

**MASTER AGREEMENT TO PROVIDE SERVICES TO AN  
AGGREGATED GROUP**

**BETWEEN**

**JO DAVIESS COUNTY, ILLINOIS**

**AND**

**FIRSTENERGY SOLUTIONS, CORP.**

This Master Agreement ("Agreement"), is entered into as of this 10<sup>th</sup> day of June, 2014 ("Effective Date") by and between FirstEnergy Solutions Corp. ("FES"), an Ohio corporation with its principal place of business at 341 White Pond Drive, Akron, Ohio and Jo Daviess County, an Illinois county, with its principal place of business at 330 N. Bench St., Galena, JO DAVIESS COUNTY, Illinois ("JO DAVIESS COUNTY", "COUNTY" or "Governmental Aggregator"), an Illinois government aggregator (each a "Party" and collectively, "Parties").

## RECITALS

A. FES is certified by the Illinois Commerce Commission ("ICC") as an Alternate Retail Electric Supplier ("ARES") to sell competitive retail electric service to customers in the State of Illinois utilizing the existing transmission and distribution systems. FES is certified by the ICC to operate as an ARES in the service areas of ComEd and Commonwealth Edison Company.

B. FES (directly or through its affiliates) is an energy services provider with extensive experience in the provision of a broad range of energy related services.

C. FES sells electricity and related services and equipment ("Retail Electric Supply") to corporate authorities of municipalities or boards of county supervisors acting as governmental aggregators of residential and small commercial retail electrical loads located within the county or the unincorporated areas of the county, as authorized by 20 ILCS 3855/1-92 ("Act").

D. Both Parties have the corporate, governmental and/or other legal capacity(s), authority(s) and power(s) to execute and deliver this Agreement and related agreements and to perform its obligations hereunder.

E. Jo Daviess County has adopted an ordinance (the "Aggregation Ordinance") under which it may aggregate, in accordance with 20 ILCS 3855/1-92, residential and small commercial retail electrical loads located within the corporate limits of Jo Daviess County for the purpose of soliciting and entering into service agreements to facilitate for those loads the sale and purchase of Retail Electric Supply (the "Aggregation Program").

F. Jo Daviess County duly adopted an ordinance to operate the Electrical Aggregation Program as an opt-out program under the Act and has complied with all the requirements of the Act to operate an opt-out program.

G. By this Agreement, Jo Daviess County and FES desire to enter into a mutually beneficial energy and services provisions relationship whereby FES shall provide Retail Electric Supply and related administrative services ("Administrative Services") necessary to fulfill the obligations of this Agreement.

H. Jo Daviess County desires to enter into this Agreement with FES to provide Retail Electric Supply to applicable residential and small commercial retail customers through the Aggregation Program.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**  
**GENERAL REQUIREMENTS**

1.1 Governmental Aggregator Obligations and Authority.

1.1.1 The Governmental Aggregator: (1) shall take all necessary action as required by 20 ILCS 3855/1-92 to develop, adopt and maintain an Aggregation Program for all applicable residential and small commercial retail customers, within its boundaries (the "Aggregation Area") that the Governmental Aggregator has determined are eligible to participate in the Aggregation Program ("Eligible Customers"); (2) shall request the names and addresses of Eligible Customers from the electric utility that provides residential and small commercial retail electric service in the Aggregation Area (the "Electric Utility"); (3) shall hold and publish notice of any required public meetings regarding the Aggregation Program; and (4) hereby authorizes FES to contract for Retail Electric Supply with those Eligible Customers that do not opt-out of the Aggregation Program, rescind their switch to FES as part of their enrollment in the Aggregation Program, otherwise terminate their participation in the Aggregation Program, or have their participation terminated by the Governmental Aggregator, or their Retail Electric Supply terminated by FES or the Electric Utility ("Aggregation Program Customer" or "Participating Customer").

1.1.2 The Governmental Aggregator shall, on a best efforts basis and in a timely manner, forward to FES all notices from the Electric Utility concerning Participating Customers' accounts served pursuant to this Agreement, including but not limited to verbal or written notices regarding transition costs, changes in the terms and conditions of tariffs, rates or riders, and notices concerning the operation and reliability of the Electric Utility's system.

1.1.3 Governmental Aggregator has the authority to designate, and has designated FES as its ARES for the Eligible Customers for the Term of this Agreement.

1.1.4 During the Term of this Agreement, the Governmental Aggregator hereby grants FES the exclusive rights to provide Retail Electric Supply to the Eligible Customers.

1.1.5 Customer Data and Load Forecast Information. FES and Governmental Aggregator shall cooperate to obtain the consent of Participating Customers to obtain all available Eligible Customers' data and historical load and load forecast information, related to the Participating Customer's load and consumption, from any entity in possession of such data, subject to the limitations on disclosure of customer information described in Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act and any other applicable laws or regulations. Additional costs for Participating Customer(s) that are interval metered shall be borne by the Participating Customer(s).

1.1.6 Service Inquiries and Service Notices to Customer. Participating Customers may direct inquiries regarding this Agreement, and Retail Electric Supply provided hereunder, and any electric generation supply or billing questions, to FES at the address and phone number provided in Section 11.1, which address and phone number shall be provided in communications

with Participating Customers regarding the Aggregation Program. Participating Customers should direct inquiries concerning Electric Utility related emergency, power outage, wire or service maintenance, metering, Electric Utility service billing or other similar Electric Utility related concerns to the Electric Utility.

1.1.7 Point of Sale. Governmental Aggregator and Participating Customers acknowledge and agree that FES shall have no responsibility for damage to any property, or to any equipment or devices connected to the Participating Customers' electrical system.

## **ARTICLE 2** **FES OBLIGATIONS**

### 2.1 FES Obligations.

2.1.1 Commencing on the Effective Date and during the Term, subject to the terms of this Agreement, FES shall provide Retail Electric Supply (subject to the terms of the appropriate transmission and/or distribution tariffs) sufficient to serve the total electric generation needs of the small commercial retail and residential Aggregation Program Customers. FES shall arrange for the delivery of Retail Electric Supply in accordance with the requirements of the Participating Customers' respective Electric Utility and Independent System Operator ("ISO") or Regional Transmission Organization ("RTO") according to the rules, regulations, and tariffs governing Retail Electric Supply from an alternative supplier to the Point of Delivery, recognizing that the Electric Utility provides utility distribution service from the Point of Delivery to the Point of Sale. To the extent that any services or requirements are provided by the Electric Utility, FES shall not be responsible for the provision of such services. Notwithstanding the foregoing, FES is not responsible for the performance or failure to perform of the provider of such transmission, distribution, or ancillary services, or the consequences of such performance or failure to perform.

2.1.2 FES shall be responsible for all acts necessary for FES to perform its obligations hereunder, including but not limited to the scheduling of delivery of Retail Electric Supply hereunder.

2.1.3 FES shall provide Aggregation Program Customers with the environmental disclosure data and other data it is required to provide, if any, to comply with the applicable law and rules of the ICC or other applicable authority.

2.2 Subcontracting. FES may subcontract the performance of its obligations under this Agreement. However, no subcontract shall relieve FES of any of its obligations and/or liabilities under this Agreement. FES shall be responsible for all payments and obligations as between FES and subcontractors, and Governmental Aggregator shall not be responsible for payments to any such subcontractor.

2.3 Comply with Governance Plan. FES shall comply with all the terms and conditions of the Act and shall comply with the Plan of Operation and Governance adopted by Jo Daviess County, a copy of which Plan is marked as Attachment "B" and made a part hereof as if fully set forth by this reference. FES, at its own expense, shall be fully responsible to mail out all required enrollment and opt-out notices to Eligible Customers according to the requirements of the Act and any other applicable law and the form of the letter shall be approved in advance by

Jo Daviess County, which approval shall not be unreasonably withheld or delayed by Jo Daviess County.

