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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) Case No. 10-2586-EL-SSO
Bidding Process for Standard Service Offer)
Electric Generation Supply, Accounting)
Modifications, and Tariffs for Generation)
Service)

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INITIAL TRIAL BRIEF OF
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.

January 27, 2011

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I. Introduction

Now come Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (jointly “Constellation”), pursuant to the procedural schedule established in the matter at bar and submit their Initial Trial Brief. Constellation NewEnergy, Inc. (“CNE”) is a Commission certificated competitive retail electric service (CRES) provider who has continuously served retail customers in Ohio since 2001.¹ CNE is the nation’s largest supplier of competitive electric service to commercial, industrial and public sector customers² providing more than 15,000 Megawatts (MW) to over 18,000 customers.³ Constellation Energy Commodities Group, Inc. (“CCG”) is the largest wholesale supplier of power in the United States. CCG also manages fuels and provides other project services for energy intensive industries and utilities.⁴ CCG has participated in the FirstEnergy auctions and is currently a standard service offer energy provider to Cleveland Electric Illuminating Company, Ohio Edison Company and Toledo Edison Company.

On November 15, 2010 Duke Energy Ohio, Inc. (“Duke”) filed an application for a Market Rate Option plan (MRO) to fulfill its standard service obligation pursuant to Section 4928.141, Revised Code. As described in the testimony of Constellation Vice President David Fein, Constellation intervened in this proceeding to provide the Commission with a practical critique of the Duke Energy Ohio application from the perspective of a prospective bidder in the auction, as well as a CRES provider⁵.

¹ Case No. 00-1717-El-CRS.

² Constellation Ex. No. 1, Direct Prepared Testimony of David Fein, p. 1.

³ Id, at 2.

⁴ Id, at 1.

⁵ Constellation Ex. No. 1 Direct Prepared Testimony of David Fein p. 3.

Duke has built upon the success of the previous Cleveland Electric Illuminating, Ohio Edison Company and Toledo Edison Company ("FirstEnergy") auctions by largely incorporating the features of those auctions, with a few amendments. As discussed below, the Commission should further build upon the successful auction construct and adopt Constellation's recommendations in order to achieve two (2) extremely beneficial objectives: (i) a more robust and competitive procurement process for the supply of electric power and energy for SSO service; and (ii) greater promotion of the development of retail competition and customer choice. As will be discussed herein, Duke's MRO Application (including its amended Master Supply Agreement) should be revised as follows, and approved:

- Providing auction participants and winning wholesale suppliers with additional data and information, consistent with that which is provided by FirstEnergy, or further enhanced information that will promote robust bidding;
- Providing additional clarity regarding the authority of the CBP Manager;
- Adopting revisions to the Master Supply Agreement;
- Using collaborative processes for all stakeholders to discuss potential improvements or other refinements to a future CBP;
- Rejecting Duke's proposal to impose certain non-bypassable generation charges under the Riders SCR, EIR and RECON where a customer takes service from a CRES; and
- Requiring Duke to take additional steps to promote a more robust retail electric market for the benefit of Duke's customers.

II. THE COMMISSION SHOULD MAKE ADDITIONAL REVISIONS TO THE MRO APPLICATION TO FURTHER PROMOTE THE APPLICABLE STATUTORY OBJECTIVES.

A. The Commission should direct Duke to improve the timing and detail of data and information.

Section 4928.142(A), Revised Code sets out the criteria that the competitive bid procedure for each MRO Application must meet. The statutory criteria include, among other things, having a competitive bid that is: 1) open, fair, and competitively transparent and 2) is conducted by an independent third party administrator. To be open, fair and competitively transparent prospective bidders must be able to obtain relevant information concerning the load that is being bid in a timely fashion. Duke's MRO Application is, at best, unclear whether certain key information such as was provided in the FirstEnergy auction would be made available to bidders provided in a timely manner for the Duke. Specifically, the following information is essential and should be presented electronically:

- (1) Monthly information specific to a municipal opt-out aggregation program that includes peak load, hourly consumption, and population statistics for existing programs and programs that are proposed for commencement during the term of an SSO;
- (2) Hourly load data for eligible and SSO load by customer class as close as practical in time to the auction date;
- (3) Customer counts, peak demand and NSPL for eligible and SSO load by customer class as close as practical in time to the auction date;
- (4) For NITS charges, the expected allocation (below 138 kV) by rate class;
- (5) Historical distribution losses and any allocated Unaccounted for Energy (if applicable);
- (6) For the larger nonresidential customer base, a distribution of the number of customers above and below 500kW within a rate class; and

