

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy for Approval of a Market Rate)	
Offer to Conduct a Competitive Bidding)	
Process for a Standard Service Offer)	Case No. 10-2586-EL-SSO
Electric Generation Supply, Accounting)	
Modifications, and Tariffs for Generation)	
Service.)	

INITIAL BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Ann M. Hotz
Counsel of Record
Jody M. Kyler
Richard C. Reese
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (T)
hotz@occ.state.oh.us
kyler@occ.state.oh.us
reese@occ.state.oh.us

RECEIVED-DOCKETING UNIT
2011 JAN 27 PM 4:35
PUCO

January 27, 2011

11
This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician SMS Date Processed 1/27/11

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. APPLICABLE LAW AND STANDARDS	3
A. R.C. 4928.141, R.C. 4928.142 And Ohio Adm. Code 4901-1-35 Establish The Requirements Of Filing An MRO.	3
B. R.C. 4928.02 Sets Forth The Goals Of The State With Regard To The Company's Provision Of An SSO.	4
C. R.C. 4928.05(2) And Ohio Adm. Code 4901:1-36 Establishes The Commission's Authority To Address Transmission Costs.....	6
III. ARGUMENT.....	6
A. Duke's MRO Application, Subject To Revision, Is Preferable To An Electric Security Plan	6
1. A properly constructed MRO could provide lower prices to customers than Duke's current Electric Security Plan.	6
2. An MRO is more likely to further state policy established in R.C. 4928.02 than an ESP.	8
a. An MRO, if properly constructed, will more likely ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service under R.C. 4928.02(A).	9
b. An MRO, if properly constructed, will more likely ensure the availability of unbundled and comparable retail electric service in accordance with R.C. 4928.02(B).	10
c. An MRO, if properly constructed, will better recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment in accordance with R.C. 4928.02(G).	11

d.	An MRO will better ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa in accordance with R.C. 4928.02(H).....	12
e.	An MRO will better ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies and market power in accordance with R.C. 4928.02(I).....	13
B.	Duke's Competitive Bid Auction Process Should Be Modified To Reduce Customer Risk And To Comply With Ohio Law.	14
1.	The Commission should mitigate customer risk by increasing the number of solicitations per year.....	14
2.	The Commission should mitigate customer risk by ordering the Company to bid for long-term contracts that will provide a hedge against short-term volatility.	16
3.	The Commission should establish a process for reviewing and improving future auctions and implementing requirements for Commission review listed in Ohio Adm. Code 4901:1-35-11.	17
4.	The Commission should eliminate the opportunity for improper application of sanctions by Duke by insisting that the auction manager report suspicion of rule violations to the Commission. ..	19
C.	The Commission Should Not Waive Its Authority To Review The Recoverability Of The Costs Resulting From Duke's Business Decision To Join PJM Nor Should It Determine The Recoverability Of Such Costs In This Proceeding.	21
1.	The Commission should not waive its jurisdiction to consider the recoverability of the costs resulting from Duke's business decision to join PJM.	21
a.	Relevant Ohio Laws and Regulations.....	24
b.	The <i>Pike County</i> Doctrine	25
2.	A determination as to the recoverability of the costs resulting from Duke's business decision to joint PJM is not relevant to the review of a market rate offer application.....	28

3.	The Commission should not prematurely approve the recoverability of the uncertain costs resulting from Duke's business decision to join PJM.....	30
4.	Duke did not present sufficient evidence in the case for a commission determination regarding the recoverability of the costs resulting from Duke's business decision to join PJM.	33
D.	The Commission Should Require Duke To Include Demand Charges In The Retail Rates Duke Charges Customers From The Bid Price In Order To Limit The Uncertainty Of Peak Use For Bidders.	35
E.	The Commission Should Not Permit Duke To Usurp The Commission's Obligation To Incrementally Adjust The Blended Proportions In Response To Market Conditions In The Transition From The ESP To 100% Bid Prices As Required By The Statute Under The Blending Period Provisions.	38
F.	The Commission Should Conduct A Prudence Review On All Adjustments Made to Riders During the Blending Period.	42
G.	The Commission Should Ensure That All Of Duke's Generation Riders Are Bypassable By Shopping Customers In Order To Further The Competitive Market.	43
IV.	CONCLUSION.....	44

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy for Approval of a Market Rate)	Case No. 10-2586-EL-SSO
Offer to Conduct a Competitive Bidding)	
Process for a Standard Service Offer)	
Electric Generation Supply, Accounting)	
Modifications, and Tariffs for Generation)	
Service.)	

**INITIAL BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On November 15, 2010, Duke Energy Ohio, Inc. ("Duke" or "Company") filed an Application for Approval of a Market Rate Offer ("MRO") ("Application") with the Public Utilities Commission of Ohio ("PUCO" or "Commission") as permitted under R.C. 4928.141 and 4928.142. In its Application, Duke includes:

- 1) A request for approval of its competitive bidding process as required under R.C. 4928.142(A)(1) and Ohio Adm. Code 4901:1-35-03(b)(2);¹
- 2) A request for a finding that Duke meets the statutory requirements under R.C. 4928.142(B) to provide a MRO;²
- 3) A request for permission to limit the blending period to a three year period rather than the minimum five year period required under R.C. 4928.142(D);³

¹ Duke Exh. 3 at 12-20 (Application).

² Id. at 20-32.

³ Id. at 10-12.

- 4) A request for approval of its retail rate design in applying the competitive bid results to customer classes;⁴
- 5) A request for approval of the new or modified riders that Duke proposes;⁵
- 6) A demonstration that Duke owns operating generating facilities as required under Ohio Adm. Code 4901:1-35-03(B)(2)(k) along with notice that it intends to file for divestiture of its generation assets within three years;⁶
- 7) A description of its corporate separation plan as required under Ohio Adm. Code 4901:1-35-03(B)(3);⁷
- 8) A description of how it proposes to address governmental aggregation programs as required under Ohio Adm. Code 4901:1-35-03(B)(4); and⁸
- 9) A description of how its proposed CBP advances policies in this state as required under Ohio Adm. Code 4901:1-35-03(B)(2)(d).

Multiple interested parties intervened, including the Office of the Ohio Consumers' Counsel ("OCC"). The Commission established a procedural schedule on November 16, 2010, which was later continued on December 27, 2010. The hearing in this case commenced on January 11, 2011 and ended on January 19, 2011.

⁴ Id. at 33-36.

⁵ Id. at 37.

⁶ Id. at 38.

⁷ Id. at 39.

⁸ Id. at 40.

II. APPLICABLE LAW AND STANDARDS

A. R.C. 4928.141, R.C. 4928.142 And Ohio Adm. Code 4901-1-35 Establish The Requirements Of Filing An MRO.

This Application is the second SSO application Duke has filed under R.C.

4928.141. R.C. 4928.141 directs electric distribution utilities (“EDUs”) to:

Provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. In order to meet this requirement EDUs may choose between the MRO plan as set forth under R.C. 4928.142 or an electric security plan (“ESP”) under R.C. 4928.143.

R.C. 4928.142(A)(1) sets forth specific requirements for the competitive bidding process that can be used to establish an MRO:

- a) open, fair, and transparent competitive solicitation;
- b) clear product definition;
- c) standardized bid evaluation criteria;
- d) oversight by an independent third party that shall design the solicitation, administer the bidding, and ensure that the criteria specified in division (A)(1)(a) to (c) of this section are met;
- e) evaluation of the submitted bids prior to the selection of the least-cost bid winner or winners. No generation supplier shall be prohibited from participation in the bidding process.

In addition, R.C. 4928.142(A)(2) directs the Commission to modify or adopt rules concerning the conduct of the competitive bidding process and the qualifications of bidders to encourage participation in the bidding process. The Commission enacted rules for that purpose under Ohio Adm. Code 4901:1-35-03.

B. R.C. 4928.02 Sets Forth The Goals Of The State With Regard To The Company's Provision Of An SSO.

R.C. 4928.02 sets forth the policy of the state of Ohio with regard to the provision of electric generation.

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;
- (D) Encourage innovation and market access for cost-effective retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure;
- (E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;
- (F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa;

(I) Ensure retail electric service consumers just and reasonable rates and protection against unreasonable sales practices, market deficiencies, and market power;

(J) Preclude imbalances in knowledge and expertise among parties in a proceeding under this chapter to eliminate any appearance of disproportionate influence by any of those parties;

(K) Ensure that consumers and shareholders share the benefits of electric utility investment in facilities supplying retail electric generation service;

(L) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

(M) Protect at-risk populations when considering the implementation of any new advanced energy technology;

(N) Encourage implementation of distributed generation across customer classes through regular review and updating of rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;

(O) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and advanced energy technologies in their businesses;

(P) Facilitate the state's effectiveness in the global economy.

