

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Application of Duke)
Energy Ohio, Inc. for Authority to Establish)
a Standard Service Offer Pursuant to)
Section 4928.143, Revised Code, in the) Case No. 11-3549-EL-SSO
Form of an Electric Security Plan,)
Accounting Modifications, and Tariffs for)
Generation Service.)

In the Matter of Application of Duke)
Energy Ohio, Inc. for Authority to Amend) Case No. 11-3550-EL-ATA
its Certified Supplier Tariff, P.U.C.O. No.)
20.)

In the Matter of Application of Duke)
Energy Ohio, Inc. for Authority to Amend) Case No. 11-3551-EL-UNC
its Corporate Separation Plan.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, considering the above-entitled applications, the testimony, the applicable law, the proposed stipulation, and other evidence of record, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Amy B. Spiller, Elizabeth H. Watts, Rocco O. D'Ascenzo, and Jeanne W. Kingery, 2500 Atrium II, 139 East Fourth Street, Cincinnati, Ohio 45201, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by John H. Jones, Assistant Section Chief, and Steven L. Beeler and Devin D. Parram, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Michael J. Settineri, 52 East Gay Street, Columbus, Ohio 43216, on behalf of Constellation New Energy, Inc., and Constellation Energy Commodities Group, Inc.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43216, on behalf of the Retail Energy Supply Association and PJM Power Providers Group.

Chester, Wilcox & Saxbe, LLP, by Mark S. Yurick and Zachary D. Kravitz, 65 East State Street, Suite 1000, Columbus, Ohio 43215, on behalf of The Kroger Company.

Bruce J. Weston, Interim Ohio Consumers' Counsel, by Jeffery L. Small, Joseph P. Serio, and Melissa Yost, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, Frank P. Darr, and Joseph E. Olicker, 21 East State Street, 17th Floor, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, on behalf of the city of Cincinnati.

Boehm, Kurtz & Lowry, by David F. Boehm, Michael L. Kurtz, and Jody M. Kyler, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

Trent A. Dougherty, Nolan Moser, and Cathryn N. Loucas, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212, on behalf of Ohio Environmental Council.

Douglas E. Hart, 441 Vine Street, Suite 4192, Cincinnati, Ohio 45202, on behalf of The Greater Cincinnati Health Council, Eagle Energy, LLC, and Cincinnati Bell, Inc.

Mark A. Hayden, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, on behalf of FirstEnergy Solutions Corp.

Bricker & Eckler, LLP, by Lisa G. McAlister and Matthew W. Warnock, 100 South Third Street, Columbus, Ohio 43215, on behalf of Ohio Manufacturers Association.

Christensen & Christensen, LLP, by Mary W. Christensen, 8760 Orion Place, Suite 300, Columbus, Ohio 43240, on behalf of People Working Cooperatively, Inc.

Tara C. Santarelli, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212, on behalf of the Environmental Law and Policy Center.

Anne M. Vogel, American Electric Power Service, 1 Riverside Plaza, 29th Floor, Columbus, Ohio 43215, on behalf of AEP Retail Energy Partners, LLC.

Gregory Poulos, 101 Federal Street, Suite 1100, Boston, Massachusetts 02110, on behalf of EnerNOC, Inc.

Joseph M. Clark, 6641 North High Street, Suite 200, Worthington, Ohio 43085, on behalf of Vectren Retail, LLC d/b/a Vectren Source.

Bailey Cavalieri, LLC, by Dane Stinson, 10 West Broad Street, Suite 2100, Columbus, Ohio 43215, on behalf of Direct Energy Services, LLC, and Direct Energy Business, LLC.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff, Special Assistant Attorney General, 52 East Gay Street, Columbus, Ohio 43216, on behalf of Miami University and the University of Cincinnati.

Covington & Burling, LLP, by William L. Massey, 1201 Pennsylvania Avenue, NW, Washington, DC 20004, and Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff, 52 East Gay Street, Columbus, Ohio 43216, on behalf of The COMPETE Coalition.

Kegler Brown Hill & Ritter, LPA, by Andrew Sonderman and Margeaux Kimbough, Capital Square, Suite 1800, 65 East State Street, Columbus, Ohio 43215, on behalf of Duke Energy Retail Sales, LLC.

Chester, Wilcox & Saxbe, LLP, by John W. Bentine, 65 East State Street, Suite 1000, Columbus, Ohio 43215, on behalf of American Municipal Power, Inc.

Vincent Parisi and Matthew White, 6100 Emerald Parkway, Dublin, Ohio 43016, on behalf of Interstate Gas Supply, Inc.

Williams, Allwein, and Moser, LLC, by Christopher Allwein, 1373 Grandview Avenue, Suite 212, Columbus, Ohio 43212, on behalf of the Natural Resources Defense Council.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, Columbus, Ohio 43216, and Eimer, Stahl, Kelvorn & Solberg LLP, by Scott C. Solberg, David M. Stahl, and Arin C. Aragona, 224 South Michigan Avenue, Suite 1100, Chicago, Illinois 60604, on behalf of Exelon Generation Company, LLC.

Behrens, Taylor, Wheeler & Chamberlain, by Rick D. Chamberlain, 6 Northeast 63rd Street, Suite 400, Santa Fe North Building, Oklahoma City, Oklahoma 73105, and Roetzel & Andress LPA, by Kevin J. Osterkamp, 155 East Broad Street, 12th Floor, Columbus, Ohio 43215, on behalf of Wal-Mart Stores East, LP and Sam's East, Inc.

McDonald Hopkins, by Matthew R. Cox, 41 South High Street, Suite 3550, Columbus, Ohio 43215, on behalf of Council of Smaller Enterprises.

Matthew J. Satterwhite and Erin C. Miller, 1 Riverside Plaza, 29th Floor, Columbus, Ohio 43215, on behalf of Ohio Power Company and Columbus Southern Power Company.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215, on behalf of Dominion Retail, Inc.

OPINION:

I. HISTORY OF THE PROCEEDINGS

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

On June 20, 2011, as supplemented on June 28, 2011, Duke filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. This application is for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.

By entry issued June 21, 2011, the attorney examiner established the procedural schedule in these cases. On June 30, 2011, a technical conference was held regarding Duke's application. By entry issued July 22, 2011, four local public hearings were scheduled in these matters for August 30, 2011, and September 8 and 9, 2011. Duke submitted proofs of publication for the hearings (Duke Ex. 3). In total, at the four local public hearings, 34 witnesses testified.

The following entities were granted intervention by entry dated July 22, 2011: Industrial Energy Users-Ohio (IEU); The Ohio Energy Group (OEG); Ohio Partners for Affordable Energy (OPAE); The Kroger Company (Kroger); Ohio Environmental Council (OEC); FirstEnergy Solutions Corp. (FES); The Greater Cincinnati Health Council (GCHC); Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation); Ohio Consumers' Counsel (OCC); Duke Energy Retail Sales, LLC (DERS); Dominion Retail, Inc. (Dominion); Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart); Ohio Manufacturers' Association (OMA); Retail Energy Supply Association (RESA); Columbus Southern Power and Ohio Power Company (AEP Ohio); AEP Retail Energy Partners LLC (AEP Retail); city of Cincinnati (Cincinnati); Eagle Energy, LLC (Eagle); People Working Cooperatively, Inc. (PWC); Council of Smaller Enterprises (COSE); Cincinnati Bell Inc. (Cincinnati Bell); Environmental Law & Policy Center (ELPC); EnerNOC, Inc. (EnerNOC); Vectren Retail, LLC d/b/a Vectren Source (Vectren); PJM Power Providers Group (PJM PPG); Direct Energy Services, LLC and Direct Energy Business, LLC (Direct Energy); Miami University and The University of Cincinnati

(Miami/UC); The COMPETE Coalition (COMPETE); American Municipal Power, Inc. (AMP); Natural Resources Defense Council (NRDC); Interstate Gas Supply, Inc. (IGS); and Exelon Generation Company, LLC (Exelon). By entries issued July 22, 2011, and September 8, 2011, the motions for admission *pro hac vice* filed on behalf of Scott C. Solberg, David M. Stahl, Arin C. Aragona, William L. Massey, and Rick D. Chamberlain were granted.

The evidentiary hearing was initially scheduled to commence on September 20, 2011. However, by entry issued August 26, 2011, the attorney examiner granted, in part, a motion filed by some of the parties; thus, the procedural schedule in these cases was extended and the evidentiary hearing was rescheduled to October 20, 2011. Subsequently, by entry issued October 5, 2011, at the request of the parties, the evidentiary hearing was rescheduled to November 3, 2011.

On October 24, 2011, a stipulation and recommendation (stipulation) was filed in these cases, purporting to resolve all of the issues in these cases (Jt. Ex. 1). The stipulation contained the agreement of Staff and all of the parties in these cases, with the exception of AEP Ohio and Dominion, which signed stating that they take no position on the stipulation and Eagle, which did not sign the stipulation.

The evidentiary hearing commenced on November 3, 2011. At the hearing, Duke presented four witnesses supporting the stipulation, and Staff, OP&E, Constellation, RESA, and Kroger each provided testimony by a witness in support of the stipulation. No testimony was presented in opposition to the stipulation.

At the hearing held in these matters, the attorney examiner granted Duke's motion for protective treatment of certain information presented on the record in these dockets on June 20 and 28, 2011, and admitted into the record Duke Exs. 2A, 6A, 10A, 10A.1, 18A. In accordance with that ruling, Duke was directed to file late-filed exhibits in this docket, which contain the portions of the documents filed under seal on June 20 and 28, 2011, for which protective treatment was denied. On November 9, 2011, Duke filed Late-filed Duke Exs. 2.1, 6.1, 10.1, 10.2, and 18.1 in the open record, as directed by the attorney examiner at the hearing. In accordance with the attorney examiner's ruling at the hearing, the unredacted versions of the documents filed on June 20 and 28, 2011, which have been admitted into the record as Duke Exs. 2A, 6A, 10A, 10A.1, 18A, should be afforded protective treatment. Rule 4901-1-24(F), Ohio Administrative Code (O.A.C.), provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this order or until May 22, 2013. Until that date, the docketing division should maintain, under seal, the information filed confidentially. Any party wishing to extend the protective order, must file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend

confidential treatment is filed, the Commission may release this information without prior notice to Duke.

On November 16, 2011, Duke filed a motion to revise Section IV.A of the stipulation stating that through an inadvertent error the name Duke was inserted in this provision, rather than PJM. In order to correct this error, Duke requests that its revision to Section IV.A of the stipulation be marked as Jt. Ex. 1.1, and that the exhibit be admitted into record. The Commission finds that Duke's motion to revise Section IV.A of the stipulation is reasonable and should be granted; therefore, Jt. Ex. 1.1 should be admitted into record.