(7) Hourly consumption, customer counts, peak demand broken out by customer class as close as practical in time to the auction date (*e.g.*, a maximum of a 1 or 2 month lag) separated by eligible load and load served by CRES providers.⁶

To fulfill the statutory requirement for an independent, third party administrator, Duke selected International d/b/a Charles Rivers Associates (CRA). Duke called upon CRA principal Robert J. Lee to support the compliance of their Application. Mr. Lee participated on behalf of CRA in both the FirstEnergy competitive auctions. On cross examination, Mr. Lee testified that he was familiar with the design of the Duke bidder's website, but at this time the exact type and form of the data that was going to be supplied on the Duke website has not been completed⁷. Mr. Lee also indicated that he was knowledgeable as to the information presented on the FirstEnergy bidder's website.⁸ Mr. Lee acknowledged that FirstEnergy did use an interactive website and that the FirstEnergy website contained historic load data, historic load data by class, and area and bulk data and PIPP data.⁹ When asked if Duke was going to have similar information on its bid website Mr. Lee to what was provided on the FirstEnergy's website he replied:

"My expectation is that similar information would be provided to bidders in the Duke Energy-Ohio auction, yes."¹⁰

Providing a website with information is only the beginning of the process to assure that enough information is provided by the utility to assure an open and transparent auction. Both Mr. Fein in his direct testimony¹¹ identified, and Mr. Lee on cross examination¹² acknowledged, the need for the bidder's website to be interactive and contain a method for asking questions and getting

⁶ Constellation Ex. No. 1, p. 12-13.

⁷ Id.

⁸ TR. I p. 164.

⁹ Id. 165-166.

¹⁰ Id at 164.

¹¹ Constellation Ex. No. 1 p. 11.

¹² TR. I, 163-69.

timely answers. Barring any technical difficulties, two days should be sufficient time for CRA to provide a response to prospective bidders' questions.

Information does not end when the competitive bid is completed and the winning bidders have been selected. The bid winning suppliers need to have information in order to efficiently and effectively conduct their supply operation. The winning bidders continued to get information after the FirstEnergy auctions, and is used by suppliers for understanding their risk.¹³ At a minimum, Duke should provide the following information:¹⁴

- (1) Peak load (or hourly consumption) data that is updated monthly beginning after the execution of the SSO MSA that shows eligible load and load taking service from a CRES provider;
- (2) Initial settlement hourly data;
- (3) From the time that the MSAs are executed, daily estimations for the capacity peak load contribution data seven days forward; and
- (4) To the extent available, the energy and capacity information that Duke Energy provides to PJM related to suppliers' SSO obligations.¹⁵

In sum, supplying concerning the load information as detailed by Mr. Fein, first to the prospective bidders and subsequently to the winning suppliers, is required in order to have a fair, open and competitively transparent auction. It is also crucial to having a robust auction which provides low price for the default customer. Thus, the Commission should in its Opinion and Order require Duke to supply the information listed above.

B. The Commission should reject the use of a Reserve Price

A reservation price, as Duke contemplates using, is where the utility would have an

¹³ *Id.*

¹⁴ Constellation Ex. No. 1 Direct Prepared Testimony of Mr. Fein p. 13-17.

¹⁵ *Id.*

“undisclosed” price above which the utility would not buy the power¹⁶ even if the auction closed with the proper number of bidders and there was no evidence of fraud or collusion. The use of a reservation price appears at odds with the statutory mandate that the competitive bid process be open, fair and transparent under Section 4928.142 (A), Revised Code. The use of a reservation price makes the auction less attractive to wholesale suppliers. A bidder may go through the auction, believe that by providing the lowest price it has won the auction, only to find out that Duke on its own is rejecting the results because of its secret reservation price. This secret reservation price is a different type of risk than the risk suppliers take when completing against other real bidders.¹⁷ A reservation price is not essential to a successful auction, as Mr. Lee testified that he has conducted auctions without a reservation price for competitive bids.¹⁸

