BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service.	))))))	Case No. 14-841-EL-SSO
In the Matter of the Application of Duke Energy Ohio for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	)))	Case No. 14-842-EL-ATA

OHIO PARTNERS FOR AFFORDABLE ENERGY'S POST-HEARING BRIEF

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I. Introduction

Ohio Partners for Affordable Energy ("OPAE") respectfully submits to the Public Utilities Commission of Ohio ("Commission") this post-hearing brief in the above-captioned applications of Duke Energy Ohio, Inc. ("Duke") to establish a standard service offer ("SSO") in the form of an Electric Security Plan ("ESP").

II. Argument

A. The Commission must assure the affordability of Duke's electric service and protect at-risk customers.

The Commission must assure affordability and the protection of at-risk populations when determining the outcome of Duke's proposed ESP. R.C. 4928.02(A) and (L) set forth the policy of the state of Ohio for competitive retail electric service. The State policy is to:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

. . .

(L) Protect at-risk populations, including, but not limited to, when considering implementation of any new advanced energy or renewable energy resource;

The Commission has a duty to ensure that the policies specified under R.C. 4928.02 are being implemented through the ESP, but nothing in the ESP as proposed by Duke addresses the affordability of electric service or the protection of at-risk populations. On the contrary, Duke's proposed ESP will increase the cost of electricity for all consumers without addressing the impact on consumers, especially low-income, at-risk residential consumers.

At-risk populations that will be affected by the proposed Duke ESP include Ohioans living in Duke's service territory with incomes that are at or below the federal poverty level guidelines ("FPL"). A single-person household with a gross annual income of $11,670 is at 100% of the FPL. OCC Ex. 47 at 5. A household of three persons with a gross annual household income of $19,790 is at 100% of the FPL. Id. The number of Ohio families living in poverty is higher than the national average. Specifically, approximately 16.3% of Ohioans are in poverty compared with a 15.9% nationwide. Id. Even more alarming, the at-risk population of Ohioans living in poverty has increased since 1999. Family poverty has increased dramatically from 8.3% in 1999 to 12.0% in 2012.

The at-risk population of Duke's customers who live in counties where poverty levels exceed the statewide average should be a concern for the Commission. The poverty level in Hamilton County is 17.1%, well in excess of the statewide poverty level of 16.3%. The City of Cincinnati had a poverty level of 29.4% in 2012 compared to 24.3% in 1999. OCC Ex. 47 at 7. Middletown had a poverty level of 23.8% in 2012 compared to a 15.4% poverty level in 1999. Id.

The Commission should also consider affordability for those customers whose incomes are slightly above the FPL. These customers are also at-risk but may not qualify for income-based assistance programs. A third of the population of Hamilton County is designated as close to the poverty level as is over a third of the population of Montgomery County. These at-risk Ohioans are already facing significant drains on their incomes for basic living expenses such as shelter, food, transportation, and health and safety. Increases in the cost of electric services have to be absorbed in budgets that are already stretched thin. Duke's ESP application did not take steps to moderate the financial impact of the proposed ESP on these vulnerable customers. OCC Ex. 47 at 8-9.

Even without the additional price increases proposed by the ESP, Duke's electric bills have increased at a level of twice the rate of inflation over the last decade. In July 2004, a residential customer bill for 750 kWh was $60.71, and in July 2014 it was $93.82. Therefore, customers' electric bills have increased by 54.5% in just ten years, while the cumulative rate of inflation was only 26.1% during the same ten years. OCC Ex. 47 at 9.

While Duke may stress that its electric bills are low compared to other electric utilities in Ohio, Duke misses the point. There is ample proof that Duke's electric service is unaffordable for many of its customers and that Duke's residential customers are struggling to pay their bills. Approximately 83,199 (or 13.5%) of Duke's residential customers were disconnected for non-payment in

2013. This is a 19.1% increase from the number of disconnections in 2011. OCC Ex. 47 at 11. Approximately 28,468 (or 4.6%) of Duke's low-income customers were on the Percentage of Income Payment Plan ("PIPP"). Another 13,193 of Duke's customers were on other payment plans. Thus, 125,000 of Duke's 615,000 residential customers are struggling to pay their electric bills. Id. at 12. This is 20.3% of the total Duke residential customers.

The numbers show that affordability is a serious issue that the PUCO must address as it determines how to modify the ESP. The proposed ESP will make electric service rates even higher and more unaffordable for many customers. This is inconsistent with the policies of the state of Ohio. R.C. 4928.02(L) provides that it is the public policy of the state of Ohio to protect vulnerable populations. At-risk customers include low-income customers who must often juggle utility bill payments and other expenses for necessities such as food, clothing, shelter, home repairs, medical care and utilities. Home energy bills are generally considered to be an "affordable burden" if they do not exceed 6% of gross household income. Despite the tremendous savings PIPP brings to low-income customers who manage to obtain its benefits, PIPP customers must still pay 12% (6% each for electric and gas) of their income for these energy services, twice the amount of an affordable energy burden. Electric service is a basic necessity for human health and life, and unaffordable bills can force low-income consumers to sacrifice other necessities such as food or medication. Especially at risk are children, elderly, or medically vulnerable customers who cannot safely reside in their homes without electric service.

