

Gexa Energy Ohio Commercial Customer Terms and Conditions

1. Electricity Supply: Gexa Energy Ohio, LLC (“Gexa Ohio,” “We” “Our” or “Us”) agrees to supply all of the customer’s (“You” or “Your”) full requirements retail electricity needs. Your electric utility, either Ohio Edison Company or The Cleveland Electric Illuminating Company (“Utility”), will deliver the electricity You buy under this Agreement to Your home or business. All electricity will be supplied and delivered under the Northeast Ohio Public Energy Council’s (“NOPEC”) electricity aggregation program (“Program”). These terms and conditions are also referred to as the “Agreement”.

2. Payment: You agree to receive all of the electricity supplied to You under the Program and pay all Gexa Ohio and Utility charges to Your account for such electricity in full on or before the due date on the bill. You will receive a single monthly bill from the Utility for all Gexa Ohio and Utility charges. The general billing rules in the Utility’s tariff will apply for Your account, including late fees and budget billing for your Utility’s portion of Your bill. We do not currently offer budget billing for the generation portion of Your bill, however we may do so in the future. We may bill you directly for any deposit or Exit Fee. We reserve the right to send You supplemental adjustments to Your previous bills or to cause Your Utility to include in any bill to You adjustments to Your previous bills, including adjustments for actual or estimated usage errors or omissions, meter reading errors, rate or other calculation errors, or other errors or omissions. You have the right to request from Us, twice within a twelve month period, up to twenty-four months of Your payment history without charge.

3. Late Fees: If You do not pay the full amount that You owe by the due date of the bill, Your Utility may charge You a late fee. If Your Utility fails to charge or discontinues charging a late fee, Gexa Ohio reserves the right to charge You a late fee equal to 1.5% of the past due amount of Gexa Ohio charges.

4. Price: If You are a small commercial customer (rate code GS), You agree to pay Us a base price of \$0.0673 per kWh for electricity usage in July and August 2009, \$0.0578 per kWh for September 2009 - December 2009, \$0.0600 per kWh for January 2010 – May 2010, \$0.0699 per kWh for June 2010, \$0.0732 per kWh for July and August 2010 and \$0.0628 per kWh for September 2010 – Your January 2011 meter reading date. Your base price includes generation, transmission, generation related components and alternative energy resource requirements compliance costs, which are charges associated with the costs of purchased power and the cost to deliver the power through the transmission system, plus an uncollectible costs adder of \$0.000539/kWh. In addition, You will be responsible for all Utility charges and surcharges, including a Public Utilities Commission of Ohio (“PUCO”) approved surcharge associated with a PUCO-approved deferral, Utility fees and riders and all taxes associated with Your electricity. The base price above may be periodically adjusted, up or down, only to reflect Our charges for certain changes in transmission rates or ancillary charges. Any applicable initial switching fee charged by the Utility may be added to Your base price through price adjustments. You will see the adjusted price in your bill. Your rate for one or more periods after Your January 2011 meter reading date (“Remaining Periods”) will be determined by NOPEC and Gexa Ohio; however, if NOPEC and Gexa Ohio are unable to agree on a rate for any Remaining Periods, the Program may be terminated by NOPEC at the end of the most recent Remaining Period for which pricing was agreed between NOPEC and Gexa Ohio. Once pricing is determined by mutual agreement between Gexa Ohio and NOPEC, Gexa Ohio will send You an opt-out mailing (“Remaining Period Opt-out Mailing”) containing the pricing for Remaining Periods and revised terms and conditions. *You may opt to terminate service from Gexa Ohio without charge for Remaining Periods by responding to this Remaining Period Opt-out Mailing within twenty-one (21) days after the mailing date on the notice attached to the Remaining Period Opt-out Mailing. You will not be required to pay an Exit Fee if You so decide to opt out of Gexa Ohio’s service or if NOPEC terminates its agreement with Gexa Ohio.* If You decide to opt out of Gexa Ohio’s service, Your electricity service will be switched to Your Utility on your meter reading date prior to the end of the most recent Remaining Period until you choose an alternate competitive supplier of electric generation rates. If NOPEC terminates the agreement with Gexa Ohio, Your electricity service will be switched to Your Utility or to another competitive supplier as determined by NOPEC on your meter reading date prior to the end of the most recent Remaining Period.

5. Term of Service: You will start to receive electricity under this Agreement with Your meter reading date occurring either in August or September 2009 (as determined by Gexa Ohio based upon necessary arrangements with Your Utility) until Your meter reading date occurring in June 2011 or sooner, upon termination of the Program. We have the right to request a “special” meter reading date at Our sole discretion and expense.