The most pernicious aspect of the use of the reservation price is what happens after Duke rejects the auction results based on the reservation price. If the reservation price is used to reject an auction, then a second auction would have to be held. It is possible that the closing price at the second auction would be higher¹⁹ than the original auction, especially if participants in the rejected auction felt Duke’s the reservation price was inaccurate, or if potential bidders simply stayed away from an auction in which they had no confidence that bids would be accepted. In the competitive bid that Duke is proposing, its competitive affiliate would be able to participate and, given that there are no load caps, the Duke affiliate could win all the tranches. Thus, it is possible that Duke could reject the original auction results won by a non-affiliated supplier because the closing price was above the reservation price. Then on the replacement auction Duke could end up awarding the tranches to its affiliate at a higher price than the original auction result. Given the uncertainty for potential bidders that is created, not to mention the potential for

¹⁶ *Id.*, at 176–177.

¹⁷ Tr. V, 867, 869; Tr. I, 178–9.

¹⁸ Tr. I p. 174-179

¹⁹ Mr. Lee agreed that was possible, though he thought it unlikely TR. I, 200-01. Also see TR. V, 867-869.

abuse, the use of a reservation price should be rejected by the Commission.

C. The Commission should adopt the changes to the Master Supply Agreement recommended by Constellation

When the MRO application was filed on November 26, 2010 it contained a sample Master Supply Agreement²⁰. The Master Supply Agreement is the standardized contract that will be used between the suppliers who win supply tranches in the auction and Duke. The Master Supply Agreement in addition to providing the terms and conditions for the subsequent purchase of energy, also is an important document for potential bidders as it is within the confines of the Master Supply Agreement that essential financial terms such as credit and bonding requirements, accounting conventions and the mechanics of payment are established.

Duke, to its credit, continued to work with suppliers after the November filing concerning many of the terms in the Master Supply Agreement. Duke then prepared a revised Master Supply Agreement²¹ which was taken into evidence along with a red line version which shows the changes between the original Master Supply Agreement, and the Revised Master Supply Agreement now before the Commission as part of the Application.

The Revised Master Supply Agreement is a vast improvement over the original filing, and wishes to compliment Duke for its efforts. There are a number of changes, however, that would not only improve the Revised Master Supply Agreement, but may well enhance the participation in the auction and lead to a lower auction clearing price. These suggestions are all part of the Direct Prepared Testimony of David Fein, which contains a red line Master Supply Agreement including the proposed enhancements.

1. Credit Terms Should Be Modified

One of the major improvements in the Revised Master Supply Agreement is that the

²⁰ Application Addendum F.

²¹ Duke Ex. 3, Attachment F-1, F-2.

Credit provisions for bidders have been made less restrictive. The less restrictive credit standards should enhance participation and lower bid prices. Unfortunately, however, Duke did not follow the suggestions of Witnesses Fein²² or Swartz²³ who suggested that Duke adopt the credit standards used in the FirstEnergy auctions. To utilize those standards the credit rating thresholds should be lowered to the same levels as those in the First Energy auction. It should be noted that the risk which accompanies use of less restrictive credit requirements for bidders is not on Duke, as Duke will pass through any increase in energy costs through to the retail customers.²⁴

In addition to the general bidding credit requirements discussed above, Duke continues to request that the supplier post separate collateral called the "Independent Credit Requirement (ICR). The purported purpose of the ICR collateral is to assure any costs that Duke may incur between the time of the default until the cost of the default (the Termination Payment²⁵) is calculated are secured. Such a provision is not necessary, as verified by the fact that several PJM jurisdictions - including Delaware, the District of Columbia, Illinois, and Maryland²⁶ - now either have eliminated a similar credit provision to the proposed ICR or elected not to include one. As more fully described in Mr. Fein's testimony, the problem with the ICR is that it is duplicative as the very costs that would be covered by the ICR are already fully addressed in the way the Master Supply Agreement implements the market-to-market calculations.²⁷ This belt and suspenders approach of requiring collateral is not in the customers' best interest, and comes at a high cost for duplicative coverage. This translates into higher bid prices as suppliers cover the unnecessary high cost of collateral in order to be a supplier.

²² Constellation Ex. 1, p. 24-25.

²³ FirstEnergy Solutions Ex. 1, pp. 4,5,9.