Ohio law requires the Commission to assure affordability and protection of at-risk customers. To comply with the law, OPAE recommends that the Commission deny the various generation and distribution cost riders that Duke is proposing in this ESP. Duke is proposing an unlawful generation subsidy rider to shift the risk of its above-market generation costs to customers. Duke is proposing a retail capacity rider when there is no such thing as retail capacity. Duke is proposing a distribution capital investment rider to collect routine maintenance expenses from customers on an expedited basis without considering the impact on affordability. Duke is proposing a storm damage rider when storm damage costs should be recovered through base distribution rates.

These riders will harm all customers, but they will especially harm at-risk populations. OCC Ex. 47 at 5. The riders will increase costs and undermine affordability and protection of vulnerable customers. The Commission should deny these riders. If the Commission approves any of these riders, the Commission should order that at-risk populations be exempt from payment of the riders.

B. The Commission must reject Duke's proposed Price Stability Rider.

In this ESP case, Duke is proposing a rider, which Duke calls the Price Stability Rider. The rider will include revenues and expenses associated with Duke's entitlement share of Ohio Valley Electric Corporation's ("OVEC") generating stations. Duke proposes that the term of the OVEC Rider be associated with Duke's entitlement share of the OVEC stations, meaning that the OVEC Rider will continue to exist after May 31, 2018, the end of this ESP term.

Staff Exhibit 1 at 5. While Duke had agreed to transfer all of its generating assets by the end of 2014 in the Stipulation and Recommendation in Duke's last ESP, Case No. 11-3549-EL-SSO, Duke remains entitled to a 9% share of the output from the OVEC units. OCC Ex. 2. Duke has not met its commitment to transfer its ownership share in the OVEC units by the end of 2014, but it would be prudent and reasonable for Duke to transfer its interest in OVEC to an affiliate or a third party. Duke can achieve the transfer of its interest in OVEC if Duke makes the effort to do so. IGS Ex. 12 at 17-18; IGS Ex. 13.

There are many reasons why the Commission must reject the OVEC Rider. First, the OVEC Rider violates Ohio law. The OVEC Rider is wholly contradictory to Ohio's current regulatory scheme for retail electric service. For over a decade, the Commission has been transitioning electric utilities to a fully competitive retail generation market. The OVEC Rider is a step backward that must not be approved.

Duke is an electric distribution public utility and as such Duke is not in the business of selling electric generation. All of Duke's distribution customers currently purchase electric generation at competitive market rates. About 77% of generation purchased by Duke's customers is supplied by competitive retail electric service ("CRES") providers and the remaining 23% is supplied to non-shoppers whose generation is procured under the Commission-administered SSO auctions. Id. at 9-10. In short, to obtain generation service, all of Duke's distribution customers currently either shop individually or through aggregation for their generation or have their generation procured through the Commission-administered SSO auctions. Under Ohio's competitive retail generation market, Duke's distribution customers cannot be required to subsidize energy and capacity produced by any power plants.

This is why the Commission must deny the OVEC Rider. Duke is not in the business of selling electric generation to retail customers and has not been in the business since January 1, 2012. Staff Exhibit 1 at 10. The purpose of the OVEC Rider is to shift the risk associated with the OVEC generating stations to Duke's distribution customers. This is unlawful. The OVEC Rider violates the state's policy at R.C. 4928.02(H), which declares that it is the state's policy to ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service. The OVEC Rider will force all of Duke's distribution customers, including those paying directly for generation supplied by CRES providers, to subsidize Duke's OVEC assets when under Ohio law it is Duke's shareholders that should bear the risk of OVEC's profits or losses in the market.

In addition, assigning the costs of above-market generation to all distribution customers makes customers once again responsible for Duke's legacy generation costs long after the period for transition cost recovery has ended. Kroger Exhibit 1 at 5. The subsidy would insulate Duke and its shareholders from the risk of the competitive market associated with Duke's interest in the OVEC units when Ohio law requires that the utility shall be fully on its own in the competitive market. IGS Exs. 12 at 3; Adopted by IGS witness

Joseph Haugen, IGS Ex. 13. The OVEC Rider is a form of transition revenues because it will continue for as long as Duke receives energy and capacity from OVEC. Duke's contractual commitment to OVEC extends through June 2040, nearly thirty-five years after the December 31, 2005 deadline for generation transition cost recovery though under R.C. 4928.38 and 4928.39, recovery of above-market generation transition costs by Ohio public utilities has long ended.

