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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke :  
Energy Ohio for Approval of a Market :  
Rate Offer to Conduct a Competitive :  
Bidding Process for Standard Service :  
Offer Electric Generation Supply, :  
Accounting Modifications, and Tariffs :  
for Generation Service. :

Case No. 10-2586-EL-SSO

INITIAL BRIEF  
OF  
DOMINION RETAIL, INC.

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I. INTRODUCTION

By the above-styled application, Duke Energy Ohio ("Duke") seeks approval of a competitively-bid market rate offer ("MRO") to replace its electric security plan ("ESP") standard service offer ("SSO"), which expires by its terms on December 31, 2011. Intervenor Dominion Retail, Inc. ("Dominion Retail") hereby submits its initial post-hearing brief in accordance with the briefing schedule established by the presiding attorney examiners at the conclusion of the hearing in this case.

As a review of the record will quickly show, the most hotly-contested issue in this proceeding is whether the MRO-based SSO proposed by Duke in its application conforms to the statutory requirements governing the establishment of an MRO, and, more specifically, to the so-called "blending" requirement set forth in Section 4928.142(D), Revised Code.<sup>1</sup> As a general proposition, Dominion Retail, as a Commission-certified supplier of competitive retail electric

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<sup>1</sup> Section 4928.142(D), Revised Code, provides that, in the first application for an MRO-based SSO by an electric distribution utility that owned generation as of July 31, 2008, the competitively-bid portion of the SSO cannot exceed certain specified annual percentage limitations during the first five years, with the remainder of the SSO load to be served from the EDU's own power supply portfolio. Thus, the statute contemplates that, during this period, the SSO price will be a proportionate blend of the last SSO price (subject to certain permitted adjustments) and the price established as a result of wholesale auction.

service (“CRES”) within Duke’s service territory, believes that Ohio’s stated policy of encouraging retail electric competition<sup>2</sup> is best served when the EDU’s price to compare is market-based. However, Dominion Retail will leave the debate over the legal sufficiency of Duke’s application to others, and, instead, will focus on certain peripheral issues raised by the proposals in Duke’s application which are also critical to CRES providers attempting to compete in the Duke retail market.

## II. ARGUMENT

### A. PROPOSED RIDER UE-GEN SHOULD BE EXPANDED TO COVER THE UNCOLLECTIBLE EXPENSE GENERATED BY SHOPPING CUSTOMERS AND, IF SO EXPANDED, SHOULD BE NON-BYPASSABLE BY SHOPPING CUSTOMERS.

#### 1. Approval Of An Uncollectible Expense Rider Applicable To Both SSO And CRES Service Will Remove A Significant Impediment To Competition In The Duke Residential Electric Market By Eliminating The Need For An Undercollection Component In The Discount Applied By Duke In Purchasing The Accounts Receivable Of CRES Providers Operating On Its System.

As the Commission well knows, a number of CRES providers, including Dominion Retail, have objected to Duke’s pending application in Case No. 09-1026-EL-ATA, whereby Duke seeks authority to increase the tariffed discount rate applicable to the purchase of the receivables (“POR”) of CRES supplier to which it provides consolidated billing service.<sup>3</sup> Although Case No. 09-1026-EL-ATA is obviously a separate proceeding, it is important that the Commission understand that the bad debt tracker issue in this case is inextricably intertwined with the POR discount rate issue, and that its decision with respect to proposed Rider UE-GEN

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<sup>2</sup> See Section 4928.02, Revised Code.

<sup>3</sup> See *In the Matter of the Application of Duke Energy Ohio . to Amend P.U.C.O. Electric Tariff 20 To Increase CRES Accounts Receivable Purchase Discount Rate*, Case No. 09-1026-EL-ATA (Application dated October 30, 2009).

will necessarily impact the outcome of the POR discount rate ATA. Indeed, Duke witness Ziolkowski clearly recognized that the two cases are interrelated.<sup>4</sup> Thus, we preface our discussion of proposed Rider UE-GEN with a review of the history of the Duke POR discount rate.

