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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 Associated With Reconciliation Mechanism, and Tariffs for Generation Service	)	Case No. 10-2586-EL-SSO

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INITIAL BRIEF OF
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I. INTRODUCTION

Retail Energy Supply Association ["RESA"] submits this initial brief pursuant to the Attorney Examiners' direction. RESA supports the Duke Energy Ohio's Market Rate Offer ("MRO") application and believes that it will greatly benefit customers and find that it is also consistent with the State Energy Policy set forth in Section 4928.02, Revised Code. RESA urges the Commission to adopt the MRO, but subject to the amendments made at the hearing and with the suggested modifications supported by witnesses Teresa Ringenbach, Manager of Government and Regulatory Affairs for the Midwest for Direct Energy and the representative for the Ohio Retail Energy Supply Association and David Fein Vice President of Energy Policy – Midwest Director of Retail Energy Policy Constellation Energy Group, Inc.

The Commission's approval of Duke Energy Ohio's MRO will increase competition in Ohio's retail energy markets and result in a more efficient, customer-focused product. The adoption of Duke Energy Ohio's MRO will ensure regulatory certainty that will in turn encourage long-term investment. The continued growth of the competitive retail market in Ohio will provide customers with more electric supply options, a diverse group of suppliers and better prices.

II. RESA SUPPORTS DUKE'S MARKET RATE OPTION (MRO) APPLICATION AS AMENDED

RESA recommends the Commission adopt Duke's MRO Application as filed, along with Duke's clarifications and amendments made during the hearing. Duke's MRO meets the requirements in Section 4928.142, Revised Code, which establishes the standard for an MRO. The proposed MRO also furthers the policy supporting the competitive electric market stated in Section 4928.02, Revised Code. Most importantly, the MRO, as amended, provides essential benefits to consumers. Duke clarified certain issues and made certain amendments to the MRO

during testimony which assist the MRO Application comply with the statutory requirements and provide benefits to Ohio consumers. Thus, the Commission should adopt the MRO Application as amended.

a. Duke's MRO Application as filed and amended meets the statutory criteria and will benefit consumers.

Section 4928.142, Revised Code describes the requirements for a successful MRO Application. The law focuses on creating a market rate that will promote a robust competitive market in a fair and open manner. The competitive bidding process of the MRO must be open, fair and present a transparent competitive solicitation. The MRO must present a clearly defined product and utilize standardized bid evaluation criteria. The Competitive bidding process must have oversight by an independent third party. Finally, the bids must be evaluated prior to the selection of winners and no generation supplier shall be excluded from participation. RESA finds that Duke's MRO conforms to these requirements (Tr. V, 990-3).

Duke's MRO advances the implantation of a competitive retail electric market. Pursuant to Section 4928.02, Revised Code, the legislature made clear that utility standard service offers under a MRO must provide consumers with electricity that is "adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced." The robust electricity market promoted by Duke's MRO will lower consumer prices and create efficient and reliable pricing. The competitive bidding process proposed by Duke also ensures broad participation by suppliers.

Duke's MRO will also provide important benefits to consumers by expanding electric supply options. Duke's proposed MRO will create efficient and reliable pricing by providing regulatory certainty for competitive retail electric service providers ("CRES") and their customers. The MRO ensures that the standard offer structure continues indefinitely instead of forcing CRES and customers to abide by the artificial and limited ESP three-year

market structure (RESA Ex. 1 p 6). Long-term contracts, which provide greater certainty in the market, are more difficult to consummate in Ohio because of the three-year length of an ESP. (Tr. V, 989). Duke's Application will encourage long-term contracts with the customer as well as long-term investment in the state because such investment requires a supplier to engage in a lengthy administrative process and significant financial investment to become a CRES in Ohio. (Tr. V, 989-90). With an indefinite standard service offer (SSO) under the MRO, customers have more options and may choose the contract term that is tailored to their use and to the market. (RESA Ex. 1, p. 6). Duke's MRO provides an opportunity for the Commission to implement a truly competitive electric retail market in Ohio, ushering in stability and reliability for companies and consumers.

b. The Commission should accept Duke's amendments and clarifications during the hearing and these should be included in the Commission's Order.