In addition to being unlawful, the OVEC Rider is wholly unnecessary. Duke claims that the OVEC Rider will provide a hedge for consumers against market volatility. However, as Staff witness Hisham M. Choueiki explained, there are far more effective approaches for mitigating price volatility that do not violate Ohio law. Staff Exhibit 1 at 12-13. In administering all past SSO procurement auctions, the Commission has adopted a staggering and laddering approach that has already effectively mitigated price volatility for SSO customers. Id.

OCC witness James F. Wilson also testified that the OVEC Rider could itself add to volatility. Under the SSO, customers are served under one to three-year full requirements contracts established through periodic auctions. Therefore, SSO customers are not exposed to substantial market price volatility. OCC Exhibit 43 at 12. Customers choosing CRES contracts select among available offerings according to their preferences and can choose offerings that hedge prices and provide greater stability to the extent customers desire. The OVEC Rider could potentially move contrary to or in the same direction as market prices. Under the OVEC Rider, the cost incurred in one quarter by OVEC would appear on the distribution customers' bills in the next quarter. The potential for the OVEC Rider to act as a hedge against volatile market prices or contribute to price stability is doubtful. OCC Ex. 43 at 13. Any benefit from the OVEC Rider would be insignificant when compared to the expected net cost and the risk of even higher costs to Duke's captive distribution customers. OCC Ex. 43 at14.

In addition, under the OVEC Rider, customers will pay Duke more but will receive no additional reliability. Reliability is already assured through the capacity market authorized under the Regional Transmission Organization PJM tariffs approved by the Federal Energy Regulatory Commission ("FERC"). These capacity charges are designed to ensure a supply of capacity to meet the region's needs. The OVEC Rider does not give Ohio customers any greater reliability than any other customer in PJM. Direct Exhibit 1 at 7.

Another serious flaw in the OVEC Rider is that it will pass through to Duke's distribution ratepayers the costs and revenues of the OVEC units without any Commission jurisdiction to review those costs and revenues. This makes the OVEC Rider wholly inappropriate as a non-bypassable charge on Duke's captive distribution customers. The contract between Duke and the managers of the OVEC units is under the jurisdiction of FERC. The Commission does not regulate wholesale energy and capacity prices, which are the exclusive jurisdiction of FERC. The Commission has no authority to regulate the costs that OVEC charges to Duke or Duke's obligation to pay such charges.

The OVEC Rider will certainly increase costs to customers during the ESP period. There is no doubt that for the three years of the ESP term, the cost of

OVEC will exceed its revenues. Duke projects that annual OVEC costs will exceed revenue over the period 2015 through 2018 resulting in a net charge to customers.

The benefits, if any, are all in the distant future and are dependent on market price assumptions several years into the future which may not prove to be accurate. It is only beginning in 2019 that Duke projects the revenue from the sale of its OVEC entitlement will exceed costs. Kroger Ex. 1 at 6. Given that the entire analysis beginning in 2019 is speculative, there is no evidence upon which the Commission can base a factual decision on the impact of the OVEC subsidy on Duke's distribution customers beyond the negative impact during the term of the ESP.

OCC witness Wilson testified that Duke's analysis of the net costs to customers from the OVEC rider is unreliable due to the highly uncertain and speculative nature of Duke's assumptions. Because Duke is proposing to recover all its OVEC costs, including fixed costs and variable operations and maintenance costs, net of market revenues, through the OVEC Rider, Duke will have no incentive to manage and minimize these costs or to maximize the operation of the OVEC units and the net revenues Duke earns. OCC Ex. 43 at 11. There is reason to believe that the OVEC units will be even more costly in the future than Duke is projecting. There is the potential that environmental regulations will increase the costs of the OVEC assets, which are coal-fired units.

Moreover, because Duke's distribution customers bear all the risk associated with Duke's share of the cost of the OVEC units, Duke will have no incentive to use a profit-maximizing bidding strategy when selling OVEC generation into PJM markets. The OVEC units will not be like other generating stations in PJM because the customers of Duke's regulated distribution utility will ensure the profitability of the OVEC units bearing all risks associated with the assets. This is illegal under the Federal Power Act. *EnergyPlus LLC v. Nazarian,* 753 F. 3d 467 (4th Cir. 2014) (affirming *PPL EnergyPlus, LLC v. Nazarian*, 974 F. Supp.2nd 790 (D. Md. 2013), and *PPL EnergyPlus, LLC v. Hanna,* Case No. 13-4330 (slip opinion) (3rd Cir.2014 (affirming *PPL EnergyPlus, LLC v. Hanna*, 977 F. Supp.2d 372 (D.N.J. 2013). The OVEC generation should be treated like any other generation in the PJM market.

