

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)	Case No. 14-841-EL-SSO
an Electric Security Plan, Accounting)	
Modifications and Tariffs for Generation)	
Service.)	

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its)	Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)	

**MERIT BRIEF
OF
DUKE ENERGY OHIO, INC.**

December 15, 2014

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I. INTRODUCTION

Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), through these proceedings, seeks approval from the Public Utilities Commission of Ohio (Commission) for its third electric security plan (ESP), under the provisions of R.C. 4928.143. The Company's application proposes an ESP that builds on its successful, second ESP,¹ which is effective through May 31, 2015.² Under that second ESP, Duke Energy Ohio has provided 100 percent of its standard service offer (SSO) supply through competitive auctions, has fully separated its directly owned, legacy generation assets from distribution- and transmission-related assets, and has enabled the growth of customer choice in its territory.

Through its third ESP, Duke Energy Ohio renews its commitment to Ohio's competitive retail market, again proposing the use of a competitive bidding process (CBP) plan to procure all of its SSO supply. And it is seeking to modify the cost allocation and rate design methodologies associated with its SSO-related riders so as to enable customers to make more informed decisions in respect of customer choice. Importantly, however, this third ESP makes provision for riders that recognize the expectations and needs of the Company's customers, whether in the form of service reliability, rate stability, or predictability. As discussed herein, the proposed ESP is more favorable, in the aggregate, than the results that would be expected under R.C. 4928.142 and it should be approved.

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.* (ESP II).

² Although Duke Energy Ohio's ESP II is, on its face, effective through May 31, 2015, it will persist beyond that date unless a new SSO is approved by the Commission and not withdrawn by Duke Energy Ohio, prior to April 1, 2015. Office of the Ohio Consumers' Counsel (OCC) Exhibit 2 (ESP II, Stipulation and Recommendation), pg. 6.

II. APPLICABLE LAW

A. Mandatory Aspects of an ESP

Ohio law requires every electric distribution utility (EDU), as part of its monopoly service in its authorized territory, to provide an SSO for the benefit of all customers who choose not to switch to a competitive retail electric service (CRES) provider. That SSO must be in one of two forms: a market rate offer (MRO) or an ESP.³

The requirements for an ESP are quite simple. First, it must “include provisions relating to the supply and pricing of electric generation service.”⁴ In other words, the ESP must set forth the manner in which the EDU will obtain retail generation service for any non-shopping customers, and must explain how the price of that generation service will be determined. And second, it must be more favorable in the aggregate as compared to the expected results of an MRO, when considering pricing and all other terms and conditions.⁵ As demonstrated herein, the Company’s application conforms to the mandatory aspects of R.C. 4928.143.

B. Permitted Aspects of an ESP

An ESP is also expressly permitted, under the law, to include a variety of other provisions, as enumerated in R.C. 4928.143(B)(2). Of these permissible provisions, the Company’s proposal includes provisions that would have the effect of stabilizing or providing certainty regarding retail electric service⁶ and provisions relating to Duke Energy Ohio’s distribution service.⁷ It also seeks to perpetuate provisions intended to promote the continued development of the retail market. These will be discussed in greater detail below.

³ R.C. 4829.141.

⁴ R.C. 4928.143(B)(1).

⁵ R.C. 4928.143(C)(1).

⁶ R.C. 4928.143(B)(2)(d).

⁷ R.C. 4928.143(B)(2)(h).

C. Burden of Proof

Pursuant to R.C. 4928.143(C)(1), the burden of proof in the proceeding with regard to elements required for approval of the ESP rests on Duke Energy Ohio. As the Commission has further instructed “the burden of proof [at the hearing] to show that the proposals in the application are just and reasonable and are consistent with the policy of the state as delineated in divisions (A) through (N) of section 4928.02 of the Revised Code shall be upon the electric utility.”⁸

Duke Energy Ohio has met its burden of proof, as demonstrated herein.

