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

ENTRY ON REHEARING

The Commission finds:

(1) Duke Energy Ohio, Inc. (Duke) is an electric distribution utility and a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.

(2) Section 4928.141, Revised Code, requires electric utilities to provide consumers with a standard service offer (SSO), consisting of either a market rate offer (MRO) or an electric security plan (ESP).

(3) Section 4928.142, Revised Code, authorizes an electric utility to file an MRO as its SSO, whereby retail electric generation pricing will be based, in part, upon the results of a competitive bid process (CBP). Paragraphs (A) and (B) of Section 4928.142, Revised Code, set forth requirements an electric utility must meet in order to demonstrate that the CBP and the MRO proposal comply with the statute. Paragraph (B) provides that an application must detail the utility's proposed compliance with the statutory CBP requirements, with the requirements set forth in the Commission's rules, and with the regional transmission organization (RTO) and pricing information requirements. In determining whether an MRO meets the requirements of Section 4928.142(A) and (B), Revised Code, the Commission must read those provisions together with the policies of this state as set forth in Section 4928.02, Revised Code.

(4) Paragraphs (D) and (E) of Section 4928.142, Revised Code, set forth the blended price requirements any electric distribution utility, such as Duke, which, as of July 31, 2008, directly owned operating electric generating facilities that had been used and useful in this state, must abide by.

(5) Chapter 4901:1-35, Ohio Administrative Code (O.A.C.), sets forth requirements each electric utility must comply with when filing an SSO in the form of an MRO, pursuant to Sections 4928.141 and 4928.142, Revised Code.

(6) On November 15, 2010, Duke filed an application for an MRO in accordance with Section 4928.142, Revised Code.

(7) By opinion and order issued February 23, 2011, the Commission ultimately found that Duke had not presented a complete MRO application and the application was in noncompliance with Section 4928.142, Revised Code. The Commission concluded that, since Duke has not presented a complete MRO application, the case could not proceed as filed. However, the Commission chose to fully discuss the remainder of Duke's application as guidance for any future filings. The specifics of the Commission's decision in this matter will be further delineated below in our consideration of the applications for rehearing.

(8) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in the proceeding by filing an application within 30 days after the entry of the order upon the journal of the Commission.

(9) On March 25, 2011, Duke and FirstEnergy Solutions Corp. (FES) filed applications for rehearing of the Commission's February 23, 2011, order. Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart) filed a memorandum contra Duke's application for rehearing on April 1, 2011. On April 4, 2011, Industrial Energy Users-Ohio (IEU), Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), The Ohio Energy Group (OEG), The Kroger Company (Kroger), The Greater Cincinnati Health Council (GCHC), and the Ohio Manufacturers' Association (OMA) filed memorandum contra the applications for rehearing. In its memorandum contra the applications for rehearing by Duke and FES, OEG offers that the Commission's order in this case is both legally and factually correct. The specifics of the applications for rehearing and the memoranda contra are set forth below.

(10) By entry issued April 19, 2011, the Commission granted the applications for rehearing to allow further consideration of the matters specified in the applications.

Section 4928.142(D), Revised Code, Blending Percentages Years Three Through Five

(11) Section 4928.142(D), Revised Code, provides, *inter alia*, that the first MRO application filed by a utility that, as of July 31, 2008, owned electric generating facilities:

> shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid... as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year or years one through five.

(12) Noting that there was strong disagreement between the parties with regard to the interpretation of the statute and the required blended price percentages for years three, four, and five of the MRO, the Commission, in its order, concluded that the words, "not more than" in paragraph (D) of Section 4928.142, Revised Code, applies to years two, three, four, and five of the blending period and not just to year two. (Order at 15.)

(13) In its first assignment of error, Duke maintains that the Commission's conclusion that the words "not more than" in Section 4928.142(D), Revised Code, applies to years two, three, four, and five of the blending period is unreasonable because it is contrary to the canons of statutory construction. According to Duke, the Commission offers no reasoned basis for its conclusion that the phase "not more than" applies to years three through five of the blending period.

(14) In response to Duke's first assignment of error, GCHC submits that the Commission followed Kroger's reasoning in reaching its conclusion regarding the interpretation of the phrase "not more than" thereby correctly concluding that Duke's application violated the statute and could not be approved. Nevertheless, GCHC states that the Commission's conclusion that "not more than" applies to

years two through five of the blending period is immaterial to Duke's application and is not a reason to grant rehearing. OCC agrees that the Commission should deny Duke's first assignment of error.