Duke claims that its OVEC proposal is competitively neutral but, as the Staff points out, if the OVEC Rider is allowed, future SSO auctions could result in higher prices because the 200 MW of OVEC generation could not participate as competitive supply in the SSO auctions. Staff Exhibit 1 at 16. Even if the OVEC MWs were participants in the auction, they are still subsidized by Duke's distribution ratepayers so that other wholesale suppliers might be discouraged from bidding in the SSO auction and competing with the subsidized generation.

The OVEC rider gives Duke assurance of cost recovery not afforded to all other generators in the PJM and SSO market. Duke could bid the generation in at zero cost as a price taker making it virtually impossible to determine the cost of the subsidy for the OVEC generation in a market where prices change hourly. The only way to avoid this problem is not to allow an unlawful subsidy from the distribution utility to the OVEC generation. The OVEC generation should be free to participate or not participate in auctions like any other generation.

CRES providers oppose the OVEC Rider. The Retail Energy Supply Association ("RESA") witness Leal Campbell and Direct Energy's witness Teresa Ringenbach testified that the OVEC Rider will require customers to pay twice for generation service without receiving any additional benefit. Ms. Ringenbach noted that under the OVEC Rider, SSO customers will pay rates reflecting the SSO service auction bids and will also pay additional generation costs through the OVEC Rider. These are charges for generation that the SSO customer will never use. Direct Ex. 1 at 6.

In the same way, CRES customers will pay for generation supplied by their CRES provider and then will make a second payment to Duke through the OVEC Rider. RESA Ex. 3 at 9-11; Direct Ex. 1 at 6-8. Again this is generation that the CRES customer will never use. Under the OVEC Rider, customers pay the gain or loss of Duke selling power from OVEC into the market. There is no benefit for customers taking service from a CRES provider. If a CRES customer has a fixed price contract, the OVEC Rider will expose that customer to the volatility of the wholesale market for the OVEC output. The CRES customer on a fixed contract has sought to avoid the volatility of the wholesale market but the OVEC Rider eliminates the very protection from market volatility that the CRES customer has sought. Direct Exhibit 1 at 6. Duke's proposal adds an additional generation charge on each customer's bill even though the customer receives no generation supply or any other benefit from OVEC.

It is bizarre that the Commission has been presented such a bad idea as the OVEC Subsidy. The OVEC Subsidy has no basis in Ohio law; it violates Ohio law. The OVEC Subsidy violates R.C. 4928.02(H), R.C. 4928.38, and 4928.39 to name but a few of the statutes. The OVEC Subsidy is contrary to the entire Ohio statutory scheme for the regulation of public utilities. The Commission has no authority to violate Ohio law. In addition, there is no evidentiary basis for the OVEC Subsidy. There is no need for the OVEC Subsidy as a hedge against volatility in SSO or wholesale market prices. The SSO is not particularly volatile. The Commission-administered auction system for determining SSO prices resolves any issues of volatility in SSO rates. CRES customers may obtain fixed-price contracts that resolve issues of volatility.

The OVEC Subsidy is anti-competitive as it clearly puts electric generators on a different level if one generator's costs are guaranteed by distribution ratepayers. The OVEC Subsidy corrupts the concept of competitive generation markets in Ohio. There is also no evidentiary basis upon which the Commission can determine that there is any benefit to ratepayers from the OVEC Subsidy when even Duke admits that for the three-year term of the ESP, ratepayers will pay more for the subsidy and when any analysis beyond the term of the ESP is speculative. The OVEC Subsidy also presents issues of federal jurisdiction because OVEC's costs are not regulated by the Commission. If all of Duke's costs associated with OVEC are guaranteed by Ohio's retail distribution ratepayers, Duke has no incentive to minimize costs when the Commission has no authority to regulate the costs. Finally, the OVEC Subsidy violates the Federal Power Act. The OVEC Subsidy must be rejected.

C. The Commission must reject Duke's proposed retail capacity rider.

In this case, Duke proposes to modify the customer class allocation percentages for SSO supply. Duke intends to perform the task of translating the bundled SSO contract payments into SSO customer class rates. Duke intends to unbundle SSO supplier bids to create an implied capacity component. Then Duke intends to perform a separate calculation of the implied capacity charge for each customer class with the residential SSO customers being required to pay a cost premium as compared to other customer classes. Duke's allocation method is highly adverse to the residential class, as it increases the residential share of capacity costs from 39.12% to 45.37%, a 16% increase in the residential allocation when compared to the current ESP. This would translate into an $11 million per year increased cost for residential SSO customers. OCC Ex. 32 at 19. Imposing this residential cost premium is both unnecessary and improper. OCC Ex. 32 at 5.