2.4 Indemnification. First Energy Solutions shall indemnify and hold harmless the County, their officers and employees, from and against any and all third-party claims, losses, judgments, liabilities or claims for reasonable attorneys' fees arising out of or resulting in whole or in part from First Energy Solution's negligence or breach of this Agreement, except to the extent caused by the negligence of the County or its breach of this Agreement. The duty to indemnify shall survive the expiration of this Agreement.

2.5 Insurance. Contemporaneous with First Energy Solution's execution of this Agreement, First Energy Solutions shall provide certificates of insurance, all with coverages and limits as set forth in Attachment C to this Agreement. First Energy Solutions shall, at all times during the term of this Agreement, maintain and keep in force, at First Energy Solution's expense, the insurance coverages provided above.

### **ARTICLE 3** **TERM AND TERMINATION**

#### 3.1 Term of Agreement and Termination.

3.1.1 This Agreement may be terminated prior to the expiration of the Term, in compliance with this Agreement's provisions, if: (1) a Party exercises its right under Article 6 to terminate this Agreement; (2) FES fails to maintain its ICC Certification; or (3) any of the situations described in Section 3.3 occur and Parties are unable to mutually negotiate modification(s) to the Agreement so that the adversely-affected Party may be restored to a reasonably similar economic position that the adversely-affected Party would have been in but for the occurrence of the events set forth in Section 3.3. This Agreement shall terminate upon the expiration of this Agreement's Term, but this Agreement may also be renewed by mutual agreement for a term agreed upon by the Parties.

3.1.2 Term of Enrollment. Participating Customers shall remain enrolled in the Aggregation Program until the Participating Customer exercises the right to opt-out, or they otherwise terminate their participation in the Aggregation Program, their participation in the Aggregation Program is terminated by the Governmental Aggregator, their Retail Electric Supply is terminated by FES or the Electric Utility, or their electric service is terminated by the Electric Utility or until this Aggregation Program is terminated, whichever occurs first.

3.2 Interaction Between Termination Dates of this Agreement and Contracts with the Participating Customer. Participating Customers initially enrolled in the Aggregation Program shall receive Retail Electric Supply at the rate(s) set forth in this Agreement. If this Agreement is terminated prior to the end of the Term due to a Regulatory Event, then Retail Electric Supply will terminate early and the Participating Customers will be switched to the applicable tariffed services provided by the Electric Utility as required by 220 ILCS 5/16-103 and defined by its rates on file with the ICC pursuant to 220 ILCS 5/Art. IX. ("Tariffed Service") in accord with the standard switching rules and applicable notices. If this Agreement is terminated pursuant to the terms of Article 6, the Retail Electric Supply will terminate early and the Participating

Customers may choose another ARES Provider or will be switched to Tariffed Service in accord with the standard switching rules and applicable notices. The Participating Customers are responsible for arranging for their supply of Energy upon expiration or termination of this Agreement. If this Agreement is terminated prior to the end of the Term and a Participating Customer has not selected another supplier, such Participating Customer will be switched to Tariffed Service.

### 3.3 Regulatory Contingencies.

3.3.1 Regulatory Events. The following, as well as the events described in Section 3.3.3 herein, will constitute a "Regulatory Event" governing the rights and obligations of the Parties under this Agreement:

(i) Illegality. If, due to the issuance of an order, or adoption of, or change in, any applicable law, rule, or regulation, or in the interpretation of any applicable law, rule, or regulation, by any judicial, regulatory, administrative or government authority with competent jurisdiction, it becomes unlawful for a Party to perform any obligation under this Agreement.

(ii) Material Adverse Government Action. If (A) any regulatory agency or court having competent jurisdiction over this Agreement requires a change to the terms of the Agreement that materially adversely affects a Party(s), or (B) any regulatory or court action adversely and materially impacts a Party's ability to perform or otherwise provide services pursuant to this Agreement.

(iii) New Taxes. If any tax or increases in such tax, or an application of such tax to a new or different class of parties, is levied or enacted on FES and effective after the Execution Date, except federal and state income taxes, employee taxes or other taxes assessed against the business of FES as opposed to the delivery of services under this Agreement.

3.3.2 Notice, Negotiation, and Early Termination. Upon the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has occurred. The Parties will mutually attempt to negotiate modification(s) to the Agreement so that the adversely-affected Party may be restored to a reasonably similar economic position that the adversely-affected Party would have been in but for the occurrence of the Regulatory Event. If the Parties are unable, within thirty (30) days of entering into negotiations, to agree upon modification(s) to this Agreement, the adversely affected Party shall have the right, upon thirty (30) days notice, to terminate this Agreement without liability and close out its obligations hereunder.

3.3.3 Regulatory Events Defined. Regulatory changes or rulings, legislative and agency acts, and judicial rulings covered by preceding Section 3.3.1, include but are not limited to: (i) material changes affecting FES' ICC Certification applicable to this Agreement/franchise status, fees, costs, or requirements; (ii) other material changes or clarifications of federal, state or local government certification, licensing or franchise requirements for electric power suppliers; (iii) material changes to existing or material new charges, fees, costs, and/or obligations, including without limitation transmission or capacity requirements or charges, that may be imposed upon

FES by an ISO or a RTO, independent transmission provider, Electric Utility, federal law or government agency; (iv) material changes to existing or material new charges, fees, costs, credits, emission allowance requirements, permitting requirements and/or obligations associated with environmental or energy law and regulations (including, without limitation, alternative energy requirements, carbon and greenhouse gas, or other similar controls); and (v) other material changes to, or requirements of, retail electric customer access or aggregation programs in a manner which will not reasonably allow a Party or the Parties to perform economically hereunder.

3.4 Termination Obligations. Termination of this Agreement shall not relieve either Party of the obligation(s) to pay amounts owed for actual performance of obligations rendered prior to the termination of this Agreement.

3.5 Termination Notices. In the event of termination hereunder, the terminating Party shall exercise its best efforts to communicate to the non-terminating Party the upcoming possibility of

termination. In the event that this Agreement is terminated prior to the end of the Term, each individual Participating Customer of the Aggregation Program will be provided written notification from the terminating Party of the termination of the Agreement at least thirty (30) days prior to termination, and in compliance with other regulatory or legal requirements and Participating Customers will also be notified of their right to return to the Electric Utility or to select an alternate retail electric supplier. All other notification(s) shall be in accordance with ICC requirements.

#### **ARTICLE 4** **ENERGY SCHEDULING, TRANSMISSION, PRICING AND DELIVERY**

4.1 Scheduling, Transmission and Delivery of Power. During the Delivery Term, FES shall schedule Energy as required by the RTO or other transmission provider and the Electric Utility, and shall arrange for transmission and distribution service to the Participating Customers. FES will arrange for necessary electric distribution and transmission rights for delivery of such Energy to provide the Retail Electric Supply hereunder and subject to the understanding that FES has an obligation to make deliveries to Participating Customer as set forth in Section 2.1 except pursuant to Sections 3.3 or Article 7 of this Agreement. FES does not take responsibility for any delivery of services supplied by the Electric Utility or RTO, or for the consequences of the failure to provide such services. FES shall not be responsible to Participating Customer in the event the Electric Utility or RTO disconnects, suspends, curtails or reduces service to Participating Customer (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Electric Utility's facilities, or to maintain the safety and reliability of the Electric Utility's electrical system, or due to emergencies, forced outages, potential overloading of the Electric Utility's transmission and/or distribution circuits, or Force Majeure or for any other reason permitted by the Electric Utility's tariff or any other acts or omissions of the Electric Utility.

4.2 Pricing.

4.2.1 During the Delivery Period, FES shall provide Retail Electric Supply to all Participating Customers at the price set forth on the Pricing Attachment. There will be no discount given on such charges as transmission and ancillary services if they are identified in a separate tariff or rider approved by the ICC.