III. DUKE ENERGY OHIO HAS PROPOSED AN ESP THAT IS JUST AND REASONABLE AND CONSISTENT WITH THE PROVISIONS OF R.C. 4928.02.

A. The Mandatory Aspects of the ESP, as Proposed by Duke Energy Ohio, Properly Recognize Existing Commitments and Established Protocol for the Procurement and Pricing of SSO Supply.

1. Provisions Relating to the Supply of Generation.

R.C. 4928.143(B)(1) mandates that an ESP include provisions related to the supply of generation service. Here, Duke Energy Ohio proposes to procure all supply for its SSO via a CBP plan that, as demonstrated herein, supports reasonably priced retail electric service for the term of the ESP.

As an initial matter, Duke Energy Ohio structured its CBP plan in reliance upon the relevant commitments made in respect of its current ESP. In that proceeding, ESP II, the parties to the Stipulation and Recommendation expressly agreed as follows:

This subsequent application [for an SSO] shall make provision for SSO supply procurements via a descending-clock format, [CBP] and the Parties hereby expressly waive any rights that they may have to contest the use of such a CBP for the purpose of establishing Duke Energy Ohio’s next SSO.⁹

⁸ O.A.C. 4901:1-35-06.

⁹ OCC Exhibit 2, pp. 4-5.

The parties further agreed that Duke Energy Ohio would procure, on a slice of system basis, full requirements supply, with that supply including energy, capacity, market-based transmission service, and market-based transmission ancillary services.¹⁰ And the parties consented to having an independent auction manager conduct the SSO auctions and to using bid documents similar to those used in the current ESP.¹¹

With these Commission-approved commitments as the basis, Duke Energy Ohio proposes descending-price clock auctions to procure supply for all SSO load, including the load of residential customers served under the percentage-of-income payment plan (PIPP).¹² Duke Energy Ohio witness Robert J. Lee described the proposed solicitations and related bid documents.¹³ As Mr. Lee observed, the Company proposes to conduct a total of six auctions, with the first two such auctions held prior to the delivery period beginning June 1, 2015.¹⁴ Through these six auctions, the Duke Energy Ohio will offer a variety of products (*i.e.*, one-, two-, and three-year contracts) for the term of its ESP.

The Company's proposed SSO procurement process, and the related bid documents, conform with existing, Commission-approved commitments and is permissible under R.C. 4928.143. Indeed, even Staff witness Raymond Strom confirms that "the procedures that the Company is recommending appear to be appropriate and consistent with the competitive bidding processes that have previously been conducted by Duke Energy Ohio and Ohio's other electric distribution utilities."¹⁵

¹⁰ OCC Exhibit 2, pp. 4-5.

¹¹ OCC Exhibit 2, pp. 4-5.

¹² R.C. 4928.53.

¹³ See Duke Energy Ohio Exhibit 3 (Direct Testimony of Robert J. Lee) and Duke Energy Ohio Exhibit 1 (Application), Attachments B – G.

¹⁴ Duke Energy Ohio Exhibit 1, Attachment B.

¹⁵ Staff Exhibit 3 (Direct Testimony of Raymond Strom), pg. 3.

2. Provisions Relating to the Pricing of Generation.

As confirmed in the testimony of Duke Energy Ohio witnesses William Don Wathen Jr. and James E. Ziolkowski, the Company has proposed to perpetuate its Commission-approved riders for SSO supply, with minor improvements. These revisions are primarily intended to better align SSO rates with the offers that retail customers may receive from CRES providers, thereby allowing for a more transparent process and informed decision-making, and to move toward a more level playing field between CRES suppliers and SSO auction winners, which are both competing for Duke Energy Ohio's retail load.

a. Rider RC (Retail Capacity)

The clearing price for each competitive wholesale auction to be held in connection with the pending ESP is an aggregate number, stated in terms of dollars per megawatt-hour (\$/MWh) for all MWhs delivered to SSO customers. In order to allow for more transparency and comparability into the components of SSO supply, Duke Energy Ohio proposes to unbundle the costs of full requirements service into two separate riders, consistent with its current process. Accordingly, the Company seeks to perpetuate Rider RC as the mechanism for recovering capacity costs embedded in the winning auction price for SSO supply, although with limited modifications to the current methodologies for cost allocation and rate design.