OCC witness Kahal testified that the capacity rider is unneeded and improperly charges residential SSO customers a price premium. Winning suppliers in the SSO auction bid and are paid on a flat dollar per MWh basis to supply a bundled capacity, energy, ancillary services, and load-following generation product. The pricing of each individual component of the generation is not revealed. Capacity costs are an implicit and unquantified component of the total payments to SSO suppliers. In addition, the suppliers do not bid nor are they paid by SSO customer class. OCC Ex. 32 at 5. Suppliers do not reveal their pricing requirements to serve individual customer classes because they bid on the total load of the distribution utility. The specific effects of the customer class mix on price bids cannot and need not be determined by Duke. OCC Ex. 32 at 15. Duke only charges SSO customers for power supply based on the blended prices resulting from the SSO auctions. The cost of capacity is not separately identified, nor is the cost to serve a particular class identified.

The price premium should not be approved as there is no showing that the premium is required by SSO suppliers to serve residential customers. It is not reasonable to charge residential customers a premium for capacity in the context of a purely market-based SSO. The cost causation principle applies to cost-of-service regulation, and there is no evidence that the winning bidders in the SSO auctions would charge residential classes a cost premium, as compared to non-residential customers. Duke's cost allocation is determined solely by Duke and is not the result of bidding behavior for the contracts that supply the SSO loads.

Moreover, the residential premium is not justified. The residential class is more than 70% of the SSO kWh sales, and absent the residential class, Duke's SSO auctions would be quite small and therefore much less attractive to potential bidders. In addition, bidders are exposed to unpredictable SSO load changes over the term due to customer migration. Large non-residential customers have a greater tendency to migrate and the departure of a single large industrial user can have a tremendous impact on the cost to serve the customers receiving service through the SSO. The risk will be priced into bids. Half of residential and small commercial customers remain on Duke's SSO, and these customers are already paying more and would pay more still under Duke's proposal because they pay the risk premium. But there is no showing that bidders in the auction require a price premium to serve the residential or small commercial classes. OCC Ex. 32 at 21.

Therefore, Duke's capacity allocation adjustment for the customer class pricing should be rejected. This will simplify the setting of SSO retail rates and eliminate the unwarranted cost premium shifted to the residential class. Residential customers are already paying for the risk faced by SSO suppliers caused by the likely migration of large customers.

OCC witness Anthony J. Yankel also testified that Duke's proposed new method for allocating costs for the capacity rider to the various customer classes based on a 5-CP method results in the increased allocation to the residential class. However, because the SSO auction generation costs are charged to Duke on an energy basis and Duke does not pay any directly billed capacity costs in order to supply its SSO load, it is not appropriate for Duke to charge customers for these costs on any basis other than the manner in which they are charged to Duke, i.e., as energy charges. OCC Ex. 46 at 3, 7-8. Duke does not incur capacity costs to serve SSO load. Duke's new allocation methodology must be rejected. There is no need for the capacity rider at all.

D. The Commission must reject Duke's proposed Distribution Capital Investment and Storm Damage Riders.

Duke has also proposed a distribution capital investment rider and a storm damage rider whose purpose is to recover distribution costs and investments from customers through pre-approved riders instead of through base distribution rates set in distribution rate cases. The move to cost recovery through distribution riders approved in SSO cases allows the distribution utility to recover costs and investments on an immediate basis without the Commission's consideration of all the cost factors that would be considered in a base rate case. This move is harmful to distribution ratepayers who are forced to pay the higher rates through the riders, without any consideration of whether those higher rider rates reflect the actual cost of distribution service. The cost of service remains relevant to regulated distribution service rates. The purpose of the distribution riders approved in SSO cases is to make the cost of distribution service less relevant to the amount paid by customers for distribution service.

OCC witness Jerome D. Mierzwa testified that riders provide for the automatic collection of certain costs from customers outside the context of a base rate proceeding where all elements of the cost of service are examined. OCC Ex. 45 at 3. This is contrary to sound ratemaking principles. When the utility is permitted to collect costs through a rider, the incentive for the utility to control costs that pass through the riders is reduced. The existence of riders can cause the utility to incur costs that are allowed through the riders and avoid incurring costs that remain recoverable only in base rates.

To the extent that riders are approved, they should be limited to cost items that are substantial, unpredictable, and beyond the utility's control. Riders are also used when essential to protect a utility from dire financial situations. Duke presented little evidence that the costs it is seeking to collect through the riders meet these criteria. Duke has also not shown that its financial integrity would be compromised if the costs were collected through rates established in base rate proceedings where costs are subject to closer scrutiny. The collection of costs through riders can lead to increases in utility rates and revenues even when the utility does not have a revenue deficiency. Under normal circumstances, a regulated utility should be able to implement rate increases only after a comprehensive base rate proceeding where all costs and revenues under present rates are taken into consideration. OCC Ex. 45 at 5-6.