Duke made several amendments and clarifications during the hearing through their testimony. These changes to the MRO Application should be accepted by the Commission and should be included in the Order. These amendments clarified parts of Duke's MRO Application that were ambiguous and may also reflect Duke's willingness to negotiate certain portions of the MRO. The Commission should include these amendments in the Order because they further the policy stated in Section 4928.02, Revised Code, and will benefit consumers through a robust competitive market and better prices for consumers.

The first clarification of the MRO Application is to confirm that the Environmental Investment Rider ("Rider EIR") is bypassable for shopping customers. Rider EIR collects environmental costs that are associated with generation (Duke Ex. No. 3, p. 37). Although initially the by-passable nature of this rider was unclear in the MRO Application, witness Wathen testified on behalf of Duke that Rider EIR will not be implemented if Duke's proposed

blending period is approved. Further, even if the three-year blending period isn't approved and Rider EIR is implemented, it will be fully by-passable for CRES customers[1]. When the blending period reaches 100%, regardless of the year, Rider EIR will expire[2]. The Commission should adopt Rider EIR as bypassable because shopping customers should not be subject to a rider collecting generation costs since they are not receiving generation service from the SSO supplier.

Duke further clarified issues relating to the bypassability of the Supplier Cost Reconciliation Rider ("Rider SCR"). (Duke Ex. 3, p. 37). Rider SCR collects certain costs associated with providing SSO service including the costs of retaining the competitive bid plan consultant and administering the competitive bid plan. (Tr. V, 1020; Duke Ex. 17, p. 9). Duke has proposed Rider SCR as a bypassable rider until expenses under Rider SCR exceed a threshold of 5% of the total generation revenues under the SSO, at which point Rider SCR will become non-bypassable. (Duke, Ex. 16, p. 20; Tr. III, 609).

In the First Energy auction, a true up rider similar to the proposed Rider SCR could transition to non-bypassability, but only after the SCR-type expenses exceeded 5% of the cost of generation for two consecutive quarters. (Tr. III, 594). Although the Duke application does not contain a similar provision, Duke Witness Wathen indicated that Duke is willing to consider such a provision. (Tr. III, 594). If the Commission should permit Rider SCR to switch from by-passable to non by-passable it should at a minimum assure in its Opinion and Order that such would only occur upon approval by the Commission following a filing that demonstrated the threshold had been exceeded for two consecutive quarters. Further, as discussed more fully below the threshold for non-bypassability should be 10% instead of 5% to avoid the Rider going back and forth from by-passability to non bypassability.

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[1] Tr. III, 593
[2] Duke, Ex. 16, p. 21

As currently written in the Application, it is unclear whether Rider SCR will automatically switch to non-bypassability or if this transition must be approved by the Commission. As the language is currently written, the transition appears automatic. (Duke Ex. 17, Atmt JEZ-1, p. 176-77). However, Duke Witness Wathen stated in the hearing that the Commission would approve Rider SCR's transition to non-bypassibility before it becomes effective. (Tr. III, 594-596).

If the bypassability trigger is adopted, RESA recommends that the Commission direct Duke to clarify the process of Rider SCR's transition to ensure price stability for consumers. Rider SCR should not transition to non-bypassability unless approved by the Commission before taking effect and only after the expenses exceed the threshold percentage for two consecutive quarters. (Tr. V, 594-596; Tr. III, 594). Duke has also stated that if Rider SCR reaches the transition threshold, it will only switch back to bypassability after expenses are below 5% for two consecutive quarters. (Duke Ex. 1, p. 20). The Commission should require Duke to track and file the actual target percentage each quarter to ensure that switching Rider SCR between bypassable and non-bypassable is regulated and anticipated instead of frequent and unpredictable. (RESA Ex. 1, p. 9). Certainty in rates is important to CRES and their customers and thus maintaining oversight requirements for Rider SCR is necessary for CRES to ensure predictability and consistency for customer pricing.