4.3 Failure of Delivery. In the event that FES fails to schedule all or part of the Retail Electric Supply as set forth herein and FES' failure is not due to a Force Majeure Event, and a Participating Customer is required to obtain and pays for Tariffed Service or other Energy supply arrangement necessary to cure such Energy deficiency, FES shall reimburse Participating Customer, on the later of ten (10) days after receipt of invoice or the date payment would otherwise be due to FES, an amount determined by multiplying (a) the aggregate deficiency in the Retail Electric Supply by (b) the Replacement Price. IN THE EVENT OF FES' FAILURE TO PERFORM DUE TO A NON-FORCE MAJEURE EVENT, FES' OBLIGATION TO PAY SUCH AMOUNT DURING THE PERIODS OF NON-DELIVERY SHALL BE THE GOVERNMENT AGGREGATOR'S AND THE PARTICIPATING CUSTOMERS' SOLE REMEDY FOR FES' FAILURE TO DELIVER ENERGY PURSUANT TO THE TERMS OF THIS AGREEMENT.

## **ARTICLE 5** **BILLING AND PAYMENTS**

5.1 Additional Costs. In addition to the pricing described in Section 4.2.1 and the Pricing Attachment, FES will charge Participating Customers for any and all fees, costs, and obligations imposed by an ISO or a RTO on FES that are not otherwise reimbursed by the Electric Utility to FES, regardless of whether such charges are greater than, less than, or equal to the charges a Participating Customer currently pays for these services to the Electric Utility ("Transmission and Ancillary Charges"). FES will pass these Transmission and Ancillary Charges, which may be variable, through to the Participating Customers, and Participating Customers will receive no discount or percent-off of these Transmission and Ancillary Charges. Such pass through includes, without limitation, the cost of Network Integration Transmission Services, Transmission Losses and Ancillaries (as such terms are used by the ISO), distribution line losses and distribution service charges assessed by the Electric Utility on FES and/or its customers, and any capacity requirement imposed on FES by an ISO or a RTO.

5.2 Billing. Billing shall be provided by the Electric Utility under a consolidated billing format pursuant to the Electric Utility's tariff provisions and ICC rules applicable to Participating Customer(s). If a Participating Customer fails to pay amounts due within the specified time period for said payments in accord with the Electric Utility's tariff and ICC regulations, FES retains the right to assess late payment fees on, or deem such non-payment a default of Participating Customer for purposes of Section 6.1.1 of this Agreement. FES may not convert Participating Customer from consolidated billing to dual billing, or from dual billing to consolidated billing if such a conversion will facilitate more timely billing, collections, and/or payment, without the prior written consent of Jo Daviess County and such consent shall not be unreasonably withheld or delayed.

## **ARTICLE 6** **DEFAULT AND REMEDIES**

6.1 Event of Default.

6.1.1 A “Jo Daviess County Event of Default” shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

(i) Any representation or warranty made by Jo Daviess County in Article 9 hereunder is false or misleading in any material respect when made;

(ii) The non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above) and such failure is not remedied within thirty (30) days after written notice thereof unless the cure requires longer than the thirty (30) days to effect and Jo Daviess County is diligently working towards such cure; and

6.1.2 A “FES Event of Default” shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

(i) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;

(ii) any representation or warranty made by FES in Article 9 hereunder is false or misleading in any material respect when made or when deemed made;

(iii) the non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above and as set forth in Section 4.3) if such failure is not remedied within thirty (30) days after written notice thereof, unless the cure period reasonably requires more than thirty (30) days to effect and FES is diligently working towards such cure; and

## 6.2 Rights and Remedies.

6.2.1 Rights and Remedies for a Jo Daviess County Event of Default. Subject to other provisions of this Agreement, if Jo Daviess County is the defaulting Party hereunder, so long as such Jo Daviess County Event of Default shall have occurred and be continuing, FES shall have the right to (i) designate a date (“Early Termination Date”), no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, on which this Agreement shall terminate and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, and/or (iii) have all rights available at law and in equity. In addition to the foregoing remedies, FES shall have the right to seek the remedies of specific performance of Jo Daviess County’s and Participating Customers’ obligations hereunder and/or injunctive relief to continue to provide Retail Electric Supply hereunder.

6.2.2 Rights and Remedies for a FES Event of Default. Subject to other provisions of this Agreement, if FES is the defaulting Party hereunder, so long as such FES Event of Default shall have occurred and be continuing, Jo Daviess County shall have the right to (i) designate an Early Termination Date, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, and/or (iii) have all rights available at law and in

equity. In addition to the foregoing remedies, Jo Daviess County shall have the right to seek the remedies of specific performance and/or injunctive relief.

Notwithstanding any other provision of this Agreement, the remedies set forth in Section 4.3 shall be the sole and exclusive remedies for any failure of FES to deliver Retail Electric Supply. As long as FES is supplying Retail Electric Supply to the Participating Customers at the price and upon the terms and conditions of this Agreement, Jo Daviess County shall not have the right to terminate this Agreement, suspend performance or pursue other remedies, and FES shall have no liability to Participating Customers for damages.

6.2.3 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.

## ARTICLE 7 **FORCE MAJEURE**

7.1 Excused Failure to Comply. Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, if its failure to perform results directly or indirectly from a Force Majeure Event. If despite its commercially reasonable efforts, either

Party is unable, wholly or in part, to meet its obligations under this Agreement due to a Force Majeure Event, the obligations of each Party, other than the obligation to make payments due for performance rendered hereunder, so far as they are affected by such Force Majeure Event, shall be suspended during such period of the Force Majeure Event. The Party claiming excuse due to a Force Majeure Event shall exercise commercially reasonable efforts and due diligence to remove the inability to perform as soon as reasonably possible so that the affected period shall be no longer than that necessarily affected by the Force Majeure Event and shall exercise commercially reasonable efforts and due diligence to mitigate the effects of the Force Majeure Event. Nothing contained in this Section 7.1 shall be construed as requiring a Party to settle any strike or labor dispute in which it may be involved.

7.2 Force Majeure Event. For purposes of this Agreement, a "Force Majeure Event" shall mean any non-economic cause beyond the reasonable control of the Party affected and shall include, but not be limited to, Acts of God, winds, floods, earthquakes, storms, droughts, fires, pestilence, destructive lightning, hurricanes, washouts, landslides, tornadoes and other natural catastrophes; strikes, lockouts, labor or material shortage, or other industrial disturbances; acts of the public enemies, epidemics, riots, civil disturbances or disobedience, sabotage, wars or blockades; the failure of facilities, governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental authority, a change in law or court order; provided, however, that any such discretionary acts, failure to act or orders of any kind by Government Aggregator may not be asserted as a Force Majeure Event by Government Aggregator; or any other reasonably unplanned or non-scheduled occurrence, condition, situation or threat not covered above and not caused by a Party's action or inaction, which renders either Party unable to perform its obligations hereunder, provided such event is beyond the reasonable control of the Party claiming such inability. A change in economic electric power market conditions shall not constitute a Force Majeure Event. Failure or interruptions, including without limitation, government ordered interruptions, on the systems of

generation, transmission or distribution relied upon for supplying Energy under this Agreement shall constitute a Force Majeure Event provided that FES has arranged for service on these systems at a level of firmness as required to provide the Retail Electric Supply agreed upon herein.

7.3 Notification. If either Party is unable to perform any of its obligations under this Agreement due to a Force Majeure Event, then said Party shall notify the other Party in writing as soon as possible, but no later than seventy-two (72) hours after the start of the Force Majeure Event. The written notice shall include a specific description of the cause and expected duration of the Force Majeure Event.

## **ARTICLE 8** **LIMITATION OF LIABILITY**

8.1 LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER, TO A PARTICIPATING CUSTOMER OR TO A THIRD PARTY FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON A STATUTE, BREACH OF WARRANTY, TORT (INCLUDING BUT

NOT LIMITED TO NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN SECTION 4.3 AND ARTICLE 6 OF THE AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH SECTION 4.3 OR ARTICLE 6 PROVIDES THE EXPRESS REMEDY OR MEASURE OF DAMAGES, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. FOR ALL OTHER PROVISIONS OF THIS AGREEMENT FOR WHICH NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PART, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

8.2 DISCLAIMER. FES DOES NOT WARRANT OR GUARANTEE THE UNINTERRUPTED DELIVERY OF RETAIL ELECTRIC SUPPLY TO AGGREGATION PROGRAM CUSTOMERS DURING FORCE MAJEURE EVENTS. FES WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE OPERATIONS OF THE ELECTRIC UTILITY, INCLUDING BUT NOT LIMITED TO, THE INTERRUPTION, TERMINATION, FAILURE TO DELIVER, OR DETERIORATION OF ELECTRIC UTILITY'S TRANSMISSION OR DISTRIBUTION SERVICE. EXCEPT AS MAY BE SPECIFICALLY PROVIDED HEREIN, NO IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO THIS AGREEMENT.