The consolidated billing service Duke provides to CRES suppliers produces significant benefits for both the end-user customers of the suppliers and the suppliers themselves. Customers benefit from, among other things, the convenience of receiving a single bill for both the distribution and generation components of their electric service, while suppliers avoid the administrative expense that would be associated with rendering their own separate monthly bills for generation service. Thus, although CRES suppliers pay Duke for this service pursuant to the fee schedule set forth in Rate CS of the Duke Supplier Tariff, there is no question that the availability of consolidated billing service promotes retail electric competition, particularly in the residential market.

Similarly, there is no question that the purchase of the supplier's receivables is an important adjunct to consolidated billing service. The purchase of receivables by the utility solves numerous practical problems that would otherwise exist. The purchase of the supplier's receivables transfers the responsibility for collections to the entity that issues the consolidated bill, which greatly simplifies collection efforts and the disconnection process, facilitates the offering and administration of customer payment plans, and provides the customer with a single point of contact for resolving customer inquiries regarding the accuracy of meter readings and the like.

Although there is no Commission rule requiring that host distribution utilities that provide consolidated billing service to purchase the accounts receivable of the competitive

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<sup>4</sup> See Ziolkowski Cross, Tr. III, 704-705.

suppliers that utilize the service, the Commission has long recognized that the purchase of receivables is an important adjunct to consolidated billing. In the case of natural gas utilities, the Commission has, on a company-by-company basis, issued orders requiring each local gas distribution utility that has a Choice program to purchase the receivables of the competitive retail suppliers to which they provided consolidated billing. The history of this issue on the electric side is somewhat more tangled,<sup>5</sup> but, as explained below, the Commission has, in fact, affirmatively imposed this requirement on Duke.

As a part of the stipulation that resolved the 1999 The Cincinnati Gas & Electric Company ("CG&E") electric transition plan ("ETP") case, CG&E committed to use its best efforts to implement consolidating billing service and to purchase the receivables of CRES suppliers utilizing that service.<sup>6</sup> By a second stipulation in the ETP case, CG&E and a number of other parties to the proceeding requested that the Commission assist in the resolution of various supplier operational support issues, including consolidated billing service and the purchase of receivables.<sup>7</sup> In response to this request and similar operational support concerns emanating from other ETP proceedings, the Commission initiated Case No. 00-813-EL-EDI to develop electronic data exchange standards and uniform business practices governing the operating relationship between the electric utility and CRES suppliers.<sup>8</sup> That case produced, among other things, a stipulated non-binding model agreement for CG&E's purchase of

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<sup>5</sup> See *In the Matter of the Complaint of Green Mountain Energy Services, Inc., et al. v FirstEnergy Corp., et al.*, Case No. 02-1944-EL-CSS.

<sup>6</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan*, Case No. 99-1658-EL-ETP (Stipulation dated May 8, 2000).

<sup>7</sup> Case No. 99-1658-EL-ETP (Stipulation dated 15, 2000).

<sup>8</sup> See *In the Matter of the Establishment of Electronic Data Exchange Standards and Uniform Business Practices for the Electric Industry*, Case No. 00-813-EL-EDI (Entry Dated May 18, 2000).

receivables, which was approved by the Commission in 2001.<sup>9</sup> However, the model agreement did not specify how the discount factor applicable to the purchase of receivables was to be calculated. Instead, the Commission left this aspect of the purchase of receivables agreement to be negotiated by the utility and the supplier.