These clarifications by Duke will remedy the ambiguities in the Application as filed and will properly apply Riders EIR and SCR. The Commission should incorporate Duke's clarifications regarding the bypassability of Rider SCR and Rider EIR into the Order.

III. THE COMMISSION SHOULD ADVISE DUKE TO ADOPT ADDITIONAL REVISIONS TO THE MRO APPLICATION TO FURTHER BENEFIT CONSUMERS IN ACCORDANCE WITH THE STATUTE

RESA supports Duke's MRO Application and recommends that the Commission find the Application in compliance with the applicable statute. However, RESA recommends changes to the Application that will improve the efficiency and effectiveness of the MRO by making competition more robust and provide the opportunity for lower prices for consumers. This is the first MRO proposed by Duke, and would be the first MRO application decided by the Commission. As a result, Duke and the Commission should rely on the expert opinions of the witnesses testifying based on their experience relating to competitive bidding processes.

The Commission has a duty to weigh the evidence presented in the record and RESA recommends that the Commission weigh heavily on these experts' opinions. The Commission should use its general supervisory power under Section 4905.06, Revised Code to direct Duke to make the adjustments recommended by experts such as Ms. Ringenbach and Mr. Fein. These changes will benefit the public interest in ensuring that the MRO provide greater electric supply options for consumers and create efficient interaction between Duke and CRES.

a. The Commission should require Duke to improve its Marketing List and implement collaborative processes for a smooth transition from MISO to PJM and promote effective customer choice of retail electric service.

RESA supports Duke's realignment with PJM, but recommends that Duke take certain actions to limit the impact of the transition on consumers. The Commission should direct Duke to utilize collaborative processes among stakeholders to promote an efficient transition where technical experts on all sides can work together to resolve transitional problems. (RESA Ex. 1, p. 12). Ms. Ringenbach recommended a workshop to address these issues as they arise including differences in reconciliations and meter reading errors resulting from the differing time period from MISO to PJM. (RESA Ex. 1, p. 12). A workshop or collaborative process will help Duke

and CRES resolve and anticipate problems in the transition in a cooperative manner rather than through litigation. (RESA Ex. 1, p. 12). Similarly, Mr. Fein has presented a request for information and a web-based information exchange between CRES and Duke. These are improvements that are required especially in light of the large amount of energy now being provided to retail customers in the Duke Service Area by CRES (Constellation Ex. No. 1 p. 46).

Expanding access to information regarding the electric utility's transmission and distribution systems is one of the policies set out in Section 4928.02(E), Revised Code. Access to such information will promote effective use of customer choice retail electric service and will improve consumer care quality by CRES. The Commission should direct Duke to add customers' Peak Load Capacity (PLC) to the electric customer marketing list. This information should also be updated if there are changes in between quarterly updates. (RESA Ex. 1, p. 8). The availability of this information will assist CRES to efficiently move into PJM.

Additional information about customers including contact information and switching status should be made available to CRES. (RESA Ex. 1, p. 8). CRES, such as Direct Energy have encountered problems where customers currently served by CRES are being switched into opt-out programs. RESA requests that Duke review for errors the opt-out government aggregation list. In particular, a new coding system similar to that of Dominion East Ohio Gas may help to solve this problem. (RESA Ex. 1, pp. 8-9).

The additional information to CRES on customer use and status, updated marketing lists and the use of collaborative processes will help CRES better serve their customers and integrate better with Duke. CRES rely on the utility to accurately and efficiently reach customers; any improvement to utility/CRES interactions results in a benefit to customers. By directing Duke to

implement these changes, the Commission will create a more efficient and robust electricity market resulting in better prices for consumers.

b. The Commission should advise Duke to make Rider RECON bypassable.