**ARTICLE 9**  
**REPRESENTATIONS AND WARRANTIES**

9.1 Representations and Warranties by FES.

9.1.1 FES hereby represents and warrants to Jo Daviess County as of the Effective Date as follows:

(i) FES is a corporation, duly formed, validly existing and in good standing under the laws of the State of Ohio and certified as an Alternative Retail Electric Supply in the State of Illinois.

(ii) FES has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(iii) The execution and delivery of, and performance under, this Agreement are within FES' powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it;

(iv) This Agreement has been duly executed and delivered by FES, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of FES enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

(v) No Bankruptcy is pending against it or to its knowledge threatened against it.

(vi) None of the documents or other written information furnished by or on behalf of FES to Jo Daviess County and the Request for Proposal contains any untrue statement of a material fact or omits to state any material fact or is misleading. FES is not in default with any order, writ, injunction or decree of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would prevent FES from complying with the terms and conditions of this Agreement.

(vii) That there are no actions, proceedings or investigations pending or threatening FES before any court or before any governmental department, commission, board, agency or instrumentality, nor does FES know or have reasonable ground to know of any basis for any such action, proceeding or investigation against FES which would prevent FES from complying with the terms and conditions of this Agreement.

## 9.2 Representations and Warranties by Jo Daviess County

9.2.1 Government Aggregator hereby represents and warrants to FES as of the Effective Date as follows:

(i) Jo Daviess County has complied with requirements under the Act for Jo Daviess County to provide for the aggregation of electrical loads for residential and small commercial retail customers within the corporate limits of Jo Daviess County as an opt-out program;

(ii) Jo Daviess County has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement;

(iii) The execution and delivery of, and performance under, this Agreement are within Jo Daviess County's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it. Neither the execution nor delivery by Jo Daviess County of this Agreement nor the consummation by Jo Daviess County of the transactions contemplated hereby or thereby does or will result a breach or violation of the Agreement establishing Jo Daviess County's Aggregation Group, or its bylaws, or any material provision of the governance document related thereto;

(iv) This Agreement has been duly executed and delivered by Jo Daviess County, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of Jo Daviess County, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization and similar laws affecting creditors' rights and remedies generally, to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law;

(v) Jo Daviess County is entering into this Agreement with a full understanding of all of the risks hereof (economic and otherwise), and it is capable of assuming and willing to assume those risks;

(vi) None of the documents or other written information furnished by or on behalf of Jo Daviess County or Eligible Customers to FES pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;

(vii) Jo Daviess County has the contractual right to enter into this Agreement, to contract with FES to supply Retail Electric Supply and Administrative Services to meet the obligations of its Aggregation Program Customers, and shall enforce its contractual agreements and rights.

**ARTICLE 10**  
**CONFIDENTIAL INFORMATION**

10.1 Confidential Information. Any Confidential Information, as defined in Section 10.2 herein, made available pursuant to this Agreement and conspicuously marked or stamped as “Confidential” shall be held in confidence by each of the Parties to protect the legitimate business needs and/or privacy interests of the Parties. With respect to multi-page documents that contain Confidential Information, the Parties may make such a designation by marking or stamping only the first page thereof. The Parties shall identify any matter deemed to be Confidential Information at the time the information is provided. Any information not designated, as Confidential Information shall not be covered by the protection contemplated herein, provided, however, that the inadvertent provision of information without a confidential designation shall not itself be deemed a waiver of the Party’s claim of confidentiality as to such information, and the Party may thereafter designate the same as confidential, if the information is deemed confidential as set forth herein.

10.2 Confidential Information Defined. “Confidential Information” means any and all data and information of whatever kind or nature (whether written, electronic or oral) which is disclosed by one Party (the “Disclosing Party”) to the other Party (the “Recipient”) regarding itself, its business, the business of its affiliates, and/or the Aggregation Program. Confidential Information does not include information that: (a) is in the public domain at the time of disclosure; (b) passes into the public domain after disclosure, except by a wrongful act of the

Recipient; (c) is disclosed to the Recipient by another not under an obligation of confidentiality; or (d) is already in the Recipient’s possession prior to disclosure by the Disclosing Party.

10.3 Obligation of Confidentiality. Each Party agrees, for itself and its authorized representatives, to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes in connection with this Agreement, except to the extent that the Recipient determines that release of Confidential Information is required by law or regulation. The Recipient shall make commercially reasonable efforts to notify the Disclosing Party if it intends to release any Confidential Information to afford the Disclosing Party an opportunity to seek a protective order prior to disclosure. The obligations for Confidentiality set forth in this Agreement, including but not limited to the non-disclosure obligations and the duty to return Confidential Information upon written request, shall survive the termination of this Agreement for a period of one (1) year thereafter. Nothing in this Paragraph shall limit, hinder, or restrict Jo Daviess County from complying with the State Records Act, 5 ILCS 160/1 et seq., and the Freedom of Information Act, 5 ILCS 140\1 et seq. nor shall Jo Daviess County be found to have violated this provision, or any other provisions of this Agreement, for having fulfilled a valid Public Records Request or Freedom of Information Request.

**ARTICLE 11**  
**MISCELLANEOUS**

11.1 Notices. Any notices, requests or demands regarding the services provided under this Agreement and the Attachments shall be deemed to be properly given or made (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at its address set

forth in this Agreement; (ii) if sent by U.S. Postal Service mail certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address shown below; or (iii) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express service, addressed to the intended recipient at its address set forth in this Agreement. The address of a Party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Party.

FirstEnergy Solutions Corp

JO DAVIESS COUNTY

For Notices or Inquires Regarding  
this Agreement:

For Notices or Inquires Regarding  
this Agreement:

Lorraine Rader

Jo Daviess County Administrator

Manager, Government Aggregation

JO DAVIESS COUNTY

FirstEnergy Solutions Corp.

330 N Bench St

341 White Pond Drive

Galena, IL 61036

Akron, OH 44320

Phone: 330-315-7271

Phone: 815-777-6557

Fax: 330-777-6152

Fax: 815-777-2285

11.2 Entire Agreement. This Agreement, including all Attachments hereto, contains all of the terms and conditions of this Agreement reached by the Parties, and supersedes all prior oral or written agreements with respect to this Agreement. This Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by all Parties hereto. No waiver of any term, provision, or conditions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.

11.3 Waivers. Any request for a waiver of the requirements and provisions of this Agreement shall be in writing and must be approved in writing by the nonwaiving Party. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights.

11.4 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois. Jurisdiction and the venue for any cause of action between the Parties relating to the terms of this Agreement shall be solely and exclusively filed in the circuit court of Jo Daviess County, Illinois.

11.5 Controlling Provisions. In the event of any inconsistency between the terms herein and the terms of the Attachments hereto, the provisions of the Agreement shall control.

11.6 Severability. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.

11.7 Non-Assignability. This Agreement shall not be transferred or assigned by either Party without the express written authorization of the non-assigning Party, which authorization shall not be unreasonably withheld; provided, however, that such authorization may be withheld upon a reasonable determination that the proposed assignee does not have at least the same financial and technical abilities. Notwithstanding the foregoing, FES may, without the consent of Jo Daviess County or the Participating Customers, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to an affiliate of FES; or (c) transfer or assign this Agreement to any person or entity succeeding to all or a substantial portion of the assets of FES. Upon an assignment pursuant to (b) or (c), Jo Daviess County and the Participating Customers agree that FES shall have no further obligations regarding future performance hereunder. Either Party's assignee shall agree in writing to be bound by the terms and conditions of this Agreement, including the Attachments. Subject to the foregoing, this Agreement and its Attachments shall be binding upon and inure to the benefit of any permitted successors and assigns, to the extent permitted by law.

