

First Reading: August 7, 2014
Second Reading: dispensed

RESOLUTION NO. 2014 - 102

**A RESOLUTION AUTHORIZING SYCAMORE TOWNSHIP TO ENTER INTO A
MASTER SERVICE AGREEMENT TO PROVIDE ELECTRIC GENERATION
SUPPLY AND RELATED SERVICES BY AND BETWEEN SYCAMORE TOWNSHIP
AND DUKE ENERGY RETAIL SALES, LLC, AND DISPENSING WITH THE SECOND
READING**

WHEREAS, the Ohio Legislature has enacted legislation (ORC 4928.20) which authorizes legislative authorities of municipal corporations, townships and counties to aggregate the retail electric gas loads located in the respective jurisdiction and to enter into service agreements to facilitate for those loads the purchase and sale of electricity; and

WHEREAS, governmental aggregation provides an opportunity for residential and small business customers collectively to participate in the potential benefits of lower electricity rates which they would not otherwise be able to have individually; and

WHEREAS, on February 4, 2014, Board of Township Trustees of Sycamore Township passed a resolution to establish an "opt-out" electric aggregation program (the "Electric Aggregation Program") pursuant to Ohio Revised Code ("ORC") Section 4928.20, for the residents, businesses, and other electric consumers eligible to participate in the Electric Aggregation Program (the "Buying Group"), and for that purpose, to take greater control over the electric purchasing decisions for Sycamore Township and its qualifying residents, with the desire to take advantage of the collective purchasing power of Sycamore Township for the benefit of the Buying Group.

NOW THEREFORE, BE IT RESOLVED, by the Board of Township Trustees of Sycamore Township, State of Ohio:

SECTION 1.

The President of the Board and Fiscal Officer are hereby authorized to execute an exclusive contract on behalf of Sycamore Township with Duke Energy Retail Sales, LLC ("DER") substantially in the form as set forth on the attached Exhibit A which is incorporated as if fully set forth herein (the "Agreement") pursuant to which the parties agree, together with each and every other term of the Agreement and pursuant to the terms set forth therein, as follows:

1. DER will provide assistance to Sycamore Township in its endeavors to become certified as a governmental aggregator, including preparing an

application to the Public Utilities Commission of Ohio ("PUCO"), at no additional cost to Sycamore Township.

2. Sycamore Township, with the assistance of DER, agrees to take all steps necessary to become certified by the PUCO as an electric Governmental Aggregator.
3. Subsequent to PUCO approval of the Sycamore Township's status as an electric Governmental Aggregator, Sycamore Township shall use DER, during the term of the Agreement, as the exclusive provider of retail electric supply to the members of the Electric Aggregation Program at the pricing mutually agreed upon by DER and the Sycamore Township pursuant to the terms set forth in Section 2 of the Agreement.

SECTION 2.

This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of the Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with applicable law.

SECTION 3.

The Trustees of Sycamore Township upon at least a majority vote do hereby dispense with the requirement that this resolution be read on two separate days, and hereby authorize the adoption of this resolution upon its first reading.

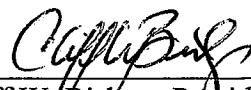
SECTION 4.

This resolution shall take effect on the earliest date allowed by law.

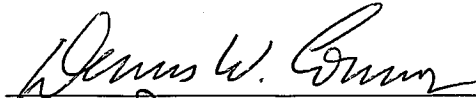
VOTE RECORD:

Mr. Bishop Aye Mr. Connor Aye Mr. Weidman Aye

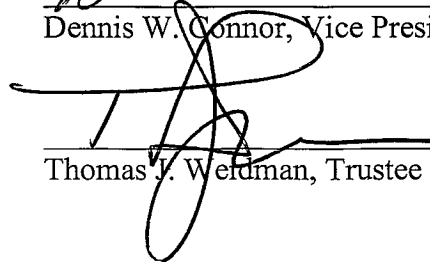
Passed at a meeting of the Board of Township Trustees of Sycamore Township this 7th day of August, 2014.



Cliff W. Bishop, President



Dennis W. Connor, Vice President



Thomas J. Weidman, Trustee

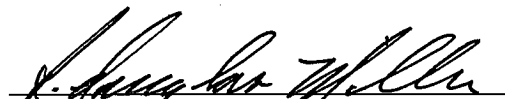
AUTHENTICATION

This is to certify that this resolution was duly passed and filed with the Township Fiscal Officer of Sycamore Township this 7th day of August, 2014.