Duke's Distribution Capital Investment Rider is designed to recover a return on incremental capital investment and the associated depreciation and property taxes for the distribution-related investment that is not otherwise recovered through existing base rates and riders. There is no limit to the rate increases that customers could experience under this rider. OCC Ex. 45 at 6-7. However, the estimated increase in rates is $104 million over four years. For the average residential customer, this would reflect an increase in rates of nearly $100 a year by 2018. OCC Ex. 45 at 8.

Duke did not demonstrate that it is necessary to increase rates through this rider to maintain the present level of service reliability. OCC Ex. 45 at 9. Duke did not demonstrate that the rider was necessary to avoid putting Duke in a dire financial situation. Duke presented no evidence that funding system improvements through a base rate proceeding would impact the reliability of its distribution system to the detriment of its customers. Utilities are already required to maintain distribution facilities under R.C. 4905.22. Current distribution rates already compensate Duke for this responsibility. Duke already has met or exceeded reliability standards for each year since 2011. OCC Ex. 47 at 21. In fact, the reliability of Duke's distribution system has been increasing under the base rate setting process. OCC Ex. 45 at 10-11. The evidence demonstrates that Duke is already dedicating sufficient resources to the reliability of its distribution system. Id. at 17.

Duke also does not claim there will be a reliability benefit to customers associated with the distribution capital investment rider. OCC Ex. 47 at15-16. The rider is only meant to maintain the existing system. All of the programs proposed for inclusion in the rider are maintenance programs rather than infrastructure modernization programs that might qualify for incentive ratemaking through a rider. OCC Ex. 47 at 17-19. While R.C. 4928.143(B)(2)(a) may permit distribution expense to be collected as part of an ESP if the distribution expense relates to infrastructure modernization, the statute does not permit expenses associated solely with maintaining a distribution system to be collected through an ESP rider. Duke has not demonstrated that this rider is an infrastructure modernization program as required by law.

OCC witness Matthew J. Kahal discussed the appropriate rate of return for the distribution investment rider if the Commission were to approve it. OCC Ex. 32 at 4. Mr. Kahal testified that the return on equity ("ROE") for the rider requested by Duke is excessive given the rider's very low risk and the beneficial effect of the rider on Duke's overall financial risk profile. The requested ROE for the rider was established in Duke's last base rate case based upon Duke's business risk at that time. The rate of return grossed up for taxes would be based on the weighted average cost of capital and gross revenue conversion factor approved in Duke's most recent distribution rate case, which is 10.7%. Included in the rate of return is a 9.84% return on equity. OCC Ex. 32.

If the Commission approves the distribution investment rider, the proposed 9.84% Return on Equity should be reduced to reflect the low risks attributes of the rider and Duke's improved financial risk profile that would result from the rider. Rate setting through the rider would materially improve Duke's business risk profile for providing distribution service. This risk reduction and the rider's practically immediate cost recovery mean that Duke's business risk decreases. Had the rider been in place at the time of Duke's last distribution base rate case, the ROE would have been lower than the 9.84% approved. The 9.84% current ROE does not reflect the risk reducing attributes of the investment rider. OCC Ex. 32 at 9.

Using a rate of return established in a base rate case is inappropriate for a rider because it is logical that the ROE established in a base rate case reflects a greater risk than that presented by a distribution maintenance rider where recovery and profits are effectively guaranteed. Lower risk results in a lower cost of equity. Therefore, the ROE component of the rider must be reduced from the 9.84% approved in the last base rate case in order to reflect the lowered risk. OCC Ex. 32 at 10.

OCC witness Yankel testified that Duke's allocation for the distribution capital investment rider is flawed because Duke does not propose to allocate the costs on distribution capital investment but on total distribution revenue, which includes capital costs and customer accounting and service costs as well. Mr. Yankel testified that it is inappropriate to use such things as meter reading and billing expenses as a basis for spreading unassociated capital costs. While the rider should be rejected, if the rider is approved, allocating the capital costs should be done on the basis of total distribution revenues less customer accounting and service expenses. OCC Ex.46 at 4.

OCC witness Williams testified that because affordability of electric service is an issue in Duke's service territory, the expected increase of $100 a year by 2018 resulting from the distribution capital investment rider could result in even more customers being disconnected for non-payment, more customers ending up on PIPP and other payment plans, and more at-risk customers being faced with potential health and safety issues. OCC Ex. 47 at15. Based on the number of at-risk customers in Duke's service territory who will be hurt by unreasonable price increases for electric service, the distribution capital investment rider should be rejected.

There is also no evidence that the storm damage rider is necessary. Duke's current distribution base rates include $4.4 million per year for major storm expense recovery. Duke is here proposing to establish a regulatory asset account to defer the costs above or below this base rate amount in each year. Duke is proposing to recover the balance of this deferral in the next distribution base rate case unless the balance exceeds $5 million at the end of a calendar year and then Duke would collect or return to customers the balance under the storm rider with carrying costs. OCC Ex. 45 at 22-23.

