BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio to Establish a Standard Service Offer Pursuant to Sectio 4928.143, Revised Code, In the Form of An Electric Securtiy Plan, Accounting Modifications, and Tariffs for Generation Service.	Case No. 14-0841-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. 14-0842-EL-ATA

INITIAL BRIEF OF THE GREATER CINCINNATI HEALTH COUNCIL

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I. INTRODUCTION

On May 29, 2014, Duke Energy Ohio ("Duke" or "the Company") filed an application for a standard service offer("SSO") pursuant to Revised Code § 4928.141. The application sought approval of an Electric Security Plan ("ESP") in accordance with § 4928.143. The Company is currently providing service to its customers in accordance with an ESP that was approved by the Commission in late 2011, and which terminates on May 31, 2015.[1] The Company conducts auctions to procure supply for its SSO electric generation service to retail electric customers who do not purchase electric generation service from a CRES provider. Duke is requesting that the Commission approve a plan to continue essentially the same competitive bidding process, with certain modifications, for a three year period commencing June 1, 2015 and ending May 31, 2018. However, the Company also seeks the right to terminate the plan one year early under certain circumstances.

In addition to establishing the terms under which Duke will supply its SSO to non-shopping customers, the Company seeks several new riders and to eliminate others. In particular, the Company seeks to establish a Price Stability Rider ("PSR") and a Distribution Capital Investment Rider ("Rider DCI"). The PSR would pass through to all distribution customers the net financial results of Duke's 9% ownership interest in the Ohio Valley Electric Corporation ("OVEC"). Rider DCI would permit Duke to recover incremental capital investments on a current basis without the need to file a distribution rate case. In addition to creating these new riders, Duke's plan would terminate the Load Factor Adjustment Rider

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[1] *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. 11-3549-EL-SSO, et al., Opinion and Order (November 22, 2011).

(”Rider LFA”) and terminate the longstanding exemption for GCHC hospitals in its Backup Delivery Point Capacity Rider (“Rider BDP”).

The GCHC files this Initial Brief to address a limited number of issues in this case – to oppose the creation of Riders PSR and DCI and the elimination of Rider LFA and the GCHC hospital exemption in Rider BDP. The failure of the GCHC to address any other issue should not be interpreted as acquiescence to Duke’s proposal. The GCHC reserves the right to address additional issues in its Reply Brief.

II. APPLICABLE LAW

Revised Code § 4928.141 requires electric distribution utilities to provide consumers with an standard service offer (“SSO”), which may take the form of a Market Rate Offer (“MRO”) or an Electric Security Plan (“ESP”). An SSO serves as the utility's default offering for customers who do not shop for competitive electric generation service. Duke has again opted for an ESP which, in addition to establishing the terms under which the Company will provide its SSO generation supply, permits it to seek certain additional features authorized by Revised Code § 4928.143(B)(2). The Company must establish 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 § 4928.142 of the Revised Code, the MRO option. Revised Code § 4928.143(C).

III. ARGUMENT

A. Rider PSR Should Be Rejected.

Duke proposes Rider PSR as a “hedge” to customers against future price volatility. Rider PSR would pass on to all distribution customers the net results of Duke’s OVEC entitlement. Under the terms of the Inter-Company Power Agreement (“ICPA”) among the thirteen utility owners of OVEC, Duke is responsible for paying 9% of the fixed costs of the OVEC plants whether or not they produce electricity. (Tr. I, p. 258). In exchange for paying its share of the fixed costs, Duke is entitled to take 9% of the capacity and energy output of the plants. Duke proposes to sell its entitlement to capacity and energy into the PJM market and to pass the net result, whether positive or negative, on to distribution customers. The net result of this proposition will only be positive if the marginal energy sales exceed the fixed cost responsibility. (Tr. I, p. 259). Duke has held an ownership interest in OVEC since the 1950s and has been entitled to take 9% of OVEC's total generation output since 2003 when the Department of Energy terminated its supply contract with OVEC. Duke is only now proposing for the first time to "share" OVEC with its customers. (Tr. II, pp. 662-64). Duke proposes that Rider BDP be non-bypassable, so all SSO customers and all shopping customers who obtain generation service from a CRES provider would have pay the Rider.