Robert C. Porter III, Fiscal Officer
Sycamore Township, Ohio

APPROVED AS TO FORM:


R. Douglas Miller, Law Director

MASTER SERVICE AGREEMENT
TO PROVIDE ELECTRIC GENERATION SUPPLY AND RELATED SERVICES
BY AND BETWEEN
SYCAMORE TOWNSHIP, OHIO
AND
DUKE ENERGY RETAIL SALES, LLC

THIS AGREEMENT (“Agreement”) is made this ____ day of August 2014, by and between Sycamore Township (“Township”) and Duke Energy Retail Sales, LLC, (“DER”) acting by and through properly authorized officials (hereinafter the Township and DER may from time to time be referred to as a “Party” and together, as the “Parties”).

WHEREAS:

1. On February 4, 2014, the Township approved a resolution to establish an “opt-out” electric aggregation program (the “Electric Aggregation Program” or the “Program”) pursuant to Ohio Revised Code (“ORC”) Section 4928.20, for the residents, businesses, and other electric consumers eligible to participate in the aggregation program (the “Buying Group”), and for that purpose, to take greater control over the electric purchasing decisions for the Township and its qualifying residents, with the desire to take advantage of the collective purchasing power of the Township for the benefit of the Buying Group.
2. DER will provide assistance to the Township in its endeavors to become certified as a governmental aggregator, including preparing an application to the PUCO, at no additional cost to the Township. The Program will include members of the Buying Group who are currently supplied by Duke Energy Ohio, Inc., the local electric distribution utility (“Utility” or “DEO”).
3. The Township, with the assistance of DER, agrees to take all steps necessary to become certified by the PUCO as an electric Governmental Aggregator.
4. Subsequent to PUCO approval of the Township’s status as an electric Governmental Aggregator, the Township shall use DER, during the term of this Agreement, as the exclusive provider of retail electric supply to the members of the Electric Aggregation Program at the pricing mutually agreed by DER and the Township pursuant to the terms set forth in Section 2 of this Agreement.
5. The “Buying Group” shall consist of all retail electric loads, except mercantile customers, that are located within the Township and for which there is a choice of supplier of that service, and who are otherwise eligible to participate in the governmental aggregation program.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions, and terms to be kept and performed and the aforementioned recitals, which are incorporated herein by reference, the Parties agree as follows:

SECTION 1 GENERAL PROVISIONS

1.1 Electric Governmental Aggregation Program

Township agrees to seek PUCO approval to become duly certified by the PUCO to provide electric aggregation services to its residents as soon as reasonably practical. If so certified, the Township shall take all actions necessary to maintain its certification at all times through the term of this Agreement and any extension(s) hereof. The Township shall not assume the credit risk for any nonpayment on behalf of any Customer (as defined below) in its Electric Aggregation Program.

1.2 DER

DER is duly certified by the PUCO as a competitive retail electric service provider and, as such, is authorized to provide such services to serve the Township's residential and small commercial customers who do not opt out of the Program.

DER shall be acting as an independent contractor to the Township, and shall not be deemed an employee or representative of the Township.

1.3 Customers

The end users in the Township's Electric Aggregation Program will be the residential and small commercial customers within the Township's political boundaries that do not opt out of the Program ("Customers") and who are otherwise eligible to participate. On behalf of the Customers, the Township reserves the right to approve the supplier's terms and conditions for the supplier's contracts with the Customers.

1.4 Utility

For the purposes of this Agreement, DEO shall be the electric distribution utility and will provide electric distribution services for all electricity supplied under this Agreement.

1.5 No Cost

All services provided by DER under this agreement or any attachment hereto shall be at no cost to the Township.

SECTION 2 SCOPE OF WORK

Upon approval by the PUCO of the Township's status as an electric Governmental Aggregator, the Township shall use DER as the exclusive provider of retail electric supply to the members of the Electric Aggregation Program at the pricing mutually agreed by DER and the Township pursuant to the terms set forth below. Upon selection of DER as the supplier for the Electric Aggregation Program the Parties will undertake, perform and complete the services and/or actions described below:

2.1 DER and the Township will amend this Agreement: (i) to agree on the rate that the Customers will pay for electric generation service provided by DER under the Electric Aggregation Program; and, if requested by Township, (ii) to approve the terms and conditions for the DER's contracts with the Customers.