II. DISCUSSION

A. Applicable Law

Chapter 4928, Revised Code, provides a roadmap of regulation in which specific provisions were put forth to advance state policies of ensuring access to adequate, safe, reliable, and reasonably priced electric service in the context of significant economic and environmental challenges. In reviewing Duke's application for an ESP, the Commission is aware of the challenges facing Ohioans and the electric power industry and will be guided by the policies established by the General Assembly in Section 4928.02, Revised Code, which provide that it is the policy of the state to, *inter alia*:

- (1) ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
- (2) ensure the availability of unbundled and comparable retail electric service;
- (3) ensure diversity of electric supplies and suppliers, and the development of distributed and small generation facilities;
- (4) encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management (DSM), time-differentiated pricing, and implementation of advanced metering infrastructure;
- (5) encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems in order to promote both effective customer choice and the development of performance standards and targets for service quality;

- (6) ensure that an electric utility's transmission and distribution systems are available to customer-generator or owner of distributed generation;
- (7) recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;
- (8) ensure effective retail competition by avoiding anticompetitive subsidies;
- (9) ensure retail consumers protection against unreasonable sales practices, market deficiencies, and market power;
- (10) provide a means of giving incentives to technologies that can adapt to potential environmental mandates;
- (11) encourage implementation of distributed generation across customer classes by reviewing and updating rules governing issues such as interconnection, standby charges, and net metering;
- (12) protect at-risk populations including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;
- (13) encourage education of small business owners regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources (AER); and
- (14) facilitate the state's effectiveness in the global economy.

The applicant's SSO must be consistent with these policies. *Elyria Foundry v. Pub. Util. Comm.* (2007), 114 Ohio St.3d 305.

Section 4928.14, Revised Code, provides that, beginning on January 1, 2009, electric utilities must provide customers with an SSO, consisting of either a market rate offer (MRO) or an ESP. The SSO is to serve as the electric utility's default SSO. Section 4928.143, Revised Code, sets out the requirements for an ESP. Section 4928.143(C)(1), Revised Code, provides that the Commission is required to determine whether the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

In accordance with Sections 4928.06 and 4928.141, Revised Code, the Commission promulgated rules, which are contained in Chapter 4901:1-35, O.A.C., for the purpose of considering SSO filings made by electric utilities in conformance with Chapter 4928, Revised Code.

B. Summary of Application

Along with its application filed in these cases on June 20, 2011, Duke provided supporting testimony from 17 witnesses, as well as supporting exhibits (Duke Exs. 2, 4-20, 2A, 6A, 10A, 10A.1, 16.1, 18A; Duke Late-filed Exs. 2.1, 6.1, 10.1, 10.2, 18.1).

According to Duke, the ESP set forth in the application would allow for both competition in the supply of energy and assurance of the availability of capacity. Duke proposed to supply generation service through a bifurcated structure, with capacity being supplied by the company to all customers and the energy being procured via competitive auctions to serve the customers that choose to purchase energy from Duke. In accordance with the application, Duke would provide capacity over a nine-year, five-month period, by establishing an unavoidable capacity charge, that would be adjusted annually, which would allow the company to recover the costs of supplying capacity and a reasonable rate of return. Furthermore, Duke proposed to sell the energy that is produced by its legacy generating assets, sharing most of the net proceeds of the energy and ancillary service sales with its customers; thus, lowering the universal capacity charge. Duke offered that 76 percent of the net profits from the sale of energy and ancillary service would be allocated to customers pursuant to the application. An additional portion, approximately 10 percent of the remaining net proceeds from the sale of energy and ancillary services, would support economic development in Duke's service territory. (Duke Ex. 1 at 1-2, 8, 10-12.)

Under the application, because the energy from the legacy generating assets would be sold to the market and a portion of the net profits would be returned to Duke's customers, the energy would not be available to the company's SSO load. Therefore, to supply energy to the SSO load, Duke proposed to hold periodic auctions through a competitive bid process (CPB) to obtain the lowest cost energy from competitive wholesale suppliers. Duke stated that retail competitors would continue to be able to compete for customers on the energy portion of the service. Duke proposed the CPB entail a descending-price clock auction with the first auction conducted on December 1, 2011, for delivery on January 1, 2012. In 2012, and for the remainder of the ESP, Duke proposed to conduct two auctions per year. Because the Commission has the authority to terminate the ESP, Duke's auction schedule incorporated transition periods at the end of the fourth and eighth years of the plan, at which time the supply contracts would terminate, so that there would not be any existing obligations that prevent termination of the ESP. The application provided that the auction product would be an hourly, load-following, full-requirements

tranche of the company's SSO load for energy, where a tranche is equal to 1.00 percent of Duke's total SSO load obligation for energy or a slice of the system of Duke's hourly SSO load for energy. The products included in the CBP plan included unbundled energy, ancillary service, and market-based firm transmission services. As explained in the application, Duke retained CRA International, d/b/a Charles River Associates (CRA), to design, administer, and oversee at least the first CBP. (Duke Ex. 1 at 2, 8, 12-15.)

C. Summary of Stipulation

As stated previously, a stipulation signed by Staff and all of the parties in these cases, with the exception of AEP Ohio and Dominion, which signed stating that they take no position on the stipulation, and Eagle, which did not sign the stipulation, was filed in these cases on October 24, 2011, as revised on November 16, 2011, and it has been entered into the record as Jt. Ex. 1 and 1.1. The stipulation, as revised, was intended by the signatory parties to resolve all issues in these proceedings. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the stipulation:

(1) Term of the ESP

- (a) Duke's ESP will be for a three-year, five-month period, January 1, 2012 through May 31, 2015. Duke shall file its next application, pursuant to Section 4928.141, Revised Code, for an SSO no later than June 1, 2014. This subsequent application shall make provision for SSO supply procurements via a descending-clock format CBP. The parties waive any rights they may have to contest the use of such a CBP for the purpose of establishing Duke's next SSO. A collaborative meeting will be held prior to March 31, 2014, to discuss lessons learned and potential improvements to the bid process, including, but not limited to, the need, if any, to address changes to the rules regarding switching between SSO and CRES providers, for consideration in Duke's next SSO. Through the CBP to be included in its next SSO application, Duke will seek to procure, on a slice-of-system basis, the aggregate wholesale full requirements SSO supply, which includes energy and capacity, market-based transmission service, and market-based transmission ancillary services

requirements, for the period of its next SSO. Market-based transmission services include those PJM charges and credits assigned to CRES providers and those identified on the sample PJM invoice as being assigned to wholesale suppliers. Said process shall be conducted by an independent bid manager and consistent with the bid documents submitted as a part of Duke's application, as modified in the stipulation and the attachments to the stipulation. The parties shall expressly support the use, by Duke, of such a CBP for purposes of acquiring all of the supply needed to serve its SSO load under the next SSO. The parties reserve all other rights that they may have to support, contest, or recommend modification of Duke's next SSO. Duke reserves all rights to withdraw its next SSO application.

- (b) In the event the Commission rejects Duke's next SSO application or substantially modifies it such that Duke withdraws the application, the parties acknowledge and agree that the auction-based pricing and cost-recovery provisions of the SSO structure under which Duke is operating as of May 31, 2015, shall persist until such time as a subsequent SSO is approved and not withdrawn, as provided for in Section 4928.143(C)(2)(a), Revised Code. Any such withdrawal by Duke shall be filed within 30 days following the issuance of the Commission's final order. Specifically, for the term commencing June 1, 2015, unless a new SSO is approved by the Commission and not withdrawn by Duke, prior to April 1, 2015, Duke will procure, through a descending-clock, auction-based SSO procurement process substantially similar to the auctions conducted under the ESP described herein, a full-requirements, load-following product for a term that is not less than quarterly or more than annually until a new SSO is approved and not withdrawn, with retail generation rates being determined based on the results of those auction-based SSO load procurements. The parties agree

and recommend that the Commission determine the term for the procurement process upon the filing of any Duke withdrawal of its next SSO application. For purposes of this paragraph, the parties also agree that, for so long as Duke is a fixed resource requirements (FRR) entity under PJM, it will provide capacity at the final zonal capacity price (FZCP) in the unconstrained regional transmission organization (RTO) region. For the period during which Duke participates in PJM's reliability pricing model (RPM) and base residual auction (BRA), the capacity price is the FCZP for the Duke Energy Ohio and Kentucky (DEOK) load zone region, and capacity shall be provided pursuant to the PJM RPM process. The Commission's oversight of said procurement process shall be consistent with the oversight afforded it in the ESP discussed herein. For purposes of this paragraph, a full-requirements load-following product shall include energy and capacity delivered to the DEOK load zone, as well as market-based transmission service, and market-based transmission ancillary service, plus the reasonable costs to procure.

(2) SSO Supply

- (a) Duke agrees to procure all of its energy, capacity, market-based transmission service, and market-based transmission ancillary services requirements for its SSO load, for the duration of the ESP, through the CBP outlined in the application and testimony filed in these proceedings, except as modified in the stipulation. The auction schedule shall proceed consistent with attachment A to the stipulation, which provides that the first auction will take place in December 2011, and will include 100 tranches.
- (b) Duke shall supply capacity to PJM, which, in turn, will charge for capacity to all wholesale supply auction winners for the applicable time periods of Duke's ESP with the charge for said capacity

determined by the PJM RTO, which is the FZCP in the unconstrained RTO region.

- (c) Duke will implement its retail capacity rider (Rider RC) and retail energy rider (Rider RE) to recover the costs associated with serving its SSO load, with the aggregate sum of the revenues under Riders RC and RE equal to the auction clearing prices, as converted into retail rates. Rider RC shall recover the cost of capacity and Rider RE shall recover all remaining auction costs, including energy, market-based transmission service, and market-based transmission ancillary services. Riders RC and RE are unconditionally avoidable by all non-SSO customers. Riders RC and RE will be put into effect through updated rates for each of the PJM planning years for which all tranches for the delivery period have been approved by the Commission.
- (d) Duke shall implement its conditionally avoidable supplier cost reconciliation rider (Rider SCR) to recover any difference between the payments made to suppliers for SSO service and the amount of revenue collected from Riders RC and RE. Rider SCR will also be used to recover all prudently incurred costs associated with conducting the auctions for SSO service and any costs resulting from supplier default. Rider SCR will be filed quarterly in this docket and will be subject to annual audits by the Commission. The monthly accumulated balance of over- or under-recovery will accrue a carrying charge equal to Duke's overall cost of long-term debt, as approved in its most recent distribution rate case. Rider SCR shall be avoidable by shopping customers during the time that they purchase retail electric generation service from a CRES provider, as long as the balance of said Rider is less than 10 percent of Duke's overall actual SSO revenue (*i.e.*, all revenue collected for SSO service under Rider RE, Rider RC, the reconciliation rider (Rider RECON), and the alternative energy resource requirement

rider (Rider AER-R)) for the most recent quarter for which data is available at the time of the filing. If the balance of Rider SCR becomes equal to or greater than 10 percent of Duke's overall actual SSO revenue, Duke shall apply to the Commission for confirmation that Duke should modify Rider SCR such that it becomes unavoidable (whether the balance in the rider results from over- or under-recovery). Rider SCR will again become avoidable for shopping customers if the balance of Rider SCR falls below 10 percent of Duke's overall actual SSO revenue.