**C. R.C. 4928.05(2) And Ohio Adm. Code 4901:1-36 Establishes
The Commission's Authority To Address Transmission Costs.**

Duke has included proposed tariffs within its application that appears to allow Duke to automatically pass through all of its transmission costs without the PUCO approval. As discussed in Section III.C. below, the Commission should find this impermissible under *Pike County Light & Power Co. v. Penn. Pub. Util. Comm'n*, 465 A.2d 735 (Pa. Commw. Ct. 1983), *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Comm'n*, 837 F.2d 600 (3d Cir. 1988), *Penn. Power & Light Co.*, 23 F.E.R.C. ¶ 61,325 (1983), *Pub. Serv. Co. of N.H. v. Patch*, 167 F.3d 29, 35 (1st Cir. 1998), *Appalachian Power Co. v. Pub. Serv. Comm'n*, 812 F.2d 898 (4th Cir. 1987), FERC Order No. 697-A, *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, 73 Fed. Reg. 25,832, at 25,892 (May 7, 2008). because federal law does not preempt states' authority to review the prudence of utility purchases.

III. ARGUMENT

**A. Duke's MRO Application, Subject To Revision, Is Preferable
To An Electric Security Plan**

**1. A properly constructed MRO could provide lower
prices to customers than Duke's current Electric
Security Plan.**

The Commission should approve an MRO, subject to certain revisions discussed below, because it will likely provide lower prices to customers than an ESP, which the Company currently uses to price its generation. The evidence in this case demonstrates

that shopping customers are paying less than the customers purchasing service from Duke's current ESP. Nothing demonstrates this more clearly than the dramatic increase in the number of customers who have left the ESP for competitive retail electric service providers ("CRES"). Currently, 60% of Duke's electricity load purchases electric generation through CRES providers.⁹ Shopping customers include 89% of the industrial load, 70% of the commercial load, 29% of the residential load, and 90% of the other public authority load.¹⁰

Moreover, the Chairman, President and Chief Executive Officer of Duke Energy Corporation, James E. Rogers, stated in his testimony:

The level of switching shows that the competitive market has developed in Duke Energy Ohio's service territory. Customers have realized that they have a choice as to the entity that provides their electric generation service and they have affirmatively chosen to exercise that choice.¹¹

Additionally, the number of CRES providers who provide service in Duke's service territory has sharply increased during the Company's current ESP period. At the beginning of January 2009, there were only seven CRES providers registered to sell electricity to customers in the Duke service territory. Now, there are thirteen CRES providers selling generation in that territory.¹²

Further, the results of the recent competitive bids conducted in the FirstEnergy Corp. ("FE") service territory provide additional evidence that an MRO is preferable to an ESP. Duke's proposed MRO is very similar to the FE CBP.¹³ Duke expects its CBP

⁹ Duke Exh. 19 at 7 (Rogers Testimony adopted by Trent Testimony at 3).

¹⁰ Duke Exh. 2 at 8 (Janson Testimony).

¹¹ Duke Exh. 19 at 6 (Rogers Testimony adopted by Trent Testimony at 3).

¹² Duke Exh. 2 (Janson Testimony) at 8.

¹³ Tr. Vol. III at 612-613. (Cross of Wathen).

to be within the same range as FE's \$55 to \$60 per MWh. Duke's current ESP price is at \$73 per MWh. Beyond the results of the FE competitive bids, other evidence indicates that the MRO is preferable to an ESP.

The President of Duke, Julia Janson, testified that she perceives that with the MRO process:

... We would certainly be honoring what we believe to be our customers' preference to participate in a competitive market as well as the legislature's intent and there forward after year three we would go through the competitive bid process with the staggered procurement which should result in some price mitigation and an open, fair, and transparent process to arrive at generation prices for our customers.¹⁴

The legislation enacted by the General Assembly provided Duke with significant indication that an MRO is preferable.

2. An MRO is more likely to further state policy established in R.C. 4928.02 than an ESP.

Ohio Adm. Code 4901:1-35-03((B)(2)(n) requires that applicants for approval of an MRO plan "include a detailed account of how the plan is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code." Duke Witness Janson offered such an account in her testimony.¹⁵ But an MRO plan is **more consistent** with many of the state policies under R.C. 4928.02 and the MRO plan **better advances** many of the state policies than an ESP construct could.

¹⁴ Tr. Vol. I at 31-32. (Cross of Janson).

¹⁵ Duke Exh. 2 (Janson Testimony) at 17-28.

- a. **An MRO, if properly constructed, will more likely ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service under R.C. 4928.02(A).**

Witness Jansen points out that an MRO will ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.¹⁶ She notes that Duke's delivery of generation to customers will not be affected by the MRO and that Duke's responsibility to provide adequate, reliable, safe and efficient service to customers will be continuing. To the extent that the currently existing Electric Service and Safety Standards of Ohio Adm. Code 4901:1-10 and other statutory requirements continue, Duke's obligations will remain the same.

Although current rules and laws do not impose similar standards on ensuring that generation is "reasonably priced," a competitively bid price that meets the requirements set forth under R.C. 4928.142 and Ohio Adm. Code 4901-1-35 will provide a more "reasonably priced" retail electric service than an Electric Security Plan. Multiple Company witnesses pointed out that current rates under FE's CBP are more "reasonably priced" than are the current rates under Duke's ESP.¹⁷ For this reason, Duke's MRO would better meet the policy intended under R.C. 4928.02(A).

¹⁶ Duke Exh. 2 (Janson Testimony) at 17.

¹⁷ Tr. Vol. III at 575 (Bailey Cross); Tr. Vol. III at 612 (Wathen Cross).

- b. **An MRO, if properly constructed, will more likely ensure the availability of unbundled and comparable retail electric service in accordance with R.C. 4928.02(B).**

Witness Janson also states that the MRO will ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs.¹⁸

Moreover, the MRO will better ensure the availability of unbundled and comparable retail electric service because the MRO will not include the various expenses or expenditures permitted under an ESP. With the current ESP, Duke not only recovers the base generation price to compare but also it collects from customers.¹⁹

Rider PTC-FPP to recover all fuel and economy purchased power costs and costs for environmental emission allowances;²⁰

Rider PTC-ACC to recover incremental costs associated with environmental compliance, including a return of and on incremental investment in plant and associated operating expenses, homeland security, and changes in tax law. The environmental costs, according to the application, would include expenses for reagents, a return of and on capital expenditures required to increase fuel flexibility, and consistent with current practice, a return on CWIP from the date such expenditures begin.²¹

Rider SRA-CD allowing Duke to fulfill its provider-of-last resort obligations and to obtain additional capacity on behalf of retail customers, in order to maintain an adequate long-term supply of capacity and to earn a reasonable return on its investment.²²

¹⁸ Id. at 18.

¹⁹ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan, et. al.*, Case No. 08-920-EL-SSO, Opinion and Order (December 17, 2008).

²⁰ Id. at 11.

²¹ Id. at 13.

²² Id. at 14.

Rider SRA-SRT that allows Duke to continue to purchase capacity necessary to maintain and offer of firm generation service and to provide default service to all consumers in its certified territory.²³

The dollar amounts of most of these riders change regularly²⁴ and make it very difficult for individual customers to compare the price they pay Duke for generation to the price being offered by alternative suppliers. After the blending period of the MRO, these riders will be transitioned out. All of the changing costs associated with the riders will be incorporated into one price based upon the final bid price. It will be that final bid price that will better allow customers to compare with CRES provider offers, rather than the moving target currently resulting from the ESP.

- c. An MRO, if properly constructed, will better recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment in accordance with R.C. 4928.02(G).**

The CBP available through the MRO, without any additional riders, better recognizes the continuing emergence of competitive electricity markets. Currently, under Duke's ESP Duke is not permitted to lower its base generation rate in response to competitive electricity markets.²⁵ Instead under Duke's ESP Duke is able to recover a base generation rate along with adjusted riders that allow Duke dollar-for-dollar recovery for certain tracked costs such as fuel and purchased power. And as long as Duke is able to collect its costs through cost tracking riders such as Rider FPP and Rider AAC, Duke should not be permitted to flex its ESP price in response to competitive electricity

²³ Id.

²⁴ Rider PTC-FPP adjusts quarterly (Id. at 12), Rider PTC-AAC adjusts annually (Id. at 13), Rider SRA-SRT adjusts quarterly (Id. at 14).

²⁵ Tr. Vol. III, at 632 (Wathen).

markets. Such flexing would be patently anti-competitive as long as it is able to collect tracked costs. Not only does the cost based rate making not accord with competitive markets but also it involves relatively rigid rather than flexible regulatory treatment.