Duke is proposing a new Reconciliation Rider for over-/under-recovery of eliminated ESP-era riders ("Rider RECON"). (Duke Ex. 3, p. 37). Rider RECON is intended to true-up costs and revenue of Price-to-Compare – Fuel and Purchased Power Rider ("Rider PTC-FPP") and System Resource Adjustment – System Reliability Tracker ("Rider SRA-SRT"), which are being eliminated in the new MRO Application. (Duke Ex. 16, p. 27).

Rider RECON picks up currently avoidable costs and should remain avoidable. (RESA Ex. 1, p. 8). Currently, Rider PTC-FPP is bypassable and Rider SRA-SRT is conditionally bypassable for certain types of customers. (Tr. III, 611). Staff witness Turkenton noted that because Rider PTC-FPP fluctuates more than Rider SRA-SRT, most of the true-up will likely relate to Rider PTC-FPP. (Staff Ex. 1, pp. 4-5). Thus, because Rider RECON's costs are associated most strongly with Rider FPP, Rider RECON should be bypassable as Rider FPP is currently. (Staff Ex. 1, pp. 4-5).

Both Rider PTC-FPP and Rider SRA-SRT pick up generation-related costs to the SSO. (Tr. III, 602-603). The costs covered in Rider RECON are related to the procurement of the SSO provided by Duke and thus should not be charged to CRES customers. (Constellation Ex. 1, p. 44). Customers should only be required to pay for costs that were incurred on their behalf. Implementing Rider RECON as proposed by Duke will force CRES customers to pay for costs associated with services provided by Duke that they are not receiving. (RESA Ex. 1, p. 8). The Commission should promote the competitive electric market and lower prices for consumers by directing Duke to make Rider RECON bypassable for shopping customers.

c. The Commission should direct Duke to alter Rider SCR so it is fully bypassable or set the bypassable threshold trigger at 10%.

RESA recommends that Duke alter Rider SCR to be either fully bypassable at any level of expense or, in the alternative, alter the trigger threshold percentage to be at least 10%. Rider SCR should be fully bypassable because Rider SCR collects costs mainly associated with providing SSO service, and thus CRES customers who are not receiving SSO service should not pay for these expenses. (Tr. III, 608-09). Duke proposes Rider SCR, as discussed above, to be bypassable until the costs reach a threshold of 5% of the generation revenues supplied under Duke's SSO, at which point Rider SCR will become non-bypassable. (Duke, Ex. 16, p. 20). Duke has created this 5% cost trigger because it anticipates a situation where SSO customers switch at a high rate, leaving only a few customers left to bear the burden of the SCR expenses. Staff witness Turkenton stated in her testimony that it is unlikely such a "spiral situation" would occur. (Tr. V, 1021). However, if such a circumstance would occur, Duke would be able to anticipate this in advance to apply to the Commission for a rider adjustment making the trigger, as proposed, unnecessary. (Tr. V, 1022-3; Staff Ex.1, pp. 8-9).

If the Commission does not direct Duke to make Rider SCR a non-bypassable expense, the Commission should raise the trigger threshold to 10%. The purpose behind the trigger threshold percentage is to prevent a situation where very few remaining SSO customers must bear the entire expense of Rider SCR. (RESA Ex. 1, p. 10). A higher threshold trigger would still protect the remaining SSO customers from unnecessarily high costs. Further, the higher threshold will minimize the number of occurrences where the Rider SCR will switch from bypassable to non-bypassable, thus maintaining greater rate certainty for CRES customers. (RESA Ex. 1, p. 10).

As stated above, it is important to ensure certainty in rates for consumers. Allowing Rider SCR to transition from bypassability to non-bypassability at a low trigger threshold will change consumer rates more frequently than at a higher threshold. The Commission should follow RESA's recommendation and direct Duke to make Rider SCR either completely bypassable, or raise the trigger threshold to 10%, thereby limiting the circumstances where such a transition would occur.