²⁴ Constellation Ex. 1, pp. 22-26. See Footnote 5.

²⁵ The capitalization denotes a defined term in the Master Supply Agreement.

²⁶ *Id.*

²⁷ Constellation Ex. 1, p. 23.

While the Master Service Agreement addresses the need for credit arrangements for the supplier no similar standards are required of Duke, though the Suppliers will be advancing Duke the energy for a substantial period of time before the Suppliers are paid. Constellation at this time does not request that Duke post credit, but would like to see in the Commission's Opinion and Order a contingency plan that should Duke's parent fall below an investment credit rating by the major credit rating agencies. Should such a rating decrease occur, then the payment schedule to the winning suppliers should be moved to weekly in line with the settlement date of PJM. Such an arrangement exists today for suppliers in some of the utility auctions in the District of Columbia, Maryland, Delaware and Pennsylvania²⁸.

2. Non-Credit-Related Improvements Should Be Made

a. Notional Quantity Language Should Be Eliminated Or Made Optional

The first suggested change to the Revised Master Supply Agreement is to the definition of "Settlement Amount" found in Article 1. The current definition may transform the energy sale under the Master Sales Agreement from a conventional sale into a derivative sale under Rule 133 of the Statement of Financial Accounting Standards (SFAS). This would affect the supplier's ability to account for the contract on an accrual accounting basis. Fein, Testimony, 29-30. On cross examination, Duke witness Northrup was asked whether it was the desire of Duke to have the suppliers use mark to market accounting and treat the transaction as the sale of a derivative. Mr. Northrup indicated that was not Duke's intent and that Duke would be willing to work with suppliers to prevent such an occurrence²⁹.

The Commission should permit Duke and potential bidders to change the definition of "settlement amount" without further Commission approval.

²⁸ Tr. V, 848; Constellation Ex. I, p. 27.

²⁹ Tr. I, 220.

b. Transition Issues Should Be Clarified

While the hearing substantiated the fact that Duke does, and will continue to, belong to an RTO with market monitoring features, two issues concerning the RTO were explored in the hearing that merit discussion in the Commission's Opinion and Order in this case. First, is the capacity charge which Duke will charge suppliers who use Duke capacity in order to supply retail customers in the Duke service area. The lack of a specific declaration of the capacity price has recently become an issue with another electric distribution utility³⁰. Duke's witness Jennings testified that Duke accepted the Fixed Resource Requirement Integration Plan (FRR) filed under FERC Docket ER 10- 2254-000³¹. On cross examination, Duke witness Northrup clarified exactly what that capacity rate would be if the capacity was purchased from Duke.

Q. Is it your understanding that the approved FRR plan for the year 2011 would be the auction price that's already taken place for PJM?

A. If you're asking would the capacity prices be the same for RPM, that would be understanding, yes.

Q. And the same would be true for 2012?

A. Yes.

Q. And for 2013?

A. Yes.³²

The second issue concerning the RTOs raised at the hearing was who would be responsible for the continuing MISO fees and how transmission charges would be collected from retail customers. The Application creates two riders which address transmission expenses. Rider BTR will collect Network Integrated Transmission Service Charges (NITS) assessed by the RTO

³⁰ In the Electric Security Plans (ESP) of the Columbus Power Company and Ohio Power Company the Commission in its Entry of December 8, 2010 in Case No. 2929-EL-UNC found that use of the RPM auction price as the CRES capacity charge was an implicit part of the ESP plans.

³¹ Duke Exhibit No. 12, Direct Prepared Testimony of Kenneth Jennings, p.4.

³² Tr. I, 215.

and will bill those expenses directly to the retail customers, both standard service customers and shopping customers. Rider RTO will apply just to the standard service customers and will collect for RTO expenses under FERC-approved tariffs which are generation related such as ancillary services³³.

By electing to switch RTOs, MISO will charge Duke a onetime exit fee³⁴. In addition, Duke witness Jennings testified that even though Duke would no longer be a transmission owner in MISO after 2012, Duke would remain financially responsible for the transmission additions and improvements (M-TEPS) authorized while it was a member³⁵, a condition that will exist for years to come. Similarly, once Duke joins PJM, it will become responsible for all the transmission additions and improvements on the PJM system (R-TEPS)³⁶.