To appreciate these proposed changes, it is important to first recognize that the cost allocation and rate design for the current Rider RC is the product of a broad-based, negotiated settlement – a settlement that involved many parties and many competing interests. But refinements to both the allocation methodology and rate design are now appropriate in order to reflect the actual manner in which costs are incurred and to better align the resultant retail rates with the source of the capacity prices.

PJM's wholesale capacity market will provide the capacity needed to serve Duke Energy Ohio's SSO load. Consequently, Duke Energy Ohio proposes to allocate capacity costs under Rider RC consistent with the manner in which PJM bills load serving entities, which is the "five coincident peak" or "5 CP" method. Such a revision to the current allocation factor will result in costs under Rider RC reflecting the manner in which such costs are incurred – a revision that recognizes the long-standing regulatory principle of cost causation.¹⁶

In addition to refining the allocation methodology under Rider RC, Duke Energy Ohio also proposes to modify the rider's rate design such that retail rates are converted to energy-only rates. As a result of this refinement, generation-related charges under Rider RC would be based upon kWh consumption.

As detailed in the Direct Testimony of Company witness Ziolkowski, non-residential customers will benefit from these changes. Indeed, low load factor customers will avoid unreasonably high average rates that can result from the existing Rider RC rate design that combines both demand charges based on an 85 percent ratchet and energy charges, while high load factor customers will substantially continue to receive the benefits applicable to them via the current rate structure.¹⁷

The Company's proposed rate design for Rider RC significantly benefits low-load factor customers, but this benefit is not being provided at the expense of high load factor customers. Rather, the Company's proposed rate design is structured so as to progressively reduce the average rate for customers as their load factors increase. The modification to the rate design

¹⁶ Duke Energy Ohio Exhibit 6 (Direct Testimony of William Don Wathen Jr.), pg. 18.

¹⁷ Duke Energy Ohio Exhibit 18 (Direct Testimony of James E. Ziolkowski), as supplemented by Duke Energy Ohio Exhibit 19 (Supplement to Direct Testimony of James E. Ziolkowski) and Duke Energy Ohio Exhibit 20 (Second Supplement to Direct Testimony of James E. Ziolkowski), pp. 10-15. (All subsequent references to Duke Energy Ohio Exhibit 18 should be deemed to include the supplements thereto, although their specific reference will not be stated, for ease of reading.)

proposed in the testimony of Mr. Ziolkowski is commonly referred to as “hours use of demand.” This rate structure is designed to reward customers for improving load factor in a manner similar to the use of a combination of demand and energy rates. Customers with higher load factors experience lower average rates compared to customers with lower load factors, just as before. The significant difference is that the hours use of demand rates eliminate the potential for customers with very low load factors to experience the extremely high average rates that have been experienced in the current rate design. All else being equal, most customers will experience little to no change with the proposed change in the rate design, but it positively impacts customers most at risk for experiencing very high average rates.

For residential and small commercial customers served under Rate RS, RSLI, RS3P, ORH, or DM,¹⁸ the Rider RC rates currently consist of stepped, summer and winter rates. The Company is not proposing that those stepped rates be eliminated, in their entirety, in this ESP; however, it is proposing to reduce the difference between those stepped rates. For example, for Rates RS, RS3P, and RSLI, the Company proposes that Rider RC be changed to just one summer rate, regardless of usage. The Rider RC for customers taking service under Rate ORH would change to just one summer rate, and the winter usage level at which the rate changes would be increased by 50 percent. For Rate DM, the proposal would result in just one summer rate, two instead of three winter rates, and a higher threshold for reaching the second block of the winter rate.¹⁹ The intent behind this reduction in the differences is to design the SSO rates to better reflect the rates that are offered by CRES providers; thereby enabling customers to more readily compare offers and make informed decisions. In addition, the proposal will, to the extent

¹⁸ Rates RS (Residential Service), RSLI (Residential Service – Low Income), RS3P (Residential Three-Phase Service), ORH (Optional Residential Service with Electric Space Heating), and DM (Secondary Distribution Service – Small).