In 2002, the Commission approved a CG&E application for authority to amend its tariffs to implement consolidated utility bill ready billing.<sup>10</sup> The purchase of receivables provision set forth in new Sheet No. 40.1 of the Supplier Tariff enumerated the items that would be covered by the purchase of receivables agreement with a supplier participating in the CG&E Purchase of Accounts Receivable ("PAR") program. Although the list included the "purchase price," there was no formula or other indication as to how the discount rate would be calculated. As discussed in our comments in Duke POR discount rate ATA, CG&E and Dominion Retail shortly thereafter entered into a purchase of receivables agreement pursuant to this new tariff provision that utilized a formula devised by CG&E for calculating the discount rate.<sup>11</sup>

We now fast forward to the 2005 Cinergy merger case that ultimately lead to Duke assuming control of CG&E and replacing it as the regulated entity.<sup>12</sup> CG&E and Duke entered into a stipulation with certain other parties to Case No. 05-732-EL-MER that included the following provision:

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<sup>9</sup> Case No. 00-813-EL-EDI (Finding and Order dated September 13, 2001).

<sup>10</sup> See *In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval Of Changes to its Retail Electric Service Tariff, P.U.C.O No. 19, and Certified Supplier Tariff, P.U.C.O. No. 20, to Implement New Services for Consolidated Utility Bill Ready Billing*, Case No. 02-291-EL-ATA (Finding and Order dated June 19, 2002).

<sup>11</sup> See Case No. 10-1026-EL-ATA (Dominion Retail Comments dated February 26, 2010, at 4-5).

<sup>12</sup> See *In the Matter of the Joint Application of Cinergy Corp. on behalf of The Cincinnati Gas & Electric Company and Deer Holding Corp. For Consent and Approval of Change of Control of The Cincinnati Gas & Electric Company*, Case No. 05-732-EL-MER, *et al.*

2.7 Effective January 1, 2006, CG&E agrees to purchase the receivables of competitive natural gas and electric marketers without a discount. The Settling Parties agree and recommend that the Commission approve the gas and electric uncollectible expense recovery mechanisms (Riders) attached hereto as Exhibit D, effective January 1, 2006. The Riders shall permit CG&E to recover the incremental gas and electric uncollectible expenses associated with disconnected or other final accounts above the amount of collectibles *[sic]* currently in gas and electric distribution base rates. Rates will be established for the Riders in a future proceeding according to the terms of the Riders.<sup>13</sup> (emphasis added)

In its December 21, 2005 finding and order in the merger case, the Commission found as follows:

CG&E shall purchase the receivables of competitive natural gas and electric marketers without a discount, as recommended by staff. In addition, the Commission finds that CG&E's request for gas and electric uncollectible expense recovery riders is reasonable. The riders will allow CG&E to recover the incremental gas and electric uncollectible expenses associated with disconnected and final accounts, above the existing mechanisms for such recovery. This result is consistent with the Commission's approval of similar riders for other Ohio utilities.<sup>14</sup> (citations omitted)

It might appear that this language laid to rest any question as to whether CG&E could apply a POR discount and clearly authorized CG&E to implement both gas and electric bad debt riders to recover all incremental uncollectible customer bill arrearages. However, that did not prove to be the case, notwithstanding the Commission's observation that this outcome would be consistent with its approval of similar riders for other Ohio utilities. Enter the Office of the Ohio Consumers Counsel ("OCC") and the Ohio Partners for Affordable Energy ("OPAE") with their joint application for rehearing from the Commission's order approving the merger. In its entry on rehearing, the Commission agreed with OCC and OPAE that, contrary to the premise upon which its approval of the gas and electric bad debt trackers was based, the staff had not

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<sup>13</sup> Case No. 05-732-EL-MER, *et al.* (Stipulation dated December 15, 2005, at 6).

<sup>14</sup> Case No. 05-732-EL-MER, *et al.* (Finding and Order dated December 21, 2005, at 18-19).



recommended approval of an electric uncollectible expense rider and, therefore, found that an electric uncollectible expense rider should not be approved in the context of the merger case.<sup>15</sup> Thus, although the order in the merger case finally put CG&E (subsequently, Duke) on the same footing as other Ohio natural gas utilities with Choice programs – *i.e.*, mandatory purchase of supplier receivables with no discount and an uncollectible expense rider applicable to all distribution and commodity service customers – the requirement that the company purchase the receivables of electric suppliers at no discount evaporated when authority for the implementation of an electric uncollectible expense rider was withdrawn.

