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Modification of Cinergy Hub Language for Transition of Duke Ohio and Duke Kentucky from MISO to PJM

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DISCLAIMER

This document is posted for use only as a reference that market participants may consult as they undertake individual negotiations to reformulate their commercial relationships to reflect the transition of the assets of Duke Energy Ohio, Inc. (Duke Ohio) and Duke Energy Kentucky, Inc. (Duke Kentucky) from the Midwest Independent System Operator, Inc. (MISO) to the PJM Interconnection, LLC (PJM). Nothing herein should be construed as any agreement or understanding by any party to the contrary.

BACKGROUND

On October 21, 2010, Duke Ohio and Duke Kentucky received conditional approval from the Federal Energy Regulatory Commission (FERC) to transition from MISO to PJM effective January 1, 2012.¹ As a result, a substantial portion of the EP nodes formerly comprising Cinergy Hub will also transition from MISO to PJM at that time.

The transition will impact physically settled power transactions at, and financially settled power transactions referencing, Cinergy Hub, the tenor of which span the transition date, currently scheduled to be January 1, 2012. The primary purpose of this document is to provide market participants with a structure to address the impact that the Duke transition will have on physical Cinergy Hub transactions, whether existing now or executed in the future, and the manner in which an alternative settlement point is determined. This document also provides the parties with the opportunity to address the impact that the transition may have on financially settled Cinergy Hub transactions.²

The EEI Contract Drafting Committee together with the International Swaps and Derivatives Association, Inc. (ISDA) has drafted the following documents to assist parties in addressing these issues in their bilateral agreements:

Annex 1: Fallback Language for Physical Transaction Confirmations. The language set-out in Annex 1 hereto enables parties trading under an EEI Master Agreement or an ISDA Master Agreement with a North American Power Annex to agree, on a bilateral basis, to incorporate fallback language into confirmations for physical transactions. The fallback language could be incorporated as a line item in confirmations for prospectively executed physical transactions.

Annex 2: Amendment Agreement for Historical Physical and/or Financial Transactions. The Amendment Agreement set-out in Annex 1 can be used by parties to modify their outstanding, bilateral physically-settled or financially-settled Cinergy Hub transactions (defined as “Covered Transactions”) effective as of the later of the date of

¹ The Federal Energy Regulatory Commission (FERC); Docket Nos . ER10-1562-000 and ER10-2254-000 133 FERC ¶ 61,058; issued an “Order Addressing RTO Realignment Request” (Issued October 21, 2010) authorizing Duke Ohio and Duke Kentucky to terminate its existing obligations to the Midwest ISO, subject to several conditions. FERC also accepted Duke’s proposed FRR Integration Plan and requested waivers, subject to certain conditions - <http://www.ferc.gov/whats-new/comm-meet/2010/102110/E-1.pdf> - Page 1, Paragraph 3.

² See Annex 2: Amendment Agreement for Historical Physical (and/or Financial) Transactions.

the amendment or the date that Duke Ohio and Duke Kentucky transition from MISO to PJM.

In both Annex 1 and Annex 2, a definition of Indiana Hub, which could serve as a substitute for Cinergy Hub, is included in the fallback language. Indiana Hub was developed by the MISO Trading Hub Task Force which was formed by MISO to develop an approach to define and maintain a liquid trading hub to replace or redefine Cinergy Hub, with the primary objective of maintaining minimal changes to historical Cinergy Hub prices. The MISO Hub Task Force identified Indiana Hub through a study titled “Historical Price Comparison of Hub Definitions Against the Cinergy Hub”.³ This study reviewed the price performance of potential Hubs against Cinergy Hub generated through a statistical analysis study, identified by Day-Ahead LMP data through procedures that applied Nearest Neighbor Search and Cluster Analysis dependent upon the inclusion of varying numbers of EPNodes. This calculation process led to the identification of Indiana Hub by the MISO Hub Task Force as the best replacement and redefinition for the nodes currently represented in Cinergy Hub. Indiana Hub became available for settlements and trading in MISO effective March 1, 2011. The parties can also agree to an alternative fallback in Annex 1 and Annex 2 by agreeing to a different replacement hub and a suggested mechanism for defining that hub, as set-out in both annexes.