¹⁹ Duke Energy Ohio Exhibit 18, pg. 15 and Attachment JEZ-1, pp. 100-105 of 121.

possible, ensure competitive neutrality between SSO prices and CRES offers, thereby enhancing the competitive market.

Finally, it is noteworthy that the proposed rate designs for SSO supply are consistent with those in existence for the FirstEnergy distribution utilities and are generally consistent with the rate designs recently proposed by AEP Ohio.²⁰ With efforts toward standardization underway following the Commission's investigation into the retail market, such consistency in retail generation rates across the state is reasonable and thus worthy of consideration.

b. Rider RE (Retail Energy)

As discussed above, capacity costs associated with SSO supply will be recovered through Rider RC. Duke Energy Ohio proposes to recover all remaining costs for providing full requirements supply (*e.g.*, energy, market-based transmission services, market-based ancillary services, and distribution losses) through Rider RE, consistent with current purpose for Rider RE. With little modification, the Company further proposes that the current structure of Rider RE be continued in its next ESP.

The one modification to Rider RE proposed in these proceedings concerns only those customers on Rates RS, RSL1, RS3P, ORH, and DM. As noted above, these rider rates consist of stepped, summer and winter rates. For the same reason offered in connection with Rider RC, Duke Energy Ohio proposes here to reduce the difference between the stepped rates so as to achieve SSO prices that more closely reflect CRES providers' offers.²¹

²⁰ *In the Matter of the Application of The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 7 (July 18, 2012); and *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, *et al.*, Application and Direct Testimony of Andrea E. Moore and David M. Roush (December 20, 2013).

²¹ Duke Energy Ohio Exhibit 18, pp. 15-17.

c. Rider SCR (Supplier Cost Reconciliation Rider)

The Commission previously approved Duke Energy Ohio's Rider SCR – a rider intended to reconcile and recover the costs related to the competitive wholesale auctions for SSO supply.²² In the context of these proceedings and given the continued use of competitive wholesale auctions, Duke Energy Ohio proposes to perpetuate Rider SCR, as previously approved by the Commission.²³ Specifically, Duke Energy Ohio proposes that, through Rider SCR, it continue to recover any difference between the payments made to suppliers for SSO supply and the amount of revenue collected under Rider RC and Rider RE. Rider SCR would also recover all prudently incurred costs associated with conducting the competitive wholesale auctions for SSO supply and any costs resulting from supplier default. The monthly accumulated balance of over- or under-recovery under Rider SCR will accrue a carrying charge equal to Duke Energy Ohio's overall cost of long-term debt, as approved in its most recent distribution rate case.

Consistent with the current structure of the rider, the Company further proposes that Rider SCR be approved as a conditionally bypassable rider. Specifically, as long as the balance of Rider SCR is less than 10 percent of Duke Energy Ohio's overall actual SSO revenue for the most recent quarter for which data is available, the rider would be avoided by shopping customers. But if the balance is equal to or exceeds 10 percent of the overall actual SSO revenue, Duke Energy Ohio will apply to the Commission for confirmation that the rider should be modified such that it becomes non-bypassable. This designation would persist only for as long as the rider balance is equal to or exceeds the stated threshold of 10 percent of overall actual SSO revenue.²⁴

²² Ohio Manufacturers' Association (OMA) Exhibit 2 (ESP II Opinion and Order), pg. 51.