Although the Commission did not expressly discuss the status of the POR discount in reversing field in this manner, the Commission obviously recognized that the need for a POR discount to account for undercollection from defaulting shopping customers was directly tied to whether the host utility had an uncollectible expense rider. Thus, on the gas side, Duke, like all other gas utilities with Choice programs, now has a bad debt tracker – Rider UE-G – to recover incremental increases in both the distribution and commodity uncollectible expense, and a tariffed purchase of receivables program – Duke's gas Accounts Receivable Management Program, Rate ARM<sup>16</sup> – under which the receivables of competitive natural gas suppliers are purchased at 100 percent (*i.e.*, with no discount).

Although the company was not authorized to implement an electric uncollectible expense rider as a result of the merger case, things changed as a result of Duke's 2008 electric

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<sup>15</sup> Case No. 05-732-EL-MER, et al. (Entry on Rehearing dated February 6, 2006, at 12-13)

<sup>16</sup> See Duke Gas Tariff, P.U.C.O. No. 18, Sheet No. 85. Dominion Retail would note that, notwithstanding the Commission's order in the merger case eliminating the discount in connection with Duke's purchase of receivables from competitive gas suppliers, Rate ARM continues to refer to a "negotiated rate" for the purchase of gas receivables. However, despite this pre-merger vestige, Duke does not, in fact, apply a discount in purchasing the receivable of competitive natural gas suppliers to which it provides consolidated billing service. (See Ziolkowski Redirect, Tr. III, 709).

distribution rate case, Case No. 08-709-EL-AIR.<sup>17</sup> Duke, the Commission staff, and various other parties to that proceeding submitted a stipulation intended to resolve all issues in the rate case and several companion proceedings.<sup>18</sup> Although Duke had not proposed such a rider in its application, the stipulation contained a paragraph that provided for the creation of an uncollectible expense rider, Rider UE-ED, that would permit Duke to recover the incremental net uncollectible expense above the test-year amount reflected in base rates.<sup>19</sup> However, unlike the Commission-approved bad debt riders of gas distribution utilities, including Duke Rider UE-G, which apply to both the distribution and commodity portion of defaulting customer arrearages, Rider UE-ED applied to only the distribution component.

The Commission adopted this paragraph of the stipulation without modification and without comment.<sup>20</sup> Thus, there has never been a public explanation as to why the electric bad debt rider applied only to distribution bad debt and not to all bad debt, as is the case with Duke's gas uncollectible expense rider as well as the uncollectible expense riders of all other gas distribution utilities.<sup>21</sup> The Commission's approval of this provision of the rate case stipulation has created the untidy situation in which Duke's gas and electric customers (the great majority of which are likely both gas and electric customers) are subject to two totally different uncollectible expense riders. Clearly, this outcome is at odds with the Commission's observation in the order

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<sup>17</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case No. 08-709-EL-AIR.

<sup>18</sup> Case No. 08-709-EL-AIR (Stipulation dated March 31, 2009).

<sup>19</sup> *Id.*, 9-10.

<sup>20</sup> *See* Case No. 08-709-EL-AIR (Opinion and Order dated July 8, 2009).

<sup>21</sup> It may be that the parties to the stipulation believed that it would be inappropriate for the Commission to establish an uncollectible expense rider applicable to the generation component of defaulting customer arrearages in the context of a distribution rate case. For reasons discussed *infra*, Dominion Retail disagrees with this rationale, if indeed, this was the reason for limiting the applicability of Rider UE-ED.

in the merger case that approving the implementation of both a gas and electric uncollectible expense rider was “consistent with the Commission's approval of similar riders for other Ohio utilities.” Although the Commission reversed its approval of the electric uncollectible expense rider on rehearing on the grounds that staff had not recommended the approval of the electric rider, it is clear that the Commission believed that the underlying justification for an electric bad debt rider was the same as that which supported the bad debt riders previously approved for other utilities, and that, if electric uncollectible expense rider had been approved, the requirement that company purchase the receivables of CRES providers at no discount would have been retained.

