

RESOLUTION R19-17

A RESOLUTION AUTHORIZING THE VILLAGE ADMINISTRATOR TO ENTER INTO AN AGREEMENT AMENDING THE GENERATION SUPPLY AGREEMENT

WHEREAS the Village of Covington entered into an agreement for the generation supply of all facilities and a street lighting agreement with DPL Energy Resources, Inc. and Miami Valley Lighting, LLC on November 20, 2014;

WHEREAS IGS Energy has purchased DPL Energy Resources, Inc. and has assumed their contracts;

WHEREAS said agreement is scheduled to terminate on May 31, 2018 and the Village, and IGS Energy desire to modify said agreement by amending various terms and rates; and

WHEREAS the Village Council has reviewed the terms of the proposed amendments to the November 20, 2014 agreement and finds that amending said agreement is in the Village of Covington's best interest;


BE IT RESOLVED by the Legislative Authority of the Village of Covington, State of Ohio, that:

SEC. 1: The Village of Covington's Council approves the amendments to the November 20, 2014 agreement with IGS Energy and DPL Energy Resources, Inc.;

SEC. 2: The Village of Covington's Administrator of Covington shall be authorized to execute the Generation Supply Agreement, Amendment 2 attached as Exhibit A hereto.

SEC.3: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

APPROVED May 1, 2017:



Edward L. McCord, Mayor



R. Scott Tobias, President of Council



Brenda Carroll, Clerk/Fiscal officer

**Electricity Purchase Contract**

Large Commercial V2.3-OH

FOR OFFICE USE ONLY: dKW-xl

**Seller: Interstate Gas Supply, Inc.**

Attn: Commercial & Industrial Sales, 6100 Emerald Parkway, Dublin, Ohio 43016

Fax: 614-659-5126

Phone: 877-923-4447

**Buyer: VILLAGE OF COVINGTON**

**Contact Name** Mike Busse

**Confirmation Email** administrator@covington-oh.gov

**Phone** 937-473-5577

**Fax**

Street Address

City

State

Zip

**Mailing** 1 S. High St.

COVINGTON

OH

45318

**Billing** Same as Mailing

**Facility** See Exhibit A

**Account Number/s** See Exhibit A

or  see the attached **Exhibit A**

This Contract is subject to the attached Electricity Supply Master Terms and Conditions, which are incorporated in their entirety herein.

**Electric Distribution Company ("EDC"):**

Dayton Power Light :

**Purchase Price:**

**Subject to the Price Adjustment Provisions and Regulatory language in the attached Electricity Supply Master Terms and Conditions, Buyer's Price:**

**Option 1:** Will remain \$0.0649 per kilowatt hour (kWh). The price will not include applicable taxes or EDC service and delivery charges, which will be billed by the EDC.

**Option 2:** Will vary based upon costs, including but not limited to energy, transmission, capacity, ancillary services, congestion management, renewable energy credits, independent system operator fees, various EDC charges to Seller, and other market-related factors, plus Seller's costs, expenses, and margins. The price will not include applicable taxes or EDC service and delivery charge, which will be billed by the EDC.

Buyer's price includes applicable costs resulting from PJM Interconnection's RPM Capacity Performance Transition Incremental Auctions for: 2016/17, as posted on August 31, 2015; and 2017/18, as posted on September 9, 2015. After the Initial Term expires, the price will be as described under the Renewal Variable Pricing section of this Contract.

**Initial Term:**

The Initial Term of this Contract will begin with the **June 2017** EDC billing cycle, and it will continue through the **May 2018** EDC billing cycle.

**Renewal:**

Upon expiration of the Initial Term, this Contract will automatically renew on month-to-month basis, with each such month constituting a "Secondary Term." Any automatic renewal may be cancelled by Buyer or Seller delivering written notice to the other party at least 60 days before the automatic renewal date. The automatic renewal date will be the last calendar day of the month at the end of the applicable Term. Because Seller needs to contract for supply and transportation in advance, Buyer's early termination of any Account under this Contract will harm Seller.