1. There Is No Economic Justification For Rider PSR.

Even if the Commission could approve Rider PSR in light of state policy and Duke's own Corporate Separation Plan ("CSP"), discussed below, the economics of the rider are so flawed it makes no sense. The purported reason for creating Rider BDP is to offer customers a hedge against price volatility. The evidence at the hearing demonstrated that this is a pretext to justify shifting responsibility for the OVEC losses to customers. The OVEC contract is a poor hedge mechanism. The original purpose of the ICPA was to govern the operation of two power plants jointly owned by 13 separate utilities, not to act as a hedge contract. (Tr. VII, p. 2014). A typical hedge contract has a known cost and a known benefit. (Tr. VII, pp. 2015-16). For example, there is usually a premium cost to obtain the contract and a strike price, so that the terms of the hedge are clear and it is known when the hedge is "in the money." In the case of the OVEC entitlement, the hedge concept depends upon the notion that, if market prices increase, OVEC would be profitable and would yield positive cash flow. (Tr. VII, p. 2016). But it is indefinite under what conditions that would occur as there is no "strike price." Compared to an express hedge project, use of the OVEC entitlement as a "pseudo-hedge" is inferior. (Tr. VII, p. 2017). The value of OVEC as a hedge relies upon energy margins exceeding fixed costs. (Tr. VII, p. 2018). It is speculative when, if ever, those conditions will exist. Duke's own projections do not show that happening until after the term of the ESP (which is a point beyond the reasonable time that such projections are reliable). When it proposed this "hedge," Duke had no projections of its value (Tr. II, pp. 652-53), and it chose to rely entirely on "intuition" that it would act as a hedge. (Tr. II, p. 670).

Duke filed its case and direct testimony without providing the Commission with any information that could be used to evaluate the economics of OVEC or whether Rider PSR would be beneficial or detrimental to customers. (Tr. I, p. 255; Tr. II, p. 665-67). The Commission could not tell from Duke's application and direct case whether Rider PSR would be positive or negative and whether it could be worth $1 or $1 billion (Tr. II, p. 668). Duke did not even offer any data on its historical experience with OVEC. (Tr. I, p. 256; Tr. II, p. 666). Incredibly, Duke itself had not even done an analysis of OVEC before it filed its case. (Tr. I., p. 255). Instead, Duke asked the Commission to rely solely on "intuition" that the OVEC entitlement will act as an effective price hedge for customers. (Tr. II, p. 589).

Only after the case was filed and parties submitted discovery requests to Duke did it perform or provide any analysis of the expected results of OVEC. (Tr. I, p. 256). Duke provided a single projection that extended through year 2024. (Tr. II, p. 590, OEG1-1). That projection showed that during the proposed three-year term of the ESP, the OVEC entitlement is expected to create a loss of approximately $22 million. (Tr. II, pp. 671-72; Tr. V, p. 1137; Tr. IX, p. 2515;

XII, p. 3404). Duke expects it to be about ten years before the investment would be net cash flow positive on a cumulative basis.

The value of OVEC as a hedge, even if it does become cash flow positive is *de mininis*. OVEC represents only about 7% of Duke's native load (Tr. I, p. 461). This is too small to be an effective hedge. (Tr. XII, p. 3404). The primary example used by Duke to claim that OVEC would help protect against price spikes was the January 2014 polar vortex. Yet, the OVEC units themselves had outages during that event. (Tr. I, pp. 621-22). Furthermore, retail customers are not directly exposed to daily price volatility caused by such events. The prices paid by SSO customers are fixed by the auction in advance and stay in place for a year at a time, unaffected by daily price fluctuations. The prices paid by CRES customers are established by the terms of their contracts. Customers are already hedged against price volatility by the very nature of fixed price contracts. (Tr. I, pp. 472-473). And, to the extent CRES suppliers have themselves hedged against price volatility, the cost of those hedges is built into their contract prices. (Tr. II, pp. 676-77). Duke's proposal would require a customer to pay Duke for a second hedge against their will (Tr. II, p. 677). This would not only be ineffective, it would be unnecessary. Rider PSR should be rejected simply because it makes no economic sense.