Rather Duke should be permitted to bid into its MRO auctions along with other wholesale providers (with the understanding that the appropriate codes of conduct will be adhered to), competitively pricing its generation product without a dollar for dollar collection of any generation costs. That is the only way that competitive electricity markets will further emerge in the Duke service territory.

- d. An MRO will better ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa in accordance with R.C. 4928.02(H).**

The ESP riders allow for dollar-for-dollar recovery of such items as fuel, purchased power, tax adjustments and environmental costs. The rider cost recovery mechanisms practically guarantee Duke the recovery of generation costs that it can demonstrate as prudently incurred. The CBP will not.

The dollar-for-dollar cost recovery mechanisms under an ESP, simply by their nature, presents Duke with an incentive to designate as many of those costs as Duke can as SSO customer costs rather than as competitive, non-native load customer costs. The fewer costs that Duke designates as non-native load costs, the less risk Duke faces in the competitive market.

In order to correct for this incentive, the Commission has had to provide for time-consuming and imperfect rider audits and proceedings. For example, in Duke's FPP rider prudence reviews, the auditing of costs relating to purchases through its Active

Management process has been an ongoing problem.²⁶ Auditors have had difficulty auditing the process and determining the effectiveness of active management since the Company began using it.²⁷

The MRO, without generation related cost collection riders, will ensure a level playing field for all generation suppliers. Under the MRO, all generation suppliers face the same risk and will better ensure effective competition in the provision of retail electric service.

- e. **An MRO will better ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies and market power in accordance with R.C. 4928.02(I).**

The MRO provides a rate to customers that is competitively bid by wholesale power providers by focusing on and improving a CBP that will provide the lowest possible price. As the incumbent, Duke and its affiliates, could easily maintain market power in the Duke service territory without a wholesale competitive bid. Currently, the only means whereby a competitive generation provider can enter the Duke service territory is as a CRES provider who must market to and obtain new customers. As the incumbent, Duke does not have to market to obtain new customers.

With the MRO, the Commission can continue to monitor and regulate the CBP that occurs to produce the MRO through the annual report process provided for under

²⁶ See eg., *In the Matter of the Application of Duke Energy Ohio, Inc. to Establish its Fuel and Economy Purchased Power Component of its Market-Based Standard Service Offer for 2009 et. al.*, Case No. 09-974-EL-FAC et. al., Opinion and Order (September 22, 2010) at 6-7.

²⁷ See eg., *In the Matter of the Regulation of the Fuel and Economy Purchased Power of Cincinnati Gas & Electric Company's Market Based Standard Service*, Case No. 05-806-EL-UNC, Financial and Management/Performance Audit of the FPP of the Cincinnati Gas & Electric Company (October 7, 2005) at 2-14.

Ohio Adm. Code 4901:1-35-11(D). The Commission's review and supervision over the CBP will ensure that market deficiencies and market power problems will be addressed.

On the other hand, the ESP focuses too much on cost recovery for the electric distribution company to ensure a level playing field for all generation providers. The rider cost recovery mechanisms provides the opportunity for cross-subsidization of Duke's competitive customers by Duke's SSO customers. Without these riders, Duke will be less likely to maintain market power in the Duke service territory.

The MRO, without the need for time-consuming and imperfect cost recovery mechanisms, will better provide an effective bidding process to encourage market entry and participation.

B. Duke's Competitive Bid Auction Process Should Be Modified To Reduce Customer Risk And To Comply With Ohio Law.

1. The Commission should mitigate customer risk by increasing the number of solicitations per year.

The Commission should order Duke to increase the number of solicitations to be held each year because such a revision to the CBP would reduce customer risk and potentially increase bidder participation. Duke witness Lee agreed that having multiple auctions would "make the process more accessible" for bidders in some cases.²⁸

Lee also agreed that spreading investments or purchases over a period of time is a recognized means of mitigating risk.²⁹ He stated that "I think some people have hypothesized that there's, that bidders are significantly influenced by short-term market conditions." He also stated "...there are certainly people who would hypothesize that multiple solicitations would insulate the process from some of that risk."

²⁸ Id. at 182.

²⁹ Tr. Vol. I at 183 (Lee).

In its application, Duke proposes to hold only one solicitation or CBP each year.³⁰ In the long term Duke proposes to hold one auction per year for approximately 33% of its load. The 33% itself is a significant amount of load to expose to a single auction but as it stands under Duke's "three year" blending proposal, Duke would hold a single auction for 80% of its load in the third year. That single auction exposes customers to significant price risk without any evidence in the record that such risk is warranted. Mr. Lee admitted that neither he nor the Company conducted a quantitative assessment of the risks associated with bidding 80% of Duke's load in just one auction versus multiple auctions.³¹

In fact, the Commission recently ordered FirstEnergy to increase the number of auctions it planned to hold in order to mitigate risk.³² The Commission explained:

The Commission also believes that, in order to mitigate risk, the remaining two proposed auctions, with 34 tranches to be procured in each, should be further divided into four separate auctions, with 17 tranches to be procured in each auction. Accordingly, we will modify the Combined Stipulation and order that the auctions proposed for July 2011 and July 2012 be reschedule into four auctions to be held in October 2011, January 2012, October 2012, and January 2013.³³

In this case, the Commission should also order at least two auctions per year when 30% or more of the SSO load is to be auctioned. If 50% or more of the load is to be auctioned in a year, the Commission should require at least four auctions.

³⁰ Duke Exh. 3 at 12-13 (Application).

³¹ Tr. Vol. I at 180 (Lee).

³² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant To Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order (August 25, 2010) at 34.

³³ *Id.*

Finally, as the Commission recognized in the FirstEnergy auction case,³⁴ “... even if the risk of holding an auction during peak months is limited, there is no reason to take that risk. There is certainly no affirmative reason to hold auctions during peak months.” Again, the Commission should make that finding and order Duke not to hold auctions during peak months.

2. The Commission should mitigate customer risk by ordering the Company to bid for long-term contracts that will provide a hedge against short-term volatility.

The Company’s proposal to conduct only one auction that would provide generation for only one year³⁵ or at the most, three years, will provide little hedge to the price of power from one year to the next. If the auction incorporates long-term products it will enhance price stability. The Commission should conduct an inquiry into the possibility of including a long-term product component into the auction.

Additionally, longer-term product auctions will likely encourage more generation developers to participate. As witness Kevin Helmich testified, developers of new generation resources typically need long term contracts in order to secure financing. He stated:

A commercial-scale wind farm, like any other large-scale power plant, is a significant capital investment. Financing such projects depends on investor confidence in the availability of a long-term revenue stream, lasting at least ten years, to cover the substantial upfront costs.³⁶

³⁴ Id.

³⁵ Duke Exh. 3 at 17 (Application).

³⁶ OAE Exh. 1 at 2 (Helmich Testimony).

The proposal's focus on short term products provides little if any incentive for generation developers to participate directly in the auction, nor does it provide any incentive for intermediary bidders to commit to long term contracts with generation developers. In order to address these issues the Commission should, prior to the second auction, conduct an inquiry into the possibility of including a long term product in the auction process.

3. The Commission should establish a process for reviewing and improving future auctions and implementing requirements for Commission review listed in Ohio Adm. Code 4901:1-35-11.

The Commission should insist upon Duke recognizing the Company's obligation to seek the Commission's approval for any significant revisions or modifications that Duke intends to make to the CBP. There are far too many interests at stake in this process to leave it to Duke's limited perspective and unfettered control. Under R.C. 4928.142(A)(2) the Commission has been directed by the General Assembly to modify or adopt rules "which rules shall foster supplier participation in the bidding process and shall be consistent with the requirements of division (A)(1) of this section."

Although Duke recognizes that the CBP should be modified as Duke gains experience with the process, Duke wants to limit the Commission's authority to monitor and supervise the CBP:

Such modifications will be carried out in consultation with Duke Energy Ohio but without prior consent from the Public Utilities Commission of Ohio ("PUCO") or any past, current, or potential bidders and will be posted to the Information Website.³⁷

³⁷ Exh. 3, Attachment C, "Bidding Rules for Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions" at 1 (Application).

In response to the General Assembly's directive, the Commission has enacted Ohio Adm. Code 4901:1-35-11(D), which requires an annual report, which calls for, among other things, a discussion:

The electric utility shall discuss, in its annual report upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modification of the approved CBP plan being requested by the electric utility shall be described in detail, with specific rationale provided for every such deviation or modification requested.³⁸

Along with Duke's proposal to revise the CBP process without Commission approval, the Company's proposal projects auctions through at least 2018, essentially in perpetuity.³⁹ Duke's apparent claim of unilateral authority unlawfully precludes both stakeholders and the Commission from participating in changes to the CBP format. Not only is Duke's approach unlawful but it is also impractical. The Commission should insist that Duke incorporate into its CBP auctions input from all interested parties in order to more effectively address lessons learned from prior auctions, changes in market, impacts of technology developments such as smart grid, and the potential impacts of real time pricing, increased penetration of energy efficiency, demand response, distributed generation, etc.