If adopted as proposed, Rider UE-GEN will muddy the waters even more. There would then be an uncollectible expense rider to cover the distribution component of customer bad debt, a separate uncollectible rider to cover the generation component of SSO customer bad debt, but no mechanism for the recovery of the generation component of shopping customer bad debt, notwithstanding that it was the absence of such a mechanism that caused the Commission to backtrack from the requirement that the company purchase the receivables of CRES providers at no discount. As proposed, Rider UE-GEN would be bypassable by shopping customers, but, if expanded so as to cover the generation component of shopping customer bad debt, it goes without saying that Ride UE-GEN should be non-bypassable. Otherwise, as Duke witness Ziolkowski correctly observed, SSO customers would be subsidizing shopping customers.<sup>22</sup> But the fundamental question that remains unanswered is why Duke's gas and electric uncollectible expense riders should be different. On its face, this makes no sense.

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<sup>22</sup> Ziolkowski Redirect, Tr. III, 709-710.

2. There Is No Rational Basis For A Distinction Between The Applicability Of The Uncollectible Expense Riders Of Gas And Electric Distribution Utilities, For Limiting The Applicability Of An Electric Uncollectible Expense Rider To The Distribution Component Of Defaulting Customer Arrearages, Or For Limiting The Applicability Of A Generation Uncollectible Expense Rider To SSO Service.

This Commission has routinely approved uncollectible expense riders for gas distribution utilities that cover both the distribution and commodity components of arrearages of defaulting customers, including the commodity arrearages of defaulting customers served by competitive retail natural gas suppliers. Yes, there was opposition in some quarters to the implementation of gas uncollectible expense riders, but, no matter what one thinks of bad debt trackers generally, the same factors that led the Commission to conclude that gas uncollectible expense riders are appropriate – whatever they may be – must necessarily apply with equal force in connection with electric uncollectible expense riders. Indeed, Duke witness Ziolkowski, Duke's rate manager, was quick to admit that he could think of no reason why Duke should have different uncollectible expense riders for the gas and electric sides of its business.<sup>23</sup> Neither can we.

The Commission has required all gas distribution utilities with Choice programs, including Duke, to purchase the receivables of the competitive suppliers operating on their systems at no discount. As discussed above, it is no coincidence that all these gas distribution utilities also have uncollectible expense riders that apply to all their customers without regard to whether their gas is supplied by the utility or by a competitive provider. As Mr. Ziolkowski pointed out, under Duke's gas ARM program, as under the POR programs of other Ohio gas distribution utilities, Duke is not required to pay the competitive provider until the month following the month in which the customer is billed, whereas, under Duke's electric PAR

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<sup>23</sup> Ziolkowski Cross, Tr. III, 702-703.

program, participating CRES providers are paid when the bill is issued.<sup>24</sup> As a result, Duke's formula for establishing the discount for the purchase of electric receivables has two separate elements: an allowance for undercollection component based on the company's collection experience and an allowance for carrying costs to address the lag between the time the bill is issued and Duke receives payment from the customers. However, Mr. Ziolkowski agreed that if Duke's electric uncollectible expense rider applied to the generation component of defaulting shopping customers arrearages – and assuming, of course, that, like gas Rider UE-G, the rider was non-bypassable – there would be no reason for an element in the POR discount formula for undercollection.<sup>25</sup>

Although the CRES providers participating in Case No. 10-1026-EL-ATA have challenged the reasonableness of the Duke formula used to calculate the carrying cost component of the discount rate, that is clearly a matter for the ATA case. But a Commission finding in this case that proposed Rider UE-GEN should be expanded to cover the generation arrearages of both defaulting SSO customers and defaulting shopping customers and, accordingly, should be non-bypassable, would render moot any issue in the ATA case as to whether there should be an allowance for undercollection in the POR discount rate formula. Indeed, Duke witness Ziolkowski specifically testified that Duke would be agreeable to an arrangement that mirrored the way in which this is handled on the gas side,<sup>26</sup> an outcome also recommended by RESA witness Ringenbach for the many of same reasons set forth herein.<sup>27</sup>

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<sup>24</sup> Ziolkowski Recross, Tr. III, 711-712.