IV. RIDER UE-GEN SHOULD BE ADOPTED BY THE COMMISSION, BUT AMENDED TO INCLUDE TRACKING UNCOLLECTIBLE COSTS FOR NON-MERCANTILE CUSTOMERS FOR WHOM DUKE PURCHASES ENERGY RECEIVABLES WHICH WOULD MAKE IT NON-BYPASSABLE

In its MRO Application, Duke has proposed that certain existing riders be eliminated, other existing riders be modified, and that certain new riders be adopted. One of the new proposed riders is the Uncollectible Expense Rider for Generation ("Rider UE-GEN"). (Duke Ex. 3, p. 37). Duke witness Ziolkowski testified that proposed Rider UE-GEN will recover the cost of bad debt associated with its SSO service. Duke's previously filed Uncollectible Expense – Electric Distribution Rider ("Rider UE-ED") recovers bad debt expense associated with distribution. Rider UE-GEN will be calculated in a similar manner as Rider UE-ED but will be bypassable for shopping customers. (Duke Ex. 17, p. 11).

Staff witness Turkenton recognized that the purpose of proposed Rider UE-GEN was to recover the cost of bad debt associated with Duke's SSO service and that this rider sought to recover incremental generation uncollectible expense above what is in base rates and also seeks to include Percentage of Income Payment Plan ("PIPP") customer installments not collected through the Universal Service Rider. She noted that the first application that Duke would make to the Commission regarding Rider UE-GEN will be the second quarter of 2012 and the Rider UE-GEN charge will be set at $0 starting January 1, 2011 for both the residential and non-

residential class. She noted that Duke proposed that Rider UE-GEN be a bypassable rider. (Staff Ex. 1, pp. 5-6). She also conceded that today, Duke Energy Ohio is not compensated for bad debt for its electric standard service. (Tr. V, 1002-1003).

Staff witness Turkenton recommended that the Commission not approve Rider UE-GEN in this MRO proceeding for the sole reason that an uncollectible rider for generation is not one of the adjustments specifically listed or contemplated in R.C. 4928.142(D). (Staff Ex. 1, p. 6). The Staff's reliance on R.C. 4928.142(D) is simply misplaced.

Section 4928.142(D), Revised Code provides in part:

> . . . The standard service offer price for retail electric generation service under the first application shall be a proportionate blend of the bid price and the generation service price for the remaining standard service offer load, which latter price shall be equal to the electric distribution utility's most recent standard service offer price, adjusted upward or downward as the Commission determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of anyone or more of the following costs as reflected in the most recent standard service offer price . . .

Subsection (D) of Section 4928.143, Revised Code addresses the concept of blending the bid or auction price with the generation service price for the remaining standard service offer which is equal to the electric distribution utility's most recent standard service offer price. In this application, Duke is not proposing to adjust the most recent standard service offer price; it is proposing to timely recover the cost of bad debt related to the standard service offer to be established in this case through a recovery mechanism that is permitted under Section 4928.142(C), Revised Code.

The Commission should contrast the language of subsection (D) which refers to "most recent standard service offer price" with the last paragraph of subsection (C):

> . . . All costs incurred by the electric distribution utility as a result of or related to the competitive bidding process or to procuring generation service to provide the standard service offer, including the costs of energy and capacity and the costs of all other products and services procured as a result of the competitive bidding

> process, shall be timely recovered through the standard service offer price, and, for that purpose, the commission shall approve a reconciliation mechanism, other recovery mechanism, or a combination of such mechanisms for the utility.

When comparing subsection (D) with subsection (C), it is apparent that subsection (D) refers to the "most recent standard service offer price" which is the currently established SSO. The "standard service offer" referred to in subsection (C) is the one that is to be established through the competitive bidding process. The General Assembly recognized that the vehicle for recovering all such costs incurred by the electric distribution utility as the result of or related to the competitive bidding process or to procuring generation service to provide the standard service offer may include reconciliation mechanisms, other recovery mechanisms, or a combination of the two.