2. The Commission Should Not Approve A 25-Year Rider In a 3-Year ESP.

Recognizing that Rider BDP could only have a net positive value to customers if it would remain in effect for many years, (Tr. I, p. 257), Duke proposed that Rider BDP continue as long as it holds its OVEC entitlement, potentially for as long as the year 2040. Duke's proposed term is flawed. First, the promised benefit is illusory. Duke knows that there can only be a net benefit to customers if the rider remains in effect for many years, but only promises to sustain Rider PSR so long as it continues to hold the OVEC entitlement. (Tr. I, p. 259). While Duke's OVEC entitlement may extend until 2040 (or perhaps longer if the ICPA is extended), it could end earlier for various reasons. There has been much discussion in this case regarding the terms of the ICPA that permit participating companies to assign their interest.[2] Duke has the ability to sell or transfer its interest in OVEC by satisfying the conditions of the ICPA (one option requires consent of the other participating companies; another only requires Duke to satisfy certain financial conditions). So long as the result of Duke's investment in OVEC is cash flow negative, it would have every incentive to keep Rider PSR in place, effectively shifting its investment losses to distribution customers. But, if and when OVEC turns cash flow positive (assuming the favorable economic conditions Duke projects in the future come true), Duke would have the incentive to either monetize its investment by selling it to a third party or to transfer it to one of its own affiliates out of the reach of the Commission and Rider PSR. As time passes and projected positive cash flow years draw nearer, the discounted cash flow value of the OVEC entitlement becomes more valuable. (Tr. I, pp. 265, 268). Under either scenario, Rider PSR would terminate under the terms proposed by Duke and customers who had covered Duke's losses for years could be deprived of the positive benefits. (Tr. I, p. 269).

Second, Rider PSR would only have positive value to customers if Duke continues to hold the OVEC entitlement *and* the Commission can approve Rider PSR for a term of many years, despite the ESP itself having only a three-year term. (Tr. I, p. 360). The only precedent Duke offers for such a proposition is Rider AERR, which was approved in Case No. 11-3549 to continue past the three-year term of the current ESP. (Tr. I, 260). But Rider AERR and Rider PSR are very different, both in their inherent nature and in how they would come into existence.

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[2] GCHC is not entering into the debate at this time whether Duke is required by the Stipulation in Case No. 11-3549 to divest its interest in OVEC. But, if Duke is required to divest itself of OVEC, the discussion of Rider PSR would be moot because there would be nothing to pass through to customers.

First, Rider AERR was approved by Stipulation in Case No. 11-3549 without opposition. There is no agreement from any party to Duke's Rider PSR proposal. Only one party, OEG, even supports the concept of passing the OVEC entitlement on to distribution customers through a rider. But, even OEG's support is conditioned on severe modifications to Duke's proposal. OEG proposes that Duke levelize the results of the OVEC entitlement over a nine year, seven month period and that Duke finance the significant early losses. (Tr. VII, pp. 2026, 2030). But, it also believes that a term longer than nine years is too speculative. (Tr. VII, p. 2026). OEG understands that Duke could pull the plug on Rider OEG if OVEC becomes profitable (Tr. VII, p. 2025-26), and believes that a minimum nine year, seven month term is required to make the proposal tolerable at all. (Tr. VII, 2026). But even that proposal is expected to be a net charge to customers. (Tr. VII, p. 2032; Tr. XII, p. 3405). And, the witness who proposed OEG's modified plan does not even know if Duke would support it. (Tr. VII, p. 2030).