At this time the amount of the exit fee and the M-TEPs fees are not a part of either the application or a subsequent petition for authorization filed by Duke. Duke's position on these RTO charges was presented by Mr. Wathen who testified that since the exit fees, M-TEP fees and R-TEP fees are part of FERC's approved tariff, Duke is entitled to pass all FERC related charges through to the retail customers³⁷. Mr. Wathen then cited a Post-Hearing Brief filed in the recent FirstEnergy ESP II proceeding Case No. 10-388-SSO where the Staff explained that FirstEnergy, who also exited MISO in favor of PJM, had agreed to pay for all the MISO exit fees and M-TEPs in perpetuity as well as the R-TEPs for a period of five years. Mr. Wathen then quoted the Staff brief which stated that without the Stipulation signed in the FirstEnergy case, the Commission would have had to authorize the MISO exit and M-TEP charges be paid by the retail customers.

While the Staff's briefs are often insightful, briefs are not Commission or court decisions

³³ Application, p. 37.

³⁴ OEG Exhibit No. 1, Direct Prepared Testimony of Mr. Baron, p. 19.

³⁵ Duke Exhibit No. 12, Direct Prepared Testimony of Mr. Jennings, p. 9.

³⁶ *Id.* at 11.

³⁷ Duke Exhibit No. 16, Direct Prepared Testimony of Mr. Donald Wathen, p. 24.

and thus not accorded the legal precedent. Faced with this record, the Commission should take two affirmative steps. First, the Commission should approve the basic tariff structure that Duke is proposing for transmission costs. Duke is proposing via its Rider BTM to funnel all the NITS as well transmission enhancement fees through Rider BTM. By contrast, today such transmission charges are paid by standard service customers to Duke and by shopping customers to their CRES provider. As pointed out by CRES witness Ringenbach, separating the transmission costs, which are set by the FERC and are uniform, as a wire charge effectively separates generation from transmission charges, thus making the "price to compare" number easier for the retail customers to use when shopping³⁸. Similarly, Constellation witness Fein notes the preference for having the utility collect the NITS and points out that the Duke proposed method of collecting transmission costs is the same now used by the other Ohio utilities using an auction procurement for the standard service³⁹.

After the Commission sets the basic tariff structure for collecting transmission costs, it should address the issue of the MISO exit fees and M-TEP costs. The Commission while approving the structure of Rider BTR, should clearly state in its Opinion and Order that no decision on the amount of MISO exit fees, M-TEPs and R-TEPs that can or should be passed through to customers is being made in this proceeding. Duke should apply for specific authorization of when the cost of the MISO exit fee and the M-TEPS are known.

D. The Commission Should Require Duke To Use A Future Collaborative Process

In the spirit of trying to achieve transparent competitive solicitation and have a clear auction product definition, both of which are required by Section 4928.142, Revised Code, the Commission should require Duke to engage in an open collaborative stakeholder process. Such

³⁸ Tr. V, 996.

³⁹ Constellation Ex. No. 1, Direct Prepared Testimony of David Fein, p. 18.

an open dialogue is bound on its own to attract the maximum number of qualified participants and to solicit the best possible offer. Either Duke or the Commission is equally capable of organizing such a collaborative process.

A collaborative stakeholder process would promote the sharing of data, information and experience from other markets, and would allow participants to be consulted as to what pre-bid information needs to be made available, as well as discussing other key terms associated with the competitive wholesale procurement, including the Master Supply Agreement.⁴⁰ In addition, bidding rules could be discussed at such a collaborative stakeholder process, which might cause a larger number and more diverse set of suppliers to participate in the competitive procurement process. If Duke is concerned about the costs of complying with a collaborative stakeholder process and fulfilling the requests generated from such a process, Duke should seek return of these costs through the appropriate tariff.⁴¹ The results of this collaborative process will help the Commission pursue its overarching commitment to successfully promote an efficient and effective competitive retail market in Ohio.⁴² The Commission should therefore require Duke to engage in a collaborative stakeholder process prior to submitting any future proposal for a competitive bid process.