(15) The Commission finds that Duke's first assignment of error is without merit. The Commission appropriately considered the various parties' positions and arguments regarding the interpretation of the phrase "not more than" and determined that the statute applies that phrase to years two through five. In making our determination, the Commission agreed with the arguments expounded by Kroger, GCHC, and Eagle Energy, LLC; the only logical interpretation of Section 4928.142(D), Revised Code, directly links the phrase "not more than" with the percentage proportions that must be set forth in Duke's initial MRO proposal for years three through five. Furthermore, Duke's assertion that there was no basis for this determination has no credence given that 20 pages of our order were devoted to evaluating the statute in conjunction with the legal arguments set forth by the parties and arriving at the proper statutory interpretation. The Commission concludes that Duke raises no new issue on rehearing that was not considered in the order; accordingly, Duke's first assignment of error should be denied.

Section 4928.142(E), Revised Code, Five-year Blending Period

(16) Section 4928.142(E), Revised Code, provides the Commission with additional authority to alter the blending percentage in order to mitigate any effect of abrupt or significant change in the SSO price stating, *inter alia*, that:

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

(17) Upon consideration of Duke's proposed two-year blending period in its application, the Commission determined, in its order, that,

under Section 4928.142(D) and (E), Revised Code, as well as Chapter 4901:1-35, O.A.C., Duke was required to file a five-year blending plan and transition to market. Therefore, the Commission concluded that, because Duke failed to provide information and testimony supporting the requisite five-year blending plan as required by Rule 4901:1-35-03(D), O.A.C., Duke's proposed MRO application was in noncompliance with the statutory requirements. (Order at 23.)

(18) In their second assignments of error, Duke and FES each argue that the Commission's determination that the blending period must extend at least five years imposes an unreasonable and unlawful restriction on Section 4928.142(D) and (E), Revised Code. According to Duke, the Commission's interpretation unreasonably fails to account for the potentialities that may arise from the proper interpretation of these paragraphs; therefore, the Commission should modify its interpretation on rehearing.

(19) GCHC, OMA, OPAE, IEU, Kroger, and OCC, in their memoranda contra the applications for rehearing filed by Duke and FES, submit that, in an initial application for an MRO, the blended price period must be at least five years; therefore, they support the Commission's conclusion that Duke's proposed two-year blending period is in violation of the statute and assert that Duke's second assignment of error should be rejected. OPAE argues that, contrary to Duke's perspective, the Commission provided sufficient rationale for its decision, Duke just refuses to accept the clear meaning of the law. OCC asserts that Duke, in its interpretation of the statute, ignores the canon of statutory interpretation that the plain meaning of the words used in a statute should be used.

(20) The Commission finds no merit in the second assignments of error posed by Duke and FES. As we stated above, we thoroughly considered all arguments on the statutory interpretation of the statute and set forth the support for our decision in our order. Having performed this analysis, the Commission appropriately concluded that Duke's failure to present information and testimony in the record supporting a five-year blending plan in its filing rendered the application fatally deficient, such that the application could not be considered as filed. Accordingly, the Commission concludes that Duke and FES have not set forth any new issues on rehearing; therefore, the second assignments of error delineated by Duke and FES should be denied.

Section 4928.142(E), Revised Code, Timing of Decision to Alter Blending Period

(21) Duke proposed in its application that the Commission approve in this case the altering of the blending proportion. We acknowledged, in our order, that it may be advantageous, in the future, for the Commission to consider altering, prospectively, the blending proportions; however, the Commission concluded that such speculation is not appropriate at this time. The Commission found that the phrase "beginning in the second year of the blended price" in Section 4928.142(E), Revised Code, determines the timing of the Commission's consideration to alter the blended price percentages. Therefore, we concluded the statute requires that, the Commission must wait until year two of the MRO to consider altering the blending proportions. Furthermore, we noted that the evidence produced by Duke in this case was based on events that may or may not occur; therefore, based on the record before us, the Commission found that it was premature to make a determination to alter the proportions of the blended SSO price today. (Order at 17-18.)