11.8 Forward Contract. The Parties acknowledge and agree that (a) this Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code, and (b) FES is a forward contract merchant.

11.9 Recitals. The Parties agree and acknowledge that the prefatory statements and recitals in this Agreement are intended to be and shall be a part of the provisions of this Agreement.

11.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective on the date first written above.

**FirstEnergy Solutions Corp.:**

Signed: \_\_\_\_\_  
Printed Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Jo Daviess County, Illinois**

Signed: Merrill Berg  
Printed Typed Name: Merrill Berg  
Title: County Board Vice-Chair  
Date: June 27, 2014

Attest:

Jean Dimke  
Jean Dimke  
Jo Daviess County Clerk

## **ATTACHMENT A:**

### **Pricing and Other Conditions to Retail Generation Service Offer**

**Attachment A to Master Agreement**

Between

**JO DAVIESS COUNTY, Illinois and FirstEnergy Solutions Corp.**

**The program discounts are as follows:**

**Term:** Beginning with September 2014 meter read dates through September 2017 meter read dates.

**Opt-Out Program:**

**Residential Customer Class**

Price: 7.31¢ per KWh\*

**Commercial Customer Class**

Price: 7.31¢ per KWh\*

The above pricing includes 0% renewable power

**Opt-In Program:**

**Residential Customer Class**

Price: 7.34¢ per KWh\* – 100% Renewable

**Commercial Customer Class**

Price: 7.34¢ per KWh\* – 100% Renewable

**Term:** 36 months

**Supplier will \_\_\_\_\_ / will not X make a civic contribution annually at the rate of \$0.xxx per KWh for all usage consumed and paid for by participants of the Jo Daviess County Aggregation Program.**

**Termination Fees:** None

\* Price Guarantee. Should the ComEd Price to Compare, as defined below, for the enrolled participants be set below the contract aggregation price, the County has the option, but not the obligation to terminate Supplier service and have all participants returned to Utility Supply. In the event that the ComEd Price to Compare drops below the contract aggregation price and the County chooses to return all participants to the Utility, Supplier will receive Notice from the County of its right to terminate Supplier service. Upon receiving Notice, Supplier shall have the option, but not the obligation, to continue service at a price equal to the ComEd Price to Compare. "Price to Compare" shall be defined as the weighted average of the published summer and non-summer ComEd Tariffed Service rate as defined by the ICC, including charges for Transmission and the monthly Purchased Energy Adjustment ("PEA"). Should the County choose not to return all participants to Utility Service, the County will reserve its right to terminate Supplier Service in the future, should the ComEd Price to Compare again later be set below the contract aggregation price.

**Program Development/Administration – To be provided by FirstEnergy Solutions**

- Design, print and mail the Opt-out letter to all eligible participants including a sheet of Frequently Asked Questions to provide assistance
- Administer the Opt-out process including database preparation, handling of opt-out form information, and final enrollment list compilation
- Provide a call center to handle information calls
- Run supplemental mailings to allow new customers to join the program as well as sending out mailings to residents already on supply (done at the beginning of the program and at the same time as mailing the Opt-out letters)

IN WITNESS WHEREOF, the Parties have duly executed this agreement to be effective on the date first written above.

FirstEnergy Solutions Corp:  
 Signed: \_\_\_\_\_  
 Printed  
 Typed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Jo Daviess County, Illinois  
 Signed: Merri Berlage  
 Printed  
 Typed Name: Merri Berlage  
 Title: Vice-Chair of County Board

Attest: Jean Dimke  
 Jean Dimke  
 Jo Daviess County Clerk

**ATTACHMENT B:**

**Plan of Operation and Governance**

**JO DAVIESS COUNTY**

**ELECTRIC POWER  
AGGREGATION  
PLAN OF OPERATION  
AND GOVERNANCE**

**May 14, 2013**

# **Jo Daviess County**

## **Electric Power Aggregation**

### **Plan of Operation and Governance**

#### **I. INTRODUCTION**

Public Act 096-0176 amended the Illinois Power Agreement Act by adding Section 1-92 to Chapter 20, Act 3855 of the Illinois Compiled Statutes (“the Act”) and allowed the Corporate Authorities of a county to adopt an ordinance in accordance with the Act to aggregate electrical loads for residential and small commercial retail customers within the corporate limits of the County on an opt-out or opt-in program. The Act further authorized a county to select suppliers of retail electric supply, solicit bids and enter into service agreements to facilitate the sale and purchase of electricity and related services. The legislation authorized the Illinois Power Agency (“IPA”) to assist a county in developing a plan of operation and governance.

Large industrial and commercial consumers with sophisticated electric operations use their size and expertise to obtain lower electric power rates. Individual residential and small commercial retail consumers are typically unable to obtain significant price reductions since they lack the same bargaining power, expertise and the economies of scale enjoyed by larger consumers. Aggregation, the combining of multiple electric loads, provides the benefits of retail electric competition for consumers with lower electric usage.

Municipal aggregation, the combining of multiple retail electric loads of customers by a county, provides the means through which municipal residential and small commercial retail customers may obtain economic benefits of Illinois’ competitive retail electric market. The Jo Daviess County Aggregation Program combines the electric loads of residential and small commercial retail customers to form a buying group (“Aggregation Group”). Jo Daviess County (“County” or “Jo Daviess County”) will act as purchasing agent for the Aggregation Group. Therefore, Jo Daviess County will be a Municipal or Governmental Aggregator, as described by Illinois law and the rules established by authorized agencies, and shall act on behalf of Commonwealth Edison Company, an affiliate of Exelon Corporation (herein referred to as “ComEd” or “Commonwealth Edison”) in the County to obtain the best Aggregation Program for the Members of the Aggregation Group.

#### **II. PROCESS**

On April 9, 2013, in accordance with the requirements of the Act, Jo Daviess County voters approved a referendum to operate an Aggregation Program as an "opt-out" program. Under the opt-out program, all ComEd residential and small commercial retail customers in the County are automatically included as participants in the Program unless they opt-out of the Program by providing written notice of their intention not to participate as a part of the Aggregation Group. As required by state law, the Corporate Authorities (“Jo Daviess County Board” or “County Board”) of the County of Jo Daviess, Illinois (“County” or “Jo Daviess County”) duly passed an Ordinance which authorized submitting to the County's electorate the determination whether or not the Aggregation Program shall operate as an opt-out program. Following the approval of the referendum by the electorate, the County passed Ordinance number 2013-03 on May 14, 2013

authorizing the County to aggregate electric loads for residential and small commercial retail customers in unincorporated Jo Daviess County and implement an opt-out program.

In addition to passing the required ordinances by the County Board, the County may also be required to comply with various rules and regulations established by authorized agencies of the State of Illinois. The County will promptly file any application and comply with any applicable rules and regulations that may be required by Illinois law for certification as a Municipal Aggregator and to operate the Aggregation Program under the Act. As required by the Act, the County Board developed and approved this Aggregation Plan of Operation and Governance ("Plan"). Before adopting this Plan and as required by the Act, the County Board duly published a notice in the Flash and Galena Gazette, a newspaper of general circulation in the County, of public hearings to be held on March 13, 2013 at 7:00 o'clock P.M. and on March 14, 2013 at 7:00 o'clock P.M. The public hearings were held by the County Board at the Apple River Stagecoach Event Center and the Jo Daviess County Courthouse and provided the residents of the County a meaningful opportunity to be heard regarding the Aggregation Program and this Plan. The County Board considered the concerns of the residents and information disclosed at the hearings in the development of this Plan. The opt-out notice for the Aggregation Program shall be provided in advance to all eligible electric customers in the County upon approval of this Plan according to the opt-out disclosure program developed by the County. The opt-out notice and disclosures shall comply with the Act and all applicable rules and regulations of any authorized agency in the State of Illinois and shall fully inform such customers in advance that they have the right to opt-out of the Aggregation Program. The opt-out notice shall disclose all required information including but not limited to the rates, terms and conditions of the Program and the specific method to opt-out of the Program.