- (e) Upon Commission approval of the bids, Duke shall determine the rates for Riders RE and RC by converting the clearing prices from each auction into retail rates pursuant to the methodology contained in attachment B to the stipulation. The conversion of the auction prices into Riders RC and RE will include applicable losses.
- (f) Affiliates and subsidiaries of Duke shall be permitted to participate and compete in the SSO auctions on the same fair and nondiscriminatory manner as all other participants. Duke shall not give any competitive advantage to an affiliate or subsidiary participating in the SSO auctions. Notwithstanding the above, Duke agrees that, for the period during which its electric service stability charge rider (Rider ESSC) is in place, and irrespective of ownership of its generation assets, it shall not participate in the SSO auctions. Generation assets include all generation assets currently, directly owned by Duke, whether operating or retired, but shall not include any generation assets currently owned by an affiliate or subsidiary of Duke. Rather, during said period and irrespective of ownership, Duke shall cause the energy from all of its generation assets to be sold into the day-ahead or real-time PJM energy markets, or on a forward basis through a bilateral arrangement. Any forward bilateral sales must be done at a liquid trading hub (*i.e.*, Western Hub,

AD-Hub, Cinergy Hub) at the then-current market wholesale equivalent price. Intercontinental-Exchange (ICE) or a similar publicly available document shall be used as a form of measure of the then-current market wholesale equivalent pricing. Staff, or, at the Commission's discretion, an independent auditor, shall semi-annually audit Duke's records to ensure compliance with this provision. The cost of any such audits shall be recovered through Rider SCR.

- (g) There shall be load caps applicable to each auction conducted during the term of the ESP, with no one supplier being able to bid upon or be awarded more than 80 percent of the tranches in any one auction.
- (h) The bidding process described in Duke's application, as modified in the stipulation, shall be conducted by an independent bidding manager, CRA, except as provided in the stipulation. The Commission may also retain a consultant who may monitor the bidding process, and the costs of such consultant shall be recovered under Rider SCR.
- (i) Within the first 30 days following Commission approval of the results of each auction, Staff may notify Duke of its desire to evaluate the use of an independent auction manager other than CRA. Within 30 days of such notification, Duke and Staff shall jointly: (1) confirm whether CRA will continue to serve as the independent auction manager; or (2) identify a new independent auction manager; or (3) identify a process to determine the new auction manager. In order to avoid disruption to the auction schedule, the substitution of the independent auction manager shall occur no sooner than six months after confirmation of such a substitution. If Staff does not provide notice, as set forth above, CRA shall continue to serve as the auction manager until such time as a substitution is confirmed. In no

event shall the substitution of the independent auction manager delay or otherwise alter the bidding schedule as delineated in attachment A to the stipulation or result in a modification of the CBP or bidding documents detailed in Duke's application, and as modified by the stipulation, except to revise the identification of, and contact information for, the auction manager. Any costs associated with the substitution of independent auction managers shall be recovered through Rider SCR.

- (j) The Commission may reject the results of any auction, by means of an order filed within 48 hours of the conclusion of each such auction, based upon a report from the independent auction manager or the Commission's consultant that the auction violates a specific CBP rule in such a manner so as to invalidate the auction or if the Commission determines that one or more of the following criteria were not met:
 - (i) The bidding process was over-subscribed based upon bidder indicative offers submitted as part of the Part 2 Application, such that the amount of the supply bid upon was greater than the amount of the load bid out;
 - (ii) There were four or more bidders; or,
 - (iii) Consistent with the load cap, no bidder won more than 80 percent of the tranches in any one auction.

Duke witness Lee explains that the parties agreed to changes to the CBP plan that was proposed by Duke in its initial application, with those changes being reflected in attachments A, C, F, and G of the stipulation. Mr. Lee states that attachment A to the stipulation is the schedule for Duke's auctions to be conducted for the term of the ESP and he points out that the document reflects the change in timing of the auctions due to the shorter term of the ESP, from what was originally proposed in the application. As set forth in attachment A, the first auction would include 100 tranches and take place in December 2011. Mr. Lee also explains that attachment C of the stipulation reflects the

revised bidding rules for the auctions to be conducted during the term of the ESP¹ and he points out that the rules are similar to those used as part of the FirstEnergy distribution utilities' competitive procurement for its SSO. However, Mr. Lee notes that the differences in the final document are designed to provide enhancements from what was proposed, including certain relaxed credit terms for auction participants and the provision of additional information in advance of the auction. In addition, the witness states that the stipulation also reflects changes to the Master SSO Supply Agreement. (Duke Ex. 23 at 2-4; Jt. Ex. 1 at Att. A.)

With respect to the timing of the auction, Mr. Lee offers that the auction can be conducted for delivery commencing January 1, 2012. Although Mr. Lee acknowledges that the schedule will be compressed, he explains that preparations for the auction will be occurring prior to a Commission decision on the stipulation, so that auction participants will not be unduly burdened in preparing for the auction and the December 14, 2011, auction date will not be jeopardized. (Duke Ex. 23 at 4-5, Att. RJL Supp-1.)

Duke witness Wathen explains that the SSO price paid by nonshopping customers will be determined primarily by the price that results from the procurement of energy and capacity via the CBP, which will yield bundled prices for energy and capacity on a \$/megawatt-(MW) hour basis. The resulting average rate for the bundled capacity and energy product will be decoupled so that the prices for capacity and energy can ultimately be shown separately on customers' bills as Rider RC or Rider RE. According to the witness, decoupling the capacity and energy components of the CBP auction results is simple due to the use of the PJM market price for capacity. Mr. Wathen further explains that Duke will file an application to propose a decoupling mechanism related to its energy efficiency program. Given opposition by some of the parties, Duke was unable to accomplish the objective of decoupling its distribution revenue from energy sales as part of the current cases. (Duke Ex. 22 at 4-5, 24-26.)

As explained by Mr. Wathen, Rider SCR is a means of truing up the costs of procuring SSO supply and revenue collected from customers for SSO service. According to Mr. Wathen, Rider SCR provides a means of making Duke's customers, Duke, and SSO suppliers whole for the energy and capacity procured to meet the SSO load obligation and includes: a reconciliation of the difference between revenue collected from SSO customers and the payments Duke will make to SSO suppliers for the power they actually deliver; the cost of consultants hired by Duke or Staff, if charged to Duke to administer the auction; and any other costs directly associated with the procurement process. Mr. Wathen submits that the need to reconcile the difference between revenue collected from SSO customers and the payments Duke makes to its SSO suppliers results from the

¹ Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively referred to herein as FirstEnergy).

combination of differences in rate design among the classes and the fact that switching is not uniform across all rate classes. (Duke Ex. 22 at 13-17.)

With respect to Rider ESSC, Duke witness Wathen avers that Rider ESSC is necessary because Duke is required to supply capacity for Duke's entire footprint until at least the 2015/2016 PJM planning year. Duke will satisfy its obligation, in part, with its generation assets. Moreover, Duke has agreed that its generation assets will only participate in the wholesale PJM day-ahead and real-time energy markets for the first three calendar years of the ESP. According to Mr. Wathen, Rider ESSC is a means of providing economic stability and certainty during the term of the ESP, while recognizing the value of Duke's commitment of its capacity and the separation of the generation assets. (Duke Ex. 22 at 18-19.)

Duke's load factor adjustment rider (Rider LFA) is a mechanism that only applies to nonresidential, demand-metered, rates, and is an unavoidable demand charge for all billed kilowatts (kW) of demand and a corresponding unavoidable energy credit for all kW hours (kWhs) of usage designed to stabilize retail prices by enhancing some of the benefits associated with high-load factor customers under current rates. Mr. Wathen explains that the intent of Rider LFA is to recognize that customers that maintain a higher than average load factor are generally more efficient users of electricity, in that their pattern of consumption is not as volatile as a low load factor, higher energy user. High-load factor customers are typically more sensitive to volumetric energy charges as well, which suggests that a rider such as Rider LFA will serve to mitigate the impact on energy intensive industries. Rider LFA will have no impact on residential and other nondemand metered classes. (Duke Ex. 22 at 19-20.)

Rider AER-R will, according to Duke witness Wathen, recover Duke's costs to comply with Ohio's AER requirements, will be implemented through quarterly filings, will include true-up provisions, and will be subject to annual audits (Duke Ex. 22 at 21). Ms. Janson explains that, because Rider AER-R will not expire until May 31, 2015, under the terms of the ESP, Duke will be able to recover all of the reasonably and prudently incurred costs associated with Ohio's AER requirements. Moreover, the stipulation provides for the further development of Duke's existing residential SREC program. (Duke Ex. 21 at 15.)

Mr. Wathen explains that Rider RECON, as agreed to in the stipulation, is a true-up of Duke's current price-to-compare fuel and purchased power rider (Rider PTC-FPP) and Rider PTC-SRT (system reliability tracker), both of which will expire on the effective date of the ESP. Because it cannot be determined whether there will be a zero balance in these riders when they expire, the purpose of Rider RECON is to recover the collective balance of any over- or under-recovery in both of these riders. Once the balances in Riders PTC-

FPP and PTC-SRT are resolved, Rider RECON will expire. (Duke Ex. 22 at 21; Duke Ex. 1 at 24.)

Rider UE-GEN is a mechanism to recover the cost of bad debt associated with generation service. Mr. Wathen explains that Duke will modify its purchase of accounts receivable (PAR) program to reduce the discount rate suppliers pay for this service to zero percent, with the PAR program working like it does in its current form. Rider UE-GEN will be initially set at zero. Duke will file its initial application to set Rider UE-GEN rates in conjunction with its filing for Rider EU-ED in May 2012. (Duke Ex. 22 at 22-23.)

(3) Transmission Services

Transmission services shall be provided consistent with the May 25, 2011, opinion and order issued by the Commission in *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of the Establishment of Rider BTR and Associated Tariff Approval*, Case Nos. 11-2641-EL-RDR, *et al.*, except that PJM Schedule 1 (Scheduling, System Control, and Dispatch) shall not be included in Duke's base transmission rate rider (Rider BTR) and will be billed directly to wholesale auction winners and CRES providers by PJM.

(4) Capacity for Shopping Customers

Duke shall supply capacity resources to PJM, which, in turn, will charge for capacity resources to all CRES providers in its service territory for the term of the ESP, with the exception of those CRES providers that have opted out of Duke's FRR plan, for the period during which they opted out. During the term of the ESP, PJM shall charge CRES providers for capacity as determined by the PJM RTO, which is the FZCP in the unconstrained RTO region, for the applicable time periods of its ESP. When computing the capacity allocations for PJM, Duke shall use an allocation formula in common use in PJM.

(5) Future Capacity Supply

Duke will provide its generating unit commitment information to PJM as soon as reasonably possible, but no later than February 1, 2012. Provided that Duke does

not withdraw this ESP prior to February 29, 2012, it will terminate its election of an FRR plan and provide written notice by March 2, 2012, to the PJM Office of Interconnection of its intent to participate in the RPM and the BRA for the 2015/2016 planning year. If Duke is required to make a filing with the Federal Energy Regulatory Commission (FERC) to terminate its FRR status for the 2015/2016 planning year, the parties agree not to intervene in said proceeding for the purpose of contesting, opposing, or otherwise objecting to the termination of the election; nor shall the parties seek to delay the proceeding. Nothing herein prohibits the parties from intervening in such proceeding for the purpose of supporting the filing. In the event Duke is precluded from terminating its FRR plan for the 2015/2016 planning year and, in addition, the Commission permits full legal corporate separation, Duke will provide notice to PJM no later than March 2013, that it intends to participate in the RPM and BRA for the 2016/2017 planning year. Further, in the event Duke is precluded from terminating its FRR plan for the 2015/2016 planning year, it shall supply capacity to PJM, which, in turn, shall charge all wholesale auction winners, generation suppliers for the percentage of income payment plan (PIPP) contract load, and CRES providers for capacity as determined by the PJM RTO, which is the FZCP in the unconstrained RTO region.