Second, unlike Rider AERR, Rider PSR would not be used just to recover costs incurred during the ESP period. Duke was required to provide a certain percentage of alternative energy resources as a generation supplier during the ESP, which it generally did by purchasing alternative energy credits ("AEC"). (Tr. II, p. 344-45). Rider AERR permitted Duke to expense over future periods investments it had made in AECs *during* the ESP term. (Tr. I, p. 261; Tr. II, p. 345). Nothing in Case 11-3549 authorized Duke to purchase new AECs *after* the expiration of that ESP. All that was authorized was continued cost recovery of investments that had already been made during the ESP term. (Tr. I, p. 263). In contrast, Rider PSR would continue to include future net operating results of OVEC, occurring outside the three-year ESP period.

Third, Rider AERR was fully bypassable by shopping customers because it was a charge related to generation service (Tr. I, p. 263), but Duke proposes that Rider PSR not be bypassable by any customer. (Tr. I, p. 264). Duke offers no reason why Rider PSR should be non-bypassable. For Rider PSR to have any benefit to customers, it would have to be cash flow positive at some point. Otherwise, it would never be anything but a charge to customers, for which they would see no benefit. But the value of the OVEC entitlement is the same to Duke as it would be to customers. (Tr. VII, p. 2021). If Duke was acting rationally, it would have no objection to Rider PSR being bypassable and should be seeking to retain the value of OVEC and not pass it on to customers. (Tr. VII, p. 2022). This simple point illustrates the obvious – Rider PSR is not designed to benefit customers, but to insulate Duke from the nearly certain losses it will experience from its OVEC ownership interest (Tr. XV, p. 4050). If Duke thought Rider PSR was beneficial to customers it would not resist making it bypassable for customers who do not want it. Even OEG proposes that Rider PSR be bypassable by very large customers, presumably because they have the sophistication to engage in their own hedging strategies. (Tr. VII, p. 2082). But, it does not take much customer sophistication to recognize that Rider BDP is a bad deal for customers and they ought to be able to reject it. If for some reason the Commission is inclined to allow Rider PSR at all, it should make the rider bypassable for shopping customers. (Tr. XII, p. 3403).

3. Duke's Proposed Rider PSR Violates State Energy Policy and Duke's Own Corporate Separation Plan.

Even if Rider PSR made any economic sense, the Commission should reject it on policy grounds. State energy policy, set forth in R.C. § 4928.02, specifically addresses cross-subsidization of regulated and non-regulated services. It is the policy of the state 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 or to a product or service other than retail electric

> service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;[3]

This policy prohibits public utilities from using revenues from competitive generation service components to subsidize the cost of providing noncompetitive distribution service, or vice versa.[4] Through Rider PSR, Duke would be using revenues from non-competitive distribution customers to subsidize its unregulated investment in OVEC. Distribution customers should not be forced to subsidize Duke's independent investment in generation supply that has nothing to do with the provision of distribution service.

Proposed Rider PSR would directly violate this state policy. Rider PSR would allow Duke to recover all of its costs of ownership in OVEC from captive distribution customers whether or not they take generation service from Duke. Accordingly, to avoid cross-subsidization, Rider PSR must be fully by-passable.

It is also Ohio policy for electric distribution utilities to separation their generation businesses from their distribution businesses, not to re-entangle them. The only involvement an EDU should have with generation is to procure a supply option for SSO customers. The EDU should have no role with respect to the pricing CRES customers pay for generation service; the EDU's role is only to deliver them power, not to affect its price. Duke's proposed Rider PSR forces all customers, even those who do not want generation service from Duke, to assume Duke's risk of an ownership interest in OVEC. Whether or not Duke should be required to divest itself of its 9% share of OVEC, it certainly should not be allowed to force unwilling customers to become the involuntary owners of that entitlement.

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[3] Revised Code § 4928.02(H).

[4] *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176, ¶¶ 47-58;*Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 2004-Ohio-3924, 812 N.E.2d 955, ¶ 4.