**Early Termination Damages:**

**If under Option 1:** For each Account that is terminated early, damages will be equal to the positive difference, if any, between the Option 1 Price minus the then-current market price, multiplied by the "Contract Volumes" (defined below) as apportioned to the terminated Account(s) and remaining under the then-current Term. The "Contract Volumes" are calculated using each Account's historical monthly consumption, as provided to Seller by the EDC, multiplied by weather normalization factors and are set forth in the table below. The Contract Volumes will be used for determining early termination damages under this Contract. Buyer is not otherwise obligated to accept/consume the Contract Volumes on a monthly or annual basis.

**If under Option 2:** For each Account that is terminated early, damages will be equal to \$0.015 per kWh multiplied by the Contract Volumes as apportioned to the terminated Account(s) and remaining under the then-current Term.

**Contract Volumes in kWh**

Month	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
	73,566	65,138	65,514	56,304	57,436	59,793	64,067	63,093	56,504	58,278	62,468	70,445

This Contract, including any Exhibit(s) may be signed in counterparts. If Buyer and Seller execute more than one Contract with respect to any Account(s), the terms of the most recent Contract will supersede and take priority over all previous Contracts with regard to the same Account(s). Any signature on this Contract and any Exhibit(s) will be considered valid for all purposes and have the same effect whether it is an ink-signed original, e-signed, a photocopy, or a facsimile representation of the original document.

The signers below personally certify that they have all requisite authority to sign and enter into this Contract on behalf of the parties identified above their signatures. Further, they acknowledge that on behalf of their respective parties, they have read, understood, and voluntarily agreed to every provision of this Contract, the attached Terms and Conditions, and any Exhibit A.

**Accepted by Buyer:**

**Name:** \_\_\_\_\_ **Title** \_\_\_\_\_ **Date** \_\_\_\_\_

**Accepted by Seller:**

**Name:** Scott Arthur **Title** VP of C&I Sales **Date** \_\_\_\_\_

## Electricity Supply Master Terms and Conditions

These Master Terms and Conditions (the "Terms and Conditions") set forth the general terms and conditions for the retail sale and purchase of electricity between Seller and Buyer. The specific terms with respect to Buyer's Accounts will be set forth on Page 1. These Master Terms and Conditions, the specific terms set forth on Page 1, and any Exhibits form a written agreement between Seller and Buyer (the "Contract").

1. **Eligibility.** This Contract is exclusively for mercantile customers that consume more than 700,000 kWh per year but less than 5,000,000 kWh per year are part of a national account involving multiple facilities in one or more states. Buyer is designated as a mercantile customer.

2. **Electricity Supply.** Seller will supply and deliver to Buyer the full electricity requirements for all Accounts under this Contract and Buyer will accept and pay for all such deliveries according to this Contract. Seller will act as Buyer's agent for the limited purposes of working with the Buyer's retail transmission organization/independent system operator ("RTO/ISO") and Buyer's EDC in order to (a) obtain the Accounts' usage, billing, and payment histories; (b) effect the transfer of electricity supply service to Seller; and (c) perform Seller's obligations under this Contract. Buyer will execute all documents and be responsible for all services and equipment required by the EDC in order for Buyer to receive service under this Contract.

3. **Price Adjustment Provisions.** Where applicable, Seller may pass through to Buyer any NITS charge resulting from changes to Buyer's NITS rate. Except as otherwise set forth on Page 1 of this Contract, Seller will not pass through to Buyer any NITS charge or capacity charge resulting from changes to Buyer's NITS tag or capacity tag.

4. **Renewal Variable Price.** The price for each Secondary Term will be determined monthly based upon costs, including but not limited to energy, transmission, capacity, ancillary services, congestion management, renewable energy credits, independent system operator fees, various EDC charges to Seller, and other market-related factors, plus Seller's costs, expenses, and a service fee. The price will not include EDC delivery charges to Buyer or applicable taxes.