Company witness Lee admits that there is no formal process for obtaining PUCO review and approval or stakeholder input.⁴⁰ Although Lee alludes to an informal process⁴¹ Duke has not committed to incorporating stakeholder input or seeking the Commission approval in modifying the CBP. The only commitment that Duke has made

³⁸ Ohio Adm. Code 4901:1-35-11(D)(4).

³⁹ Exh. 3 at Attachment B at 1 (Application).

⁴⁰ Tr. Vol. I at 186 (Lee).

⁴¹ Id. at 187, 189-191.

is that "Such modifications will be carried out in consultation with Duke Energy Ohio but without prior consent from the Public Utilities Commission of Ohio ("PUCO") or any past, current, or potential bidder."⁴²

As mentioned previously, there are far too many interests at stake to leave the CBP to the sole discretion of the Company and the auction manager. The process and its subsequent modifications will have a significant affect on the price all customers will pay for generation from the start of the MRO into perpetuity. The Commission can most effectively provide customers with a reasonable price by ensuring that the CBP remains competitive. For that reason, the Commission should focus most of its efforts on this process and should order a meaningful stakeholder process to occur annually.

In that annual process, the Commission should insist upon allowing all interested stakeholders to participate and provide input into the modification process. Moreover, the Commission should provide for a procedure that will ensure that the Company will incorporate changes that will benefit all stakeholders and will ensure Commission review and approval.

- 4. The Commission should eliminate the opportunity for improper application of sanctions by Duke by insisting that the auction manager report suspicion of rule violations to the Commission.**

Both Duke and its affiliates will be permitted to bid in the auction.⁴³

Additionally, Duke has proposed that it will retain the decision-making authority as to whether it will apply sanctions to itself or other Duke affiliates for failure to comply with

⁴² Duke Exh. 3, Attachment C, "Bidding Rules for Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions" at 1 (Application).

⁴³ Tr. Vol. I at 183 (Lee Cross).

bidding rules.⁴⁴ This process would provide Duke with the temptation to improperly advantage itself at the expense of other bidders. The Commission should simply eliminate this process in order to ensure potential bidders that the bid will be fair.

Witness Lee agreed that bidding rules can be established to help eliminate the potential for unfair treatment among bidders.⁴⁵ But nothing in the bidding rules specifically ensures that Duke will not advantage itself or its affiliates at the expense of other bidders. Although the Company has corporate separation rules, neither Witness Lee nor Witness Jones, who sponsored Duke's corporate separation plan could identify a specific provision that would prevent Duke from advantaging itself or its affiliates through sanctions in the CBP.⁴⁶

The commission should take the discretion with regard to sanctions out of Duke's hands and reserve that power for itself. To facilitate the commission's ability to impose sanctions the commission should order the auction manager to report through a filing in this docket, any suspicion of rule violations to the commission so that the commission may take appropriate action.

The best way to ensure that potential bidders perceive that the auction will be fair is for the Commission, itself, to apply sanctions upon bidders who do not comply with bidding rules. The auction manager should report any suspicions he or she develops during the course of the auction process that a bidder is not following the rules. From that report the Commission should investigate the suspicions and if necessary apply

⁴⁴ Id. at 184.

⁴⁵ Id.

⁴⁶ Tr. Vol. I at 198 (Lee Redirect); Tr. Vol. IV at 726-728 (Jones Cross).

sanctions. Otherwise the auction will not give the appearance of impartiality and the auction will be less likely to attract robust bidding.

C. The Commission Should Not Waive Its Authority To Review The Recoverability Of The Costs Resulting From Duke's Business Decision To Join PJM Nor Should It Determine The Recoverability Of Such Costs In This Proceeding.

1. The Commission should not waive its jurisdiction to consider the recoverability of the costs resulting from Duke's business decision to join PJM.

Duke requests Commission approval of a number of new or modified riders in its Application, including Rider BTR or its "base transmission" rider.⁴⁷ Rider BTR would be created to recover some of the types of costs currently recovered in Duke's transmission cost recovery rider ("TCRR") and Rider RTO would be created to recover the remaining types of costs currently included in the TCRR.⁴⁸ According to the Direct Testimony of William Don Wathen, Jr., Rider BTR "will include *all* costs billed from either PJM and/or MISO under FERC-approved tariffs except those costs billed from either RTO that are recovered in other riders..."⁴⁹ Regarding transmission expansion planning costs, Mr. Wathen, Jr. testifies "[t]o the extent Duke Energy Ohio is charged for these FERC-authorized costs, these costs will be included in Rider BTR for recovery from retail customers."⁵⁰

Attachment JEZ-2 to the Direct Testimony of James E. Ziolkowski, the redlined version of the Duke's proposed electric tariff at January 1, 2012, provides further guidance into exactly what the Company is seeking in this case regarding Riders BTR

⁴⁷ Duke Exh. 3 at 37-38 (Application).

⁴⁸ Duke Exh. 16 at 22-23 ("Wathen Testimony").

⁴⁹ Id. at 23-24 (emphasis added).

⁵⁰ Id. at 24.

and RTO.⁵¹ In drafting the Company's proposed tariff sheet for Rider RTO, the Company appears to have revised its current tariff sheet for its TCRR. One notable change to the tariff is the deletion of language that would require approval of transmission costs by both the PUCO and the Federal Energy Regulatory Commission ("FERC"). As Duke's proposed Rider RTO tariff now reads, there is no language whatsoever regarding approval of transmission costs by the PUCO. Rather, it appears only FERC approval is necessary.⁵² Similarly, the proposed tariff sheet for Rider BTR only requires FERC approval of costs included in the Rider. It does not include language regarding PUCO approval of such costs.⁵³ Company Witness Ziolkowski confirmed this interpretation of the language at the evidentiary hearing:

Q. Let me ask you to turn to page 86 of 152. Is this the proposal for Rider RTO?

A. Yes.

Q. Okay. Am I correct that the company has deleted language that would say these costs had to be approved by both this Commission and FERC and inserted language that would only require FERC approval?

A. This is a redlined version and that language was deleted as you described.

Q. Finally if you would turn to page 136 of 152. Are you there?

A. Yes.

Q. This is Rider BTR?

A. Yes.

Q. And this is a brand-new section, isn't it?

⁵¹ Duke Exh. 17, Attachment JEZ-2 at 86 ("Ziolkowski Testimony").

⁵² Id.

⁵³ Id. at 136.

A. Yes.

Q. And this language only requires FERC approval and not the Ohio Commission's approval, correct?

A. There are no –there's no reference in this tariff to the Ohio Commission's approval.⁵⁴

Thus, the Commission's approval of the Company's proposed tariff sheets for Riders BTR and RTO could effectively constitute a waiver by the PUCO of its authority to review and approve costs the Company seeks to include in those riders. The PUCO should not waive its jurisdiction to review the types of costs included in the Company's transmission riders and should require Duke to explicitly acknowledge the PUCO's authority in the Company's tariff sheets.

Moreover, the Company has requested FERC approval to withdraw from the Midwest Independent Transmission System Operator, Inc. ("MISO") and to join PJM Interconnection, L.L.C. ("PJM"). This business decision by Duke to move to PJM could lead to significant costs. Duke has not demonstrated that its customers will benefit from this business decision yet Duke seems to be prepared to include the related costs in its transmission and RTO-related riders. As described in the Direct Testimony of Kenneth J. Jennings⁵⁵ these costs include MISO exit fees, PJM integration fees, and overlapping transmission expansion fees resulting from dual billing for both MISO's Transmission Expansion Plan ("MTEP"), and PJM's Regional Transmission Expansion Plan ("RTEP"). The Company will seek to collect such costs from its Ohio customers through Riders

⁵⁴ Tr. Vol. III, at 701-702 (Ziolkowski Cross).

⁵⁵ Duke Exh. 12 at 9-11 ("Jennings Testimony").

BTR or RTO. Thus, it is crucial that the Commission not implicitly, or explicitly, waive its right to review the prudence of these costs in future PUCO proceedings.

a. Relevant Ohio Laws and Regulations

R.C. 4928.05 grants the PUCO the authority to provide for the recovery of all transmission and transmission-related costs, imposed on or charged to the utility by the FERC or a regional transmission organization ("RTO"), independent transmission operator, or similar organization approved by FERC. Under R.C. 4928.05, the Commission has the authority to supervise and regulate non-competitive retail electric service, including transmission service, "to the extent that authority is not preempted by federal law." As discussed in detail below, the Commission is not preempted by federal law from reviewing the prudence of the costs resulting from Duke's decision to withdraw from MISO and to join PJM.