(6) Renewable Energy Credits

- (a) Duke will implement Rider AER-R, as proposed in its application, to recover the costs incurred in complying with the requirements of Section 4928.64, *et seq.*, Revised Code. Rider AER-R shall not expire upon the termination of the ESP on May 31, 2015, but instead shall continue in order to enable recovery of all reasonable and prudently incurred costs for the acquisition of renewable energy credits (RECs), including brokerage fees, REC tracking participation expenses, gains and losses realized from the sale of RECs, and carrying costs at the long-term cost of debt, as approved in

Duke's most recent distribution rate case. Rider AER-R shall remain avoidable for customers taking generation service from a CRES provider. Rider AER-R will be filed quarterly and will include true-up provisions, with annual audits conducted by Staff, or an independent auditor at the discretion of the Commission, in a manner similar to that employed with respect to Duke's current Rider PTC-FPP.

- (b) Within 60 days of the issuance of a final order adopting the stipulation, Duke will engage in collaborative discussions with interested parties to prepare an application to revise certain elements of the current Section 4928.64, Revised Code, residential solar REC (SREC) purchase program. With the common goal of expanding customer participation in the program, Duke will work with the signatory parties to identify mutually agreeable modifications aimed at enhancing clarity, transparency, and certainty of contractual terms. These changes may include, but may not be limited to, features such as the assignment of a known SREC price over the length of the contract, an up-front rebate with certain output standards, or another mutually agreed solution as yet to be developed. If the parties are unable, within 60 days of the start of the collaborative process, to agree on changes to Duke's existing SREC tariff, Duke shall file a letter at the Commission indicating that the parties could not reach agreement. In such event, the other parties retain the right to petition the Commission to make changes to Duke's existing SREC tariff. The Commission will become the final arbiter in the event of such a dispute.
- (c) Within 60 days of the Commission's issuance of a final order adopting the stipulation, Duke will initiate collaborative work in consultation with the OEC, ELPC, and other interested signatory parties on an evaluation and report on combined heat and power.

(7) Ohio Policy

- (a) For calendar years 2012, 2013, and 2014, of the ESP, Duke shall recover annually, via an unavoidable generation charge, Rider ESSC, an amount intended to provide stability and certainty regarding Duke's provision of retail electric service as an FRR entity while continuing to operate under an ESP.² Duke shall be permitted to implement a Rider ESSC rate to collect \$110 million per year for a period of three years commencing January 1, 2012, with the collection to be trued up annually and the total equal to \$330 million, allocated in accordance with attachment B to the stipulation. The revenue collected under Rider ESSC shall stay with Duke and shall not be transferred to any subsidiary or affiliate.
- (b) For calendar year 2012, Duke commits to a \$1 million contribution to support economic development efforts in its service territory. For each of the two remaining calendar years of the ESP, Duke agrees to provide \$1 million annually, to support economic development efforts, provided Duke's return on equity (ROE), as determined in its then most recent annual significantly excessive earnings test (SEET) review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation (DEC) shareholders and Duke shall have sole discretion to direct the use and allocation of the funding, which shall be available to customers in Duke's service territory on a competitively neutral basis and without regard to their status as a shopping or nonshopping customer.

² OCC, FES, and OMA support the stipulation. However, OCC, FES, and OMA take no position regarding Section VII.A. of the stipulation, or do not support or oppose the paragraph, so that support for the stipulation by OCC, FES, and OMA may not be used as precedent in any other proceeding. (Jt. Ex.1 at 16.)

- (c) For calendar year 2012, Duke commits to a \$100,000 contribution to OMA to support economic development and energy efficiency initiatives among its members within Duke's service territory. For each of the remaining two calendar years of the ESP, Duke agrees to provide \$100,000 annually, to support economic development and energy efficiency efforts, provided Duke's ROE, as determined in its then most recent annual SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from DEC shareholders and shall be available to OMA members in Duke's service territory on a competitively neutral basis and without regard to their status as a shopping or nonshopping customer.
- (d) For the term of this ESP, while PIPP customers will remain retail generation customers of Duke, their metered, retail load and usage will be supplied by FES at a five percent discount off the applicable residential price to compare, excluding Rider AER-R. Duke will enter into a wholesale bilateral contract with FES at such pricing for the full-requirements supply including capacity, energy, market-based transmission services, and market-based transmission ancillary services for the term of the ESP, with power flow under such wholesale contract commencing January 1, 2012. While Duke is an FRR entity, it will continue to supply the capacity at the FZCP for the unconstrained RTO region. Duke will continue to supply RECs associated with the PIPP load, as required under the AER requirements of the Commission, with cost recovery through Rider AER-R. Under the bilateral contract, FES will supply power to Duke at wholesale in an amount sufficient to meet the requirements of all PIPP customers taking service under Duke's tariffs and riders for generation service. For purposes of this section, a PIPP customer shall be defined as any customer who is a PIPP customer as of January 1,

2012, and any customer who, thereafter, is enrolled in the PIPP program during the period of this ESP. Within five days of the filing of this stipulation, Duke will enter into the bilateral agreement with FES, as referred to herein, with performance obligations thereunder expressly conditioned upon Duke's acceptance of the Commission's order approving or modifying and approving the stipulation.³

- (e) For calendar year 2012, Duke commits to a \$1 million contribution for low-income weatherization efforts in its service territory, to be administered by PWC. For each of the two remaining calendar years of the ESP, Duke agrees to provide \$1 million annually to support low-income weatherization, provided Duke's ROE, as determined in its then most recent annual SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from DEC shareholders and shall be available to customers in Duke's service territory on a competitively neutral basis and without regard to their status as a shopping or nonshopping customer.
- (f) Duke and PWC will jointly undertake a pilot energy efficiency project. This pilot will utilize Duke funds provided to PWC for low-income weatherization. PWC will use Duke dollars to leverage additional energy efficiency funds from nonutility public and private sources for both electric and gas energy efficiency for low-income households. The leveraged energy efficiency funds will provide funding for low-income weatherization services that will yield energy efficiency that is enhanced by additional improvements in the home and funded by other sources. It is anticipated that the enhanced energy efficiency services will yield better results as measured by the total resource cost test. Duke

³ RESA, Constellation, Exelon, Direct Energy, IGS, Vectren, Wal-Mart, PJM PPG, and AEP Retail support the stipulation but do not endorse Section VII, Paragraph D, of the stipulation (Jt. Ex. 1 at 18).

and PWC will provide the results of the pilot energy efficiency project to the energy efficiency collaborative and will jointly file such results with the Commission and seek the Commission's approval of inclusion of the enhanced energy efficiency attributes in Duke's portfolio of programs for energy efficiency. The project shall be available to customers in Duke's service territory on a competitively neutral basis and without regard to their status as a shopping or nonshopping customer.

- (g) For calendar year 2012, Duke commits to a \$350,000 fuel fund contribution to benefit electric consumers in its service territory who are at or below 200 percent of poverty level. The fund will be managed in conjunction with the Ohio Department of Development in a manner consistent with the operation of the fuel fund provided by Duke during the current ESP. Assistance will be provided through the agencies in the Duke service territory that provide assistance under the Emergency Home Energy Assistance Program in the Duke service territory. For each of the two remaining calendar years of the ESP, Duke agrees to provide \$350,000 in continued support of the fuel fund, provided Duke's ROE, as determined in its then most recent annual SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from DEC shareholders and shall be available to customers in Duke's service territory on a competitively neutral basis and without regard to their status as a shopping or nonshopping customer.
- (h) For calendar year 2012, Duke commits to a \$325,000 contribution for low-income weatherization efforts in its service territory in Adams, Brown, Butler, Clermont, Clinton, Highland, Montgomery, and Warren Counties. The contribution shall be made to OP&AE, which shall

receive an administrative fee of \$25,000. The funds shall be available until expended for the benefit of the appropriate agencies within Duke's service territory. Duke and OP&E shall agree to the amount of distribution to each agency, program parameters, and reporting requirements. The program parameters shall be substantially similar to the programs currently managed by OP&E for AEP, The Dayton Power & Light Company, and FirstEnergy. For each of the two remaining calendar years of the ESP, Duke agrees to provide \$325,000 annually to support low-income weatherization programs of OP&E member organizations, provided Duke's ROE, as determined in its then most recent annual SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from DEC shareholders and shall be available to customers in Duke's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer. The Duke Energy Community Partnership shall review the results of the program and make recommendations regarding continuation of the program as a part of Duke's DSM portfolio.

- (i) Duke will continue to provide existing distribution reserve capacity at no charge for existing load for GCHC member hospitals for the term of this ESP. Duke agrees to consider similar reasonable arrangements for new hospital construction and/or expansion up to 4,000 kilovolt ampere during the term of this ESP, provided the requesting hospital(s) and Duke can reach agreement on appropriate compensation to Duke if it is necessary to upgrade facilities for the purpose of a secondary distribution service and/or reserve capacity. Duke agrees to meet with any requesting GCHC member hospitals to discuss Duke's electric distribution system serving the member hospital, including, but not limited to, any system enhancements planned and the age

and performance of the system. Also, for the term of the ESP, Duke will work with GCHC member hospitals to understand and evaluate service quality concerns, particularly with regard to secondary feeders for reliability purposes, and to enhance communication between members and Duke to facilitate better understanding of overall service quality. Duke and GCHC will hold meetings upon request to discuss, at least annually, any service quality or reliability concerns. Within 90 days of the approval of this stipulation, Duke will meet with GCHC to identify ways to leverage and better utilize Duke's nonresidential custom and prescriptive energy efficiency programs to benefit GCHC member hospitals.

For the term of the ESP, Duke agrees to continue to compensate GCHC member hospitals that participate in PowerShare agreements consistent with the terms of the PowerShare program and any subsequent program approved by the Commission.

- (j) For the term of the ESP, the parties agree to establish, on a revenue-neutral basis among all demand-metered customer classes, an unavoidable demand charge and unavoidable energy credit designed to stabilize electric service by enhancing some of the benefits associated with high-load factor customers under current rates. For customers served under rates for service at secondary distribution voltage (DS), service at primary distribution voltage (DP), and service at transmission voltage (TS), there will be an unavoidable demand charge of \$8/kW per month and a unavoidable energy credit of \$0.020961/kWh to produce net revenues of \$0 for Rates DS, DP, and TS as a group. The energy credit referred to in this paragraph is to be trued up quarterly to maintain net revenue neutrality.