5. **Billing & Payment.** The EDC will issue consolidated monthly invoices which will contain Seller's electricity charges, plus applicable taxes and all of the EDC's distribution and other applicable charges. Buyer will pay to the EDC the entire amount of each electric bill under the EDC's payment terms and conditions. Seller reserves the right to invoice Buyer directly for: (a) Seller's charges only, plus applicable taxes; or (b) for the EDC's charges, as well as Seller's charges, plus all applicable taxes. Late charges will apply for all past-due amounts owed to Seller at the rate set forth in the EDC's tariff for its charges. The EDC is solely responsible for reading Buyer's meter(s), and all disputes that Buyer has with respect to meter readings and related adjustments will be addressed by Buyer solely to the EDC.

6. **Credit.** Upon Seller's reasonable request, Buyer will provide to Seller financial statements and other credit-related information, all of which will be treated as confidential by Seller. If Seller reasonably deems Buyer's financial condition inadequate to extend credit, Seller may require security sufficient to cover volumes for the two largest months' Contract Volumes. The security will be in the form of either a deposit or an irrevocable letter of credit. Furthermore, if Buyer (a) becomes a Debtor in a bankruptcy proceeding; or (b) breaches any payment obligation or any other obligation to Seller (including any obligation to provide security as provided above), then Seller may suspend deliveries and/or terminate this Contract 10 days after delivering written notice to Buyer. Seller's rights under this Credit section are in addition to all other remedies available under this Contract.

7. **Damages.** Seller may hedge its obligations under this Contract by purchasing electricity and related transportation, as well as electricity futures and/or swaps, or any combination thereof. If (a) Buyer terminates any or all Accounts under this Contract before the expiration of any Term; or (b) Seller terminates this Contract as to any or all Accounts before the expiration of any Term as a result of Buyer's breach of this Contract, or (c) the EDC terminates any or all Accounts under this Contract before the expiration of any term as a result of late or non-payment, then Buyer will pay Seller damages calculated as set forth in the Early Termination Damages section on Page 1. Seller may increase the price charged to Buyer for Accounts that have not breached in order to cover the damages described above; in such instance, Seller will send to Buyer an informational invoice to supplement the EDC's bill. If Buyer transfers service to the EDC, Buyer may be charged a price other than the EDC's standard rate. Nothing in this Damages section limits Buyer's obligation to pay for all delivered electricity as metered by the EDC. If Seller Fails to perform its delivery obligations under this Contract, Seller will pay to Buyer an amount equal to the positive difference, if any, between Buyer's reasonable cost of cover minus the then-current Contract price for all electricity Seller failed to

deliver. The prevailing party in any lawsuit under this Contract will be entitled to collect from the Breaching party the prevailing party's costs of enforcing this Contract, including reasonable attorneys' fees and all other litigation expenses.

8. **Cross Default.** If Buyer is a party to one or more natural gas or electricity supply contracts with Seller, a breach by Buyer under such other contract(s) may be treated by Seller as a breach by Buyer of this Contract.

9. **Limitation of Liability.** Seller will not be liable for any losses arising from Buyer's use of electricity or for losses arising from the EDC, including but not limited to: their operations and maintenance of their system, any disruption of their service, termination of their service, their events of force majeure, or deterioration of their service. Except as otherwise set forth in this Contract, neither party will be liable for any indirect, consequential, special, or punitive damages, whether arising under contract, tort (including negligence and strict liability), or any other legal theory.

10. **Warranty.** Seller warrants that all electricity delivered to the EDC for its distribution to Buyer will meet the EDC's quality standards and that title to such electricity is free from liens and adverse claims. Seller makes no other warranties or representations of any kind, express or implied, including any warranty of merchantability or warranty that the goods are fit for a particular purpose.

11. **Regulatory.** The retail electric choice program is subject to ongoing utility commission, RTO/ISO, and EDC jurisdiction. During the Initial Term, your price will remain the same; provided, however, that Seller may pass through to Buyer's price any new or additional charges, or changes in the calculation of charges imposed on suppliers or their customers through a change in governing law or commission, RTO/ISO, or EDC proceeding (collectively, "New Charges"), but only to the extent that those New Charges, alone or when added together over the course of the Initial Term of this contract, exceed \$0.001 per kWh of Seller's non-commodity cost. New Charges may cause your price to vary during the Initial Term. Seller will deliver to Buyer written notice at least 30 days before passing through any New Charges. If a change in governing law, regulation, or rule physically prevents or legally prohibits Seller from performing under this Contract, then either party may terminate this Contract without penalty.