In addition to Ohio's energy policy, Duke's Corporate Separation Plan ("CSP") prohibits Rider PSR. Paragraph 5 of the Code of Conduct in Dukes CSP states:

> Duke Energy Ohio shall not tie (nor allow an affiliate to tie), as defined by state and federal antitrust laws, or otherwise condition the provision of Duke Energy Ohio's regulated services, discounts, rebates, fee waivers, or any other waivers of ordinary terms and conditions of service, including but not limited to tariff provisions, to the taking of any goods and/or services from Duke Energy Ohio's affiliates.

(Duke Exhibit 12, at p. 67). Duke has heretofore treated OVEC as part of its unregulated business. The financial results of OVEC do not pass through the regulated portion of Duke's income statement, (Tr. II, p. 378), but appear in the unregulated portion of the financial statement. (Tr. II, pp. 385, 673). Rider PSR would have the effect of converting the risk of Duke's non-regulated investment in OVEC into a regulated risk that must be assumed by all ratepayers. (Tr. II, pp. 674-75).

While there has been much argument whether OVEC is an "affiliate" within the meaning of the statutory definition, there is no question that Duke itself identified and listed OVEC as an affiliate in its CSP. (Tr. IV, p. 954). Duke updated the affiliate list earlier this year in Case No. 14-0689-EL-UNC, in part because of corporate changes caused by the Progress Energy merger. Many new affiliates were added to and others were removed, but, OVEC was retained on the list of affiliates in the current version of the CSP. (Tr. IV, pp. 957, 1023). Duke witness Hollis acknowledged that the statute only sets minimum requirements and that Duke can opt to live by higher standards. (Tr. IV, p. 952). A plan can be more restrictive than the rules require. (Tr. IV, p. 953). Once a CSP has been approved, the terms of the CSP control Duke's behavior. (Tr. IV, p. 952) Duke unequivocably listed OVEC as an affiliate and, despite noting (for the first time) that its OVEC ownership was a minority interest, did not insert any language to treat a minority-owned affiliate any differently than a majority-owned affiliate. (Tr. IV., pp. 955-56). For purposes of Duke's CSP, OVEC *is* an affiliate and Duke cannot condition the provision of distribution service to customers assuming financial responsibility for OVEC.

There is no reason why majority and minority ownership interests in affiliates should be treated any differently for purposes of the prohibition on tying arrangements – allowing Duke to force captive customers to subsidize any non-regulated affiliate involves the same evil, only differing in magnitude, not concept. Duke's own Code of Conduct states that it applies to all affiliates. (Tr. IV, p. 958). Duke's Code of Conduct states that it will not condition the provision of regulated service on taking any service from an affiliate. (Tr. IV, pp. 960-61). Yet, Rider PSR would do just that. All distribution customers would be forced to subsidize Duke's ownership interest in OVEC against their will. This tie would have no rational relationship to their status as distribution customers and serves only to subsidize Duke's ownership interest in OVEC.

B. The Commission Should Reject Rider DCI.

1. The Rider Is Not Justified.

Duke proposes Rider DCI to recover incremental capital investments in distribution plant without the need for a distribution rate case. GCHC will not go into detail on the underlying programs Duke proposes to include in Rider DCI, as it expects other parties to brief those issues. The GCHC would simply state that Duke has not justified this unusual approach to distribution ratemaking. Duke avows that it is able and committed to provide reliable distribution service whether or not Rider DCI is approved and that the rider is not necessary for it to do so. (Tr. I, p. 131; Tr. II, p. 391-92). Thus, Duke has not shown any necessity for this unusual rider. If the rider is not necessary for it to meet service reliability standards, it should be rejected.