- (k) UC operates a Commission-certified renewable energy generation facility at its main campus in Cincinnati which is not directly metered by Duke. For the term of this ESP, UC will establish its main campus demand usage for rate purposes, including for Rider ESSC and the load factor adjustment, by using the five coincident peak (CP) demand determinate established by PJM for purposes of assessing capacity costs. Until PJM establishes an actual demand determinate for the PJM 2012/2013 planning year, which is anticipated to occur in October 2011, Duke shall use 12,475 kW, which is the five CP demand factor for UC for the 2011/2012 PJM planning year. The commodity billing determinates for both Rider ESSC and the load factor adjustment shall be the kWh received by UC at its side of the substation.
- (l) COSE and Duke will work with small and mid-sized businesses in the Duke service territory to educate such entities with respect to services provided by both Duke and COSE related to energy efficiency during the term of this ESP. To the extent such customers can provide energy savings as a result of implementing energy efficiency measures, Duke will compensate COSE through its Commission-approved energy efficiency programs for services performed on behalf of the businesses that they work with, at a rate to be determined in the future and similar to the compensation rate paid to other vendors, provided the savings contribute to Duke's mandated energy efficiency requirements. COSE will participate in Duke's energy efficiency collaborative and provide its views and input with respect to the design of energy efficiency products and programs for small- and mid-sized businesses.
- (m) In the aggregate, the ESP, as agreed to in the stipulation, is better than the results that would be expected under an MRO and is consistent with

and advances state policy, as set forth in Section 4928.02, Revised Code, as it:

- (i) Is quantitatively better than the results expected under the MRO, as provided in attachment D to the stipulation;
- (ii) Allows customers to benefit from a fully competitive market as soon as practicable;
- (iii) Encourages and supports the development of competitive retail markets in Ohio;
- (iv) Results in stability and certainty with respect to retail electric service;
- (v) Provides for a stable electric distribution utility;
- (vi) Encourages the development of renewable resources in Ohio;
- (vii) Supports economic development;
- (viii) Provides low-income assistance;
- (ix) Ensures PIPP customers a discount from the SSO;
- (x) Continues and expands the ability of retail electric consumers served by Duke to choose from among CRES providers on a competitive basis;
- (xi) Expands wholesale competition;
- (xii) Mandates divestiture of Duke's generation assets;

- (xiii) Constitutes a state regulatory structural change, within the meaning of Section 1.81 and Section C.3 of Schedule 8.1 of the PJM Reliability Assurance Agreement (RAA); and
- (xiv) Allows Duke to terminate its FRR plan due to such state regulatory structural change, subject to any necessary governmental approvals, by providing notice of termination pursuant to Section C.3 of Schedule 8.1 of the PJM RAA at least two months prior to the May 2012 PJM Base Residual Auction.⁴

According to Duke witness Janson, the ESP reflects financial commitments by Duke for economic development and serving low-income customers. PIPP customers will be precluded from participating in customer choice; however, they will be afforded the benefit of a discounted price for generation service, via the agreement between Duke and FES to supply PIPP customers at a five percent reduction. (Duke Ex. 21 at 6-7.) The Commission notes that, if a customer is no longer a PIPP customer, they will be eligible to participate in customer choice.

(8) Generating Assets

- (a) Duke will transfer title, at net book value, to all of its generation assets out of Duke. Such transfer shall occur on or before December 31, 2014, and Duke commits to using its best commercial efforts to complete the transfer as soon as practicable upon its acceptance of a Commission order approving the stipulation and upon receipt of necessary regulatory approvals. Staff, or an independent auditor, at the Commission's discretion and with costs thereof to be recovered through Rider SCR, shall audit the terms and conditions of the transfer of the generation assets to ensure compliance with the stipulation and shall also audit Duke's compliance with Section

⁴ OCC supports the stipulation. However, OCC takes no position regarding Section VII.M. of the stipulation, or does not support or oppose that paragraph, so that OCC's support for the stipulation may not be used as precedent in any other proceeding. (Jt. Ex. 1 at 25.)

4928.17, Revised Code, and Rule 4901:1-37, O.A.C., to ensure that no subsidiary or affiliate of Duke that owns competitive generation assets has any competitive advantage due to its affiliation with Duke. The parties support Duke's request for a waiver of the Commission's rule requirements, as set forth in Rule 4901:1-37-09(B) through (D), O.A.C., relating to the sale or transfer of generating assets. Approval of the stipulation shall constitute the Commission's consent required by paragraphs (A) and (E) of that rule, and that no hearing is required under paragraphs (D) and (E) of that rule. Staff shall be provided with access to books and records in compliance with paragraph (F) of that rule.

- (b) Approval of this stipulation will serve as the Commission's approval of full legal corporate separation, as contemplated by Section 4928.17(A), Revised Code, such that the transmission and distribution assets of Duke will continue to be held by the distribution utility and all of Duke's generation assets shall be transferred to an affiliate. Full legal corporate separation will be implemented as soon as reasonably possible after necessary regulatory approvals are obtained. Following the transfer of the generation assets, Duke shall not, without prior Commission approval, provide or loan funds to, provide any parental guarantee or other security for any financing for, and/or assume any liability or responsibility for any obligation of subsidiaries or affiliates that own generating assets; provided, however, that contractual obligations arising before the signing of the stipulation shall be permitted, but only to the extent that assuming or transferring such obligations is prohibited by the terms of the contract or it is commercially infeasible for Duke to transfer such obligation to its subsidiary or affiliate, and provided further that, on and after the signing of this stipulation, Duke shall ensure that all new contractual obligations have a successor-in-interest clause that

transfers all Duke responsibilities and obligations under such contracts and relieves Duke from any performance or liability under the contracts upon the transfer of the generation assets to its subsidiaries. This does not restrict Duke's ability to receive and pass through to the subsidiary(ies) that own the generation assets equity contributions from its parent that are in support of the generation assets, nor does it restrict Duke's ability to receive dividends from the subsidiary(ies) that own the generation assets and pass through such dividend(s) to its parent. Generation-related costs associated with implementing corporate separation shall not be recoverable from customers. Any subsidiary of Duke to which generation assets are transferred shall not use or rely upon the rating(s) from credit rating agency(ies) for Duke if such subsidiary currently does not maintain separate rating(s) from the credit rating agency(ies), then upon transfer of any of the generation assets, it shall either seek to establish such rating(s) or shall tie its credit rating to DEC as soon as practicable, but no later than six months following such transfer.

- (c) The parties expressly agree that full legal corporate separation is in the public interest and, as such, they will not intervene in the FERC proceeding to transfer Duke's generation assets in order to contest, challenge, or in any way oppose the transfer. Parties are not precluded from intervening in said FERC proceeding for purposes other than those prohibited by this paragraph.⁵

Duke witness Whitlock explains that Duke's generating assets have been functionally separated from Duke, the regulated distribution utility, but that, since 2001, the energy and capacity of these plants have been dedicated to serving Duke's retail electric customers. Mr. Whitlock states that the objective of transferring the generation assets to an affiliate or subsidiary is to allow Duke to fully embrace competitive markets

⁵ OMA supports the stipulation. However, OMA takes no position regarding Section VIII.C of the stipulation, or does not support or oppose that paragraph, so that OMA's support for the stipulation may not be used as precedent in any other proceeding. (Jt. Ex. 1 at 28.)

and bring the benefits of competition in both wholesale and retail markets to Duke's customers. According to Mr. Whitlock, the transfer of the generation assets will begin immediately after the approval of this order, which serves as final approval for the transfer of the generation assets, but could potentially take as long as one year, as the transfer also requires FERC approval. (Duke Ex. 24 at 4-8; Tr. at 51.)

(9) Miscellaneous

- (a) Duke shall implement Rider RECON as proposed in Duke's application. Rider RECON shall terminate no later than two quarters after the filing of a final entry in the docket initiated by the Commission for purposes of conducting its final audit of Rider PTC-FPP.
- (b) Effective January 1, 2012, Duke shall implement Rider UE-GEN applicable to all retail jurisdictional customers including those taking generation service from a CRES provider, except for those customer accounts designated by CRES providers as not part of Duke's PAR program. Rider UE-GEN shall be avoidable by dual-billed customer accounts and customer accounts designated by CRES providers as not part of the PAR program, but shall be unavoidable by all other retail customers, including SSO customers and customer accounts designated by CRES providers as part of the PAR program. Accordingly, uncollectible expenses generated by customer accounts of CRES providers that utilize dual billing and customer accounts of CRES providers that utilize consolidated billing but are not designated as part of the PAR program are excluded from Rider UE-GEN and, instead, remain the liability of said CRES provider. Rider UE-GEN will initially be set at zero in these proceedings. Duke's initial application to establish a rate for Rider UE-GEN shall be filed in conjunction with Duke's Rider UE-ED filing. Thereafter, Duke will file annual applications to adjust Rider UE-GEN in conjunction with and governed by the same review process applicable to adjustments to Rider

UE-ED as provided in *In the Matter of the Application of Duke Energy, Inc. for an Increase in Electric Rates*, Case Nos. 08-709-EL-AIR, et al. As with Rider UE-ED, Duke shall not accrue carrying charges on the monthly unrecovered uncollectible expense balances for which recovery is sought through Rider UE-GEN. Rider UE-GEN shall be in form set forth in attachment E to the stipulation.

- (c) After the effective date of Rider UE-GEN, Duke shall purchase the customer accounts receivable of CRES providers that designate accounts to participate in the PAR program at no discount and shall pay such CRES providers for such receivables no later than twentieth day of the month after the month in which the billing occurs. Duke's Supplier Tariff shall be amended as shown in attachment E to the stipulation to memorialize this change to the PAR Program. Duke agrees to amend any existing PAR agreements with CRES providers participating in the PAR program to make them consistent with the stipulation.
- (d) Duke agrees to modify its Certified Supplier Tariff and its Electric Tariff, and to make any other tariff modifications that are necessary to eliminate the prohibition against customers enrolling in the PAR program where such customers have outstanding arrears of more than \$50 or 30 days.
- (e) CRES providers may designate which of their customer accounts will be billed using a dual-billing method, which of their customer accounts will be billed using consolidated billing but with no purchase of receivables by Duke, and which of their customer accounts will be billed using consolidated billing with purchase of receivables. Duke will accommodate different methods of billing and collections by a CRES provider, so long as alternative methods of billing and collection are distinguished as subaccounts to PJM. The responsibility for, and PJM costs related to,

creating a PJM subaccount shall be that of the CRES provider.