Utilities can seek PUCO approval of the recovery of transmission-related cost through transmission cost recovery rider proceedings, governed by Commission rules found in Ohio Adm. Code Chapter 4901:1-36. The Commission's regulations as outlined in Ohio Adm. Code 4901:1-36 explicitly acknowledge that PUCO can undertake prudence or financial reviews of the costs incurred and sought to be recovered by a utility through its transmission cost recovery rider. In fact, Ohio Adm. Code provides the PUCO the authority to conduct a comprehensive review of transmission-related costs, including the consideration of comments from interested parties and setting the matter for hearing within seventy-five days after a utility files an application for PUCO approval of a transmission cost recovery rider.⁵⁶

⁵⁶ Ohio Adm. Code 4901:1-36-03 and 4901:1-36-05.

Moreover, Ohio Adm. Code 4901:1-36-03(C) explicitly provides “[t]he commission may order that consultants be hired, with the costs billed to the electric utility and recoverable through the rider, to conduct prudence and/or financial reviews of the costs incurred and recovered through the transmission cost recovery rider.”⁵⁷ Thus, Commission rules explicitly provide the PUCO with authority to review the prudence of the costs, including the transmission and transmission-related costs, resulting from the Company’s decision to withdraw from MISO and join PJM. The PUCO should assert this jurisdiction, but, for reasons specified below, should not determine the recoverability of such costs in the current proceeding.

b. The *Pike County* Doctrine

The PUCO has jurisdiction to review the prudence of the costs resulting from Duke’s move to PJM under the *Pike County* doctrine and should assert that authority in reviewing the prudence of such costs in a separate PUCO proceeding. The *Pike County* doctrine is grounded in the Pennsylvania Public Utilities Commission’s decision, subsequently affirmed by the Pennsylvania Commonwealth Court in *Pike County Light & Power Co. v. Penn. Pub. Util. Comm’n*, 465 A.2d 735 (Pa. Commw. Ct. 1983). The *Pike County* doctrine recognizes that a state commission can examine the prudence of a utility’s decision to choose between two FERC-approved rates. The core holding of *Pike County* is quoted with approval by the Federal Energy Regulatory Commission in FERC Order No. 697-A, which provides “[i]n most circumstances, ‘a state commission may legitimately inquire into whether the retailer prudently chose to pay the FERC-approved

⁵⁷ Emphasis added.

wholesale rate of one source, as opposed to the lower rate of another source.”⁵⁸ Thus, under the *Pike County* doctrine, the PUCO could examine the prudence of the Company’s decision to choose to move to PJM and its impact on customer rates.

FERC itself recognizes the validity of the *Pike County* doctrine in the context of purchaser decisions between competing wholesale supply options. FERC “has consistently recognized that wholesale ratemaking does not, as a general matter, determine whether a purchaser has prudently chosen among available supply options.”⁵⁹ Further, FERC has stated that it “do[es] not view its responsibilities under the Federal Power Act as including a determination that the purchaser has purchased wisely or has made the best deal available.”⁶⁰

Federal courts have likewise recognized the validity of the *Pike County* doctrine. In *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Comm’n*, 837 F.2d 600 (3d Cir. 1988), the 3rd Circuit recognized the principle of the doctrine with respect to the purchase of wholesale gas in rejecting a preemption challenge to a state law that requires the state PUC to assess the prudence of the wholesale acquisition before permitting the pass-through of the acquisition costs to retail customers. The court held that “[s]ince the question here of whether the retailer acted with economic prudence in purchasing from

⁵⁸ Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Order No. 697-A, 73 Fed. Reg. 25,832, at 25,892 (May 7, 2008), III F.E.R.C. Stat. & Regs. ¶ 31,268 P 416 (emphasis supplied)(quoting *Pike County*, 465 A.2d at 783), clarified, 124 F.E.R.C. ¶ 61,055 (2008), on reh’g and clarification, Order No. 697-C, 74 Fed. Reg. 79,610 (Dec. 30, 2008), III F.E.R.C. Stat. ¶ 31,291, corrected, 128 F.E.R.C. ¶ 61,014 (2009), petition for review filed sub nom. *Mont. Consumer Counsel v. FERC*, No. 08-71827 (9th Cir. filed May 1, 2008).

⁵⁹ FERC Order No. 697-A at ¶ 415.

⁶⁰ *Penn. Power & Light Co.*, 23 F.E.R.C. ¶ 61,325 (1983) at 61,716.

one wholesaler rather than another is never before FERC, the PUC is not regulating the same activity.”⁶¹

The First Circuit held to like effect in *Pub. Serv. Co. of N.H. v. Patch*, 167 F.3d 29, 35 (1st Cir. 1998), upholding the authority of the New Hampshire PUC to address the prudence of a wholesale power purchase for purposes of setting retail rates. The court found that this result was consistent with FERC’s own policy, and that the United States Supreme Court had twice assumed *arguendo* that the *Pike County* doctrine was a valid exception to the filed rate doctrine:

The Supreme Court has never squarely decided the question of whether imprudence is an escape hatch from the [state] Commission’s otherwise existing obligation to respect FERC’s authority to determine the just and reasonable rate. But the Court has twice said that it would assume *arguendo* that such escape hatch existed; the Third Circuit has so held; and FERC has concurred, citing prior cases of its own. See *Mississippi Power & Light*, 487 U.S. at 373-74 ... *Nantahala Power & Light*, 476 U.S. at 972 ... *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Comm’n*, 837 F.2d 600, 609 (3d Cir. 1988), *Palisades Generating Co.*, 48 FERC ¶ 61,144, at 61,574 and n.10, 1989 WL 262105 (1989). We agree with FERC.

By contrast, FERC has held that the *Pike County* doctrine does not apply where there is no choice on the part of the utility. As explained in Order 697-A (at ¶ 416, n.598), the doctrine is inapplicable “where the Commission, in setting a wholesale rate, leaves the purchaser with no legal choice but to purchase a specified amount of power.” The Fourth Circuit has held to like effect.⁶² Here, however, the PUCO would be

⁶¹ *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Comm’n*, 837 F.2d 600 (3d Cir. 1988) at 609.

⁶² *Appalachian Power Co. v. Pub. Serv. Comm’n*, 812 F.2d 898 (4th Cir. 1987)(“the lack of choice here makes such an inquiry an empty one”).

considering the prudence of the decision by the Company to choose one FERC-approved Regional Transmission Organization over another.

Central to the court's decision in *Pike County*, and later decisions following *Pike County*, is that state Commission action was not preempted under the Federal Power Act. Therefore, in the absence of FERC action and as supported by *Pike County* and its progeny, the PUCO could assert jurisdiction in these circumstances, and could lawfully deny the Company's collection of such RTO switch costs from Ohio retail customers. However, for reasons explained further below, the Commission should not render a decision on the prudence of Duke's decision to join PJM in this case and should make that determination in a separate proceeding.

2. A determination as to the recoverability of the costs resulting from Duke's business decision to join PJM is not relevant to the review of a market rate offer application.

The Commission should not determine the prudence of types of costs resulting from the Company's decision to join PJM in this case because that issue is irrelevant to the Commission's review of a Market Rate Offer under R.C. 4928.142.

Under the Ohio law governing MRO applications, R.C. 4928.142, the Commission's required consideration of RTO-related issues is minimal. R.C. 4928.142(B) provides, as part of an application for an MRO, an electric distribution utility must demonstrate that:

- (1) The electric distribution utility or its transmission service affiliate belongs to at least one regional transmission organization that has been approved by the federal energy regulatory commission; or there otherwise is comparable and nondiscriminatory access to the electric transmission grid.

- (2) Any such regional transmission organization has a market-monitor function and the ability to take actions to identify and mitigate market power or the electric distribution utility's market conduct; or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power.
- (3) A published source of information is available publicly or through subscription that identifies pricing information for traded electricity on- and off-peak energy products that are contracts for delivery beginning at least two years from the date of the publication and is updated on a regular basis.

None of these requirements provides that the Commission must consider the prudence of costs resulting from a utility's decision to move from one FERC-approved RTO to another. Thus, there is no need for the Commission to decide that issue in the context of the MRO proceeding.

Further, an MRO proceeding is subject to a ninety-day schedule that is not required under the Commission's rules for transmission cost recovery rider proceedings.⁶³ The only time limitation on TCRR proceedings is that the Commission must decide whether to set the matter for hearing within seventy-five days of the filing of the Application.⁶⁴ Thus, there is no need to decide the recoverability of the types of costs that may be included in a transmission-related rider within the accelerated ninety day schedule required in an MRO proceeding.

⁶³ R.C. 4928.142(B)(3).

⁶⁴ Ohio Adm. Code 4901:1-36-05.

3. The Commission should not prematurely approve the recoverability of the uncertain costs resulting from Duke's business decision to join PJM.