12. **Relationship of Parties.** Buyer will make decisions regarding pricing and volumes in Buyer's sole discretion and will confirm all expiration/termination dates of any existing contract terms, with or without advice or recommendation from Seller, and Seller will not be liable for Buyer's acting or failing to act upon Seller's advice or recommendations.

13. **Assignment.** This Contract may be assigned by Buyer only with express written consent of Seller, which consent will not be unreasonably withheld, delayed, or conditioned.

14. **Waiver.** No failure to enforce any provision of this Contract will be deemed a waiver of any right to do so, and no express waiver of any breach operate as a waiver of any other breach or of the same breach on future occasions.

15. **Choice of Law, Jurisdiction, Venue & Jury Trials.** This Contract will be governed by the applicable laws of the State of Ohio, without regard to Ohio's principles of conflicts of law. All legal actions involving all disputes arising under this Contract will be brought exclusively in a court of the State of Ohio sitting in Franklin County, Ohio, or in the United States District Court for the Southern District of Ohio sitting in Columbus, Ohio. Buyer and Seller waive all of their rights to a trial by jury in any legal action related to this Contract.

16. **Severability.** If any provision of this Contract is held unenforceable by any court having jurisdiction, no other provisions will be affected, and the court will modify the unenforceable provision (consistent with the intent of the parties as evidenced in this Contract) to the minimum extent necessary so as to render it enforceable.

17. **Entire Agreement.** This Contract, including these Terms and Conditions and any Exhibits, contain the entire agreement between Seller and Buyer regarding the Accounts under this Contract, and it supersedes all prior and contemporaneous written and oral agreements and understandings between them with respect to those accounts. This Contract cannot be modified in any way except by a writing signed by both Seller and Buyer.

**Exhibit A to Electricity Purchase Contract Form Large Commercial V2.3-OH  
Account Numbers & Facility Addresses**

**Seller:** Interstate Gas Supply, Inc.  
**Buyer:** VILLAGE OF COVINGTON

Following are the Account/Meter Numbers and Addresses included under the above-mentioned contract between Seller and Buyer:

Utility	Street Address	City	State	Zip	Account No:
1 DPL	101 E SPRING ST SIREN	COVINGTON	OH	45318	0194186779
2 DPL	123 W WRIGHT ST # WATER NEW WATER PLANT	COVINGTON	OH	45318	8113567990
3 DPL	140 W BROADWAY COMMUNITY PARK	COVINGTON	OH	45318	3261195296
4 DPL	938 E WALNUT ST REAR POINT 5 MG WATER TOWER	COVINGTON	OH	45318	7872809547
5 DPL	1 S HIGH ST VILLAGE CLERK	COVINGTON	OH	45318	7350418070
6 DPL	10 S MAIN ST	COVINGTON	OH	45318	7462017225
7 DPL	580 S HIGH ST BD OF PUBLIC AFFAIRS-LIFT STION	COVINGTON	OH	45318	5666911062
8 DPL	131 N MAIN ST GARAGE	COVINGTON	OH	45318	3044837894
9 DPL	140 W BROADWAY COM PARK	COVINGTON	OH	45318	5577086124
10 DPL	123 W WRIGHT ST	COVINGTON	OH	45318	7949517024
11 DPL	CHESTNUT ST LIFT STA BD OF PUBL AFFAIRS	COVINGTON	OH	45318	9845847154
12 DPL	W US-RT-36	COVINGTON	OH	45318	9187924188
13 DPL	8000 COV-GETTYS RD	COVINGTON	OH	45318	9756731400
14 DPL	E BROADWAY & VALOR DR BALLINGER SUB LFS R	COVINGTON	OH	45318	8205549040

AGREED.

Accepted by Buyer:

Name: \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Accepted by Seller:

Name: Scott Arthur

VP of C&I Sales

Title

Date