- (f) Duke withdraws its proposed profit sharing mechanism rider and Advance Southwest Ohio Fund, as well as the funding for same.
- (g) Duke withdraws its distribution reliability rider as proposed in these proceedings. Within 45 days of the execution of the stipulation, Duke shall file, in a separate proceeding, for Commission approval of a distribution revenue decoupling mechanism that will adjust rates between rate cases to effectively remove Duke's through-put incentive, with all parties retaining their rights to due process in such proceeding. The decoupling mechanism to be filed through such application shall not be applicable to Rates TS, DS, and DP. Nothing in this stipulation is intended, or shall be interpreted, to signify parties' agreement with such application. Further, nothing in this stipulation shall affect Duke's existing SmartGrid recovery mechanism, which shall continue under the distribution reliability infrastructure modernization rider.
- (h) Duke shall conduct collaborative meetings, on or before November 15, 2011, with all interested wholesale suppliers, retail suppliers, and transmission owners to confirm the charges from PJM that shall be paid by Duke and the charges from PJM that shall be paid by CRES providers.
- (i) Duke shall be permitted to amend its certified supplier tariff, as proposed in its application, as modified in this stipulation.
- (j) Duke agrees to withdraw from these proceedings the proposed amendment to Section XIV.C of its Third Amended Corporate Separation Plan (CSP) that, if approved, would enable Duke to provide special customer services. Duke expressly

reserves the right to seek revision of its CSP to incorporate this proposal to provide special customer services in a subsequent proceeding. Except as modified in the stipulation, Duke shall be permitted to adopt its Third Amended CSP, as proposed in its application. The Third Amended CSP will be amended to identify additional affiliates and parties to agreements following the anticipated merger of DEC and Progress Energy, Inc., and the parties agree not to oppose such amendment. Within 90 days after the effective date of full legal corporate separation, Duke agrees to file for approval of a fourth amended CSP that will address any issues with the full legal corporate separation.

- (k) The parties agree that the SEET, as provided for under Section 4928.143(F), Revised Code, shall be administered to Duke with an ROE threshold of 15 percent for the term of this ESP. The methodology for applying the SEET is outlined in attachment H to the stipulation.
- (l) During the term of this ESP, transmission voltage customers, whether shopping or nonshopping, with loads in excess of 10 MW at a single site shall have the option to annually nominate any part of their load as being subject to interruption through Duke. Any such nomination shall have an effective date no earlier than June 1, 2012. For any customer electing to nominate load subject to interruption through Duke, such load: (1) must be registered with PJM and abide by all of PJM's requirements for the demand response (DR) program chosen by the customer, by March 1 of the upcoming PJM planning year; (2) must not have been previously sold or committed to PJM or another party as a DR resource for the same planning year; and, (3) will have Duke serve as its curtailment service provider. The customer acknowledges that Duke may use such interruptible load in Duke's FRR plan and any

capacity resource revenues associated with this DR resource will be credited to the economic competitiveness fund (Rider DR-ECF). The interruptible credit for load subject to interruption will be one half of the PJM net cost of new entry (CONE) on a \$/MW-day basis for the planning year in which the interruptible load is nominated (net CONE equals 2011/2012 = \$160.76, 2012/2013 = \$276.09, 2013/2014 = \$317.95, 2014/2015 = \$342.23 per MW-day). The maximum amount of interruptible load under this program shall be 250 MW in the DEOK zone. The amount of this interruptible credit shall be recoverable by Duke through Rider DR-ECF. Duke shall file a separate application to amend Rider DR-ECF.

- (m) Duke will work with interested CRES providers and Staff to jointly develop a secure, web-based system that will provide electronic access to key customer usage and account data that can be accessed via a secure, supplier website that presents the following data and information in a format that can be automatically retrieved, by the CRES provider authorized by the customer, subject to appropriate limitations reflecting legally mandated customer privacy issues, including compliance with protections addressed in the O.A.C. and specifically including, but not limited to, Rules 4901:1-10-24 and 29, O.A.C.. The following data and information, in a format that can be automatically retrieved, will be the subject of the web-based system: account numbers; meter numbers; names; service address, including zip codes; billing address, including zip codes; email address; meter reading cycle dates; meter types; indicator if customer has an interval meter; rate code indicator; load profile group indicators, peak load contribution (PLC) and network service peak load (NSPL) values (capacity and transmission obligations); 24 months of consumption data (in kWh) by billing period; 24 months of demand data (in kW); 24 months of interval data; indicator if

SSO customer; and, identifier as to whether customer is participating in the budget billing plan.

Duke shall use commercially reasonable efforts to add to the existing web system the load profile group indicators and the customer service addresses by March 1, 2012, but shall complete such additions no later than June 1, 2012. Duke shall make a commercially reasonable effort to add the other items by June 1, 2013, but agrees to complete the additional data items no later than June 1, 2014, and will work with Staff and interested CRES providers to stage the implementation of various portions of this website, as possible. Additionally, Duke shall add an indicator to the preenrollment list, noting whether a customer is an SSO customer or is shopping, by no later than June 1, 2012.

Duke shall recover the actual costs to develop said web-based system, recovery not to exceed \$500,000, on an unavoidable basis. Duke shall be permitted to create a regulatory asset for purposes of recording said costs for future recovery through electric distribution rates. The carrying charge on said regulatory asset shall not exceed Duke's long-term cost of debt from the then most recent distribution rate case.

In addition, the following types of data would be provided via electronic data interchange (EDI) transactions: 867 historical usage (HU) and historical interval (HI); 867 monthly usage and monthly interval data; NSPL and PLC in 867HUs, 867HIs, and 814 accepted enrollment responses; and meter read cycle and load profile segment information to be in 867HUs no later than 12/31/12, as agreed to in the Ohio EDI Working Group - Change Control #82 (current rate code already included in 867HUs).

Duke shall confirm that accounts requested together in the same EDI envelope come back together, unless there would be an unnecessary delay for a particular subset of accounts. Duke shall make available, upon request, a quarterly updated sync list to CRES providers on a confidential basis showing the accounts that are enrolled with the CRES provider. The list would contain information such as service start date, bill method, NSPL values, and PLC values. Duke confirms that validation, error detection, and editing (VEE) rules and processes are now in place and will continue to be applied to raw meter read data before Duke transmits such usage data to the CRES providers via EDI.

Effective January 1, 2012, Duke shall increase the required interval meter threshold size requirement from 100kW to 200kW and will make such tariff changes as are necessary to accomplish this result.

Duke agrees to conduct a collaborative process to discuss the deployment of an electric vehicle (EV) ecosystem that works in tandem with a competitive retail market, including, but not limited to, customer education and additional billing system functionality to support various EV deployment programs and charging platforms. All interested persons shall be encouraged to participate in the EV collaborative process. The first such EV collaborative meeting shall occur in the first quarter of 2012 and continue to be held periodically, but not less often than three times a year for the first two years thereafter. At the conclusion of the EV collaborative process, the participants in the EV collaborative shall prepare a report to the Commission discussing the progress of the collaborative and any recommended regulatory or legislative changes to facilitate the development of an EV ecosystem.

Duke shall host annual meetings or conference calls with registered CRES providers to discuss supplier coordination issues affecting CRES providers, including but not limited to CRES consolidated billing.

- (n) All energy efficiency programs and rebates shall be made available at the same terms and conditions to customers, regardless of whether they purchase generation service from a CRES provider or Duke. Duke shall maintain its policy to make SmartGrid meters and data available to all customers on a competitively neutral basis and without regard to their status as a shopping or nonshopping customer.
- (o) Duke shall provide, from shareholder funds, a one-time economic development/energy efficiency grant of \$50,000 for IEU to be distributed among its members.
- (p) For the term of this ESP, Duke will maintain its existing procedures contained in its tariff (e.g., bulking of meters, power factor adjustments, demand ratchets) for metering and calculating billing determinants that are used in the calculation of retail bills.
- (q) For the term of this ESP, Duke will continue the retail real-time pricing rate (Rate RTP), Sheet No. 90. Current customer base line and billing demand history values will continue for each customer taking service under RTP as of October 18, 2011, subject to the terms of Rate RTP, as modified to be consistent with this stipulation.
- (r) Duke will reduce its switching fee, as set forth in rate certified supplier, Sheet No. 52.2, of its Certified Supplier Tariff, from \$7.00 to \$5.00. Duke will make bill-ready billing functional and available as soon as commercially and reasonably practicable, but in no event later than September

30, 2013. In addition, Sheet 52.2 of the Certified Supplier Tariff shall be modified to reduce the per-bill charges for consolidated, bill-ready billing to 50 percent of the existing rate. Duke agrees to continue its current practice of not imposing a per-bill charge for rate-ready consolidated billing services.

- (s) Retail customers in Duke's territory are permitted to participate in PJM DR programs including through aggregators of retail customers or curtailment service provider and the following conditions apply:
 - (i) Duke retail customer DR capacity may be utilized to satisfy either FRR or non-FRR capacity obligations (such as DR that clears in a PJM RPM auction);
 - (ii) Any customer that is already receiving an incentive payment through a reasonable arrangement, including but not limited to energy efficiency/peak demand reduction, economic development arrangements, unique arrangements, and other special tariff schedules that offer service discounts from the applicable tariff rates and would currently or would like to participate in PJM programs must agree to commit to the electric distribution utility the peak DR attributes that have cleared in the PJM market in a manner consistent with applicable statutes and rules at no cost to the utility for the duration of the arrangement. This provision shall not be interpreted as modifying the express specific terms of any agreement; and

- (iii) Duke may issue a request for proposal (RFP) to meet its peak demand reduction mandates under the statute.

The "Summary of Riders Impacted by the ESP," attached as attachment I to the stipulation, provides an accurate recitation of Duke's riders for electric distribution, transmission, and generation service, effective January 1, 2012. Rider RTC (regulatory transition charge) and Rider DRI (distribution reliability investment) expired for all customers on December 31, 2010.

III. CONSIDERATION OF THE STIPULATION

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559 (citing *Consumers' Counsel*, supra, at 126.) The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.*)

A. Is the settlement a product of serious bargaining among capable knowledgeable parties?

Duke witness Janson testified that the signatory parties represent a broad range of interests, regularly participate in rate proceedings before the Commission, are very knowledgeable in regulatory matters, and were represented by experienced, competent counsel. Moreover, Ms. Janson opines that all of the issues raised by the signatory parties in negotiations were thoroughly reviewed and addressed and all parties had an opportunity to express their opinions on each issue during negotiations that occurred over a period of three months and involved almost daily meetings in the weeks leading up to the filing of the stipulation. Further, parties were represented by counsel and had the additional benefit of subject matter experts. (Duke Ex. 21 at 8-9.) OPAE witness Rinebolt asserts that, in addition to numerous discussions with all parties, numerous bilateral discussions between Duke and individual parties occurred prior to reaching the stipulation (OPAE Ex. 1 at 3). Kroger witness Higgins opines that the stipulation is the product of serious bargaining, which resulted in a comprehensive and fair compromise among diverse parties with competing interests (Kroger Ex. 1 at 4).

Upon review of the stipulation, the Commission observes that, based upon the wide-range of issues addressed and resolved in the stipulation, which affect a very diverse and experienced group of parties that signed the stipulation, it is evident that the parties expended a great deal of time and effort to resolve the issues in these proceedings. The signatory parties represent interests including the company, municipalities, competitive suppliers, industrial consumers, commercial consumers, advocates for low- and moderate-income customers, environmental advocates, and Staff. Further, we note that the signatory parties routinely participate in complex Commission proceedings and that counsel for the signatory parties have extensive experience practicing before the Commission in utility matters. Accordingly, the Commission finds that the stipulation meets the first prong of the test and appears to be the product of serious bargaining among capable, knowledgeable parties.