(22) In its third assignment of error, Duke submits that the Commission's finding that it may not prospectively alter the blending percentages set forth in Section 4928.142(D), Revised Code, prior to year two, unreasonably interprets the phrase "beginning in the second year" as a temporal restriction, rather than an indicator marking the place at which the amended blending percentages may be effective. Duke believes that the clear language of the statute allows the Commission to alter, prospectively, the blending percentages that are applicable in year three and beyond.

(23) Likewise, in its first and third assignments of error, FES maintains that the Commission's decision that it cannot alter the blending proportions at the outset of an MRO filing is unreasonable and unlawful, and the decision not to modify the blending proportions is unreasonable and contrary to evidence. FES insists that the Commission has the authority to approve Duke's modified blending proposal, with FES's proposed modification, and the Commission should have done so, because: the price projections set forth on the record are not speculative; the decision not to credit Duke's price projections is contrary to statute; projections of data are routinely relied on in other cases; and, by rejecting the MRO, customers were deprived of lower prices.

(24) GCHC, OPAE, and OMA, in their memoranda contra the applications for rehearing, state that the Commission's finding that it may not prospectively alter the blending percentages set forth in Section 4928.142(D), Revised Code, prior to year two, is the correct interpretation of the statute. OMA agrees with the Commission's conclusion that, to consider ending the blending period at the end of year two, as proposed by Duke, would be premature and would require the Commission to prejudge circumstances that are not present currently and are not reflected in the record. GCHC notes that, while the statute might permit a blending period shorter than five years, if there is justification for making an alteration beginning in year two or later, such a determination is premature in an initial MRO application. In addition, OCC submits that the statute does not allow the Commission to alter the proportions of the blend before it is able to compare the price that comes out of the competitive bid to the current SSO price.

(25) Upon consideration of Duke's third assignment of error and FES's first and third assignments of error, the Commission finds it necessary to clarify the intent of our order regarding the Commission's authority to alter the blending period. The evidence presented by Duke in support of its proposal to alter the blending period, at this time, did not meet the statutory requirement and; therefore, based on the record, we concluded it would be premature for us to even consider altering the blending period. It is clear from the order that the Commission comprehensively reviewed the statute and the arguments in this case and determined that, while the Commission may consider altering the blending proportions, such deliberation may not take place until the second year of the MRO. Duke and FES have raised no issue that was not already considered by the Commission in the order; accordingly, Duke's third assignment of error, and FES's first and third assignments of error should be denied.

Completeness of the MRO Application

(26) In our order, the Commission determined that, in light of the fact that Duke failed to file an application for a five-year MRO, as required by statute, Duke's application is not an application within the meaning of Section 4928.142, Revised Code, because, on its face, it was deficient. Therefore, the application was determined to be in noncompliance with the statute and the Commission concluded that the case could not proceed as filed.

(27) In its fourth assignment of error, Duke submits that the Commission's determination that it cannot pass upon the application, as submitted, is unlawful and unreasonable because it effectively forces Duke to file an application that conforms to an improper statutory interpretation.

(28) GCHC opposes Duke's fourth assignment of error stating that the Commission's determination that it cannot pass on the application, as submitted, was lawful and reasonable and does not force Duke to file an application that conforms to an improper statutory interpretation. GCHC submits that, because Duke did not provide the information required for the full five-year term, Duke's application suffers from a fundamental defect. OPAE agrees that the Commission's decision and rationale on this point is in accordance with the statute; therefore, the case could not proceed. OCC also agrees that Duke's fourth assignment of error should be denied.

(29) Our order reviewed the record, in total, and found that the application, as filed and litigated, did not comply with the statutory mandate that an initial MRO must include a five-year blending period and was not an application within the meaning of Section 4928.142, Revised Code. While we understand that Duke does not agree with our statutory interpretation, to say that our decision was unreasonable and unlawful simply because we did not agree with Duke's legal position does not constitute sufficient grounds for rehearing. Duke has raised nothing new on rehearing that would warrant reconsideration; therefore, Duke's fourth assignment of error should be denied.