If Riders BTR and RTO are approved as filed by the Company, the Commission may implicitly be ruling on the recoverability of the types of costs resulting from Duke's business decision to move to PJM. The Commission should explicitly refuse to determine the recoverability of the types of costs resulting from the Company's business decision to move to PJM in this case because that issue is premature and the costs are still highly speculative.

As an initial matter, the Company does not have final approval by FERC to withdraw from MISO. Although Duke characterizes the FERC's Order conditionally approving Duke's withdraw ("FERC Order") as merely imposing "minor conditions," FERC itself describes the approval as imposing "several conditions."⁶⁵ Further, the FERC Order summarizes why its approval of Duke's withdrawal from MISO is merely conditional:

"[o]utside of these preliminary findings, we cannot make any final determinations regarding Duke's right to withdraw from the Midwest ISO. Nor can we determine, at this time, whether, or to what extent, applicant's anticipated arrangements comply, or will comply, with the Commission's *pro forma* OATT or the standard of review applicable to deviations from the *pro forma* OATT. Similarly, we cannot reach any final determinations regarding whether Duke's proposed replacement arrangements are just, reasonable, and not unduly discriminatory. Additionally, while we address...certain concerns raised by intervenors, we reserve other issues for resolution in future proceedings regarding Duke's proposed RTO Realignment."⁶⁶

⁶⁵ Order Addressing RTO Realignment Request, FERC Docket Nos. ER10-1562 and ER10-2254 (Oct. 21, 2010) ("FERC Order") at 1.

⁶⁶ FERC Order at 6.

Accordingly, the imposition of costs resulting from the Company's proposed withdrawal from MISO is still uncertain and dependent upon a number of future FERC filings by the Company and final FERC approval of Duke's withdrawal.

Moreover, the recoverability of costs resulting from a utility's decision to switch from one regional transmission organization to another is still undecided at FERC. In FERC's Order on Duke's proposed withdrawal from MISO, FERC explicitly provides:

"Thus, at this time, we decline to provide guidance as to whether Duke may recover any RTO Realignment costs from its wholesale or retail customers. The Commission will address these issues as they arise in Duke's anticipated future filings. Similarly, Duke explains that it did not address issues regarding potential preemption of state rates with respect to exit fee costs and transmission costs because it wishes to hold further discussions with the affected state commissions."⁶⁷

Thus, the issue of recoverability of costs resulting from a utility's business decision to switch from one RTO to another is still explicitly undecided at the federal level.

Further, Duke's witness on the RTO-related issues provides that the Company is planning to negotiate the amount of its MTEP costs with MISO, but that the amount and length of those MTEP obligations is yet to be determined.⁶⁸ At the evidentiary hearing, Duke's witness, Kenneth Jennings testified as follows:

Q. Okay. I wanted to ask you, Mr. Jennings, about the MTEP expansion planned fees for MISO. How long will that continue, for Duke to be responsible for those costs?

⁶⁷ FERC Order at 46.

⁶⁸ Duke Exh. 12 at 9 (Jennings Testimony).

A. I'm not sure exactly how that will work. I'm sure it could work in a variety of ways. It could work over time, it could be a one-time payment, so I think that's all subject to negotiation and settlement.⁶⁹

Thus, the actual amounts of the costs resulting from Duke's business decision to join PJM are still uncertain and recoverability of such costs should be determined in a separate proceeding.

Witnesses from both PUCO Staff and the Ohio Energy Group ("OEG") also testified as to the premature nature of any PUCO determination on the recoverability of the types of costs resulting from Duke's business decision to withdraw from MISO and join PJM. Staff witness Tamara S. Turkenton testifies "Staff recommends that deciding the appropriateness of what specific rider MISO exit fees, PJM entrance fees, and RTEP expansion planning fees are recovered are at best premature. Those decisions should be the subject of another proceeding and not part of this MRO proceeding."⁷⁰ Further OEG witness Stephen J. Baron points out that "[t]he issues raised by the Company's request for transmission cost recovery are complex and require a full evaluation by the Commission, including an opportunity for the Commission to consider prudence issues."⁷¹ The Commission should adhere to these recommendations and should determine recoverability issues in later proceedings.

⁶⁹ Tr. Vol. II at 471 (Jennings Cross).

⁷⁰ PUCO Staff Exh. 1 at 15 (Turkenton Testimony).

⁷¹ OEG Exh. 1 at 23 (Baron Testimony).

4. Duke did not present sufficient evidence in the case for a commission determination regarding the recoverability of the costs resulting from Duke's business decision to join PJM.

The Commission should not determine the recoverability of the types of costs resulting from Duke's decision to withdraw from MISO and join PJM because there is insufficient evidence in this case to make such a determination. Under Ohio Adm. Code 4901:1-36-03, there are specific requirements for the content that must be included in a TCRR Application, including summaries of total projected transmission costs and revenues, summaries of current and proposed rates, and typical bill comparisons, among other content requirements. The Company did not present those types of information in its Application in this case. Further, as OEG witness Stephen J. Baron notes, the Company did not present any economic analysis in this MRO case that would support its decision to withdraw from MISO and join PJM.⁷² Moreover, during the evidentiary hearing, counsel for the Company repeatedly asserted that issues related to Duke's business decision to join PJM and the approval of actual costs in this proceeding were irrelevant to this case.⁷³

In the absence of a cost-benefit analysis or other relevant quantifications of costs, the Commission cannot make a determination in this case about the recoverability of the types of costs that Duke seeks to include in Rider BTR or Rider RTO.

⁷² Id. at 21.

⁷³ Tr. Vol. II at 312 (Ms. Spiller: "The internal business -- the internal decision-making process regarding the business decision is not relevant to the issues.") Vol. II at 318 (Ms. Spiller: "[t]he critical issue in this case is whether Duke Energy-Ohio belongs to an independent RTO membership." Vol. II at 349 (Ms. Spiller: "we are asking for the establishment of the riders for FERC approved costs, those dollar amounts, as Ms. Janson has just testified, have not yet even been established.")).

Further, evidence that was presented in this case raises concerns regarding whether the Company's business decision to withdraw from MISO and join PJM was in the public interest or beneficial to consumers.

As OEG's witness, Stephen J. Baron testifies:

"the decision to withdraw from MISO and join PJM was a unilateral decision made by the Company, with full knowledge of the financial consequences...With regard to the ongoing MTEP charges associated with the costs of MISO construction projects approved during Duke's membership, customers are being asked to pay these costs even though Ohio ratepayers will receive little or no benefit because Duke will no longer be a member of MISO, and Duke will incur PJM RTEP costs (regional transmission expansion plan) that it will also charge to ratepayers. Duke is asking ratepayers to pay for the transmission expansion costs of its former RTO (MISO), as well as for the transmission expansion costs of its new RTO (PJM)."⁷⁴

Because there is insufficient evidence in this case for the Commission to make a determination regarding the recoverability of the types of costs resulting from Duke's decision to withdraw from MISO and join PJM, the Commission should explicitly refuse to make a determination about the recoverability of those types of costs or their inclusion in either Rider BTR or Rider RTO in this case.

Should the Commission choose to rule on the recoverability of the types of costs resulting from Duke's business decision to join PJM, the Commission should rule that the Company cannot recover those costs. Such costs are the result of the Company's unilateral business decision to switch RTOs and there is no evidence that the substantial and extraneous costs stemming from this decision are outweighed by benefits to customers. Thus, if the Commission does rule on the recoverability of the types of costs that the Company seeks to include in Rider BTR or Rider RTO, the Commission should

⁷⁴ OEG Exh. 1 at 20-21 (Baron Testimony).

rule that those types of costs are not recoverable from Ohio customers because the Company has not provided sufficient evidence or quantification of the benefits to customers.

D. The Commission Should Require Duke To Include Demand Charges In The Retail Rates Duke Charges Customers From The Bid Price In Order To Limit The Uncertainty Of Peak Use For Bidders.

Duke's current generation tariffs recognize differences between customers by including demand charges for large customers. The Commission and the Ohio Supreme Court⁷⁵ have recognized that demand charges are an important way of reflecting the costs to provide generation service to large customers. Duke, however, proposed to eliminate demand charges in the bid price component of the MRO which currently comprise a significant portion of Duke's ESP generation rate "for those rate schedules that are billed on a demand basis."⁷⁶

An important objective of Duke's rate design should be to send the correct price signals to customers concerning the varying costs of electricity. Demand charges are an effective way to accomplish this objective. Demand components are charges that take into consideration the large load for generation or heavy burden large customers place upon a generation system at a single point or points in time.⁷⁷ Duke's approach fails to recognize the important cost differences between large customers. The elimination of

⁷⁵ E.g., *Smith v. Public Utilities Commission of Ohio*, 130 Ohio St. 328 (December 26, 1935).