6. Right of Rescission: You have a right to rescind this Agreement within seven days following the postmark of Your Utility’s letter confirming Your enrollment in the Program. This right is in addition to Your right to opt-out of the Program.

7. Eligibility: The Program covers all eligible residential customer accounts and all eligible small commercial customer accounts located in the Utilities’ service territories. The Program will not include those customers enrolled in the percentage of income payment plan, customers on the PUCO’s “do not

aggregate” list, customers who properly opt-out of the Program, customers under contract with another competitive retail electric service provider, mercantile customers that have not provided affirmative consent to join NOPEC’s aggregation, customers that have a special arrangement with the Utility, residential customers (rate code RS) eligible for the residential nonstandard credit provision under rider EDR, small commercial customers (rate code GS) that are eligible for the School Credit Provision under rider EDR, and such other customers not eligible for service under the Program, as determined by PUCO or Utility rules. Gexa Ohio reserves the right to void this Agreement without liability if You or Your account does not meet these eligibility requirements and return You to Your Utility.

8. Opt-Out Rights: You have the right to opt out of the Program every three (3) years from Your most recent enrollment without penalty in accordance with applicable PUCO requirements. Your account will automatically be included in the Program unless You opt out by signing and dating the attached form and returning it to Us at the address listed on the card within twenty-one (21) days after the mailing date on the attached notice unless Your account is otherwise ineligible for the Program. If You do not opt out within the twenty-one (21) day period, and do not rescind Your enrollment as provided in paragraph 6, You will pay an exit fee if You later choose to exit the Program (“Exit Fee”). The Exit Fee is \$300 for each commercial customer. You will not be charged the Exit Fee if You leave the Program because the agreement between NOPEC and Gexa Ohio is terminated, You move from Your service location, or You enroll in the Utility’s percentage of income payment program, or You opt to terminate service by responding to the Remaining Period Opt-out Mailing.

9. Change in Regulation: If there is a change in regulation, Gexa Ohio may adjust Your price for electricity to reflect additional costs and expenses of providing electricity to You, as provided in Our agreement with NOPEC.

10. Termination: Gexa Ohio may terminate this Agreement upon fourteen (14) calendar days written notice to You if You fail to pay any portion of Gexa Ohio’s charges on Your bill or fail to meet any agreed-upon payment or credit arrangement. If this Agreement is terminated, You will be required to pay the Exit Fee, except as otherwise provided in this Agreement, and Your electricity service will be switched to Your Utility. The failure to pay any portion of Your Utility charges on Your bill may result in disconnection of Your service in accordance with Your Utility’s tariff. If Your service is returned to Your Utility, You may or may not be served under the same rates, terms and conditions that apply to other customers of the Utility. Regardless of the method or reason for termination of this Agreement and/or disconnection of Your service, You are responsible for payment of all outstanding Gexa Ohio charges incurred through the effective date of termination and/or disconnection.

11. Moving: If You move Your residence inside or outside of Your Utility’s service territory, this Agreement will terminate when Your service is switched to Your Utility and You will not be required to pay any Exit Fee. If You move to a new address in a NOPEC member community within the Utilities’ service territories, You may contact Gexa Ohio and request that Your new address be enrolled in the Program. Gexa Ohio may choose to enroll the new address, in its discretion.

12. Assignment: Gexa Ohio may assign this Agreement, in whole or in part, to any person or entity, including another competitive retail electric service provider, subject to any required regulatory approvals and NOPEC’s consent. You may not assign this Agreement to any person or entity except upon written consent of Gexa Ohio.

13. Program Termination: This Agreement shall automatically terminate upon the termination of the Program for the NOPEC member community in which Your commercial account is located.

14. Authorization: You authorize Your Utility to release to Gexa Ohio all information relating to Your historical and current electric usage, account number, and billing and payment history. Without PUCO or court order, We are prohibited from disclosing Your social security number and/or account number(s) without Your consent except for Our own collections and credit reporting, participation in programs funded by the universal service fund pursuant to section 4928.54 of the Revised Code, or Our assignment of this Agreement and Your service to another competitive retail electric service provider.