Staff witness Turkenton agreed that it was foreseeable that a utility such as Duke would provide standard service to customers and that some of those customers would not pay Duke. (Tr. V, 1001). She also agreed that in terms of generation, there is nothing that allows Duke to collect generation uncollectibles. (Tr. V, 1003). She conceded that while a generation uncollectible rider was not contemplated under Section 4928.142(D), Revised Code, a generation uncollectible rider might not be unreasonable under an electric security plan (ESP) proposal under Section 4928.143, Revised Code. (Tr. V, 1006-1007). The Commission should distinguish between the most recent standard service offer price (Subsection (D)) and the standard service offer (Subsection (C)). Because uncollectibles expenses are a cost incurred by the electric distribution utility (Duke) as a result of or related to the competitive bidding process or in procuring generation service to provide the standard service offer, the Commission should recognize and approve Rider UE-GEN in this proceeding pursuant to Section 4928.142(C), Revised Code.

The Commission should also adopt the RESA recommended amendment to Rider UE-GEN to also include tracking uncollectible costs for non-mercantile customers for whom Duke purchases energy receivables. RESA witness Ringenbach explained that Duke currently purchases receivables for non-mercantile gas and electric customers for which it conducts consolidated billing. The Purchase of Receivables program behind Duke has led to switching with the program being used by a variety of suppliers who supply residential and small commercial customers. This Purchase of Receivables program offers competitive retail electric service providers and competitive natural gas service providers the opportunity to lower their cost to acquire, and offers the customers the ability to have a single collection point for their gas and electric charges. She explained that currently the mechanics of the gas and electric Purchase of Receivables programs are different. On the gas side, Duke has purchased all consolidated bills, conducted all the collection efforts, and purchased the receivables at face value. Any bad debt was then processed through a rider similar to Rider UE-GEN subject to Commission review. By contrast, consolidated non-mercantile electric receivables were purchased by Duke at a discount based on projected levels of bad debt and carrying costs. (RESA Ex. 1, pp. 10-11).

The advantage of the gas program from the perspective of the suppliers is that the receivable risk for customers that shop are the same as for the customers that remain with the utility. From the non-mercantile customer perspective, the gas program eliminated the credit checks and possible deposits by the competitive supplier. This simplified enrollment. Once a customer cleared the Duke credit process to become a customer, that customer will have also cleared the competitive retail natural gas service provider credit requirements as Duke will purchase the receivable. Duke's gas Purchase of Receivables policy has expanded the potential for lower income residential customers to shop. (RESA Ex. 1, pp. 10-11). When a utility has an

uncollectible generation rider, it typically has a lower-to-0 discount factor for the purchase of receivables. When a competitive retail supplier enrolls a customer, it faces the dilemma of having to either do a credit check to make sure the customer fits within that discount factor and actually serving them or not serving them based on the competitive retail supplier's credit review. By removing this dilemma, customers who may not normally pass the competitive retail supplier's credit check will now be able to receive service. (Tr. V, 994-995).

RESA proposes that Rider UE-GEN be amended to also include tracking uncollectible costs for non-mercantile customers for whom Duke purchases energy receivables primarily to socialize the cost of bad debt for non-mercantile customers (gas or electric) which will assist in implementing the Commission's shut off policy. Ms. Ringenbach explained that with the utility doing all the collections, administration of the Commission's shut off policy in its review of collection efforts can be focused on the utilities who are experienced in dealing with such issues. Human needs concerns do not exist for large commercial and industrial customers. Credit arrangements for large users are more complex and amount of usage per customer is far larger than for residential and small commercial customers. Since the Purchase of Receivables policy would not apply to mercantile customers, mercantile customers should not be subject to Rider UE-GEN. (RESA Ex. 1, pp. 11-12).

Adoption of these revisions would lead to a non bypassable rider for customers that are with a competitive retail supplier using the purchase of receivables. (Tr. V, 994). Duke witness Ziolkowski testified that if Duke had a non-bypassable uncollectible rider that included CRES receivables that Duke would purchase at a 0% discount, Duke would find that acceptable. (Tr. III, 702-710). There would have to be an adjustment in the period of time that Duke would pay the CRES provider for the receivables. FirstEnergy Solutions witness D'Alessandris also

agreed that if Rider UE-GEN were to become non-bypassable and would treat electric accounts receivable as are treated on the gas side, this would be a workable solution with respect to the partial payment priority rules issue. (Tr. IV, 816).