⁷⁶ Kroger Exh. 1 at 4 (Higgins Testimony).

⁷⁷ Tr. Vol. III at 561-562.

demand charges from all generation tariffs will encourage an inefficient demand for, and use of, generation resources.⁷⁸

The Company's proposal eliminates the principal source of responsiveness to differences in demands that has historically been in place for large customers, and that is needed going forward to reduce the bid price. This weakness in the generation tariffs will be recognized by bidders, and will result in higher bids.

The bid price component of the proposed MRO is priced solely on a kilowatt-hour basis.⁷⁹ The change to rely solely on kilowatt-hour charges is proposed by Duke at a time when greater attention has been focused, both on the national level⁸⁰ and by the Commission⁸¹ on providing customers with appropriate price signals so that electricity is used in an economically efficient manner. This weakness in the design of the retail

⁷⁸ Some customers operate with multiple shifts, and the elimination of demand charges could encourage reductions in shift work that is currently designed to reduce demand charges. The result could be to increase overall demand by the Companies' customers and result in a more costly supply environment.

⁷⁹ Duke Exh. 15 at 4 (Bailey Testimony).

⁸⁰ A landmark in the path towards emphasizing appropriate pricing of electricity at the federal level was the Energy Policy Act of 2005 ("EP Act 2005"). Section 1252 of EP Act 2005 required electric utilities to offtime-based electric schedules. Additional initiatives by FERC have led to increasing emphasis by regional transmission organizations on demand-responsiveness on the part of retail customers in order to meet regional energy needs with lessened reliance upon building expensive generating units. See FERC Order No. 719, concerning Wholesale Competition in Regions with Organized Electric Markets, 73 FR 61,400 (Oct. 28, 2008) where the Commission required each RTO and ISO to:

- treat demand response resources in RTOs' and ISOs' markets on a comparable basis to existing generation;
- eliminate barriers to participation of demand response resources;
- allow aggregator of retail customers (ARC) to bid demand response on behalf of retail customers directly into the organized energy market;
- assess and report on any remaining barriers to comparable treatment of demand response resources;
- each RTO's or ISO's Independent Market Monitor submit a report describing its views on its RTO's or ISO's assessment to the Commission.

⁸¹ For example, the Commission initiated Case 05-1500-EL-COI on December 14, 2005, at least in part to respond to the initiative set in EP Act 2005 on smart metering and demand response. Entry, page 4 (December 14, 2005). On May 30, 2007, the Commission initiated a proceeding to investigate advanced metering infrastructure ("AMI"). Case No. 07-646-EL-UNC, Entry (May 30, 2007).

generation tariffs will be recognized by bidders, and will result in higher bids. Demand components should be reintroduced before any bidding takes place in order to properly reflect the cost of generation in rates and to reduce the price likely to be bid in the proposed auctions. Duke recognizes that the elimination of demand charges will have a dramatic effect on Duke's current rate design.⁸² The dramatic change in rate design will cause "higher-load-factor customers within each demand-billed rate schedule" to "see their rates negatively impacted, whereas lower-load-factor customers will receive a windfall benefit."⁸³

The proposed rate design will, therefore, encourage increased energy usage from high-load customers and may dramatically impact capacity. Capacity-related costs should be recovered from demand-billed rate schedules through demand charges. The conversion of capacity charges into energy charges will cause unwarranted cost-shifting and drive up bid prices.⁸⁴ The Commission should modify Duke's proposed rate design for the bid price component of SSO generation rates in order to send the appropriate price signals to the market as well as to lower the bid prices in the MRO.

⁸² Tr. Vol. III at 565 (Jennings). Q. And would you agree with me that currently a significant portion of Duke's ESP generation rate is comprised of demand charges for those rate schedules that are billed on a demand basis? A. Yes, I would. Q. And would you agree with me that the bid price component of the proposed MRO is based solely on a kilowatt-hour basis, which is a significant change? A. Yes, I would. Q. And would you also agree that the Duke proposal will substantially transform your rate design, Duke's rate design, and will impact customer rates within each demand billed rate schedule? A. Yes, that is correct. See also Duke Exh.15. at 8 (Bailey).

⁸³ Kroger Ex. 1 at 4 (Higgins).

⁸⁴ Id.

E. The Commission Should Not Permit Duke To Usurp The Commission's Obligation To Incrementally Adjust The Blended Proportions In Response To Market Conditions In The Transition From The ESP To 100% Bid Prices As Required By The Statute Under The Blending Period Provisions.

The Commission should ignore the blending period proposed in Duke's application as patently unlawful. Not only did Duke attempt to usurp the Commission's role under R.C. 4928.142(D), Duke also seeks approval of a blending process that is contrary to the process the General Assembly directed the Commission to follow under R.C. 4928.142(E). R.C. 4928.142(D) and (E) prescribe a very specific process that the EDU and the Commission must follow as it transitions the EDU's SSO price from a full ESP to an MRO. In setting forth the process, R.C. 4928.142(D) assigns particular roles and responsibilities to the EDU and particular roles and responsibilities to the Commission.

First, R.C. 4928.142(D) directs Duke to propose in its first MRO application the specific default proportions, accordingly:

The first application filed under this section by an electric distribution utility . . . shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty percent in year three, forty per cent in year four, and fifty per cent in year five.

Then R.C. 4928.142(D) addresses the Commission as to its role and responsibility in the blending process:

Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five.

Rather than proposing what R.C. 4928.142(D) very specifically requires Duke to propose in its application, Duke attempts to usurp the Commission's role and

responsibility to determine the actual percentages for each year of years one through five by not filing the proportions prescribed in the statute. Whatever Duke's intent with regard to its application, Duke's application is unlawful.

Duke proposes only a two year blending period, with its MRO price reaching a 100% market-based price by year three. Duke insinuates that if the Commission can revise the blending proportions, Duke should be permitted to do it also in its application.⁸⁵ Duke proposes that the market based rate make up 10% and 20% of the SSO price in the first two years respectively. However in the third year the proportion of SSO price determined by the market will jump from 20% to 100%.

For that reason, Duke's blending proposal is not only unlawful under R.C. 4928.142(D) but it is also abrupt. In proposing an abrupt change, not only did Duke propose the wrong proportions in its application, but in assuming the Commission's role, Duke also violated R.C. 4928.142(E), the statute that tells the Commission how to revise the default proportions.

R.C. 4928.142(E) describes to the Commission how the Commission is required to revise the default proportions during the blending period:

Beginning in the second year of the blended price under division (D) of this section and notwithstanding any other requirement of this section, the commission may alter prospectively the proportions specified in that division to mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration.

Essentially, R.C. 4928.142(E) recognizes that in the first year of the blended price, there is not likely to be an abrupt or significant change in the SSO price when only

⁸⁵ Duke Exh. 16 at 11 (Wathen Testimony).

10% of the SSO price is from the competitive bid. But in the second year, when the competitive bid price becomes 20% of the full SSO price there is more potential for an abrupt or significant change. An “abrupt or significant change” is more likely in the second year because the proportion of the price set by the competitive bid price is twice what it was the year before and because two years have passed, giving the market price additional time to change.

In the second year of the blended price, R.C. 4928.142(E) directs the Commission to take advantage of the opportunity to compare the market price obtained through the competitive bid process to the SSO price during the first year of the blending period and decide whether the prices are similar enough not to create too much of a change by applying the statutorily prescribed default proportions. If the competitive bid price and the previous SSO price are similar enough to prevent an “abrupt or significant change” in the SSO price then the Commission should apply the default proportion. If the competitive bid price is too different from the previous SSO price, then applying the default proportion would create an abrupt or significant change in the SSO price. Accordingly, the Commission could alter the blending proportions to reduce the change in the SSO price from one year to the next.

But the statute does not allow the Commission to alter the proportions **before** the Commission is able to compare the price that comes out of the competitive bid to the current SSO price. That comparison is the only means whereby the Commission could determine if there would be an abrupt or significant change in the previous SSO price and the price that comes out of the competitive bid. In addition the statute does not allow the Commission to alter the proportions three to five years before the blending begins. The

blending process is designed to be an incremental process whereby the Commission can adjust the SSO price based upon changing market conditions, for a specific period of time. It is not intended to be an absolute plan, based upon market forecasts that are not reliable,⁸⁶ to be applied at one time before the blending begins.

Moreover, the statute does not permit the Commission, or Duke for that matter, to alter the blending period. The statute only allows the Commission to alter the blending proportions. And the only means whereby the blending period may change is if the Commission finds it necessary to alter the blending proportions significantly or frequently enough to necessitate an extension of the blending period. The only mention of a change in the blending period is an extension in the duration that would be caused by the altering of proportions:

Any such alteration shall be made not more often than annually, and the commission shall not, by altering those proportions and in any event, including because of the length of time, as authorized under division (C) of this section, taken to approve the market rate offer, cause the duration of the blending period to exceed ten years as counted from the effective date of the approved market rate offer.