CBP Requirements, Section 4928.142(A)(1), Revised Code

(30) Section 4928.142(A)(1), Revised Code, requires that an MRO be determined through a CBP that provides for all of the following: an open, fair, and transparent competitive solicitation; a clear product definition; standardized bid evaluation criteria; oversight by an independent third party; and evaluation of submitted bids prior to selection of the least-cost bid winner(s). The Commission is mandated by Section 4928.142(A)(2), Revised Code, to adopt rules concerning the conduct of the CBP and the qualifications of bidders, which foster supplier participation in the CBP and are consistent with the requirements of Section 4928.142(A)(1), Revised Code. Applicants filing an MRO are required to detail their

compliance with the requirements of Section 4928.142(A)(1), Revised Code, and the Commission's rules promulgated under Section 4928.142(A)(2), Revised Code.

(31) In its order, the Commission determined that Duke failed to present sufficient information to satisfy three of the five requirements set forth in Section 4928.142(A)(1), Revised Code. On the three deficient areas, the Commission found:

(a) With regard to an open, fair, and transparent competitive solicitation, Duke failed to provide vital information regarding a five-year blending period that would enable the Commission to consider its proposal, e.g., pro forma financial information and a comparison of the projected market prices to the projected legacy ESP prices. The record reflects that Duke had limited alternative retail rate options and that Duke had not demonstrated the MRO would promote the policies set forth in Section 4928.02, Revised Code, regarding the promotion of demand-siding management, time-differentiated pricing, and the implementation of advanced metering infrastructure. Furthermore, the Commission found that, absent a reasonable load cap, the CBP may not elicit an open and fair solicitation. Similarly, additional information regarding the process for establishing a reservation price and the consequences of invoking the reservation price was required for the Commission to determine if the process is open, fair, and transparent. (Order at 34-36.)

(b) With regard to a clear product definition, there were legitimate concerns raised on the record which called to question whether the application complied with the statute, including the need for further explanation of alternative methods of procurements and issues pertaining to the Master Standard Service Offer Agreement. Not only did the proposed MRO not include the requisite information for a five-year blending period, but, absent a showing that the proposed evolution of the auction product complies with the statutory directives for a reasonable transition to market-based rates that provide

consumers clear and meaningful choices, the Commission determined that it could not conclude that the proposed CBP provides a clear product definition. (Order at 41-42.)

(c) With regard to oversight by an independent third party, as proposed by Duke in the application, a single auction manager could have control over the CBP permanently. The Commission found that, in order to eliminate the risk that the auction manager could lose its independence, the auction manager should be selected by the Commission, through a request for proposal (RFP) issued by the Commission and the Commission should supervise the auction manager. (Order at 43-44.)

(32) In its fourth assignment of error, FES asserts that the Commission's concerns regarding the absence of a load cap are unreasonable and not supported by the evidence. Therefore, FES urges that the Commission grant rehearing on this issue and find that Duke's proposal, which does not include a load cap, is reasonable and in compliance with the statute.

(33) OPAE, in its memorandum contra, asserts that it is reasonable for the Commission to require a load cap; therefore, FES's request for rehearing on this issue should be denied.

(34) In our determination of whether the CBP set forth in the MRO will elicit an open and fair solicitation, the Commission reviewed all aspects of the CBP presented and the concerns raised by various parties on the record. One concern raised by Staff was the absence of a load cap. The fact that the application did not propose a load cap and Duke did not adequately respond to those concerns, such that the Commission could consider all sides of this issue, led the Commission to provide guidance in the order directing Duke to address this issue in any future application containing a proposal for a CBP. Accordingly, we find that FES's request for reconsideration set forth in it fourth assignment of error is without merit and should be denied.

(35) In its fifth assignment of error, Duke maintains that the Commission's finding that Duke had not presented sufficient information to satisfy the open, fair, and transparent competitive

solicitation requirement, the clear product definition requirement, and the requirement for oversight by an independent third party, pursuant to Section 4928.142(A)(1), Revised Code, artificially and unreasonably imposes additional requirements on the CBP in an MRO, beyond the statutory requirements. Specifically, Duke asks that the Commission reevaluate its commentary on these issues in light of the Commission's approval of the application in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan,* Case No. 10-388-EL-SSO (*FirstEnergy 10-388 Case*). According to Duke, the company relied heavily on the Commission-approved plan in the *FirstEnergy 10-388 Case,* which the Commission found met the requisite statutory requirements. Duke also argues that the Commission's analysis of the competitive solicitation portions of the application, including the discussion of retail rate options, does not relate to the statutory requirements for a CBP. Duke indicates that the Commission overlooked and misunderstood the significance of the proposed auction schedule and, therefore, the Commission should reconsider its concerns on this issue. Also, Duke believes that, contrary to the Commission's opinion, it provided sufficient information on alternative methods of procurements. Finally, Duke contends that the Commission unlawfully imposed the requirement that the auction manager should be selected by an RFP and that the Commission should oversee the auction manager.