²³ Duke Energy Ohio Exhibit 18, Attachment JEZ-4. *See also* Duke Energy Ohio Exhibit 6, pg. 18.

²⁴ See OMA Exhibit 2 for details of the agreed upon and Commission-approved structure for Rider SCR.

The Company's proposal is reasonable and merits approval. Indeed, no party has opposed the continuation of Rider SCR, consistent with its current structure. And the scant testimonial evidence offered in connection with this rider confirms that parties acquiesce to the recommended process to convert Rider SCR from a bypassable to a non-bypassable rider.²⁵

The proposed manner for procuring and pricing SSO supply adheres to the commitments in the ESP II proceeding, as agreed to by those parties and as approved by the Commission. The moderate, yet important, revisions as described in the application and supporting testimony confirm the just and reasonable nature of these procurement and pricing proposals.

B. The Permitted Aspects of the ESP, as Proposed by Duke Energy Ohio, Are Just and Reasonable and Properly Recognize the Expectations of the Company and its Customers and of Suppliers.

R.C. 4928.143 authorizes an EDU to propose, for inclusion in an ESP, certain components other than generation supply and pricing. As the Ohio Supreme Court has confirmed, the components eligible for inclusion in an ESP are set forth in R.C. 4928.143(B)(2)(a)-(i).²⁶ Consistent with this pronouncement, Duke Energy Ohio proposes for inclusion in its ESP elements intended to address timely and necessary reliability improvements to the existing distribution system, timely and efficient service restoration following extreme weather events, and stability and certainty in retail rates at a time when the wholesale market on which Duke Energy Ohio and its retail customers are wholly dependent is facing unprecedented change.

²⁵ Tr. X, pg. 2693 (RESA witness Lael Campbell confirms that RESA does not oppose a non-bypassable rider, but only an automatic trigger for same).

²⁶ *In re Application of Columbus Southern Power Company*, 128 Ohio St.3d 512, 2011-Ohio-1788, at ¶ 32.

1. Provisions Relating to Distribution Service

a. Rider DCI (Distribution Capital Investment)

Ohio law authorizes Duke Energy Ohio to include, in its proposed ESP, provisions regarding single-issue ratemaking, including, but not limited to, distribution infrastructure and modernization.²⁷ This statutory provision is complemented by a Commission rule that sets forth additional criteria to be included in such a distribution infrastructure and modernization plan.²⁸ Consistent therewith, Duke Energy Ohio proposed a non-bypassable Distribution Capital Investment Rider (Rider DCI) as part of its application in these proceedings. As discussed below, Rider DCI, like similar distribution infrastructure riders approved by the Commission for other Ohio electric utilities,²⁹ is structured to recover a return on incremental capital investment and the associated depreciation and property tax expense for distribution-related reliability investment that is not otherwise recovered through base rates or another rider.³⁰ Before addressing the rider's structure, however, Duke Energy Ohio focuses on the purpose for the rider and resulting benefit to customers.

Distribution reliability is a core tenet for the Company. It is also critical to the Company's customers, whose expectations regarding reliability continue to evolve with

²⁷ R.C. 4928.143(B)(2)(h).

²⁸ O.A.C. 4901:1-35-03(C)(9)(g).

²⁹ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order, at pp. 11-12, 46 (August 25, 2010)(approval of Delivery Capital Recovery Rider); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order, at pp. 10-11, 57 (July 18, 2012)(approval to continue the Delivery Capital Recovery Rider); *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order, at pp. 46-47 (August 8, 2012)(approval of Distribution Investment Rider).

³⁰ Duke Energy Ohio Exhibit 9 (Direct Testimony of Peggy A. Laub), pp. 2-3.

increasing dependence upon sophisticated or more advanced technologies.³¹ Maintaining a reliable system is a continuing obligation. And it is an obligation that requires regular capital investment and an awareness of both the Company's and its customers' needs. As explained by Duke Energy Ohio witness Marc W. Arnold, the ability to meet this obligation is not without challenges.