By majority vote of the County Board, the County may select a Retail Electric Supplier ("RES" or "Provider") to provide the electric power for the Jo Daviess County Aggregation Program according to the terms of a written service agreement entered into by and between the Provider and the County. By majority vote of the County Board, the County may determine not to enter into a service agreement with any Provider and in such event the Aggregation Group shall continue to purchase electric power through Commonwealth Edison. If the County Board enters into a service agreement with a Provider, Commonwealth Edison will continue to provide and service delivery of the electricity purchased from the Provider, and metering, repairs and emergency service will continue to be provided by Commonwealth Edison. The County Board has determined that each participant in the Aggregation Group shall receive a single monthly bill from Commonwealth Edison under applicable tariffs.

### III. DEFINITIONS

In order to clarify certain terminology, the following terms as used in this Plan shall have the meanings set forth below:

"Aggregation Group" shall mean all the residential and small commercial retail customers of ComEd in the corporate limits of the County that have not opted out of the Program and are permitted under the terms of the Act to participate in the Program.

"Aggregation Program" or "Program" means the program developed and implemented by the Jo

Daviess County, as a Municipal Aggregator under the Act, to provide ComEd residential and small commercial retail customers in the County with retail electric generation services.

"Municipal Aggregator" means the County operating an Aggregation Program under the legislative authority granted the County to act as an aggregator to provide a competitive retail electric service to residential and small commercial retail customers of ComEd in the County. Pursuant to the Act, an Aggregator is not a public utility or an alternative retail electric supplier.

"Member" means a person or legal entity enrolled in the Jo Daviess County Municipal Aggregation Program for competitive retail electric services and a member of the Aggregation Group.

"Retail Electric Supplier" ("RES" or "Provider") means an entity certified by all required authorities of the State of Illinois to provide competitive retail electric supply service(s), and which is duly selected by the County to be the entity responsible to provide the required retail electrical supply service related to an Aggregation Program as defined in the Act, County Ordinances and applicable rules and regulations of any authorized agency of the State of Illinois and has duly executed a Power Supply Agreement with the County.

#### IV. OPERATIONAL PLAN:

##### A. Aggregation Services

1. Provider: Jo Daviess County will use a competent entity as a Provider to perform and manage aggregation services for Members of the Aggregation Program. The Provider shall provide adequate, accurate, and understandable pricing, terms and conditions of service, including but not limited to no switching fees and the conditions under which a Member may opt-out without penalty. The Provider must provide the County, upon request, an electronic file containing the Members usage, charges for retail supply service and such other information reasonably requested by the County.

2. Database: The Retail Electric Supplier shall create and maintain a secure database of all Members. The database will include the name, address, Commonwealth Edison account number, and Retail Electric Suppliers' account number of each active Member, and other pertinent information such as rate code, rider code (if applicable), most recent 12 months of usage and demand, and meter reading cycle. The database will be updated at least quarterly. Accordingly, the Provider will develop and implement a program to accommodate Members who (i) leave the Aggregation Group due to relocation, opting out, etc. (ii) decide to join the Aggregation Group; (iii) relocate anywhere within the corporate limits of the County, or (iv) move into the County and elect to join the Aggregation Group. This database shall also be capable of removing a Member from the Aggregation Group who has duly opted out of the Program. The Provider will use this database to perform audits for clerical and mathematical accuracy of Member electric supply bills. The Provider will make the database available to the County at any time the County requests it.

3. Member Education: The Provider shall develop and implement, with the assistance of the

County, as the County may determine in its sole discretion, an educational program that generally explains the Aggregation Program to all residential and small commercial retail customers in the County and the Aggregation Group, provides updates and disclosures mandated by Illinois law and applicable rules and regulations, and implements a process to allow any Member the opportunity to opt out of the Aggregation Program according to the terms of the Power Supply Agreement. See Appendix A for further details.

4. Customer Service: Provider shall hire and maintain an adequate customer service staff and develop and administer a written customer service process that will accommodate Member inquiries and complaints about billing and answer questions regarding the Aggregation Program in general. This process will include a description of how telephone inquiries will be handled, either internally or externally, how invoices will be prepared, how Members may remit remittance payment, and how collection of delinquent accounts will be addressed. The Provider and the County will enter into a separate customer service plan agreement or the terms shall be included in the Power Supply Agreement.

5. Billing: Commonwealth Edison will provide a monthly billing statement to each Member which shall include the charges of the Provider, and the Provider will not charge any additional administrative fee.

6. Compliance Process: The Provider shall develop internal controls and processes to ensure that the County remains in good standing as a Municipal Aggregator and ensure that the County and the Program complies with the Act and all applicable laws, rules and regulations, as they may be amended from time to time. It will be the Provider's responsibility to timely deliver reports at the request of the County that will include (i) the number of Members participating in the Program; (ii) a savings estimate or increase from the previous year's baseline; (iii) such other information reasonably requested by the County; (iv) comparison of the Members' charge for the supply of electricity from one designated period to another identified by the County. The Provider shall also develop a process to monitor and shall promptly notify the County in writing of any changes or amendments to the Act or any laws, rules or regulations applicable to the Aggregation Program.

7. Notification to Commonwealth Edison: The residential and small commercial retail customers of ComEd in the County that do not opt-out of the Aggregation Program will be enrolled automatically in the Aggregation Program by a Provider. Members of the Aggregation Group will not be asked to take affirmative steps to be included in the Aggregation Group. To the extent that ComEd requires notification of participation; the Provider shall provide such notice to ComEd. The Provider will inform ComEd from time to time through electronic means any new members that it is enrolling into the Aggregation Group.

8. Plan Requirements: Pursuant to the Act, the Provider selected by the County and the County shall:

- a. Provide for universal access to all applicable residential customers and equitable treatment of applicable residential customers;
- b. Describe demand management and energy efficiency services to be provided to each class of customers;

c. Meet any requirements established by law concerning aggregated service offered pursuant to the Act.

9. Solicitation of Bids: Pursuant to the requirements of the Act, the process of soliciting bids for electricity and related services and awarding power supply agreements for the purchase of electricity and other related services by the County, shall be conducted in the following manner:

a. The County Board of the County may solicit bids for electricity and other related services.

b. Notwithstanding Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, an electric utility that provides residential and small commercial retail electric service in the County must, upon request of the Corporate Authorities of the County, submit to the requesting party, in an electronic format, those names and addresses of residential and small commercial retail electrical retail customers in the County that are reflected in the electrical utilities records at the time of the request and such other information required by the Act or any applicable rule or regulation of an authorized Illinois agency.

c. The County, upon receiving customer information from an electric utility shall be subject to the limitations on the disclosure of that information described in Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Practices Act, and an electric utility providing such information shall not be held liable for any claims arising out of the provision of information pursuant to this Section and the Act.

B. Power Supply Agreement

The County Board of the County and the Provider shall duly execute and enter into a Power Supply Agreement to serve the Aggregation Group.

C. Jo Daviess County's Retail Electric Supplier

The County may require the Provider to satisfy each of the following requirements in the Power Supply Agreement:

- Have sufficient sources of power to provide retail firm power to the Aggregation Group.
- Maintain a license as a Federal Power Marketer with the Federal Energy Regulatory Commission.
- Maintain a certification from the State of Illinois as a certified retail electric supplier and any and all other licenses or certifications required by Illinois law.
- Register as a retail electric supplier with ComEd.
- Maintain a Service Agreement for Network Integration Transmission Service under Open Access Transmission Tariff.
- Maintain a Service Agreement as required under all applicable rate tariffs of the State of Illinois.
- Maintain the necessary corporate structure to sell retail firm power to the ComEd residential and small commercial retail customers in the County and the Aggregation Group.
- Maintain an Electronic Data Interchange computer network that is fully functional at all times and capable of handling the ComEd residential and small commercial retail electric customers in the County and the Aggregation Group.
- Maintain the marketing ability to reach all ComEd residential and small commercial retail customers in the County to educate them on the terms of the Aggregation Program and the

Act.