2. Alternatively, If Rider DCI is Approved, The Proposed Rate Design Should Be Modified.

Duke proposed a method of allocating Rider DCI through witness Laub. (Duke Exhibit 10; Tr. III, pp. 752-54). Under the mechanics of that calculation, Duke inexplicably attempts to preserve the same relative proportion of revenue recovery from each customer class as was established in Case No. 12-1682, despite there being significant changes in those customer groups since the last rate case. By continually using updated billing determinants in the calculations (Tr. III, p. 812), but maintaining historical revenue allocations, Duke's calculation method would cause rates to move in the opposite direction of billing determinants. (Tr. III, p. 762). Since Case No. 12-1682, the billing determinants for rate groups RS, DM and DS all went up, but the billing determinants for rate group DP went down. (Tr. VI, pp. 1622-23). Duke's calculation method would disproportionately assign rate increases to the DP customer class for no apparent reason. (Tr. V, pp. 1147-48). Hypothetically, if circumstances changed such that there was only one DP customer left, then Duke's calculation methodology would assign responsibility for the entire $2 million rate increase it attempts to assign to the DP customer class to that one customer. (Tr. VI, pp. 1624-25). That would be an absurd result and it dramatically illustrates the flaw in the calculation method. Duke did not seem to realize the rate distortion caused by its calculation method until the hearing. Even Duke agrees that customers should not see rate increases solely on account of the rate structure. (Tr. VI, pp. 1619-20).

Duke's calculation method is unnecessary and over-complicated. All parties (save OCC, discussed below) agree that a simple equal percentage increase of base distribution rates would be a fair and simple way to address Rider DCI, which is how AEP handles a similar rider. (Tr. III, pp. 755, 759; Kroger Exh. 1; Tr. V, pp. 1149, 1169-70; Tr. VI, p. 1621). Applying a fixed percentage to base distribution rates would raise the same amount of revenue as Duke's proposed method and is fair and reasonable. (Tr. VI, p. 1621). It would be revenue neutral to Duke, simple to administer and fair to all customer classes.

OCC witness Yankel proposes that Rider DCI be allocated among rate classes according to a subcomponent from Duke's cost of service study in Case No. 12-1682. This approach necessarily accepts the validity of that cost study. (Tr. XII, p. 3506). But that cost of service study was challenged in the distribution rate case. (Tr. XII, p. 3508). The sponsor of the cost of service study was never subjected to cross-examination and none of the challenges to the study were resolved. (Tr. XII, pp. 3507-09). The parties stipulated to an allocation of the rate increase that varied from the cost of service study. (Tr. XII, p. 3510). Mr. Yankel proposes to use only one subcomponent of the cost of service study to allocate Rider DCI, not the bottom line total. The very line in the cost study that he would rely upon to allocate DCI was challenged in Case No. 12-1682. And, while the stipulation in Case 12-1682 only addressed the bottom line, in order for the cost of service study to match the agreed allocation, that subcomponent would have had to change. (Tr. XII, 3512-14). It would be unreasonable to rely upon that very line as determinative in this case, when the parties necessarily agreed to a different result when the allocation of distribution rates was resolved.

C. Rider LFA Should Be Continued.

Duke's ESP proposal eliminates Rider LFA that was approved in the last ESP, Case No. 11-1349. Both Staff and OEG recommend the continuation of Rider LFA, with some modifications. Rider LFA imposes a demand charge on customers based upon their load, then gives the customer a credit based on energy usage. The rates for the demand charge and the energy credits are set so that the charges and credits exactly offset each other in the aggregate and Rider LFA is revenue neutral to Duke.

Staff proposes that Rider LFA retain its essential structure, but that it be phased out over the three year ESP period. OEG proposed a more substantial change and would remove the DS customer group from Rider LFA, leaving only DP customers. The basic justification for retaining Rider LFA is to avoid sudden rate shock that would result from its immediate removal. Withdrawing Rider LFA immediately would cause sizeable rate increases to high load factor customers. Continuing the LFA for some period of time would promote the ratemaking principle of gradualism. (Tr. VIII, p. 2304; Tr. XIV, p. 3868). The GCHC supports the continuance of Rider LFA in its current form and would prefer the Staff's gradual phase out proposal over OEG's more radical change to the mechanism.