In summary, RESA recommends that the Commission adopt Rider UE-GEN, but that it be amended to also include tracking uncollectible costs for non-mercantile customers for whom Duke purchases energy receivables. This will make Rider UE-GEN non-bypassable, will expand the potential for lower income residential customers to shop, and will provide a workable solution with respect to the partial payment priority issues.

V. RESA RECOMMENDS THAT RIDER BTR SHOULD REFLECT THE COSTS AS PROPOSED BY DUKE AND PROMOTE COMPETITIVE NEUTRALITY FOR THE REALIGNMENT WITH PJM

Duke Energy Ohio is in the process of transitioning from its current RTO, MISO, to PJM. This transition will cause Duke to incur costs including exit fees, entrance fees, as well as assuming costs associated with the transmission expansion projects in PJM. The Commission should ensure that the costs of this transition are allocated neutrally for all customers. In particular, CRES customers should not be forced to pay more for this transition merely because they purchase from CRES rather than through the electric distribution utility.

RESA recommends that the Commission adopt Rider BTR as developed in Duke's testimony from the hearing to achieve this neutrality. The Base Transmission Rider ("Rider BTR") as proposed by Duke is a non-bypassable rider created to recover the transition costs stated above. Rider BTR will also include Network Integrated Transmission Service (NITS) costs. NITS include revenue requirements based on the costs of providing network customers the ability to take electricity from the network to meet their load requirements. This a uniform cost that is not based on the proportion of the load served by the supplier.

Duke stated that Network Integrated Transmission Service (NITS) will be charged directly to customers through Rider BTR. (Tr. V, 598). MISO transmission expansion projects (MTEPs) and PJM transmission expansion projects (RTEPs) will also be charged directly to the customers and CRES will not be double charged. (Tr. V, 600-01). These charges will flow directly to the retail customer, regardless of whether they are a shopping or a non-shopping customer, through the non-bypassable Rider BTR. (Tr. V, 600-01).

RESA recommends that the Commission adopt this Rider BTR structure because it ensures that RTO transition costs will be applied neutrally and will create efficient and reliable customer pricing. This structure ensures transition neutrality because costs will be charged directly from Duke to the customers, meaning that each customer will be charged the RTO transition costs and NITS equally regardless of whether they are CRES or SSO customers. Further, this structure is simple and efficient because it does not require CRES to procure transition service from Duke. (Duke Ex. 16, p. 23). This will enhance the competitive market because CRES will not have to price these charges into their bids, thus allowing them to lower bid prices resulting in lower customer prices. (Tr. V, 835; Duke Ex. 16, p. 23). Customers will also have the ability to accurately compare costs because both the SSO and CRES price will be solely a "generation" price, not "generation and transmission." (Duke Ex. 16, p. 23).

RESA recommends that the Commission approve Rider BTR as presented by Duke in its application and testimony. This structure will ensure a smooth transition from MISO to PJM that will impact each customer, whether receiving service through Duke or CRES, in a neutral manner. The structure of Rider BTR will also improve the efficiency of customer pricing.

There was a prolonged discussion at the hearing as to what the MISO exit fee, M-TEPs or R-TEPs would be. The Commission's Opinion and Order should be clear that approval of Rider

BTR is not an implicit approval of the pass through of any MISO exit fees, M-TEP charges or R-TEP charges. The Commission Opinion and Order ought to be clear that authorization of those costs await an application by Duke when in particular the MISO exit fees and M-TEP \ R-TEP costs are known.