2.2 DER will be responsible for the costs of obtaining the eligible customer list from the Utility and/or from any other resource it deems useful in creation of an accurate list. The Township will share its resources to help mitigate the cost of assembling and verifying this list and will request the eligible customer list from the Utility. It will be the joint responsibility of the Township and DER to approve the list to be used. Upon notification and request to DER by a Customer who was eligible at the time of the initial opt-out notification and who remains eligible, DER shall enroll any such Customer wishing to join the Program. If an ineligible customer receives an opt-out notice and is enrolled in the Program, upon knowledge of or notice to DER, DER shall take immediate steps to return that customer to DEO's standard service. DER will also be responsible for reimbursing any switching fee and negative differential charges resulting from the improper switch, if notified by a customer with a legitimate grievance.

2.3 DER shall perform, and the Township will assist, to the best of their abilities, in the necessary list cleansing to ensure that only those Customers who are eligible to participate are included on the list. DER and the Township acknowledge that the list acquired from the Utility is represented by the Utility to be a list properly cleansed to include only those Customers that are eligible for the Government Aggregation, as detailed in ORC Section 4928.20. To the extent the Utility fails to provide such a list, the Parties hereto expressly waive any claim against each other resulting from such failure by the Utility.

2.4 DER shall print and mail opt-out notice packets to Customers that appear on the cleansed list. The packet shall contain an opt-out notice scripted by the Township, a terms and conditions page outlining Customer contract provisions scripted by DER and approved by the Township, and may also include other information as agreed upon by the Township and DER. DER shall bear the costs associated with preparing, printing, and mailing the opt-out notice packets.

2.5 DER shall receive and organize the opt-out responses and prepare a final listing of those Customers to be enrolled in the program. DER will also handle the information sharing/verification process with DEO for the transfer of accounts.

2.6 DER will utilize its customer call center resources to handle customer calls and concerns. DER maintains a toll-free telephone number that will be provided in all written correspondence with Customers, as well as the DER website that can be used by Customers to answer frequently asked questions. DER understands that the Township is not equipped to handle large volumes of customer calls and will be dependent on DER for this function. The Township will remain available to answer questions regarding customer inquiries as needed by DER.

2.7 Once timing is finalized between the Township and DER, DER will conduct an initial opt-out opportunity (the "Initial Opt-out"). Thereafter, no new Customer will be enrolled in the aggregation until a subsequent offering, at the Township's discretion ("Interim Opt-outs") is conducted. DER will provide the services set forth in Sections 2.2 through this 2.7 with respect to an Interim Opt-out, as it did for the Initial Opt-out. The purpose of the Interim Opt-outs is to provide an opportunity for newly-eligible Customers (by way of example only and not by way of limitation, a resident new to the Township since the time of the list compilation for the Initial Opt-out) to take advantage of the Program. All Interim Opt-outs will be conducted in the same manner as the initial opt-out, except that any price notifications may be provided in an expedited fashion, as long as a full opt-out notice has been provided within the term of this Agreement.

2.8 Notwithstanding anything to the contrary herein, DER agrees that, upon notification by any former Customer of the Buying Group and once provided with appropriate documentation, DER shall re-enroll any Customer who is in the Program and who moves to a new location within the Township and within the Utility's service territory. This can be accomplished as an opt-in enrollment. Appropriate documentation shall include a signed agreement, telephone verification of enrollment, or internet enrollment into the Program. The price, terms, and conditions, once re-enrolled, shall continue for the remainder of the Customer's initial term at the Customer's prior address, although in no event shall the term exceed the term of this Agreement. In addition, DER shall permit any new resident of the Township, who is within the Utility's service territory and who moves into any facility existing at the time of execution of this Agreement, to opt into the Program at the then current terms and conditions for the Program, for the remaining term of the Program as specified in this Agreement. Residents of newly constructed facilities, if eligible, will be permitted to enroll in the Program during Interim Opt-out notifications and may, in DER's sole discretion, be permitted to enroll in the Program as opt-in Customers, from time to time.

2.9 If the Utility charges a switching fee for all Customers choosing a new supplier under the Choice Program, DER agrees to pay this fee.

2.10 DER's arrangements regarding electric supply shall comply with the Choice Program. DER will supply and manage deliveries to meet 100% of the Buying Group's electric supply requirements. Pricing shall not include Utility charges, fees, or expenses, other than as set forth in Section 2.9 hereof.

2.11 If the PUCO requires information or documents regarding the Aggregation, DER agrees to assist in compiling such information, for all information in the possession and control of DER.

SECTION 3 TIME OF PERFORMANCE AND TERM OF CONTRACT

3.1 This Agreement and DER's obligations under this Agreement shall terminate on the later of May 31st 2017, or the date of commencement of another agreement related to aggregation Administrative Services by and between the Township and another such administrator, unless the Agreement is extended for an additional term(s) by mutual written agreement of the Township and DER.