D. The Existing GCHC Member Exemption in Rider BDP Should Not Be Eliminated.

Subsequent to filing its Application and supporting testimony, Duke made a supplemental filing on July 10, 2014 to revise the Rider BDP tariff. (Duke Exh. 20; Tr. VI, p. 1625). Rider BDP imposes a demand charge for a backup delivery point. In each of the prior Duke ESP cases going back to 2008, Duke agreed that GCHC member hospitals would not be subject to Rider BDP. The change proposed to Rider BDP in Exhibit 20 would eliminate the GCHC hospital exemption. (Tr. VI, p. 1626). The Commission should not eliminate the exemption in this proceeding.

In its last distribution rate case, Duke's base revenue requirement included all of the capital and operating expenses used to provide backup delivery service covered by Rider BDP, so the cost to provide the service is already embedded in base rates. (Tr. VI, p. 1629). Without the exemption from Rider BDP, a charge of $4.334 per kW would be imposed for a backup delivery point served by the same transmission line and a charge of $5.58 per kW would apply where the backup delivery point is served by a second transmission line. (Tr. VI, p. 1627). The effect of imposing these rates on a hospital with a typical load of 6,000 kW would be an annual charge in the range of $300,000 to $400,000. (Tr. VI, p. 1628). But Duke is already recovering all of this revenue in its base rates. (Tr. VI, p. 1629). The evidence it presented in support of Rider DCI demonstrated that base rates are more than covering the revenue requirement established in the last distribution rate case.[5] (Tr. III, p. 810). But, Duke is not proposing any reductions to its base rates in this proceeding. (Tr. VI, p. 1630). Elimination of the exemption in Rider BDP would result in Duke recovering the same revenue twice that it is already recovering in base rates. (Tr. VI, p. 1630). This would result in a windfall to Duke of potentially millions of dollars for which it has demonstrated no unrecovered costs and, thus, no justification for such a rate increase. The Commission should reject the elimination of the exemption and order Duke to file an amended Rider BDP reflecting continuation of the GCHC hospital exemption.

E. Duke Has Not Demonstrated That Its ESP Proposal Is More Beneficial in the Aggregate Than An MRO.

Ohio law requires each electric distribution utility to provide a standard service offer to customers within its service territory to provide them with electric generation service. Revised Code § 4928.141. The statute gives the utility the choice of filing for an MRO pursuant to § 4928.142 or an ESP pursuant to § 4928.143. The statute explicitly states: "*Only* a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section;" Revised Code § 4928.141(A) (emphasis added).

Section 4928.142, authorizing an MRO, requires that the utility follow a competitive bidding process to establish the terms of the offer. The purpose is to obtain the least cost offer to consumers. The MRO statute does not permit the inclusion of other single issue ratemaking

[5] And, if Rider DCI is approved, Duke would also recover the cost of any incremental capital investment made during the ESP term.

features. Duke acknowledges that Riders PSR and DCI could not have been proposed or approved pursuant to § 4928.142. (Tr. I, pp. 146-47, 276; Tr. II, pp. 446, 448, 556). The ESP statute permits single-issue ratemaking, but the MRO statute does not. (Tr. II, p. 449). However, Duke has concocted a theory that, because it could propose such riders in a base rate case in an "MRO environment," that it should be able to ignore these riders for purpose of the ESP v. MRO test. (Tr. I, p. 277; Tr. II, p. 556). Duke postulates that these riders are neutral because they could exist under either an ESP or an MRO. (Tr. I, p. 536; Tr. II, pp. 439-40, 445). But, these riders could not be approved in a standalone MRO proceeding without a separate base rate case. (Tr. II, pp. 441, 448). Staff concurs that its neutral treatment of Rider DCI in the ESP v. MRO test assumes that a separate base rate case would have to be filed in addition to an MRO proceeding. (Tr. XIII, p 3793).