This document is the product of a joint initiative of the EEI Contract Drafting Committee and ISDA.

³ See, *Historical Price Comparison of Hub Definitions Against The Cinergy Hub*, Trading Hub Task Force, October 8, 2010 (<https://www.midwestiso.org/Library/Repository/Meeting%20Material/Stakeholder/THTF/2010%20THTF/20101008%20THTF/20101008%20THTF%20Item%2005%20Historical%20Price%20Comparison%20of%20Hub%20Definitions%20Against%20the%20Cinergy%20Hub.pdf>), and *Cinergy Hub Redefinition*, Midwest ISO Staff, October 8, 2010 (<https://www.midwestiso.org/Library/Repository/Meeting%20Material/Stakeholder/THTF/2010%20THTF/20101008%20THTF/20101008%20THTF%20Item%2005%20CIN%20Hub.pdf>).

ANNEX 1

FALLBACK LANGUAGE FOR PHYSICAL TRANSACTION CONFIRMATIONS

If, on or after the Trade Date of this Transaction, Duke Energy Ohio, Inc. (Duke Ohio) and Duke Energy Kentucky, Inc. (Duke Kentucky) withdraw operational control of their transmission facilities from the Midwest Independent System Operator, Inc. (MISO) and integrate their transmission facilities into the PJM Interconnection, LLC (PJM), then this Confirmation shall be amended (without further action of either party) by (i) replacing any reference to Cinergy Hub in the definition of Delivery Point with a reference to [Indiana Hub *or* [] Hub]⁴, and (ii) by replacing, *mutatis mutandis*, any reference to a price published by MISO in respect of Cinergy Hub (howsoever expressed) in the definition of Contract Price with the corollary price published by MISO in respect of [Indiana Hub *or* [] Hub]⁵, in either case, in respect of deliveries made on and after the Transition Date.

where:

“**Cinergy Hub**” means an aggregation of buses in the MISO region identified by MISO as comprising the “Cinergy Hub”.

[“Indiana Hub” means an aggregation of buses in the MISO region identified by MISO as of the Transition Date as comprising the “Indiana Hub”; and]

[“[] Hub” means an aggregation of buses in the [] region identified by [] as of the Transition Date as comprising the “[] Hub”; and]⁶

“Transition Date” means the earliest date on which both Duke Ohio and Duke Kentucky have withdrawn operational control of their transmission facilities from MISO and integrated their transmission facilities into PJM.

⁴ Note that the parties must bilaterally agree on the fallback point.

⁵ Note that the parties must bilaterally agree on the fallback point.

⁶ Should the parties prefer to reference a hub other than Indiana Hub as the fallback point, a generic definition of a fallback point has been included which the parties can tailor as necessary.

ANNEX 2
AMENDMENT AGREEMENT FOR HISTORICAL
PHYSICAL AND/OR FINANCIAL TRANSACTIONS

AMENDMENT
RELATING TO
THE REPLACEMENT AND/OR REDEFINITION
OF
CINERGY HUB

This amendment (this “Amendment”) is made this ___ day of _____, 20___, (the “**Amendment Date**”) by and between [Party A] a _____ (“_____”), and [Party B], _____ (“_____”), (each a “**Party**” and collectively “**Parties**”).

RECITALS

WHEREAS, the Parties have entered into one or more Covered Transaction(s) as defined below;

WHEREAS, as a result of the intended exit of Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. from Midwest Independent Transmission System Operator, Inc. (“MISO”) membership, authorized by the Federal Energy Regulatory Commission through the “Order Addressing RTO Realignment Request” issued on October 21, 2010, and the assumption of responsibility by PJM Interconnection, LLC (“PJM”) for transmission assets, unregulated and selected regulated generation assets, as well as various distribution affiliates and other load serving entities of Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. on the date of integration, anticipated to be January 1, 2012, it is necessary for the Parties to agree upon an approach for the replacement and/or redefinition of Cinergy Hub;

WHEREAS, the Parties desire to amend the Covered Transaction(s) to substitute for Cinergy Hub a replacement Hub that represents, in their view, the best replacement and redefinition for the nodes currently represented in Cinergy Hub, effective as of the Operative Date of this agreement

NOW, THEREFORE, in consideration of the mutual covenants herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

References in this Amendment to the following terms have the meaning indicated below:

“**Cinergy Hub**” means an aggregation of buses in the MISO region identified by MISO as comprising the “Cinergy Hub”.