As with the capital investment rider, Duke has not demonstrated that base rate procedures for storm damage expenses have threatened Duke's financial integrity. With the storm damage rider, there will only be limited review of the costs. A full review of storm costs would more likely occur in a separate proceeding, if necessary, or in a base rate case. With the storm rider, customer rates may increase with little oversight. The storm damage rider also lowers Duke's business risk. No Duke witness demonstrated that the 9.84% ROE approved in the last base rate case is appropriate for the rider.

The allocation of costs for the storm rider is flawed. Duke proposes to allocate these costs on total distribution revenue. As with the distribution capital investment rider, this method includes expenses associated with customer accounting and service costs as well. It is inappropriate to use such expenses as meter reading and billing expenses as a basis for spreading unassociated storm restoration expenses. If the Commission approves the rider, these costs should be allocated on the basis of total distribution revenue less customer accounting and service expenses. OCC Ex. 46 at 3.

The Commission should not approve the riders and instead rely on base rate proceedings to determine distribution rates. In the event that the Commission approves these riders, the Commission should adopt the recommendations of OCC witnesses Mierzwa, Kahal and Yankel to mitigate the basic unfairness of these riders. The issue here is not cost recovery but the method of cost recovery. Simply put, distribution service cost recovery is best accomplished through base rate proceedings. Riders frustrate the public policy inherent in base rate proceedings.

E. Duke's SEET test recommendations must be rejected.

Duke proposes that the annual Significantly Excessive Earnings Test ("SEET") threshold be based on 15% as the trigger for customer refunds. This threshold is too high. Current market conditions, Duke's extremely low risk, and the riders proposed in this case simply do not justify a 15% ROE SEET threshold.

It is not necessary to approve the SEET threshold at this time for the full three-year term of the ESP. Instead, the ROE threshold can be set in the annual Duke SEET proceedings. If the Commission chooses to set the SEET threshold in this case, a range of 12 to 14% is more reasonable and more appropriate to balance customer and shareholder interests. OCC Ex. 32 at 7-8.

VI. Subsidies for CRES providers must be rejected.

Duke currently operates a Purchase of Receivables ("POR") Program that includes a feature whereby Duke pays the bad debt expense for participating CRES supplies and charges that expense to distribution utility customers. This is an improper involuntary subsidization of unregulated CRES suppliers by captive utility customers. There is an increase in distribution customer costs in the amount of the subsidy embedded in Duke's POR program for which Duke has a bad debt expense rider, Rider UE-GEN. The Duke POR program is an improper subsidy to CRES providers. OCC Ex. 32 at 6

The certainty in the collection of debt for CRES providers is an anti-competitive subsidy that is contrary to the state of Ohio policy at R. C. 4928.02(H), which seeks to ensure effective competition in the provision of retail electric service by avoiding anti-competitive subsidies flowing from a non-competitive electric service such as distribution service to a competitive retail electric service such as generation service. The state policy also prohibits the recovery of any generation related-costs through distribution rates. Charges to distribution customers should not include generation charges and should not be used to subsidize deregulated generation functions.

Duke's POR program should cease its practice of subsidizing CRES provider bad debt expense and collecting that expense from distribution utility customers. If the POR program is to continue, Duke should implement a discount for receivable payments that fully covers CRES suppliers' bad debt expense and avoids charging distribution customers for the expense. The current POR program including the zero discount should be eliminated. A discount rate should be set at the level that is sufficient to cover participating CRES providers' bad debt expense based on the actual CRES bad debt experience. Once the zero discount ends, the rider is not needed for the CRES provider bad debt. Then, Duke's Rider UE-GEN can be eliminated.

Certain CRES providers filed testimony in these cases to initiate programs that are designed to undermine the Standard Service Offer ("SSO"). Arranging the provision of an SSO is a statutory requirement of Ohio electric distribution utilities. Unable or unwilling to compete with the SSO, some CRES providers ask the Commission to approve of their efforts to undermine the SSO and to frustrate the choice of many customers to rely on the SSO as a competitive generation option. These CRES providers seek an unlawful end state of electric generation competition in which customers are forced into direct bilateral contracts with CRES providers whose prices could not be compared to a price determined by a transparent auction process. These CRES providers would then set prices for electric generation without a benchmark by which generation offers can be compared. The Commission must reject these efforts by certain CRES providers to undermine the choice of the SSO.

Matthew White of IGS testified that the SSO retains a “disproportionate” amount of market share for residential customers. IGS Ex. 10 at 21. IGS claims that the SSO has an anti-competitive advantage. IGS asks the Commission to conduct a “retail auction” to procure SSO load in which CRES providers would bid for the right to serve SSO customers. Further, IGS proposes a retail price adder which is a fee charged to winning bidders in the SSO auction to reflect the cost of providing retail electric service in the market. Id. at 21-22. IGS also recommends an unbundling of costs required to support SSO service so that these costs are reflected in the SSO price instead of the distribution service. IGS argues that Duke should not apply customer switching fees to customers that switch to CRES service and should require that customers returning to the SSO pay switching fees. IGS Ex. 10 at 26-27.