3.2 The Township shall have the right to begin negotiations with DER and other electric suppliers during the term of this Agreement, in order to ensure a seamless transition and continuation of the Program. If the Township chooses a different supplier upon the termination of this Agreement, DER shall reasonably cooperate with the Township and the new supplier in a timely manner in order to ensure a seamless transition to the new supplier. This would include providing a list of Customers who, according to DER's records, are participating in the Program at the time such request is made.

3.3 Should this Agreement terminate at the end of the initial term and a new supplier is not chosen, DER will take any and all actions necessary to return any opt-out Program Customers to the Utility upon expiration of the Program.

SECTION 4 DELIVERIES

4.1 Upon selection of DER as the supplier, DER shall provide firm, full requirements electric supply to the Utility's distribution system, in accordance with the Utility's delivery guidelines.

SECTION 5 BILLING AND PAYMENT

5.1 Upon selection of DER as the supplier, DER shall delegate the billing obligations to DEO, such that Customers will receive an invoice for the Utility's charges and the DER's charges on the same monthly bill.

SECTION 6 NON-PERFORMANCE/TERMINATION

6.1 If DER fails to meet its obligations to deliver electric supply under this Agreement and its failure is not excused by any provision under this Agreement, then DER shall reimburse the Customers for any difference between DER's price and the price that the Customers pay for any replacement electric supplies, as necessary to meet the Customers' needs due to DER's failure to perform.

6.2 If, based upon a material change in the creditworthiness of DER, the Township has reasonable grounds for insecurity regarding the DER's performance of any material obligation under this Agreement; the Township may demand "Adequate Assurance of Performance," which, in the aggregate, may not exceed \$100,000. "Adequate Assurance of Performance" shall mean sufficient security, in the form, amount, and term reasonably acceptable to the Township, including, but not limited to, a standby letter of credit or a guaranty.

If DER fails to provide Adequate Assurance of Performance, as described above, within five (5) business days of written demand from the Township, then the Township shall have the right, after written notice, to terminate this Agreement and have DER transfer all aggregation Customers back to the Utility with the corresponding end-of-service notification.

6.3 A Party may terminate this Agreement prior to its natural expiration for: (i) a material breach of any of the terms contained herein by the other Party hereto which has not been cured within fifteen (15) days after written notice by the non-defaulting Party or such other cure period set forth in this Agreement, or (ii) in accordance with the following regulatory contingencies (each, a "Regulatory Event"):

A. **Illegality.** Due to the adoption of or change in any applicable law or any interpretation of any applicable law by any judicial or governmental authority, it becomes unlawful for either Party or both Parties to perform any obligation under this Agreement or its Attachments.

B. **Adverse Government Action.** Any regulatory agency or court having jurisdiction over this Master Agreement i) requires a material change to the terms of the Master Agreement that materially and adversely affects a Party, or ii) adversely and materially impacts a Party's ability to perform or otherwise provide the services described herein.

C. Failure of the PUCO to approve the Township's status as a Governmental Aggregator.

Upon the occurrence of a Regulatory Event, the adversely affected Party shall notify the other Party in writing that such an event has occurred. The Parties shall attempt to agree to an amendment to remedy the effects of the event. If no such agreement is reached, then either Party may terminate the Agreement by 30-day written notice and the DER will take all actions necessary to return all Program Customers back to the Utility and will send all Customers in Township's program an end-of-service notification in accordance with PUCO rules.

SECTION 7 FORCE MAJEURE

7.1 Force Majeure shall include, but not be limited to, the following: (i) physical events such as Acts of God, landslides, lightning, earthquakes, fires, storms (including hurricanes), or storm warnings, which result in evacuation of the affected area, floods, washouts, explosions, breakage, accident, or necessity of repairs to machinery or equipment or transmission or distribution lines; (ii) weather-related events affecting an entire geographic region, such as low temperatures that cause failure of transmission or distribution lines; (iii) interruption and/or curtailment of primary transmission or distribution lines where such interruption directly affects electric supply deliveries under this Agreement; (iv) acts of others such as strikes, lockouts, or other industrial disturbances, riots, sabotage, insurrections, terrorist acts, or wars; and (v) governmental actions, such as the necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law, promulgated by a governmental authority having jurisdiction to do so. DER and the Township shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

7.2 Neither Party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible transmission or distribution lines; (ii) the Party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, DER's ability to sell electric supply at a higher or more advantageous price than the price under this Agreement, the Township's ability to purchase electric supply at a lower or more advantageous price than the price under this Agreement, or a regulatory agency disallowing, in whole or in part, the pass-through of costs resulting from this Agreement; or (iv) the loss or failure of DER's electric supply or depletion of supply, except, in either case, as provided in Section 7.1.