III. Rider RECON, Riders EIR, and Rider SCR, and Should Be Made By-Passable

A. Rider RECON

One of the attractive features of a fully auctioned supplied MRO is that the price paid by standard service for energy price will no longer be subject to retroactive price adjustments based on previous incurred fuel, capacity and other variable costs. Such a fixed price is in stark contrast to Duke's current Electric Security Plan in which fuel and capacity costs were amended

⁴⁰ Constellation Ex. 1, pp. 42-43; Tr. V, 849-51.

⁴¹ Tr. V, 851.

⁴² Tr. V, 853; Section 4928.02, Revised Code.

via a Riders PTC-FPP (fuel) and SRA-SRT (capacity) based on actual expenditures from past quarters. Duke's MRO plan will eliminate Rider PTC-FPP and SRA-SRT upon commencement of the MRO⁴³. After that date customers will only pay the blend of the then frozen legacy generation rate plus the auction closing price. When the MRO commences though there will still be the past fuel and capacity cost true ups on Duke's books. To address these potential cost or possible credits, Duke has proposed Rider RECON that will true up the accounts to zero by charging all customers a pro rata share of what remains in the Rider PTC-FPP and SRA-SRT accounts⁴⁴.

On cross examination Duke Witness Wathen testified that all of the costs or credits that are in the two Riders being trued up by Rider RECON are generation related⁴⁵. Section 4928.03, Revised Code defines generation costs as non-regulated (utility) expenses and prohibits cross subsidies of between regulated and non-regulated services. Thus the costs collected by Rider RECON cannot be collected as part of a utility service charge as proposed by Duke. Ohio is not unique among open access, competitive states in requiring that all generation costs be charged only to generation customers. A similar prohibition on making non generation customers pay for generation expenses exists in Illinois, Pennsylvania, New York, Texas, New Jersey, Maryland, Connecticut, Massachusetts, Maine, the District of Columbia and Delaware⁴⁶.

Commission Witness Turkenton explained that most of the costs likely to be collected through Rider RECON will be for fuel which is fully by passable today, and thus it is Staff position that Rider RECON should be fully by passable⁴⁷. Based on this record the Commission in its Opinion and Order shall find that Rider RECON must be made by-passable.

⁴³ Duke Ex. 19, p. 27.

⁴⁴ Duke Ex. 3, p. 37.

⁴⁵ Tr. III, p. 602-603.

⁴⁶ Constellation Ex. 1, p. 44.

⁴⁷ Staff Ex. 1, pp. 4-5.

B. Rider EIR

In the MRO application, Duke froze the cost of the portion of the standard service energy cost being blended as of the cost established for generation on December 31, 2011. That freeze however was based upon the assumption that by year three of the MRO the auction would supply 100% of the energy. In the event that the Commission requires a blend of legacy generation for longer than two years, then Duke will not freeze the fuel and environmental cost riders currently in place⁴⁸. The fuel cost would continue to be picked up in Rider PTC-FPP and environmental costs would be collected through a new Rider EIR until the blend reaches 100% auction energy.⁴⁹ It is clear from the record that the environmental costs to be collected via Rider EIR are generation compliance costs⁵⁰. As discussed above, to avoid subsidies all generation costs must be paid only by generation customers.

At the hearing Duke witness Wathen explained that Rider EIR was a conditional rider and would only come into play if the blending period was extended beyond the three year proposal in the MRO. He then indicated that it was Duke's intent that should Rider EIR come into play that it be assessed only on standard service customers and be fully by passable to shopping customers⁵¹. The Commission should require that Rider EIR be fully by passable for shopping customers.

C. Rider SCR

Rider SCR is a new charge designed by Duke primarily to true up the difference, positive or negative, between what Duke collects from standard service customers for generation and what Duke pays to the auction energy providers⁵². Clearly, Rider SCR is a generation cost or

⁴⁸ Duke Ex. 16, p. 21.

⁴⁹ Duke Ex. 3, p. 21.

⁵⁰ Duke Ex. 3, p. 37.

⁵¹ Tr. III, p 593.