- Maintain a call center capable of handling calls from Members of the Aggregation Group.
- Maintain a local or toll-free telephone number for customer service and complaints related to the County's Aggregation Program.
- Agree in a binding written agreement between the County and the Provider to hold the County financially harmless and fully indemnifying the County from any and all financial obligations arising from supplying power to the Aggregation Group.
- Satisfy the credit requirements of the State of Illinois and the County.
- Have the binding authority (to the satisfaction of legal counsel for the County) to execute the Power Supply Agreement with the County and be fully bound by all of its terms and conditions.
- Assist the County in filing all reports required by the Act and any applicable law, rule or regulation, as may be amended from time to time.
- Assist the County in developing a Consumer Education Plan.
- Assist the County in developing a smart-meter program

D. Activation of Service

After a notice is mailed to all residential and small commercial retail electric customers in the County providing an opportunity to opt out of the Program within a specific period of time, all customers who do not opt out in writing will be automatically enrolled in the Program. Customer enrollment with the Provider will occur thereafter without further action by the customer on terms set forth in the Power Supply Agreement and according to the retail tariffs of Commonwealth Edison.

E. Changes, Extension or Renewal of Service

The Power Supply Agreement with the Provider will provide when service shall begin and end. If the Power Supply Agreement is extended or renewed, Members will be notified as to any change in rates or service conditions and other information required by law. The Power Supply Agreement shall describe the terms upon which a Member or non-member will be given an opportunity to opt into or out of the Program, and reasonable notice will be provided as required by the Act or any applicable law. Members who opt-out will also be notified of their right to select an alternate retail electric supplier and of their ability to return to ComEd provided supply service.

F. Termination of Service

In the event that any Power Supply Agreement is terminated for any reason prior to the end of the scheduled term, each Member of the Aggregation Group will receive prompt written notification of termination of the Program at least sixty (60) days prior to termination of service under the Agreement. If the Agreement is not extended or renewed, Members will be notified in a manner determined by the County and any applicable law, prior to the end of any service. Members will also be notified of their right to select an alternate retail electric supplier and of their ability to return to ComEd provided supply service upon termination of the Agreement.

G. Opt-In Procedures

ComEd residential and small commercial retail customers will be automatically enrolled in the Aggregation Program after any opt-out period has expired, unless they timely call the Provider's 800 number and/or return in writing a form to be provided notifying the Provider that they do not want to participate in the Aggregation Program. The Provider may provide special notice directly to categories of ComEd customers as the County may direct, and inform such customers of specific potential consequences of their change from existing service from ComEd to the Program, including but not limited to (i) space heating customers, (ii) Real Time (Hourly) pricing customers, (iii) customers using an electrical supplier other than ComEd or the Provider. ComEd residential and small commercial retail customers in the County may request to join the Aggregation Group after the expiration of any enrollment period by contacting the Provider, who shall accept them into the Aggregation Program, subject to written policies mutually agreed upon between the County and the Provider in the Power Supply Agreement. The agreed upon policy shall be consistent with ComEd's supplier enrollment requirements. Members of the Aggregation Group who move from one location to another within the corporate limits of the County shall continue as a Member of the Aggregation Group.

#### H. Opt-out Procedures

ComEd residential and small commercial retail customers in the County may opt-out of the Aggregation Program at any time during the opt-out period. The Provider may or may not charge an early termination fee. Members of the Aggregation Group will be allowed to switch to a different electric supplier after the expiration of the opt-out period on the terms set forth in the Power Supply Agreement but at least shall be allowed to opt-out every three years. Requirements for notification of intent to opt-out of the Aggregation Group shall be set forth in the Power Supply Agreement. Consumers who opt-out of the Aggregation Group will not be switched from their current supplier or their applicable to ComEd's Standard Service Offer, until the consumer selects an alternate generation supplier. As required by the Act, it shall be the duty of the County or the Provider if so provided in the Power Supply Agreement, to fully inform residential and small commercial retail customers in the County in advance that they have the right to opt-out of the Aggregation Program. Such disclosure shall prominently state any charges to be made and shall include full disclosure of the cost to obtain service pursuant to Section 16-103 of the Public Utilities Act, how to access it, and the fact that it is available to them without penalty, if they are currently receiving services under that section. As further required by the Act, the IPA shall furnish, without charge, to any resident of the County, a list of all supply options available to them in a format that allows comparison of prices and products.

#### I. Bid Process

The County may elect to hold an individual bid or participate in a group bid. If the County elects to participate in a group bid, the County may use Rock River Energy Services ("RRES") to assist with the group bid. The County will not delegate any signing authority to RRES or other entity, but will make its own decision to accept or reject their individual bid resulting from the group bid. Suppliers will present individual bids to each community participating in the bid group. RRES will create an advisory group, representing and consisting of those communities participating in the bid, to determine the bid winner(s) on the day of the bid. RRES will then recommend that each County accept the bid winner's individual bid for the County. The County will then decide to accept or reject their individual bid. Whether or not

each community participating in the bid accepts or rejects their individual bid will have no impact upon the individual bids of the other communities.

V. MISCELLANEOUS GOVERNANCE GUIDELINES

- A. The County Board of the County shall approve by an Ordinance passed by majority vote of the County Board this Plan of Operation and Governance for the Aggregation program and any Amendments thereto.
- B. The County Board of the County shall contract with a Provider certified by the Illinois Commerce Commission for the provision of Competitive Retail Electric Service to the Aggregation Group.
- C. The County Board of the County will require any Provider to disclose any subcontractors that it uses in fulfillment of the services described above in the Power Supply Agreement.
- D. The County Board of the County will require the Provider to maintain either a toll-free telephone number, or a telephone number that is local to the Members.

VI. LIABILITY

THE COUNTY SHALL NOT BE LIABLE TO PARTICIPANTS IN OR MEMBERS OF THE AGGREGATION GROUP FOR ANY CLAIMS, HOWEVER STYLED, ARISING OUT OF THE AGGREGATION PROGRAM OR THE PROVISION OF AGGREGATION SERVICES BY THE COUNTY OR THE PROVIDER. PARTICIPANTS OR MEMBERS IN THE AGGREGATION GROUP SHALL ASSERT ANY SUCH CLAIMS SOLELY AGAINST THE PROVIDER PURSUANT TO THE POWER SUPPLY AGREEMENT, UNDER WHICH SUCH PARTICIPANTS ARE EXPRESS THIRD-PARTY BENEFICIARIES.

VII. INFORMATION AND COMPLAINT NUMBERS

Copies of this Plan shall be available from Jo Daviess County free of charge. Members and residential and small commercial retail customers of ComEd may call the Jo Daviess County Clerk at 815-777-0161 for a copy of the Plan or for more information.

## **Appendix A -- Education Process**

The Provider shall develop the educational program in conjunction with the County. Its purpose will be to explain the Aggregation Program to its members, provide updates and disclosures as mandated by State law and the rules and regulations of any applicable Illinois agency, and provide the opportunity for the Members to Opt-out of the Aggregation Program. The following are components of the education program:

1. Each residential and small commercial retail customer of ComEd within the corporate limits of the County will receive notification by U.S. Mail stating: what the municipal Aggregation Program means, the procedure which must be followed to Opt-out of the Aggregation Program, the estimated price of electricity for Member of the Aggregation Program, and the deadline for returning the Opt-out form. See sample letter attached.
2. The Provider shall cooperate with the County to provide opportunities for educating residential and small commercial retail CE customers in the County about the Program and their rights under the applicable law and rules and regulations. In addition, the Provider and County will cooperate to provide education about opportunities for energy efficiency measures to help Members reduce energy consumption.
3. The Provider will provide updates and disclosures to the County and Members as mandated by State law and applicable rules and regulations as amended from time to time.