The Party whose performance is prevented by Force Majeure must provide notice to the other Party. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. The claiming Party shall exercise due diligence to remove the inability to perform as soon as reasonably possible, if possible. Upon providing written notice of Force Majeure to the other Party, the affected Party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of electric supply, as applicable, to the extent and for the duration of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

SECTION 8 APPLICABLE LAW

This Agreement and all provisions herein will be governed by and interpreted under Ohio laws. Any and all litigation between DER and the Township related to this Agreement shall be brought in either a state or federal court located within the State of Ohio.

SECTION 9 MISCELLANEOUS

9.1 If any provision in this Agreement is determined to be invalid, void, or unenforceable by any court or agency having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement.

9.2 No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

9.3 This Agreement sets forth all understandings between the Parties respecting each transaction subject hereto, and any prior contracts, understandings, and representations, whether oral or written, relating to such transactions are merged into and superseded by this Agreement. This Agreement may be amended only in writing, executed by both Parties.

9.4 The Township and DER each represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of either Party represents and warrants that he or she has full and complete authority to do so and that such Party will be bound thereby.

9.5 Neither Party may assign or transfer rights and obligations under this Agreement without the written consent of the other Party. Such consent may not be unreasonably withheld. Notwithstanding the foregoing, the DER may assign this Agreement to an affiliate other than DEO or in connection with the sale of all or substantially all of the DER's assets without the consent of Township. If this occurs, the DER shall provide the Township with five (5) business days' written notice.

9.6 Any notices, requests or demands regarding the services provided under this Agreement shall be sent to the following parties:

A. TOWNSHIP

Sycamore Township
8540 Kenwood Road
Cincinnati, Ohio 45236
Attention: Township Administrator

Ph: 513-791-8447
Email: gbickford@sycamoretownship.org

B. DER

Matthew Walz
Duke Energy Retail Sales, LLC
139 East Fourth Street. EA600
Cincinnati, Ohio 45202
Ph: 513-419-6921
Matthew.walz@duke-energy.com

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first mentioned above.

Township:

DER:

Board of Township Trustees of Sycamore Township

Duke Energy Retail Sales, LLC.

By: _____

Name: Cliff W. Bishop

Title: President

By: _____

Name: Matthew Walz

Title: Vice President

Name: Robert C. Porter, III

Title: Fiscal Officer

ATTACHMENT A

ADMINISTRATIVE SERVICES TO BE PERFORMED BY DER

Duke Energy Retail Sales, LLC ("DER") will perform the following administrative services for the aggregation program at no cost to the Township.

1. DER will prepare an application to the PUCO seeking PUCO approval for Township as an electric governmental aggregator. DER will obtain all information necessary to complete the application. DER will respond to all information requests submitted by the PUCO. DER will monitor the PUCO approval process and communicate with PUCO staff to ensure that the PUCO reviews the application in a timely manner and to ensure that the PUCO has all necessary information to process the application. DER will communicate with the Township to keep the Township informed of the status of the PUCO approval process for the aggregation program.
2. Following PUCO review of the opt-out notice, DER will ensure that the opt-out notice is mailed to residents and small commercial customers who are eligible to participate in the aggregation process. DER will provide dedicated personnel based in Cincinnati to meet with Township and aggregation customers to answer any questions related to the aggregation program and to handle any disputes arising from the implementation of the aggregation program, such as enrollment, pricing, billing and termination of service. As needed, DER will meet with Township and aggregation customers to resolve such disputes.
3. DER will respond to any information requests and complaints initiated by the PUCO or aggregation customers related to the aggregation program. As needed, DER will appear at any PUCO mediations and formal hearings related to the aggregation program.
4. Prior to the expiration of the aggregation supply agreement, DER will advise Township of the communications that must be sent to aggregation customers to notify them of their rights relating to expiration and/or renewal of their individual supply contracts. DER will also advise Township regarding the requirements and timeline for renewing the aggregation supply agreement.
5. DER will make all PUCO filings necessary to renew Township's status as an electric governmental aggregator.
6. DER will consult with the Township regarding the required public hearings and will have at least one representative attend all public hearings of the Township regarding the aggregation program to answer questions and provide information to the public in attendance.