⁵² Duke Ex. 3, p 18-19.

credit and as such should be paid only by standard service customers taking generation. Duke recognized that fact and Rider SCR will be by passable, unless the numbers of standard service customers become so low that Rider SCR makes up more than 5% of the cost of energy. At that point Rider SCR would become a non by passable charge⁵³. The application is not clear as to what the mechanics would be for this switch from by-passable to non by-passable to occur. A similar "circuit breaking"⁵⁴ device exists today for FirstEnergy for a true up rider. Triggering the FirstEnergy Circuit Breaker though depends on the utility filing with the Commission for authority and demonstrating in its filing that for two consecutive quarters the threshold of the Circuit Breaker has been reached⁵⁵. Duke witness Wathen indicated that Duke would consider a similar mechanism to effectuate the Circuit Breaker provision of Rider SCR⁵⁶.

The logic behind the circuit breaker was explained by Staff Witness Turkenton who noted that purpose Rider SCR was to prevent a spiral where a mass migration of customers away from standard service caused the Rider SCR to grow to such a level that it forced more customers to leave standard service. Ms. Turkenton found it "unlikely" that such a spiral would occur⁵⁷. Further, the Staff believes that a rider for this contingency is unnecessary for if such a spiral did occur Duke could apply to the Commission and adjustments would be made to address the actual circumstance⁵⁸.

The Commission should adopt the Staff position. If however the Commission should decide to implement a Circuit Breaker rider such as Rider SCR, it ought to be triggered at the

⁵³ Id. P. 19-20.

⁵⁴ The description of Rider SCR as a "circuit breaker" is found in David Fein's Direct Testimony Constellation Ex. No. 1 p. 43.

⁵⁵ Tr. Vol. III, p. 594.

⁵⁶ Id.

⁵⁷ Tr. Vol. V, p. 1021.

⁵⁸ Tr. Vol. V 1022-1023; all so see Staff Ex. No. 1 pp. 8-9.

10% was advocated by RESA witness Ringenbach⁵⁹ and that the switch from by-passable to non by-passable only occur after specific authorization from the Commission based on two consecutive quarters in which the 10% threshold was exceeded.

IV. Information for CRES Suppliers

One fact that was clear from the record in this proceeding is that the CRES today play an essential role in providing energy to the retail customers in the Duke Service area. Some 60% of the overall Duke load, including 89% of the industrial load and 70% of the commercial load come from CRES suppliers⁶⁰. This development of the retail market is in line with the State Energy policy which encouraged having a variety of energy supply options and a diverse group of suppliers Section 4928.02(C) Revised Code.

Given this market development Duke must provide a more dynamic and improved system of providing CRES with needed information. To begin with Duke, should provide each CRES with the following data and information: 1) A list of customers that is refreshed and updated quarterly; 2) Web-based, electronic access to key customer usage and account data; 3) VEE data posted via EDI; 4) 867 historical usage and monthly usage; 5) transmission and capacity peak load contributions; meter read cycle information; and finally a quarterly updated account syn-list provided on a confidential basis⁶¹.

In addition to the above information, four business practices need to be instituted between Duke and the CRES that operate in their service area. These four practices consist of:

1. Notification to the CRES provider of record of a drop before the drop occurs, and an opportunity to allow CRES provider to cure if the drop is in error.

⁵⁹ RESA Ex. No. 1 p. 10.

⁶⁰ Constellation Ex. No. 1 p. 46.

⁶¹ This list was presented in the Direct Prepared Testimony of David Fein Constellation Ex. NO. 1. P. 47. Additional details on this request can be found in the testimony.

2. Provision of legacy customer numbers. This includes using the legacy numbers on customer lists and EDI data transactions so that CRES can synchronize their systems and data basis.
3. Regular electronic mail notifications of tariff supplements, modifications or changes when filed with the Commission.
4. Semi-Annual or Quarterly Meetings or Conference calls with CRES providers to discuss proposed tariff changes, business practices and other information.

Finally, currently Duke only provides a Rate Ready billing service. This limits the creativity and options which CRES can offer retail customers as any offer must fit the Duke Rate ready billing matrix. Ten years ago, Duke began development of a Bill Ready service in which the CRES simply indicates the amount that should be reflected on the customer's bill⁶². The Commission should require Duke to provide a status report on its Bill Ready billing project and costs needed to complete it.

V. CONCLUSION

The Commission should modify the Application, as amended, consistent with the recommendations contained herein⁶³, and approve Duke's MRO.

Respectfully Submitted,



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⁶² Constellation Ex. No. 1, P. 51.

⁶³ A bullet point list is presented in the Introduction Section.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing documents was served this 27th day of January, 2011 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



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