B. Does the settlement, as a package, benefit ratepayers and the public interest?

Ms. Janson asserts that the stipulation benefits consumers and the public because it provides significant benefits across all customer groups and for other interested stakeholders, while advancing and remaining consistent with state policy (Duke Ex. 21 at 10). Mr. Higgins opines that the stipulation results in fair and reasonably priced rates for customers (Kroger Ex. 1 at 4). Mr. Rinebolt explains that the stipulation allocates funding from shareholders to meet pressing social and economic needs within Duke's service territory. Further, Mr. Rinebolt avers that the stipulation utilizes market forces to establish the price of the SSO, which will benefit consumers compared with the alternative. (OPAE Ex 1 at 4.) Constellation and RESA witness David Fein believes that the stipulation will

encourage competition in Duke's territory, which will benefit all consumers (RESA Ex. 1 at 9; Constellation Ex. 1. at 6).

Staff witness Turkenton explains some of the benefits customers will see under the proposed ESP, including increased development of competition in Duke's service territory, a discount for PIPP customers, and incentives to support economic development and energy efficiency initiatives. Moreover, Ms. Turkenton explains that the Duke auction process is similar to the one that has been successfully utilized in the FirstEnergy service territory to fulfill market-based SSO obligations. (Staff Ex. 1 at 3-7.)

As noted by the witnesses supporting the stipulation, it appears that, as a whole, the provisions of the stipulation provide benefits to all stakeholders. Not only does the stipulation, when compared to the initial application filed in these cases, provide a more straightforward approach for Duke's provision of SSO service, but the three-year, five-month term of the ESP set forth in the stipulation is more judicious. The stipulation provides safeguards and promotes an appropriate level of review during the term of the ESP, including audits and true-ups of Duke's riders, as well as audits of Duke's energy sales, transfer of generation assets, and Duke's compliance with Section 4928.17, Revised Code, and Rule 4901:1-37, O.A.C., to ensure that no subsidiary or affiliate of Duke that owns competitive generation assets has any competitive advantage due to its affiliation with Duke. Furthermore, the Commission finds that the stipulation promotes collaborative discussions amongst stakeholders for topics including, the CBP, the residential SREC purchase program, combined heat and power, a pilot energy efficiency project, energy efficiency products and programs for small- and mid-sized businesses, confirmation of the charges from PJM, and the deployment of an EV ecosystem that works in tandem with a competitive retail market.

Moreover, the Commission acknowledges that the stipulation contains provisions which promote economic development and energy efficiency as evidenced by Duke's commitment to provide support to industrial and commercial enterprises throughout the company's service territory. Duke's support for low-income ratepayers is also demonstrated in the stipulation through Duke's commitment to low-income, weatherization programs and the discounts for PIPP customers.

Accordingly, based upon the evidence on the record in these proceedings, the Commission finds that the stipulation, as a package, benefits ratepayers and promotes the public interest.

C. Does the settlement package violate any important regulatory principle or practice?

Staff witness Turkenton explains that the stipulation does not violate any important regulatory principle, but instead furthers the policy of the state to provide reasonably priced and reliable electric service and gives customers effective choices that ensure diversity of electric supply and suppliers. Moreover, Ms. Turkenton opines that, under an ESP framework, flexible regulatory treatment is achieved that could not be achieved under an MRO structure. (Staff Ex. 1 at 7-8.) Duke witness Janson further avers that the stipulation complies with all relevant and important principles and practices, and furthers those through the advancement of the competitive market in Duke's service territory in Ohio, by embracing a full competitive auction SSO and full legal separation of Duke's generating assets from its distribution utility (Duke Ex. 21 at 9-10). Kroger witness Higgins asserts that the stipulation is consistent with Ohio's regulatory principles and practices, and is consistent with Ohio law. Moreover, Mr. Higgins states that the stipulation promotes an orderly transition to market-based pricing and encourages competition by giving customers choices with respect to their electricity suppliers. (Kroger Ex. 1 at 5.)

Section 4928.02, Revised Code, establishes 14 state policy objectives the Commission must take into consideration when reviewing the proposed stipulation. When contemplating these objectives, the Commission understands that it is our responsibility to weigh the facts presented in these cases and, ultimately, ensure that consumers are provided adequate, safe, reliable, nondiscriminatory, reasonably-priced services, while also balancing the need to promote competitive options, where appropriate. Among these policy objectives is encouraging innovation and market access for demand-side retail electric service, Section 4928.02(D), Revised Code. We find that the stipulation provision at IX.H, which directs Duke to file an application for a distribution revenue decoupling mechanism that will adjust rates between rate cases to effectively remove Duke's throughput incentive, supports this goal. However, because, under this ESP, Duke will continue to recover fixed distribution costs lost as a result of energy efficiency through a rider, which is currently known as the Distribution Rider - Save-A-Watt, the Commission clarifies that the application for a distribution revenue decoupling mechanism must incorporate a proposal to adjust this rider mechanism, as well. With this clarification, the Commission concludes that, in considering the stipulation and the record in these cases, the policy objectives set forth in Section 4928.02, Revised Code, will be advanced by the provisions contained in the agreement submitted for our consideration by the stipulating parties. Accordingly, based upon the evidence of record in these proceedings, the Commission finds that the stipulation does not violate any important regulatory principles or practices.

D. Generating Assets and Corporate Separation, Section 4928.17, Revised Code

The stipulation provides that the Commission's approval of the stipulation will constitute approval of Duke's Third Amended CSP and full legal corporate separation, as contemplated by Section 4928.17(A), Revised Code, such that the transmission and distribution assets of Duke will continue to be held by the distribution utility and all of Duke's generation assets will be transferred to an affiliate (Jt. Ex. 1 at 26).

Section 4928.17, Revised Code, provides that an electric utility that, either directly or through an affiliate, engages in the business of supplying a noncompetitive retail electric service and a CRES or a product or service other than retail electric service must operate under a CSP. Pursuant to the statute, the CSP must be consistent with the policy of the state set forth in Section 4928.02, Revised Code, and achieve all of the following:

- (1) provide, at minimum, for the provision of the CRES or the nonelectric product or service through a fully-separated affiliate of the utility, and include separate accounting requirements, the code of conduct, and such other measures as are necessary to effectuate the state policy;
- (2) satisfy the public interest in preventing unfair competitive advantage and preventing the abuse of market power; and
- (3) be sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the CRES or nonelectric product or service, without compensation based upon fully-loaded embedded costs charged to the affiliate; and ensure that any such affiliate, division, or part will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service. No such utility, affiliate, division, or part shall extend such undue preference.

Chapter 4901:1-37, O.A.C., sets forth the requirements pertaining to corporate separation for electric utilities. Specifically, this chapter is applicable to the activities of the utility and its transactions or other arrangements with its affiliates, any shared services of the utility with any affiliates, and the sale or transfer of generating assets.

Pursuant to the stipulation, the parties support Duke's request for waiver of the requirements set forth in Rule 4901:1-37-09(B) through (D), O.A.C., relating to the sale or transfer of generating assets (Jt. Ex. 1 at 26). Specifically, the provisions in Rule 4901:1-37-

09(B) through (D), O.A.C., set forth the filing requirements and the procedures to be followed for an application requesting approval of the sale or transfer of generating assets.

Upon review of the stipulation, the Commission believes that the provisions contained therein provide the necessary safeguards to ensure that the statutory mandates pertaining to Duke's sale of generation assets and corporate separation are adhered to and the policy of the state is carried out. Therefore, we conclude that, to the extent necessary, Rule 4901:1-37-09(B) through (D), O.A.C., should be waived and Duke should be authorized to transfer title to all of its generation assets out of Duke, in accordance with the provisions of the stipulation. Furthermore, we conclude that Duke's full legal corporate separation and Third Amended CSP, as provided in the stipulation, are in compliance with Section 4928.17, Revised Code, and the rules contained in Chapter 4901:1-37, O.A.C., and should be approved.

- E. Is the proposed ESP more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code?

The Commission must also consider the applicable statutory test for approval of an ESP. Section 4928.143(C)(1), Revised Code, provides that the Commission should approve, or modify and approve, an application for an ESP if it finds that the ESP, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO pursuant to Section 4928.142, Revised Code.

Staff witness Turkenton believes that the ESP provides a better framework than an MRO. According to Ms. Turkenton, the ESP should be judged as a comprehensive plan that promotes fully competitive markets, promotes energy efficiency, provides rate certainty and stability, promotes economic development by making specific tangible commitments to vital industrial and commercial enterprises, and supports low-income ratepayers. (Staff Ex. 1 at 8.)

In support of the ESP, Duke witness Janson explains that, under the ESP, Duke residential SSO customers will see an approximate 11 percent reduction from their current rates. In addition, customers will realize financial benefits that are not contemplated under MRO provisions, including: \$1 million to support economic development efforts in Duke's service territory in 2012; \$1.35 million for low-income weatherization programs; and \$350,000 for a fuel fund administered by OPAE. These programs may be renewed for 2013 and 2014. (Duke Ex. 21 at 10-11.)

Duke witness Wathen points out that the ESP will result in lower overall costs for retail ratepayers than what customers would experience in an MRO, independent of any other benefits of the ESP. Specifically, Mr. Wathen explains that, on a purely mathematical basis, the net present value of the benefits to customers from Duke's ESP is approximately \$62 million greater, including the other benefits associated with the stipulation, than the total value of the alternative MRO. Accordingly, Mr. Wathen concludes that these figures contribute significantly to the conclusion that the ESP is better in the aggregate than an MRO. (Duke Ex. 22 at 30-31; Jt. Ex. 1 at Att. D.)

In addition to the mathematical benefits, Mr. Wathen explains that there are other benefits to the ESP. Specifically, Mr. Wathen explains that Duke is currently working to provide customers with more dynamic pricing options; however, customers have not taken advantage of these options due to Duke's high SSO price. With the implementation of the new ESP, Mr. Wathen opines that more Duke customers will take advantage of Duke's dynamic pricing options because there will not be such a large disincentive to take generation from Duke. (Duke Ex. 22 at 32-33.)

Duke witness Janson also explains that the ESP provides for a stable distribution utility. Specifically, she states that Rider ESSC is intended to ensure the availability of adequate, reliable, and reasonably priced electricity supply and rate stability and certainty in respect to retail electric service. Rider ESSC further is intended to protect Duke's financial integrity and ensure that the overall revenue under the ESP is adequate for Duke in its provision of an SSO. (Duke Ex. 21 at 14.)

Furthermore, Ms. Janson believes that, under the ESP, Duke will ensure that competitive markets will be realized (Duke Ex. 21 at 12-13). Likewise, Constellation witness Fein submits that the stipulation increases competition in the market place on both the wholesale level for procuring SSO energy and at the retail level by allowing for greater customer shopping, which will keep costs as low as possible and produce benefits including advancements in reliability, conservation, renewable energy development, and the ability of customers to purchase green power. Moreover, Mr. Fein explains that the ESP provides a superior platform to promote DR and energy efficiency, because consumers will pay actual market prices and have incentives to reduce or defer consumption during times when production costs are high. (Constellation Ex. 1 at 6-7; RESA Ex. 1 at 4-5.)

