

**ORDINANCE 2011-22
VILLAGE OF BUCKEYE LAKE, OHIO**

AN ORDINANCE AUTHORIZING ALL ACTIONS NECESSARY TO EFFECT A GOVERNMENTAL ELECTRIC AGGREGATION PROGRAM WITH OPT-IN PROVISIONS PURSUANT TO ARTICLE 18.04, OHIO CONSTITUTION AND AUTHORIZING THE VILLAGE OF BUCKEYE LAKE TO ENTER INTO AGREEMENT WITH AN ELECTRIC SUPPLIER.

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

WHEREAS, this Council seeks to establish a governmental aggregation program with opt-in provisions pursuant to Article 18.04, Ohio Constitution for the residents, businesses and other electric consumers in the Village of Buckeye Lake, as permitted by law.

NOW THEREFORE, BE IT ORDAINED by the legislative authority of the Village of Buckeye Lake that following an affirmative vote of at least two-thirds (2/3) of the Council to dispense with the requirement of the Village of Buckeye Lake Charter section 4.04 to read an ordinance on three separate days. By the legislative authority of the Village of Buckeye Lake:

Section 1. That the Mayor is hereby authorized to enter into an agreement with Buckeye Energy Brokers, Inc.

Section 2. This Council finds and determines that it is in the best interest of the community, its residents, businesses and other electric consumers located within the corporate limits of the Village of Buckeye Lake to establish the "Opt-in" Aggregation Program in the community. The aggregation will occur provided each interested person using electric service from AEP Ohio within the incorporated limits "opts-in" to the program by contacting the electric program supplier.

Section 3. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of the community, and for the further reason that this Ordinance is required to be immediately effective in order to file a certified copy of this Ordinance.

PASSED: December 7th, 2011

ATTEST:


CHARLENE HAYDEN, Council President


RICHARD E. BAKER, Mayor

**ENDORSEMENT PROGRAM AGREEMENT BETWEEN
CITY OF NEWARK
AND
FIRSTENERGY SOLUTIONS CORP.**

This Endorsement Program Agreement (the "Agreement") is entered into between the City of Newark ("Newark") and FirstEnergy Solutions Corp. ("FES"), each of which shall be referred to herein as a "Party" and, collectively, as the "Parties."

1. This Agreement shall be effective on the later of the dates identified with the signatures below (the "Effective Date") and continue until the date set forth on Attachment A (the "Term"). This Agreement may also be renewed by mutual agreement for a term agreed upon by the Parties.

2. FES entered into a Master Agreement to Provide Services to an Aggregated Group dated 9/26/11 with Newark to provide energy and energy related services through Newark's aggregation program ("the Opt-out Agreement"). The parties hereby acknowledge and agree that since the date of the Opt-out Agreement the prospect that a Regulatory Event as defined by the Opt-Out Agreement will occur has arisen with respect to AEP's January 27, 2011 application to the Public Utilities Commission of Ohio for approval of an Energy Security Plan, and that if the Regulatory Event should occur FES would have a right to terminate the Opt-Out Agreement. Both Parties hereby agree to delay exercising their rights under the Opt-out Agreement until such time as; (i) it becomes clear that a Regulatory Event will not occur, (ii) a Regulatory Event occurs that has a limited duration and that duration concludes, (iii) the Opt-out Agreement's term expires and is not renewed by the parties.

3. To ensure that as many eligible customers in Newark as possible are able to take advantage of FES pricing in light of the potential occurrence of the Regulatory Event, both Parties hereby agree that this Agreement shall be utilized until such time as; (i) it becomes clear that a Regulatory Event giving rise to a right to terminate under the Opt-out Agreement will not occur, (ii) a Regulatory Event's occurs and FES terminates this Agreement under Section 14 of this Agreement, (iii) this Agreement's term expires and is not renewed by the parties.

4. Newark agrees to endorse FES as the Sole Preferred Provider, on this electric supply endorsement program, to supply the total electric generation needs to its residential and commercial inhabitants that qualify under the Eligible Rate Codes set forth in Attachment A and that opt-in to and are otherwise eligible to participate in Newark's government endorsement program (the "Endorsement Program Customers").

5. FES agrees to provide full requirements retail electric supply sufficient to serve the total electric generation needs of the Endorsement Program Customers (the "Full Requirements Supply"). FES agrees to provide the Full Requirements Supply at the price set forth on Attachment A.

6. Newark grants FES the exclusive rights to provide the Full Requirements Supply to those residential and commercial inhabitants that Opt-In to this electric supply endorsement

program and authorizes FES to contract directly with the Endorsement Program Customers for the Full Requirements Supply.