(36) In its memorandum contra, GCHC agrees that the Commission's determination that the information presented on the record by Duke was not sufficient to satisfy the statutory requirement that the CBP provides for an open, fair, and transparent competitive solicitation, a clear product definition, and oversight by an independent third party was reasonable. GCHC asserts that, while Duke believes that its application must be approved and points to the Commission's decision in the *FirstEnergy 10-388 Case,* there is no such legal requirement; Duke must prove that its proposal is appropriate for the circumstances in Duke's market.

(37) The Commission would first note that the *FirstEnergy 10-388 Case* is distinguishable from the instant case because, not only did the Commission consider and approve a stipulation between the parties in that case, but the application and stipulation in that case

reflected an ESP, not an MRO. An ESP application is considered under Section 4928.143, Revised Code, which is distinct from and has different criteria for consideration than an MRO under Section 4928.142, Revised Code. The Commission must consider the criteria in Section 4928.142, Revised Code, in light of the policies of the state of Ohio under Section 4928.02, Revised Code, and the fact that an MRO represents an irrevocable step that abandons the ESP option and moves toward market-based pricing. The Commission thoroughly reviewed the evidence of record in this case specific to Duke's MRO proposal, and, in our order, we provided guidance for Duke to consider for future filings. The guidance referenced as a concern by Duke in its application for rehearing does not constitute the imposition of additional requirements; rather, the Commission is providing feedback and information for Duke's consideration in the filing of its next SSO application. Accordingly, we find that Duke has raised no arguments that would warrant rehearing on this issue; therefore, its fifth assignment of error should be denied.

Filing of an MRO versus and ESP

(38) In its seventh assignment of error, Duke asserts that the Commission's repeated criticism of the company's decision to file an MRO, rather than an ESP, unlawfully and unreasonably creates a hostile forum for an MRO-based SSO, notwithstanding that it is an approved method for submission of an SSO. Duke believes that the Commission, in its order, admonished the company for filing an MRO, as opposed to an ESP.

(39) In its memorandum contra Duke's rehearing request, GCHC states that the Commission's criticism of Duke's application was reasonable and did not improperly disadvantage an MRO application when compared to an ESP application. GCHC notes that, while Duke points to the Commission's decision in the *FirstEnergy 10-388 Case* to support its position, Duke fails to appreciate that there are major distinctions between Duke's case and the *FirstEnergy 10-388 Case*, e.g., since FirstEnergy does not own generation, it was not bound by the five-year blending requirement. Moreover, GCHC asserts that Duke failed to sustain its burden of proof in the instant case.

(40) The Commission notes that nowhere in our order in this case does the Commission criticize Duke's decision to file an MRO, rather than an ESP. Duke seems to believe that we were admonishing the

company for filing an MRO; that is not the case. Rather, as we stated in our order, the reason we addressed issues, in detail, was to provide useful guidance for any future application filed by Duke, whether it is another MRO or an ESP. Our analysis of the record could have ended after our interpretation of the statute and our determination that the application was in noncompliance. However, regardless of the fact that Duke did not comply with the statute, the Commission went to great lengths in the order to clearly consider the issues raised on the record and provide Duke with guidance for future SSO applications. The order in this case provides a thorough recitation of the evidence of record and then proceeds to objectively analyze the record in relation to the applicable statutory requirements for the MRO proposed by Duke. Therefore, the Commission concludes that Duke's seventh assignment of error is without merit and should be denied.

Rate Design

(41) In our order, the Commission considered that the policy of the state, as codified in Section 4928.02, Revised Code, requires the Commission to ensure the availability of unbundled and comparable retail electric service that provides customers with the supplier, term, price, conditions, and quality options they elect to meet their respective needs. In considering the state policy, the Commission concluded that Duke did not demonstrate how its proposed rate design furthered the state policy by providing customers who were traditionally served on a demand rate schedule an option to meet their needs without creating a significant rate increase. After reaching this conclusion, the Commission directed Duke to several areas that needed to be addressed in any subsequent SSO application. (Order at 55-56.)