The SSO is the product in which customers who have not chosen a CRES provider are enrolled. CRES providers of bilateral contracts do have costs that are not incurred by CRES providers that win bids in the SSO auction. IGS believes that the SSO, as the default service and the price to compare, is therefore anti-competitive with respect to bilateral contracts offered by CRES providers.

Under Ohio law, customers for electric service cannot be forced into direct bilateral contracts with specific CRES providers. IGS opposes the current SSO auction because IGS believes it results in an artificially suppressed price. IGS provides no evidence of its inability to market power under this circumstance. While IGS may incur marketing costs for bilateral contracts, there are other costs such as risk-related issues with the SSO load that are not present in bilateral agreements

IGS wants to transform the SSO auction to a "retail" auction, in order to address the "suppressed price" that results from the auction. A "retail" auction will bring a higher price and more profits for CRES providers. It will result in customers artificially paying more. This is not what the General Assembly intended when it required distribution utilities to provide an SSO to their customers. CRES providers are able to compete in the SSO auction and in the direct bilateral contract market when they offer customers products that customers want. The Commission should not advance policies that force customers to pay higher generation prices simply to guarantee CRES providers profits.

On a similar quest to undermine the SSO, Dwayne R. Pickett of The Retail Energy Supply Association ("RESA") testified that Duke has not put forth any new plans to address the 50% of residential customers and 40% of commercial customers "who have not taken advantage of the retail energy market", i.e., not entered into bilateral contracts. RESA Ex. 4 at 3. RESA proposes something called the "Enroll from Your Wallet" program to address the "logistical burden" of customers not having their utility account number with them when they are being solicited by CRES providers to enter into bilateral contracts. Under this program, the customer can give the CRES provider authorization to obtain the account number from Duke. Details are not worked out and only a pilot program is proposed. RESA Ex. 4 at 7-8. However, the Commission has adopted rules for CRES providers to follow when soliciting customers, and these administrative rules govern CRES solicitations and must be followed.

Another program is the Market Energy Program ("MEP") under which residential and small commercial customers who are not currently receiving service from a CRES provider under a bilateral contract and who contact Duke's call center for almost any reason must be offered -- by the Duke call center -- a three percent discount off the present SSO Price to Compare for a six-month period. RESA Ex. 4 at 8. The MEP service would be provided by a CRES provider.

Obviously, this MEP program seeks to divert customers from the SSO. Under the proposal, Duke, the distribution utility which is not in the business of marketing generation, is to expend time and effort to assist and encourage customers to leave the SSO for a CRES provider whose service will be 3% less than the SSO for a mere six months. This is a teaser rate which is designed to lure customers from the SSO and which may be increased substantially after the teaser rate expires. While this program is presented as one that will promote competition, its obvious purpose is to encourage customers to leave the SSO. This program is not worth the time and effort to implement.

The MEP proposal violates the state of Ohio policy articulated in R.C. 4928.02(H), which forbids subsidies that flow from regulated services to unregulated services. Having Duke call centers refer customers to a CRES provider is a subsidy from the distribution service to the unregulated generation service. Distribution rates, paid by all customers, would be used to market a CRES product. A distribution utility such as Duke is required by law to provide a Standard Service Offer and nothing more, and Duke is certainly not authorized to subsidize CRES providers by marketing their products. In fact, it is unlawful for Duke to do so. R. C. 4928.02(H).

Currently, 50% of Duke’s residential customers choose the SSO. The SSO is an auction-based competitive generation price that is inscribed in Ohio law and the Commission’s rules. It is the benchmark by which other generation offers can be measured. The Commission should reject this MEP program and any other proposal that simply seeks to undermine the SSO.

III. Conclusion

In conclusion, OPAE makes the following recommendations.

1) In order to assure the affordability of electric retail service in Duke’s service territory, the Commission must order that low-income residential

customers in Duke's service territory be exempt from Duke's requested riders. This recommendation is contemplated by Ohio law. R.C. 4928.02(L).

2) Duke's proposed price stability rider must be rejected.

3) Duke's proposed retail capacity rider must be rejected.

4) Duke's proposed distribution capital investment and storm damage riders must be rejected.

5) Duke's SEET proposal must be rejected.

6) The subsidies unlawfully benefiting CRES providers must be rejected.

The Commission should adopt these recommendations to assure the affordability of retail electric service for all consumers, including at-risk consumers, in Duke's service territory.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Post Hearing Brief of Ohio Partners for Affordable Energy was served by electronic transmission this 15th day of December 2014 upon the following:

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