Surety Bond

Surety Bond given by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Principal (“Principal”), and the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Surety (“Surety”) a corporation incorporated under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and licensed to transact a surety business in the State of Ohio, to The Dayton Power and Light Company, 1065 Woodman Dr., Dayton, OH 45432 (“DP&L”).

 **WHEREAS**, DP&L is prepared to accept Principal as an Electricity Supplier under the DP&L Alternate Generation Supplier Coordination Tariff in connection with the Electricity Supplier’s delivery of Competitive Power Supply in DP&L service territory;

 **WHEREAS**, DP&L will accept Principal as an Electricity Supplier only upon DP&L acceptance of this Surety bond guaranteeing payment of any penalties and other amounts owed by Principal to under the DP&L Alternate Generation Supplier Coordination Tariff; and

 **WHEREAS**, Surety is willing to provide this Surety Bond guaranteeing payment of any penalties and other amounts owed by Principal to DP&L under the terms set forth below.

 **NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, which the Surety acknowledges constitutes adequate consideration for its obligations hereunder, the Surety agrees as follows:

1. Principal and Surety are held and firmly bound to DP&L with respect to the payment of all amounts owed to DP&L by Principal in regard to the above referenced delivery of Competitive Power Supply as provided under the DP&L Alternate Generation Supplier Coordination Tariff (or any successor schedules approved by the Public Utilities Commission of Ohio), a minimum amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_) for which Principal and Surety jointly and severally bind themselves, their successors, assigns and legal representatives.

2. This obligation shall continue in force until Principal and Surety shall pay or cause to be paid to DP&L the entire indebtedness covered by this Surety Bond.

3. If Principal fails to make payments related to the services to DP&L as the same shall become due, DP&L will endeavor to give prompt notice thereof to Principal and to Surety; provided however that:

 (a) DP&L shall be under no obligation to give such notice to Principal or Surety of such failure of payment;

 (b) Surety shall not be discharged or released from its obligations hereunder by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. If at any time any payment by Principal to DP&L is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of Principal or otherwise, the Surety’s obligations hereunder with respect to such payment shall be at such time as though such payment had not been made; and

 (c) Surety hereby waives notice of acceptance of this Surety Bond and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any obligation or liability, suit or the taking of action by DP&L against, and any other notice to Principal, Surety or others. Surety hereby further waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (i) any right to require DP&L to proceed against Principal or any other person or entity or to pursue any other remedy in DP&L power before proceeding against Surety, (ii) any defense that may arise by reason of the incapacity, lack of power or authority, dissolution, merger or termination of Principal or any other person or entity or the failure of DP&L to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Principal or any other person or entity, (iii) any defense based upon an election of remedies by DP&L which destroys or otherwise impairs the subrogation rights of Surety, the right of Surety to proceed against Principal for reimbursement, or both,

 (d) any defense based on any offset against any amounts which may be owned by any person or entity to Surety for any reason whatsoever,

 (e) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the Principal,

 (f) any duty on the party of DP&L to disclose to Surety any facts DP&L may now or hereafter know about Principal, since Surety acknowledges that Surety is fully responsible for being and keeping informed of the financial condition of Principal and of all circumstances bearing on the risk of non-payment of any obligations and liabilities hereby guaranteed, and

 (g) any defense based on any change in the time, manner or place of any Payment under, or in any other term of, DP&L Alternate Generation Supplier Coordination Tariff.

4. DP&L shall have the right at any time to make written demand on Principal or Surety on this Surety Bond for payment of any and all amounts covered by this Surety Bond, which are due and owing and remain unpaid.

5. Within two (2) business days after DP&L has made written demand on Principal or on surety for payment of any amounts due and owing to it covered by this Surety Bond, Surety will pay in full such amounts to DP&L, including any applicable interest and late payment charges. Multiple partial draws shall be permitted under this Surety Bond throughout its term.

6. Surety shall always remain liable to DP&L for the full amount of any and all unpaid amounts covered by this Surety Bond and the Surety Bond will also survive and be binding upon Surety following any merger, reorganization, consolidation or other change in Principal’s or Surety’s structure, personnel, business or affairs.

7. This bond may be canceled by Surety at any time by giving ninety (90) days written notice to in which event Surety’s liability at the expiration of said ninety (90) days shall terminate, except as to such liability of Principal as may have accrued prior to the expiration of said ninety (90) days. Such cancellation by Surety shall not relieve Principal from any liability which accrues either prior to or subsequent to cancellation of this Surety Bond, it being the intent of the parties hereto that Principal shall always remain primarily liable for payment of all amounts due to DP&L.

8. If any one or more of the provisions of this Surety Bond are determined to be illegal or unenforceable by a court of competent jurisdiction, all other provisions shall remain effective.

9. Subrogation. The Surety hereby agrees that until the payment and satisfaction in full of all of the Principal's obligations which are the subject of this Surety Bond, it shall not exercise any right or remedy arising by reason of any performance by it under this Surety Bond, whether by subrogation or otherwise, against any other guarantor of any of the Principal's obligations.

10. Costs and Expenses. The Surety agrees to pay all of DP&L's costs and expenses (including, without limitation, reasonable attorneys' fees) which may be incurred in connection with the collection or enforcement of the Surety's obligations under this Surety Bond, including all such costs and expenses which may be incurred by DP&L in any legal action, reference or arbitration proceeding. Nothing contained herein shall be construed to obligate DP&L to pay any fees or expenses incurred in connection with the issuance of this Surety Bond.

11. This Surety Bond shall be governed under the laws of the State of Ohio. It represents the entire agreement of Principal, Surety and DP&L with respect to matters referred to herein. It may not be amended unless DP&L has agreed to such amendment in writing.

In Witness Whereof, Principal and Surety have executed this Surety Bond on \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_.

WITNESS/ATTEST \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Principal) (Title)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Surety) (Title)