<sup>25</sup> *Id.*; Ziolkowski Redirect, Tr. III, 710-711.

<sup>26</sup> Ziolkowski Redirect, Tr. III, 711.

<sup>27</sup> Ringenbach Direct, RESA Ex. 1, at 10-11. It worthy of mention that no party to the proceeding challenged Ms. Ringenbach's recommendation through cross-examination (*see* Tr. V, 987-997).

Even Staff witness Turkenton, who, as discussed *infra*, opposed approval of proposed Rider UE-GEN in the context of this proceeding, could not point to any substantive reasons why there should be different mechanisms for recovering gas uncollectible expense and electric uncollectible expense, or why the mechanism for recovering electric uncollectible expense should be limited to distribution uncollectible expense.<sup>28</sup> Indeed, not only did Ms. Turkenton affirmatively state that the only reason she opposed approval of Rider UE-GEN was her belief that Section 4928.142, Revised Code, does not contemplate approval of an uncollectible expense rider in an MRO proceeding, but she also specifically agreed that a non-bypassable rider that would provide for recovery of the uncollectible generation arrearages of defaulting shopping customers – and, thereby, permit Duke to purchase the receivables of CRES providers at zero discount – would “(c)ertainly” promote competition.<sup>29</sup> No one has suggested otherwise.

3. There Is No Legal Prohibition That Prevents The Commission From Approving An Uncollectible Expense Rider In The Context Of An MRO Proceeding.

As noted above, Staff witness Turkenton opposes the approval of proposed Rider UE-GEN – and, by implication, the expansion of Rider UE-GEN to cover to provide for the generation-related uncollectible expense of defaulting shopping customers – on the sole ground that Section 4928.142, Revised Code, does not permit an uncollectible expense rider to implemented in the context of an application for approval of MRO-based SSO. At the outset, Dominion Retail would point out that, although Ms. Turkenton’s credentials are impeccable, and although she has demonstrated her expertise with respect to competitive issues associated with

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<sup>28</sup> See Turkenton Cross, Tr. V, 1001-1006.

<sup>29</sup> Turkenton Cross, Tr. V, 1018-1019.

electric deregulation on numerous occasions, Ms. Turkenton is not an attorney.<sup>30</sup> Thus, notwithstanding that Ms. Turkenton must necessarily interpret statutory provisions to do her job, her opinion regarding what is and is not fair game in an MRO proceeding is still a layman's opinion, and as such, should not be relied on by the Commission as the basis for a legal interpretation of the statute. That said, Dominion Retail disagrees with Ms. Turkenton's view that Section 4928.142, Revised Code, precludes the Commission from approving an uncollectible expense rider in this case.

According to Ms. Turkenton, Section 4928.142 Revised Code, specifies "what adjustments (whether upward or downward adjustments) Duke can request for recovery under a MRO construct" and, because "an uncollectible rider for generation is not one of the adjustments specifically listed or contemplated in R.C. 4928.142(D)," she recommends that the Commission not approve proposed Rider UE-GEN in this case.<sup>31</sup> Although Section 4928.142(D), Revised Code, does identify four circumstances in which the ESP-based SSO piece of the blended MRO-based SSO price can be adjusted, these permitted adjustments all relate to costs associated with the production of the electricity generated or otherwise procured to meet the generation requirements of SSO customers. This does not mean, as Ms. Turkenton would have it, that the legislature intended to foreclose the utility from recovering incremental increases (or flowing through the benefit of incremental decreases) in bad debt expense associated with the generation component of defaulting customer arrearages. Indeed, even after the blending requirement expires, the electric utility will undoubtedly not fully recover the billed revenues necessary to meet its payments to the winning bidders in the auction that establishes the 100% market-based SSO price. Customers will continue to be disconnected for non-payment, and the electric utility

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<sup>30</sup> Turkenton Direct, Staff Ex. 1, at 1-2.