Having considered the evidence presented in these proceedings, the Commission agrees that the ESP, including its pricing and all other terms and conditions, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

IV. CONCLUSION

Initially, the Commission notes that attachment A to the stipulation provides a timeline for conducting the auctions pursuant to the proposed CBP. The initial auction, to take place in December 2011, will be for multiple products of 17-month, 29-month and 41-month duration, with each product for approximately one-third of the SSO supply. This arrangement allows for staggered expiration of contracts so that, in any given future year, only a portion of the load will be subject to renewal at market conditions at the time. The auctions planned for 2012 would be held to acquire product to replace the 17-month product expiring at the end of May 2013, and the auctions planned for 2013 would be held to acquire product to replace the 29-month product expiring at the end of May 2014. Given the record evidence of significant shopping levels in Duke's service territory, the Commission is concerned that the remaining level of SSO load in years 2012 and 2013 may not be sufficiently large to justify holding multiple descending-clock auctions each year, pursuant to the planned schedule. Conducting these auctions is time consuming and costly, for both the company and the auction participants. The Commission would like to determine if there are more cost-effective methods to procure the necessary supply, while assuring broad bidder participation and procurement of the supply at minimal cost. Alternatives could include, among other things, combining the planned multiple auctions into single annual auctions, or conducting the solicitations pursuant to an RFP. At this time, we believe it would be helpful to obtain additional information about this issue; therefore, the auction manager and the Commission's consultant are hereby directed to file reports in these dockets setting forth their evaluations and recommendations on this issue. These reports shall be filed no later than January 20, 2012. Interested parties may file comments on the reports by January 27, 2012, and reply comments by February 3, 2012. This expedited timeframe will allow the Commission to consider the information provided and issue a timely decision well in advance of the planned May 2012, auction.

Upon consideration of the record, we find that the stipulation satisfies the three-prong criteria employed by the Commission for consideration as to the reasonableness of a stipulation. We further find that, to the extent necessary, Rule 4901:1-37-09(B) through (D), O.A.C., should be waived and Duke should be authorized to transfer title to all of its generation assets out of Duke, in accordance with the provisions of the stipulation. Furthermore, the stipulation's proposed full legal corporate separation of Duke's generation assets, in conformance with Duke's Third Amended CSP, are in compliance with Section 4928.17, Revised Code, and the rules contained in Chapter 4901:1-37, O.A.C., and should be approved. Finally, we find that the ESP, as proposed in the stipulation, is more favorable in the aggregate than an MRO. Accordingly, having made these determinations, the Commission concludes that the stipulation, as revised, should be adopted and approved.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On June 20, 2011, as supplemented on June 28, 2011, Duke filed an application for an SSO in accordance with Section 4928.141, Revised Code.
- (3) On June 30, 2011, a technical conference was held in these proceedings.
- (4) In total, at the four local public hearings that were held in these cases on August 30, 2011, and September 8 and 9, 2011, 34 witnesses testified.
- (5) The following entities were granted intervention: IEU; OEG; OP&E; Kroger; OEC; FES; GCHC; Constellation; OCC; DERS; Dominion; Wal-Mart; OMA; RESA; AEP Ohio; AEP Retail; Cincinnati; Eagle; PWC; COSE; Cincinnati Bell; ELPC; EnerNOC; Vectren; PJM PPG; Direct Energy; Miami/CU; COMPETE; AMP; NRDC; IGS; and Exelon.
- (6) On October 24, 2011, a stipulation was filed in these cases. The stipulation contained the agreement of Staff and all of the parties in these cases, with the exception of: AEP Ohio and Dominion, which signed stating that they take no position on the stipulation; and Eagle, which did not sign the stipulation.
- (7) The evidentiary hearing in these proceedings was held on November 3, 2011.
- (8) Proofs of publication of the hearings were submitted on the record.
- (9) Duke's November 16, 2011, motion to revise Section IV.A of the stipulation should be granted and Jt. Ex. 1.1 should be admitted into the record.
- (10) In accordance with the attorney examiner's ruling at the hearing, Duke Exs. 2A, 6A, 10A, 10A.1, 18A, should be granted protective treatment for a period of 18 months.

- (11) Duke's application was filed pursuant to Section 4928.143, Revised Code, which authorizes the electric utilities to file an ESP as their SSO.
- (12) The Commission finds that the stipulation meets the three criteria for adoption of stipulations, is reasonable, and should be adopted.
- (13) Rule 4901:1-37-09(B) through (D), O.A.C., should be waived and Duke should be authorized to transfer title to all of its generation assets out of Duke, as provided in the stipulation.
- (14) Duke's full legal separation and Third Amended CSP are in compliance with Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C., and should be approved.
- (15) The proposed ESP, including its pricing and all other terms and conditions is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.
- (16) The auction manager and the Commission's consultant shall file reports setting forth their evaluations and recommendations regarding methods to procure the necessary supply by January 20, 2012. Comments and reply comments on the reports are due by January 27, 2012, and February 3, 2012, respectively.
- (17) The stipulation, as revised, is reasonable and should be approved and adopted.

ORDER:

It is, therefore,

ORDERED, That Duke's motion to amend Section IV.A of the stipulation be granted and Jt. Ex. 1.1 be admitted into the record. It is, further,

ORDERED, That Duke Exs. 2A, 6A, 10A, 10A.1, 18A, be granted protective treatment. The docketing division shall maintain these documents under seal for a period of 18 months from the date of this order, or until May 22, 2013. It is, further,

ORDERED, That Rule 4901:1-37-09(B) through (D), O.A.C., be waived and Duke be authorized to transfer title to all of its generation assets out of Duke, as provided in the stipulation. It is, further,

ORDERED, That Duke's full legal separation and Third Amended CSP be approved. It is, further,

ORDERED, That the auction manager and the Commission's consultant file reports setting forth their evaluations and recommendations regarding methods to procure the necessary supply, as discussed herein, by January 20, 2012. Comments and reply comments on the reports are due by January 27, 2012, and February 3, 2012, respectively. It is, further,

ORDERED, That the stipulation filed in these proceedings, as revised, be approved and adopted. It is, further,

ORDERED, That Duke take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

ORDERED, That Duke is authorized to file four complete copies of its tariffs in final form consistent with this opinion and order. DEO shall file one copy in these dockets and one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR). The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, The effective date of the new rates shall be a date not earlier than the date upon which four complete, printed copies of the final tariff page is filed with the Commission. It is, further,

ORDERED, That Duke shall notify all affected customers via bill message, bill insert, or separate mailing within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability, and Service Analysis Division at least 10 days prior to its distribution to customers. It is, further,

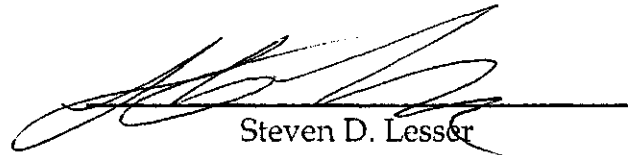
ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

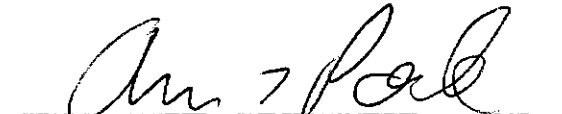
ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

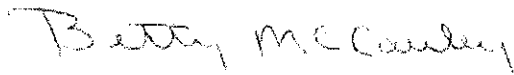

Andre T. Porter

 ^{See} ~~Corran~~
Cheryl L. Roberto

CMTP/KLS/vrm

Entered in the Journal

NOV 22, 2011


Betty McCauley
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Application of Duke)
Energy Ohio, Inc. for Authority to Establish)
a Standard Service Offer Pursuant to)
Section 4928.143, Revised Code, in the) Case No. 11-3549-EL-SSO
Form of an Electric Security Plan,)
Accounting Modifications, and Tariffs for)
Generation Service.)

In the Matter of Application of Duke)
Energy Ohio, Inc. for Authority to Amend) Case No. 11-3550-EL-ATA
its Certified Supplier Tariff, P.U.C.O. No.)
20.)

In the Matter of Application of Duke)
Energy Ohio, Inc. for Authority to Amend) Case No. 11-3551-EL-UNC
its Corporate Separation Plan.)

CONCURRING OPINION OF COMMISSIONER CHERYL L. ROBERTO

I join my colleagues in approving the stipulation entered in these matters. It represents a thoughtful pathway to reliance upon electric retail competition, this State's goal as espoused in S.B. 3 adopted in 1999. The parties have clearly endeavored to structure a balanced route to this ultimate destination. Since 2008, with the adoption of S.B. 221, this Commission has been granted additional tools to ease the transition from a vertically integrated regulated electricity industry to reliance upon retail competition. Over the past three years, we have utilized those tools to create a hybrid regulatory structure - something between regulation and not-quite market. Because I am concerned that lingering too long between the two regulatory structures can only harvest the worst of both worlds for Ohio's residential, commercial and industrial customers, I join in accepting a stipulation that moves Ohio inexorably to reliance upon retail competition.

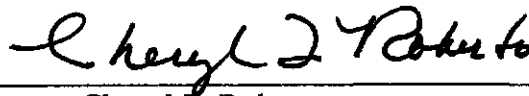
I write separately to give voice to my apprehension that a truly competitive retail market in electricity, with our current technology, is an illusion. Fundamentally, I agree that load-following and peaking generation has reached the stage that competition is possible and that competition in this realm can thrive. Markets for demand response and energy efficiency bolster the competition in meeting these generation needs. Thus, I am fully supportive of competition to meet generation needs for load-following and peaking.

However, I see no real economic potential, with our current technology, that base-load generation will be built in a competitive environment prior to the market

experiencing damaging and painful shortages. Investment in base-load generation is tremendously capital intensive and cannot reasonably be achieved in modular fashion (with the exception of plant efficiency investments which can provide additional generation in an incremental fashion within incumbent generation facilities). It requires a huge commitment in capital that in a competitive environment is simply too risky without a benefit to cost ratio that can only be achieved when shortages exist. At that point, the time that it will take to plan, site, finance and build generation will only add to upward price pressures and economic damage to customers. Without the ability of competitors to enter freely the market for base-load generation, a truly competitive retail electric market cannot exist. In fact, with the current Reliability Pricing Model (RPM), incumbent generators reap RPM payments to prop up existing generation while those same RPM markets are insufficient in predictability or term to support investment by new entrants.

The current relatively low electricity rates offered in recent auctions for retail service represent one of the few silver linings in the storm clouds of our country's current sluggish economy. These rates are projected to rise, as the forward price curves submitted without contradiction in this matter do. In fact, even inside the window of this Electric Security Plan, the market is projected to be significantly higher than a price that would result from a regulated environment. When the economy recovers, electricity prices will rise and customers will be fully reliant on the market to meet generation needs.

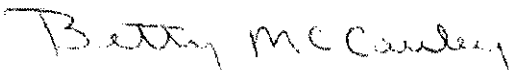
Because, however, as a Commission, it is our responsibility to implement the regulatory structure prescribed by statute, I join my colleagues in adopting this stipulation which is designed to accomplish the given goal of relying upon retail electric competition to meet the comprehensive needs of Ohio's residents and commercial and industrial enterprises - despite my misgivings that reliance on retail electricity competition may not be in the public interest.



Cheryl L. Roberto

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Betty McCauley
Secretary