The statute is attempting to provide flexibility to take into account changes in the market price of generation during the blending period but to also limit the blending period between five and ten years. The default proportion limits it to five years. The statute does not permit alterations more than once a year. And the statute does not permit proportional alterations that would extend the blending period more than 10 years. The Commission should fulfill the process the General Assembly articulated in the statute and

⁸⁶ Tr. Vol. I at 149-151 (Rose Cross).

not allow Duke to prescribe a process that is in direct contradiction with what the General Assembly intended.

F. The Commission Should Conduct A Prudence Review On All Adjustments Made to Riders During the Blending Period.

Duke proposes to adjust certain riders during the blending period if the blending period continues for longer than two years.⁸⁷ Duke states that it will adjust the FPP rider in order to collect incremental fuel and purchased power costs.⁸⁸ It will also adjust a new Rider EIR to adjust changes in environmental investment costs.⁸⁹

In Duke's description of these rider adjustments, Duke describes the process as to update the Rider EIR quarterly, but there is no provision for prudence reviews as there has been in the past. If the Commission permits Duke to continue to adjust the collection of these costs, prudence reviews are necessary and the Commission should specifically require Duke to incorporate such reviews in their proposal. These reviews are particularly necessary given that R.C. 4928.142(D)(4) requires:

In making any adjustment to the most recent standard service offer price on the basis of costs described in division (D) of this section, the commission shall include the benefits that may become available to the electric distribution utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emission credits or its receipt of tax benefits or of other benefits, and, accordingly, the commission may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility.

⁸⁷ Duke Exh. 16 at 16 (Wathen Testimony).

⁸⁸ Id. at 16-17.

⁸⁹ Id. at 17.

G. The Commission Should Ensure That All Of Duke's Generation Riders Are Bypassable By Shopping Customers In Order To Further The Competitive Market.

The Commission should reject Duke's proposal that requires switching customers under certain circumstances to pay Rider SCR. Rider SCR is intended to collect from non-switching customers no more and no less than the cost of acquiring the portion of their SSO resulting from the competitive bid.⁹⁰ Because the competitive bid price must be converted into different rates for different classes of customers and because the amount of generation used by these classes of customers will vary, Duke will not collect the exact cost of the competitive bid from its customer charges. Duke proposes to require switching customers to pay Rider SCR when the amounts owed to auction suppliers exceed 5% of the overall cost of SSO generation.⁹¹

The need for Rider SCR is understandable. But it is not understandable to require shopping customers to ever pay any amount of Rider SCR. Rider SCR does not provide a benefit to shopping customers and has no relation to any costs Duke incurs on behalf of shopping customers. Moreover, collecting Rider SCR from shopping customers is anticompetitive in that it makes shopping customers pay for the same generation cost twice, once from its CRES provider and once from Duke. This double payment will discourage shopping and is contrary to many of the policies set forth under R.C. 4928.02. For that reason, the Commission should order Duke to find a better alternative.

⁹⁰ Id. at 18.

⁹¹ Id. at 20.

IV. CONCLUSION

The Commission should approve Duke's proposal for an MRO because it will result in a lower rate and advances the policies under R.C. 4928.02 better than an ESP would. But the Commission should not accept certain provisions that Duke included in its application.

The Commission should modify Duke's CBP in four ways. It should require Duke to hold multiple auctions per year. The PUCO should study the need for auctions that would provide longer term products. It should order the establishment of an annual workshop open to all interested stakeholder through which modifications to the CBP process will be designed and eventually reviewed and approved by the Commission. The Commission should insist upon applying sanctions itself to bidders who violate bidding rules in order to ensure the appearance of fairness in the CBP process.

The Commission should not permit Duke to usurp its authority to conduct a prudence review on the costs Duke will incur in transferring from MISO to PJM as set forth under Ohio Adm. Code 4901:1-36-03(C), *Pike County*, and FERC Order 697-A by approving the transmission cost recovery BTR tariff Duke proposes in this case. Moreover, the Commission's approval of Duke's collection of transmission costs in an MRO case is not appropriate.

The Commission should require Duke to include a demand charge in its allocation of the competitive bid costs.

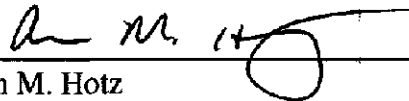
The Commission should adjust the blended proportions of the MRO incrementally, each year of the blending period in response to market conditions as required under R.C. 4928.142(D) and (E). The Commission should ignore the part of Duke's MRO application that does not comply with R.C. 4928.142(D) and (E) because

that proposal improperly usurps the authority the General Assembly granted the Commission and is inconsistent with the intent articulated in the law.

The Commission should require prudence reviews of the riders that will be adjusted as part of the blended SSO as intended under R.C. 4928.142(D). Finally, the Commission should not permit Duke to charge switching customers Rider SCR because such collection is anti-competitive.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

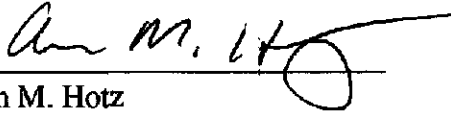


Ann M. Hotz
Counsel of Record
Jody M. Kyler
Richard C. Reese
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (T)
hotz@occ.state.oh.us
kyler@occ.state.oh.us
reese@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing *Initial Brief* by the
Office of the Ohio Consumers' Counsel upon the following via electronic transmission
this 27th day of January, 2011.


Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

Amy Spiller
Elizabeth Watts
Duke Energy Ohio Inc.
221 E. Fourth St., 25 AT II
Cincinnati, OH 45202
Amy.Spiller@duke-energy.com
Elizabeth.Watts@duke-energy.com

Steven Beeler
John Jones
Public Utilities Commission of Ohio
180 E. Broad St., 6th St.
Columbus, OH 43215
Steven.beeler@puc.state.oh.us
John.jones@puc.state.oh.us

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLawfirm.com
mikurtz@BKLawfirm.com

Samuel C Randazzo
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, Suite 1700
Columbus, OH 43215-4228
sam@mwnclmh.com

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

John W. Bentine
Mark S. Yurick
Chester Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, OH 43215
jbentine@cwsllaw.com
myurick@cwsllaw.com

William T. Reisinger
Nolan Moser
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
will@theoec.org
nolan@theoec.org
trent@theoec.org

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

David A. Kutik
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Grant W. Garber
Jones Day
P.O. Box 165017
Columbus, OH 43216-5017
gwggarber@jonesday.com

Douglas E. Hart
441 Vine St., Suite 4192
Cincinnati, OH 45202
dhart@douglasshart.com

Cynthia Fonner Brady
Senior Counsel
Constellation Energy Resources, LLC
550 W, Washington St., Suite 300
Chicago, IL 60661
Cynthia.Brady@constellation.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour And Pease LLP
52 East Gay St., P. O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Michael D. Dortch
Kravitz, Brown & Dortch, LLC
65 East State St., Suite 200
Columbus, OH 43215
mdortch@kravitzllc.com

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasshart.com

Mary Christensen
Christensen & Christensen LLP
8760 Orion Place, Suite 300
Columbus OH 43240
mchristensen@columbuslaw.org

Terrence O'Donnell
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
todonnell@bricker.com
mwarnock@bricker.com

Rick D. Chamberlain
Behrens, Wheeler & Chamberlain
6 N.E. 63rd Street, Suite 400
Oklahoma City, OK 73105
rdc_law@swbell.net

Kevin Osterkamp
Roetzel & Andress LPA
155 E. Broad Street, 12th Floor
Columbus, OH 43215
kosterkamp@ralaw.com

Lisa McAlister
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
lmcalister@bricker.com

Anne M. Vogel
AEP Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
amvogel@aep.com

Matthew J. Satterwhite
AEP Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com

Amy.Spiller@duke-energy.com
Elizabeth.Watts@duke-energy.com
Steven.beeler@puc.state.oh.us
John.jones@puc.state.oh.us
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
sam@mwncmh.com
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org
jbentine@cwslaw.com
myurick@cwslaw.com
mwhite@cwslaw.com
will@theoec.org
nolan@theoec.org
trent@theoec.org
haydenm@firstenergycorp.com

dakutik@jonesday.com
gwggarber@jonesday.com
dhart@douglasshart.com
Cynthia.Brady@constellation.com
mhpeticoff@vorys.com
smhoward@vorys.com
mdortch@kravitzllc.com
tobrien@bricker.com
dhart@douglasshart.com
mchristensen@columbuslaw.org
todonnell@bricker.com
mwarnock@bricker.com
rdc_law@swbell.net
kosterkamp@ralaw.com
lmcaster@bricker.com
amvogel@aep.com
mjsatterwhite@aep.com