<sup>31</sup> Turkenton Direct, Staff Ex. 1, at 6.

will continue to incur uncollectible expense.<sup>32</sup> Yet, under Ms. Turkenton's interpretation, the utility would have no means to recover this ordinary business expense incurred by virtue of its role as the customer billing interface.

Ms. Turkenton's suggestion that an uncollectible expense rider could be approved in the context of an ESP-based SSO application filed pursuant to Section 4928.143, Revised Code, does nothing to solve this problem. Section 4928.142(F), Revised Code, precludes an electric utility from ever returning to a Section 4928.143, Revised Code, ESP-based SSO once its first MRO-based SSO is approved. If an uncollectible expense rider could only be approved in the context of an ESP-based SSO proceeding, this would mean that, as a condition of establishing and MRO-based SSO, the company would have to forfeit its right to recover any increase in bad debt expense associated with the generation component of defaulting customer arrearages. Clearly, the legislature did not intend to create a Catch 22 scenario of this type.

In fairness, Dominion Retail would note that Ms. Turkenton did not expressly state that an uncollectible expense rider to recover incremental increases in the generation component of defaulting customer arrearages could only be approved in a Section 4928.143, Revised Code, proceeding. However, in view of her mistaken underlying premise that bad debt associated with the generation component of customer bills is a generation cost as opposed to a function of Duke's role as the entity that renders bills for service, it would be difficult for her to identify any other vehicle for approval of Rider UE-GEN, notwithstanding that the Commission has routinely approved uncollectible expense riders for gas distribution companies that cover both distribution and commodity portions of defaulting customer arrearages in company-specific dockets opened for only that purpose.

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<sup>32</sup> Turkenton Cross, Tr. V, 1017.



Finally, the notion that Duke's current ESP-based SSO rate has some built-in allowance for uncollectible expense associated strictly with the generation component of customer bills is a fallacy. Prior to the deregulation of generation, rate cases were rate cases. There was then no such thing as an electric distribution-only rate case and no such animal as a generation-only rate case. The bad debt allowance in a pre-deregulation electric rate case was based on the applicant utility's total test-year uncollectible expense, without regard to whether it was incurred in connection with the distribution or the generation component of the defaulting customer's bill. In fact, apart from the EFC rate that provided for the recovery of certain variable costs associated with power production and supply, there were no separate rate elements for distribution and generation costs. Uncollectible expense was regarded simply as an ordinary general cost of doing business (which it still is) and not as a cost of providing either distribution or generation service. Thus, the approved allowance for uncollectible expense was recovered through the electric utility's base rate. To now pretend that the uncollectible expense generated solely by the non-payment of generation charges is somehow a generation cost as the basis for concluding that approval of an uncollectible expense rider in this proceeding is prohibited by statute ignores this history and the realities of the situation.

Although Chapter 4928, Revised Code, deals specifically with competitive retail electric service, the underlying concept is essentially the same as the concept behind the SSO commodity service provided to non-shopping customers by several of the state's largest natural gas utilities. These companies all have Commission-approved uncollectible expense riders that apply to both the distribution and commodity component of the defaulting customer arrearages, including the commodity component of defaulting shopping customer arrearages. The same is true of the uncollectible expense riders of gas utilities that still utilize a GCR rider to recover

commodity costs. In neither case has the Commission considered uncollectible expense to be a commodity cost, and there is no earthly reason why it should treat electric industry differently. Admittedly, the situation here has been made somewhat more complicated by virtue of the Commission's approval of the bad debt tracker to recover incremental increases in the uncollectible expense associated with distribution service, but the Commission can get to the same place it has arrived at for gas distribution utilities by approving proposed Rider UE-GEN in this case and making it non-bypassable by shopping customers.