Dear County of \_\_\_\_\_ Resident,

County of \_\_\_\_\_ is providing you the opportunity to join other residents to save money on the electricity you use. Savings are possible through governmental aggregation, where County officials bring together citizens to gain group buying power for the purchase of electricity from a retail electric generation provider certified by the Public Illinois Utilities Commission. County of \_\_\_\_\_ voters approved this program in November, 2010.

After researching competitive electricity pricing options for you, we have chosen \_\_\_\_\_, to provide you with savings on your electric generation through May 2012. There is no cost for enrollment and you will not be charged a switching fee. You do not need to do anything to participate.

As a member of this aggregation, you are guaranteed to save \_\_\_\_\_ percent off your Price to Compare. Your Price to Compare is essentially the price you pay for electric generation from the utility and consists of generation and transmission related components, which are the costs associated with generating the power and delivering it through the transmission system.

To estimate what your savings per kilowatt-hour (KWH) will be through this program, locate your Price to Compare on your electric bill. Divide your Price to Compare by 100, then multiply by 0.0 \_\_\_\_\_ (\_\_\_\_%) to determine your savings per KWH. Multiply that number by your total monthly usage. The final number is how much you can expect to save each month you use the same amount of electricity.

You will see your electric savings from \_\_\_\_\_ after your enrollment has been completed and your switch has been finalized - approximately 30 - 45 days, depending upon your meter read date. Of course, you are not obligated to participate in the County of \_\_\_\_\_'s electric governmental aggregation program. If you wish to be excluded from the program and remain a full-service customer of your local electric utility - Commonwealth Edison- you have until \_\_\_\_\_, 2012 to return the attached "opt-out" form. If you do not opt out at this time, you will receive a notice at least every \_\_\_\_\_ asking if you wish to remain in the program. If you leave the program at any other time, you could be subject to a cancellation fee from \_\_\_\_\_ - and you might not be served under the same rates, terms and conditions that apply to other customers served by Commonwealth Edison.

After you become a participant in this governmental aggregation program, Commonwealth Edison will send you a letter confirming your selection of \_\_\_\_\_ as your electric generation provider. As required by law, this letter will inform you of your option to rescind your enrollment with \_\_\_\_\_ with adequate notice prior to the scheduled switch. To remain in the County's governmental aggregation program, you don't need to take any action when this letter arrives.

Commonwealth Edison will continue to maintain the system that delivers power to your home - no new poles or wires will be built by \_\_\_\_\_. You will continue to receive a single, easy-to-read bill from your local electric utility with your \_\_\_\_\_ charges included. The only thing you'll notice is savings.

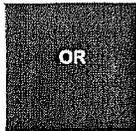
If you have any questions, please call \_\_\_\_\_ toll-free at \_\_\_\_\_, Monday through Friday, 8 a.m. to 5 p.m. Please do not call the County of \_\_\_\_\_ with aggregation program questions.

Sincerely,

County of \_\_\_\_\_

P.S. To receive these savings, you should not respond. Return the opt-out form only if you do not want to participate in the County's electric governmental aggregation program.

Option 1: Do nothing and save.  
If you want to participate in this program and save, you do not need to return this form. Your enrollment is automatic.



Option 2: Opt out by returning this form.  
If you do not want to participate in this program, you must return this form before the due date.

Service address (City, state and zip): \_\_\_\_\_

Phone number: \_\_\_\_\_

Account holder's signature: \_\_\_\_\_ Date: \_\_\_\_\_



ATTACHMENT C:

**Insurance**

# JO DAVIESS COUNTY

## CERTIFICATE OF INSURANCE POLICY

### General Insurance Requirements

It is the requirement of Jo Daviess County (County) that for work performed under contract and/or authorized by the County and conducted on county property that the contractor/supplier (Contractor) procure and maintain insurance at the expense of the Contractor and without expense to the County, until final acceptance of the work. All insurance must be procured and maintained in a form satisfactory to the County.

Before a purchase order is released, a contract signed, or any work commenced, contractors doing business with Jo Daviess County are required to provide proof of insurance satisfactory to the County and documentation evidencing that the Contractor maintains insurance that meets the following requirements:

- A. General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- B. Personal and Advertising Injury of not less than \$1,000,000.00 per occurrence.
- C. Worker's Compensation and Employer's Liability Insurance, of not less than 500/500/500, covering all employees and subcontractors of Contractor as required by law in the State of Illinois.
- D. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- E. In the event Contractor is a licensed professional, and is performing professional services under an Agreement with the County, professional liability (for example, errors and omissions) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- F. Contractor shall furnish a certificate of insurance satisfactory to the County as evidence that the insurance required above is being maintained.
- G. The certificate of insurance must include the following provisions:
  1. Jo Daviess County must be named as an additional insured under the Contractor's General Liability insurance. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
  2. The Contractor shall not cancel insurance coverage. Insurance shall be kept in force during the duration of the job and for a minimum of at least 30 days thereafter.

3. When entering into a contractual agreement with the County the Contractor shall agree to indemnify and hold harmless the County, its officers and employees, from and against any and all claims, losses, judgments, liabilities or claims for attorneys' fees arising out of or resulting from Contractor's performance of its duties pursuant to the contract.
- H. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers.
  - I. Any failure of the contractor to comply with the reporting provisions of the policies shall not affect the contractors obligations provided to the County, its officers, officials, employees, or volunteers under this agreement.
  - J. Contractor's obligations shall not be limited by the forgoing insurance requirements and shall survive expiration of any agreement with the County.
  - K. The standards as outlined above are the minimum acceptable requirements. Certificates of insurance may be required to meet additional standards that are considered essential for protection of the County. Depending upon the level of exposure, additional limits of liability or additional coverage's may be required for individual jobs or projects, as determined by Jo Daviess County.

Adopted: December 13, 2007

**ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED**  
Hamilton, Bermuda

**CERTIFICATE OF INSURANCE**  
**(Excess Liability)**

This Certificate is furnished to the Certificate Holder named below as a matter of information only. Neither this Certificate nor the issuance hereof modifies the policy of insurance identified below (the "Policy") in any manner. The Policy terms are solely as stated in the policy or in any endorsement thereto. Any amendment, change or extension of the Policy can only be effected by a specific endorsement issued by the Company and attached to the Policy.

The undersigned hereby certifies that the Policy has been issued by Associated Electric & Gas Insurance Services Limited (the "Company") to the Named Insured identified below for the coverage described and for the policy period specified.

Notwithstanding any requirements, terms or conditions of any contract or other document with respect to which this Certificate may be issued or to which it may pertain, the insurance afforded by the Policy is subject to all of the terms of the Policy.

**NAME OF INSURED:** FirstEnergy Corp. and its subsidiaries

**PRINCIPAL ADDRESS:** 76 South Main Street, Akron, Ohio 44308

**POLICY NUMBER:** XL5128302P                      **POLICY From:** July 1, 2013  
**PERIOD: To:** July 1, 2014

**RETROACTIVE DATE:** June 1, 1986

**DESCRIPTION OF COVERAGE:** Claims-First-Made Excess Liability Policy (including Automobile Liability) covering claims for Bodily Injury, Property Damage and Personal Injury arising from the operations described below.

**LIMIT OF LIABILITY:** \$2,000,000 per occurrence and in the aggregate, where applicable.

**ADDITIONAL INSURED:** The Certificate Holder is an additional insured under the Policy but only (i) to such extent and for such Limits of Liability (subject always to the terms and Limits of Liability of the Policy) as the Named Insured has agreed to provide insurance for the Certificate Holder under the following contract:

and (ii) with respect to the following operations: Proof of Insurance

Should the Policy be canceled, assigned or changed in a manner that is materially adverse to the Insured(s) under the Policy, the undersigned will endeavor to give 30 days advance written notice thereof to the Certificate Holder, but failure to give such notice will impose no obligation or liability of any kind upon the Company, the undersigned or any agent or representative of either.

**DATE:** June 10, 2014

**ISSUED TO:** Jo Daviess County ("Certificate Holder")

**ADDRESS:**

**AEGIS INSURANCE SERVICES, INC.**



**BY:**  
At Jersey City, New Jersey