(42) In its sixth assignment of error, Duke avers that the Commission 's conclusion that Duke did not demonstrate that its proposed rate design advances the state policies enumerated in Section 4928.02, Revised Code, is against the manifest weight of the evidence and imposes additional requirements that are unnecessary and not required under Section 4928.142, Revised Code.

(43) In its memorandum contra, Kroger points out that Duke did not demonstrate why its choice to adopt a rate design that dramatically and negatively impacts high load factor customers on existing demand-based billing schedules is well-reasoned.

(44) Initially, the Commission notes that, as we stated previously, in our order, we took the opportunity, after determining that Duke's MRO application was not in compliance with Section 4928.142, Revised Code, to give Duke additional guidance regarding what information Duke could provide so that any future filings would be more likely to conform to state policy. In its application for rehearing, Duke does not explain how the Commission reached an improper conclusion. Therefore, the Commission finds that Duke has not raised any issue that would lead us to believe that our determination that Duke failed to demonstrate how its proposed rate design advanced state policy was in error. Accordingly, Duke's sixth assignment of error is without merit and should be denied.

Riders

(45) The Commission determined, in its order, that Duke's supplier cost reconciliation rider (Rider SCR), legacy generation rate rider (Rider GEN), fuel and purchased power rider (Rider FPP), environmental investment rider (Rider EIR), regional transmission organization rider (Rider RTO), and base transmission rider (Rider BTR), and its rider to reconcile over- and under recovery of ESP-era rider (Rider RECON) could not be approved as proposed in the application for various reasons. (Order at 56-75.)

(46) In its eighth assignment of error, Duke argues that the Commission erred in determining that Riders RECON, SCR, GEN, FPP, EIR, RTO, and BTR could not be approved as proposed in the application, because the Commission's determination is not supported by the applicable statutes, which permit the recovery sought by Duke under each rider. In addition, Duke asserts that the decision is not supported under the corresponding rationales in the Commission's decision in the *FirstEnergy 10-388 Case*, which permit recovery under the same types of riders as proposed in Duke's application.

(47) Wal-Mart, in its memorandum contra, asserts that Duke did not raise anything substantively new in its application for rehearing and simply reiterated the evidence and arguments previously considered and rejected by the Commission. OPAE, OCC, and GCHC opine that the Commission correctly rejected Riders RECON and SCR because, as proposed, those riders would recover costs from shopping customers who would not receive the benefit of those costs. OPAE, OCC, and GCHC agree that, with respect to

Riders EIR, FPP, and Gen, the Commission's conclusion was correct and Duke did not explain how these riders would work together and how the riders would fluctuate under a five-year blending period. In addition, OPAE, OCC, and GCHC agree that RTO costs passed through Riders RTO and BTR should be explored in a separate proceeding. IEU asserts that, because the Commission's determination of Duke's ability to recover RTO-related costs was only given as guidance, it is not a proper subject for an application for rehearing, as the Commission decided that Duke's MRO application could not proceed as filed.

(48) Upon consideration of Duke's eighth assignment of error, the Commission finds that Duke has raised nothing new on rehearing that would warrant reconsideration of our prior decision. Moreover, our conclusion in the order, with respect to Duke's proposed riders, was only offered as guidance and would not be binding on a future application. Accordingly, Duke's eighth assignment of error is without merit and should be denied.

It is, therefore,

ORDERED, That the applications for rehearing filed by Duke and FES be denied. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

CMTP/KLS/dah

Entered in the Journal
MAY 04 2011

Betty McCauley
Secretary

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

CONCURRING OPINION OF CHAIRMAN TODD A. SNITCHLER AND COMMISSIONER ANDRE T. PORTER

With regard to the issue of the timing of the decision to alter the blending period, we agree with the conclusion of the majority that the assignments of error raised by Duke and FES should be denied due to the fact that there was a lack of sufficient evidence presented in support of the request for alterations to the blending percentages established in division (D) of Section 4928.142(D), Revised Code. However, we take no position with regard to when the Commission may exercise its discretion pursuant to division (E) of Section 4928.142, Revised Code, to alter the proportions specified in division (D) to mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price.

Todd A. Snitchler, Chairman

Andre T. Porter, Commissioner

Entered in the Journal

MAY 04 2011

Betty McCauley

Betty McCauley
Secretary