The most significant of these challenges relate to proactively addressing aging infrastructure through upgrading and replacing obsolete equipment and managing customer expectations.³² As to the former, much of the Company's distribution equipment is over thirty years old and, in fact, there are some portions of the system in downtown Cincinnati that date back to the 1920s.³³ Because aging infrastructure is a primary cause of outages and reliability concerns, it requires regular reviews of the distribution system and operations for appropriate upgrades or replacements.³⁴ A further complication associated with aging infrastructure is equipment obsolescence, which influences the scope and extent of ongoing system maintenance activities. Consistent with the Commission's prior determinations,³⁵ Duke Energy Ohio believes that an efficient, proactive approach to system reliability – addressing conditions before failures and resultant outages occur – is appropriate.

But implementing an efficient, proactive approach requires ongoing capital investment.³⁶ The Company thus proposes Rider DCI, which is designed to allow the Company to address

³¹ Duke Energy Ohio Exhibit 21(Direct Testimony of Marc W. Arnold), pp. 10-11.

³² *Id.*, pg. 9.

³³ *Id.*

³⁴ *Id.*

³⁵ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.* Opinion and Order, pg. 47 (August 8, 2012).

³⁶ Duke Energy Ohio Exhibit 21, pg. 16.

reliability concerns proactively³⁷ and to enable it to direct sufficient resources to the reliability of its distribution system, as set forth in R.C. 4928.143(B)(2)(h).

Proactively addressing the reliability of the distribution system is not an objective intended only to realize the expectations of the Company. Rather, as established by the record in these proceedings, customers have demonstrated an increasing dependence upon more reliable service for sophisticated technology. Their expectations, which are aligned with those of the Company, are also met through Rider DCI. Of all of the witnesses in these proceedings, Duke Energy Ohio witness Arnold is best suited to describe customer needs and expectations. Mr. Arnold works closely with large customers in the Duke Energy Ohio service territory, and also works in the field, having regular interaction with customers.³⁸ Mr. Arnold also was charged with interacting directly with customers during the deployment of the Company's grid modernization plan.³⁹ Indeed, Mr. Arnold emphatically assured the Commission that his job depends upon the maintenance of a reliable system⁴⁰ and he thus has a responsibility that requires appreciation of customer needs. Consequently, Mr. Arnold is uniquely qualified to understand customer expectations related to service quality and to ensure the Commission that those expectations are consistent with the Company's expectations. And in this regard, Mr. Arnold explained that customer expectations are evolving as technology changes and customers are generally expecting service restoration to be made more quickly and outages to occur less frequently.⁴¹ Staff witness Peter K. Baker further acknowledges that customer and Company expectations are aligned.⁴² Thus, to ensure the continuation of reliable and safe service, Rider

³⁷ Tr. VIII, pg. 2136, 2138, 2156.

³⁸ Tr. IX, pg. 2425.

³⁹ *Id.*, pg. 2426.

⁴⁰ Tr. VIII, pg. 2136.

⁴¹ Duke Energy Ohio Exhibit 21, pp. 10-11.

⁴² Staff Exhibit 7 (Direct Testimony of Peter K. Baker), pg. 5.

DCI will allow the Company to recover the incremental revenue requirement on these distribution-related capital investments on a more timely basis than if the Company simply waited for the next base rate case.