7. The Endorsement provision will expire ninety (90) days prior to the expiration of the Agreement.

8. FES agrees to provide the Administrative Services set forth on Attachment A at FES's cost. FES will use Newark's name and/or official seal in advertising and promotional materials only with the express approval of Newark. The Parties may mutually agree to use Newark's resources to inform its residents of Newark's endorsement of FES as the Sole Preferred Provider.

9. Newark agrees to take all necessary action to establish and maintain an Opt-In Endorsement Program for those residential and commercial inhabitants, within the boundaries of Newark. This agreement shall terminate upon the effective date of an opt-out aggregation program approved and implemented by Newark, or as otherwise required by law or regulation.

10. Since FES was selected as the supplier for a subsequent approved Opt-Out Aggregation Program, accounts from the Endorsement Program will be able to transfer to the Opt-Out Aggregation Program through an open enrollment period without being charged a cancellation fee.

11. Except as otherwise required by law or regulation, 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. "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 Endorsement 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. Each Recipient also agrees to return the Disclosing Party's Confidential Information upon written request. The obligations for Confidentiality set forth in this paragraph shall survive the termination of this Agreement for a period of one (1) year thereafter.

12. Each Party agrees that it has 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.

13. FES and Newark agree that prices offered during the term of this Agreement include an administrative fee of \$0.0005 per kilowatt-hour on all electricity consumed and paid for by members participating in the Endorsement Program. The disbursement of funds that accumulate from this fee shall be as follows:

- a. This fee shall be paid monthly by FES to Buckeye Energy Brokers, Inc. consistent with the Energy Services Agent Agreement between Buckeye Energy Brokers, Inc. and FES. Supplier understands that such payments are for Newark consultant to represent Newark.

14. FES shall have the right to terminate this Agreement or any affected pricing in Attachment A prior to the expiration of the Term if:

a. One of the following events occurs:

- i. The Electric Security Plan (ESP), Market Rate Offer (MRO) and/or Competitive Bid Process (CBP), or other generation procurement process results in a Price to Compare ("PTC") that is equal to or less than the comparable annualized generation and transmission rates and riders as proposed under the January 27, 2011 ESP filed by AEP; or
- ii. The Public Utilities Commission of Ohio ("PUCO") approves or implements a phase-in for generation charges of the Electric Utility which affects the PTC or otherwise does not allow the Electric Utility to reflect the full cost to procure generation in the PTC and FES, in its discretion, either (i) elects not to finance the impact of that effect or (ii) determines that commercially reasonable rates and terms are not available for such financing.

b. A Regulatory Event occurs.

i. For purposes of this Agreement, a "Regulatory Event" shall include any of the following:

- 1. **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 FES to perform any obligation under this Agreement.
- 2. **Adverse Government Action.** If (i) any regulatory agency or court having competent jurisdiction over this Agreement requires a change to the terms of the Agreement that materially adversely affects FES; or (ii) any regulatory or court action adversely and materially impacts FES' ability to economically perform or otherwise provide Electricity Services pursuant to this Agreement.
- 3. **New Taxes.** If any ad valorem, property, occupation, severance, transmission, distribution, generation, first use, conservation, Btu or energy, transmission, utility, gross receipts, privilege, sales, use, consumption, excise, lease, or transaction taxes or any other governmental charges, licenses, fees or assessments (other than such charges based on net income or net worth), or increases in such charges, or an application of such charges to a new or different class of parties, is levied or enacted on Agreement and effective after the Effective Date of this Agreement.
- 4. **Other Regulatory Events.** Material changes affecting FES' electric supplier certification/franchise status or requirements; other material changes or

clarifications or federal, state or local government certification, licensing or franchise requirements for electric power suppliers; material changes to existing or material new charges, fees, and/or obligations, including without limitation transmission or capacity requirements or charges, that may be imposed upon FES by a regional transmission organization, independent transmission system operator, independent transmission provider, or government agency; 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 other material changes to or requirements of retail electric customer access or aggregation programs in a manner which will not reasonably allow FES to perform economically hereunder including but not limited to the imposition of non-bypassable generation-related charges.

15. This Agreement, including Attachment A 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.

16. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

17. 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 as follows:

FirstEnergy Solutions Corp.

City of Newark

Signed: [Signature]

Signed: [Signature]

Printed Name: KEVIN WARELL

Printed Name: Daniel Coffman

Title: VP, Commercial Ops Structuring Pricing

Title: Service Director City of Newark

Date: 10.24.11

Date: 10/24/11