“**Confirmation**” has the meaning given that term in the related Governing Master Agreement(s) (as defined below).

“**Covered Transaction**” means a transaction entered into prior to the Operative Date, whether documented under a Confirmation pursuant to a Governing Master Agreement or otherwise, that is:

- (i) a physically-settled transaction in respect of which the Delivery Point is Cinergy Hub (howsoever expressed) or in respect of which the price published by MISO (or any other exchange, publication or data source) for Cinergy Hub (howsoever expressed) is referenced in the definition of Contract Price (a “**Physically-Settled Covered Transaction**”); or
- (ii) a financially-settled transaction in respect of which the price published by MISO (or any other exchange, publication or data source) for Cinergy Hub (howsoever expressed) is referenced in the Floating Price or the Commodity Reference Price (as defined in the 2005 ISDA Commodity Definitions) (a “**Cash-Settled Covered Transaction**”).

“**Governing Master Agreement**” means, in respect of a Covered Transaction, the master agreement governing such Covered Transaction, whether executed by the Parties thereto or incorporated by reference in the Confirmation relating to such Covered Transaction, including (i) the Edison Electric Institute Master Power Purchase and Sale Agreement; (ii) the WSPP Agreement; (iii) the ISDA 2002 Master Agreement; (iv) the 1992 ISDA Master Agreement (Multicurrency – Cross Border); (v) the 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction); or (vi) and or other similar agreement setting forth the terms and conditions governing a Covered Transaction.

“**Indiana Hub**” means an aggregation of buses in the MISO region identified by MISO as of the Operative Date as comprising the “Indiana Hub”.⁷

“**Operative Date**” means the later of the Amendment Date and the Transition Date.

“**Transition Date**” means the earliest date on which both Duke Ohio and Duke Kentucky have withdrawn operational control of their transmission facilities from MISO and integrated their transmission facilities into PJM.

2. AMENDMENT

As of the Operative Date, each Covered Transaction will be amended (without further action of either party) as follows:

⁷ Parties may decide to delete the definition of “Indiana Hub” and insert language which clearly identifies the alternative replacement Hub which shall be applied to this Amendment, as well as the process utilized to determine such replacement Hub.

(a) with respect to a Physically-Settled Covered Transaction, (i) by replacing any reference to Cinergy Hub in the definition of Delivery Point with a reference to Indiana Hub, and (ii) by replacing, *mutatis mutandis*, any reference to a price published by MISO in respect of Cinergy Hub (howsoever expressed) in the definition of Contract Price with the corollary price published by MISO in respect of Indiana Hub, in either case, in respect of deliveries to be made on and after the Transition Date; and

(b) with respect to a Cash-Settled Covered Transaction, by replacing, *mutatis mutandis*, any reference to a price published by MISO in respect of Cinergy Hub (howsoever expressed) with the corollary price published by MISO in respect of Indiana Hub in respect of calculations to be made on and after the Transition Date.

3. MISCELLANEOUS

(a) **Entire Agreement.** This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communications and prior writings (except as otherwise provided herein) with respect thereto. Except for any amendment made pursuant to this Amendment, all terms and conditions of the Governing Master Agreement and any Confirmations thereunder will continue in full force and effect in accordance with the provisions therein.

(b) **Non-reliance.** Each Party acknowledges that in agreeing to this Amendment it has not relied on any oral or written representation, warranty or other assurance and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Amendment will limit or exclude any liability of a Party for fraud.

(c) **Headings.** The headings used in this Amendment are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Amendment.

(d) **Governing Law.** This Amendment will be governed by and construed in accordance with the law specified to govern the Governing Master Agreement and otherwise in accordance with applicable choice of law doctrine.

(e) **Counterparts.** This Amendment (and each amendment, modification and waiver in respect of it) may be executed and delivered in any number of counterparts (including by facsimile transmission or PDF files), each of which will be deemed to be an original. All of such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed by their authorized officers or agents on the respective dates specified below with effect from the Amendment Date.

[Party A]	[Party B]
By:	By:

Name:	Name:
Title:	Title:
Date:	Date:

DRAFT