The MRO statute requires that generation rates be established through a competitive bidding process, but the ESP statute leaves the utility to its own devises to propose a method to establish generation rates. So, the comparison of an ESP to an MRO could involve comparing two different methods of establishing generation rates in addition to the special features authorized in an ESP that are not authorized in an MRO. Section 4928.143(B)(2) requires that all of the features proposed in an ESP filing, taken together with the generation rates, be compared in the aggregate "to the expected results that would otherwise apply under section 4928.142 of the Revised Code." R.C. § 4928.143(C)(1). Since Riders DCI and PSR could not be approved in an application filed under § 4928.142, the only proper comparison is between the ESP proposal Duke has made, with the riders, and an MRO using competitive bidding that does not include the riders. The statute does not say to compare the ESP to what could be done in an MRO *plus* a base rate case.

Because Duke has proposed an ESP based on competitive bidding and agrees that it would yield the same results with respect to generation prices as the MRO competitive bidding process, the comparison boils down to whether it is more favorable to have the riders or not to have the riders. The riders could not be approved under § 4928.142, so they are not a wash when comparing the two scenarios. Revised Code § 4928.141 says that only a plan established in accordance with sections 4928.141 and 4928.142 can serve as an SSO. Duke's comparison of its ESP to what could be done in an "MRO environment" (presumably meaning a rate case coupled with an MRO) is contrary to the statute and cannot be authorized. Revised Code § 4928.141 on its face precludes a comparison of an ESP to the combination of an MRO and a base distribution rate case.

It is undisputed that Rider DCI would increase customer bills. (Tr. II, p. 394). Staff agrees that, if the balancing test requires a direct comparison of an ESP filing to an MRO filing, then a quantitative assessment of an ESP to an MRO would find the ESP to be less favorable. (Tr. XIII, p. 3794). Staff did not do a quantitative analysis of Rider PSR because it recommends that the rider be denied for other reasons. But, Staff agrees that if the value of Rider PSR is negative, then an ESP with Rider PSR would also be less favorable than an MRO. (Tr. XIII, p. 3796). Duke attempts to lay claim to intangible benefits of its riders, while ignoring completely the cost of the riders to ratepayers. That not only violates Revised Code § 4928.141, it violates Revised Code § 4928.143(C), which requires consideration of the entire plan, "including its *pricing*." (emphasis added). Pricing must include the cost of the riders. (Tr. III, p. 670). And the price of Duke's ESP with the Riders is necessarily higher than the price that would prevail under an MRO without them. Therefore, Duke's ESP fails the comparison to an MRO because it cannot be more favorable in the aggregate.

IV. CONCLUSION

Duke's proposed Riders DCI and PSR should be rejected for numerous reasons. Fundamentally, Duke has not met its burden of proof that an ESP that includes these riders is better in the aggregate than an MRO. Independent of that, each of the riders suffers flaws of its own that should cause the Commission to reject them.

It is undisputed that Rider PSR would be detrimental to customers during the three-year term of the ESP. According to Duke's own projections, customers would not see a net benefit from Rider PSR for a decade. There has been no demonstration by Duke that the Commission could approve a Rider that would continue to capture new activity for decades after the expiration of the three year ESP plan to which it is attached. Rider PSR is nothing more than a poorly disguised attempt by Duke to shift its OVEC losses to distribution customers. The Commission should reject that.

Rider DCI should be rejected as unnecessary. Duke has unequivocably stated that it can and will meet service reliability standards without Rider DCI. It has demonstrated no emergency why it should be allowed immediate recovery (actually in advance in the case of projected spending) of these capital investments in lieu of filing a distribution rate case.

Finally, the Commission should reject the termination of Rider LFA and the GCHC member hospital exemption to Rider BDP. Duke is already recovering all of the costs associated with BDP service in base rates. Elimination of the exemption would be an unjustified rate increase and a windfall to Duke.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Brief of the Greater Cincinnati Health Council has been served to the parties listed below by electronic delivery this 15th day of December 2015.

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