15. Customer Inquiries And Disputes: If You wish to contact Us concerning Your bill or any issue You dispute, You may do so by calling Us during Our normal business hours (8:00 a.m. to 7:00 p.m. ET) at 888-223-9292 or writing to Us at Gexa Energy Ohio, LLC, 344 S. Poplar St., Hazleton, PA 18201 attention: Customer Care Center. If Your complaint is not resolved after You have called Us and/or Your Utility, or for general utility information, You may contact the PUCO for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free), from 8 a.m. to 5 p.m. weekdays or at www.puco.ohio.gov. You may also contact the Ohio Consumers’ Counsel for assistance with complaints and utility issues at 1-877-742-5622 (toll free) from 8 a.m. – 5 p.m. weekdays, or at www.pickocc.org. You may also contact NOPEC at 800-292-9284 (toll free), weekdays from 8:30 a.m. to 5:30 p.m. You may also visit NOPEC’s web site at www.nopecinfo.org. You should report any service interruptions or electrical emergencies directly to Your Utility.

16. Credit and Deposits: We may require a cash deposit from You after the initiation of Your service if You have failed to pay any of Your immediately preceding twelve (12) bills on or before the due date. If a deposit is required, the amount shall not exceed the greater of either the sum of estimated total billings as determined by Us for the next two months or one-fifth of estimated annual billing as determined by Us. We will accrue interest to Your deposit in an amount equal to one percent (1%) per annum of the cash deposit, subject to applicable regulatory requirements. We will apply any cash deposit held on Your behalf plus any accrued interest to any unpaid balances and refund any excess to You after this Agreement is terminated. Our credit and deposit procedures will comply with applicable PUCO rules.

17. Environmental Disclosure: Our environmental disclosure statement is available for viewing on Our website – www.gexaenergy.com/NOPEC. You agree that We will make the required annual and quarterly environmental disclosure filings and updates electronically on Our website. We will also provide the information upon request.

18. Limitation of Liability: Gexa Ohio assumes no responsibility or liability for matters that are the responsibility of Your Utility, including the following: Operation and maintenance of the Utilities’ electrical system, any interruption or termination of service, or quality or deterioration of service. You also agree that Gexa Ohio will not be responsible for any indirect or consequential damages.

19. DISCLAIMER: GEXA OHIO MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND GEXA OHIO EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR VERBAL, EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

20. Title and Risk of Loss: You shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the electricity after it reaches Your electric meter. Title to and risk of loss related to the electricity shall transfer from Us at the point of interconnection between Your Utility’s transmission or delivery system and Your meter. You shall indemnify, defend and hold Us harmless from any and all claims for any loss, damage, or injury to persons or property, including without limitation, all consequential, exemplary, or punitive damages arising from or related to any act or incident occurring after the electricity has been received at Your meter.

22. Non-Waiver: No waiver by any party hereto of any one or more defaults, by the other party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

23. Complete Agreement/Governing Law: This Agreement contains all terms, conditions, and agreements in any way related to, or arising out of, the sale and purchase of electricity. This Agreement shall be governed by and construed, enforced and performed in accordance with the laws of the State of Ohio.

24. Amendments to NOPEC Plan of Governance and Operations: By participating in the Program, You agree to the following amendments to the NOPEC Plan of Governance and Operation for Member Communities (“Plan”):

- (a) All references in the Plan to “two” or “2” years for the opt-out period shall be changed to “three” or “3” years;
- (b) Add a new Section 1.3.10 in the Plan: “Notifying eligible customers as part of the opt-out notice, if applicable, of the terms and calculation of any deferral – recovery surcharge and, if applicable, NOPEC’s process for election not to receive standby service and potential impacts on customers”;
- (c) Eliminate the reference to shopping credits within Section 2.2 as no longer applicable;
- (d) Change Section 2.4.1 in the Plan to provide that the opt-out period shall extend 21 days from the notice’s post-marked date (or, if none, the mailing date), and the notice shall describe the terms and conditions of any applicable deferral surcharge and whether standby service, if offered, is included as part of the offer;
- (e) Change Section 2.4.4 in the Plan to provide that Supplier may pass through any switching fees to NOPEC aggregation members; and
- (f) Change Section 2.4 in the Plan to provide that an eligible customer shall be a customer which is eligible under utility or PUCO rules and which NOPEC and its Supplier have elected to serve.

Gexa Energy Ohio, LLC
344 S. Poplar Street
Hazleton, PA 18201
Attention: Customer Care Center
Normal Business Hours: 8 a.m. to 7 p.m. ET
Phone: (888) 223-9292
Internet Address: www.gexaenergy.com/nopec
CRES certificate number 08-145 (1)