**B. PROPOSED RIDERS RECON AND SCR SHOULD BE FULLY BYPASSABLE BY SHOPPING CUSTOMERS.**

As RESA witness Ringenbach, Constellation witness Fein, and FES witness D'Allesandris all correctly observe, CRES customers should not be required to pay costs associated with SSO generation service.<sup>33</sup> Thus, these witnesses join with Staff witness Turkenton in recommending that proposed Riders RECON and SCR be bypassable by shopping customers.<sup>34</sup>

Proposed Rider RECON is intended to reconcile two existing generation related riders: Rider PTC-FPP and Rider SRA-SRT. Both these riders are currently bypassable, so it is difficult to imagine a rationale that would support making Rider RECON unavoidable.<sup>35</sup> In fact, Duke presented no testimony explaining why these riders should be non-bypassable, so it may well be

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<sup>33</sup> See Ringenbach Direct, RESA Ex. 1, at 7-8; Fein Direct, Constellation Ex. 1, at 44; D'Allesandris Direct, FES Ex. 1, at 3.

<sup>34</sup> Turkenton Direct, Staff Ex. 1, at 4-5, 8.

<sup>35</sup> To be completely accurate, Rider SRA-SRT is bypassable by customers that waive the right to return to Duke SSO service. However, as FES witness D'Allesandris points out, the Rider PTC-FPP rate is much higher than the Rider SRA-SRT rate, so it is reasonable to assume that if there is reconciliation for over-recovery or under-recovery via Rider RECON, the legacy Rider PTC-FPP component would likely swallow the Rider SRA-SRT component (D'Alessandris Direct, FES Ex. 1, at 3-4).

that there is really no issue here. In any event, Dominion Retail agrees that there is nothing inherent in the change from an ESP-based SSO to an MRO-based SSO that would change the fact that the costs in question are SSO related, and, as such, should not be borne by CRES customers.

Although the language of proposed Rider SCR is less than precise, this rider is apparently intended to assure that Duke will be made whole for the costs associated with the auction process, including the cost of the CBP plan consultant, as well as to provide for the recovery of any costs Duke incurs in providing SSO service as the result of a default of a winning wholesale supplier. Duke recognizes that these costs are obviously SSO generation costs, and that, therefore, Rider SCR should be generally bypassable by CRES customers. However, there is a concern that, if, at the end of the day, almost all customers have enrolled with CRES providers, the limited number of remaining SSO customers would be forced to shoulder this entire responsibility, an outcome that Duke believes would threaten its ability to recover these costs. Thus, Duke has proposed a “circuit breaker” mechanism, whereby, if the SCR deferral balance is 5% greater than the actual cost incurred by Duke to supply the remaining SSO load, Rider SCR would become non-bypassable.<sup>36</sup>

Staff witness Turkenton endorsed proposed Rider SCR subject to certain recommended modifications, but made it clear that staff believes that this rider should be fully bypassable by CRES customers for the entire MRO period, notwithstanding Duke’s last-customer-standing concern, which she regards as remote possibility.<sup>37</sup> Dominion Retail agrees with Ms. Turkenton that pre-approval of a trigger for converting Rider SCR from a bypassable rider to a non-by

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<sup>36</sup> See Ziolkowski Direct, Duke Ex.17, Attachment JEZ-2, at 28.

<sup>37</sup> See Turkenton Direct, Staff Ex. 1, at 7-10.

passable rider is unwise, and that the unlikely death spiral scenario posited by Duke can be adequately addressed when and if it occurs.

### III. CONCLUSION

For those reasons set forth above, the Commission should approve Rider UE-GEN, but should expand its applicability to cover uncollectible expense associated with the generation component of defaulting shopping customer arrearages. The Commission should also make proposed Riders RECON and SCR unconditionally bypassable by CRES customers.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 27th day of January 2011.

  
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