VI. RESA IS IN FAVOR OF THE MARKET RATE BLENDING PERIOD OF THREE YEARS AS PROPOSED BY DUKE

Prior to the hearing, Industrial Energy Users-Ohio ("IEU") filed a Motion to Dismiss arguing that Duke's MRO Application does not meet the requirements under Sections 4928.141, 142, Revised Code. IEU argued that because Duke allegedly did not meet these requirements the Commission does not have jurisdiction to consider the application and it must be rejected outright. The Attorney Examiner ruled that the Motion to Dismiss will be considered with the whole of the record, thus incorporated into the hearing on the briefs.

RESA responded to IEU's Motion to Dismiss arguing that the Commission has jurisdiction to review the Application, even if defective. The Commission has jurisdiction over business concerns of public utilities in accordance with Section 4905.05, Revised Code and has "general supervision" over public utilities under Section 4905.06, Revised Code. If the Commission does not have jurisdiction to consider defective applications, then the Commission could only reject defective applications outright and would have no authority to amend applications. (RESA and Constellation's Memorandum Contra, 2). This proposition goes directly against Section 4928.142(B)(3), Revised Code which requires the Commission to either accept a MRO application as meeting the statutory requirements, or reject the application and allow the Electric Distribution Utility to make the necessary amendments in a timely manner. Thus, the Commission should reject IEU's Motion to Dismiss and consider the application based on the evidence in the record.

There was extensive deliberation in the record on Duke's proposed blending period and whether it meets the statutory requirements of Section 4928.142(D) & (E), Revised Code. The length of time that a utility with utility owned generation must blend is one of first impression for the Commission. The statute is susceptible to two different readings as whether the blending must be no more than 10% incremental auction energy each year for five years, or whether that applies only to the second year. RESA takes no position on the proper legal interpretation; however, from a practical standpoint RESA would like to point out that the three year blending period would initially lower the cost of the energy portion of the standard service as current market rates are lower than the current ESP rates. (Tr. V, 995-96). Further, Duke's price projections have also shown that in the year 2014, when 100% of the load will be auctioned, the SSO price and the market price probably be no higher. (Tr. I, 124).

Prolonging the blend to market is not in the public interest of lowering consumer prices and promoting market efficiency. (Tr. V, 995). Competition is most robust at a 100% load auction, and such a goal is achieved in the shorter blending period. (Tr. V, 859, 863). One of the problems with the prolonged blending period is that it keeps the fuel adjustment and the newly proposed EIR rider in effect. These riders change the price of standard service generation based on past quarter fuel and environmental expenses. That distorts the price to compare. If the utility's price is not the market price, it compromises the apples to apples comparison. (Tr. V, 996).

The extension of the blending period also makes it more difficult for market participants to enter into long term contracts because of the uncertainty surrounding regulation. (Tr. I, 134). In this semi-regulated time period, market participants cannot anticipate the rules that will shape

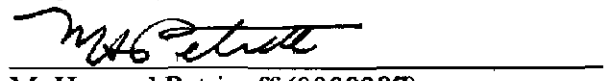
the SSO portion of the blend, or even the proportion of the blend. (Tr. I, 134). Thus, the Commission should end the blending period as soon as legally possible.

VII. CONCLUSION

In conclusion, RESA supports the MRO as amended at hearing and requests the Commission in its Opinion and Order to instruct Duke to take the following actions:

- Set up a collaborative processes for all stakeholders to discuss existing system improvements and system changes/potential problems in the transition to PJM;
- Improve market lists to allow CRES to more effectively serve customers;
- Reject Duke Energy Ohio's proposal to impose certain non-bypassable generation charges under the Reconciliation Rider for over-/under-recovery of eliminated ESP-era rider ("Rider RECON") and the Supplier Cost Reconciliation Rider ("Rider SCR") where a customer takes service from a CRES;
- Consider the Uncollectible Expense Rider for Generation ("Rider UE-GEN") with this application and adopt it as a non-bypassable rider that will collect uncollectible costs for all non-mercantile customers; and
- Accept the clarifications made during the hearing regarding charging transmission costs in the Base Transmission Recovery Rider ("Rider BTR").

Respectfully Submitted,



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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 electronic mail, upon the persons listed below.

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