Duke Energy Ohio witness Peggy A. Laub provided a detailed overview of how the proposed rider mechanism would function.⁴³ Ms. Laub explained that the incremental revenue requirement applicable to Rider DCI would be determined by calculating the revenue requirement associated with the projected rate base at the end of the next quarter and subtracting the revenue requirement for the rate base that is recovered through base rates. Ms. Laub provided an illustration to demonstrate the calculation in an attachment to her direct testimony.⁴⁴ Ms. Laub further explained that the Company proposes that Rider DCI filings would be made quarterly.⁴⁵

The revenue requirement for Rider DCI includes a return on equity (ROE) component. And as explained by Ms. Laub, Duke Energy Ohio proposes to calculate its Rider DCI using a 9.84 percent ROE, consistent with the ROE approved by the Commission in the Company's most recent electric base rate case.⁴⁶ As conceded by counsel for the Office of the Ohio Consumers' Counsel (OCC), R.C. 4928.143 does not include any requirement that the Company submit an ROE calculation in the same manner as is required in a base rate case filed under R.C. Chapter 4909.⁴⁷ Rather, R.C. 4928.143(B)(2)(h) provides simply that an ESP may make provision for a just and reasonable rate of return on infrastructure modernization. Consistent with the applicable statutory authority and Commission rules implementing same, Duke Energy Ohio has suggested

⁴³ Duke Energy Ohio Exhibit 9, pp. 2-6.

⁴⁴ *Id.*, pg. 3 and Attachment PAL-1.

⁴⁵ *Id.*, pg. 5.

⁴⁶ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 12-1682-EL-AIR, *et al.*, Opinion and Order (May 1, 2013).

⁴⁷ Tr. XVI, pg. 4202 ("And the company's correct, there is no requirement to file rate of return testimony, but had they wanted to, they had the option to do so.") *See also* R.C. 4928.143.

a 9.84 percent ROE for distribution investment, a rate that the Commission and stipulating parties found just and reasonable in the context of a very recent proceeding. Moreover, this ROE is well within the range, albeit at the low end, of the detailed ROE calculation that the Company submitted with its recent base rate case request.⁴⁸

Reliance on an existing, recently approved ROE is consistent with existing Commission precedent. Indeed, in Case No. 10-2929-EL-UNC, the Commission approved an ROE for AEP Ohio's generation capacity costs with reference to ROEs that had been approved for similar transactions.⁴⁹ The same outcome is appropriate here, where there are similar Ohio riders pertaining to incremental distribution investment having comparable, although higher, ROEs. Specifically, with regard to these other distribution capital investment riders, the Commission has authorized ROEs ranging between 10.2 percent and 10.6 percent.⁵⁰ As these approved ROEs are presumptively just and reasonable, being Commission-approved, it necessarily follows that a 9.84 percent ROE for a similar mechanism is appropriate. Despite this substantial justification for adopting an ROE of 9.84 percent for Rider DCI, certain intervening parties, most notably the OCC, have challenged whether the recently approved 9.84 percent ROE is reasonable. The Company has removed any room for doubt.

During the rebuttal phase of the evidentiary hearing, Duke Energy Ohio conclusively demonstrated that the offered 9.84 percent ROE is fair and reasonable, under current capital

⁴⁸ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 12-1682-EL-AIR, *et al.*, Direct Testimony of Roger A. Morin, Ph.D.

⁴⁹ *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry on Rehearing, at pg. 37 (October 17, 2012).

⁵⁰ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order, pg. 10 (July 18, 2012); and *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order, pg. 27 (August 8, 2012).

market conditions, for the purposes of calculating Duke Energy Ohio's Rider DCI.⁵¹ The evidence shows that a ROE of 9.84 percent: (1) remains fair to ratepayers, (2) allows the Company to attract capital on reasonable terms, (3) maintains the Company's financial integrity, and (4) remains comparable to returns offered on investments with comparable risk.⁵² Moreover, the evidentiary record is devoid of any evidence that would support a lower ROE. Indeed, although the OCC attempted to attack the proposed ROE as too high, it neither offered nor supported a different ROE.⁵³

As demonstrated by the rebuttal testimony of Duke Energy Ohio witness Dr. Roger A. Morin, based on the results of various Commission-accepted methodologies for calculating an ROE, current capital market and economic industry conditions support a reasonable ROE range applicable to Duke Energy Ohio's electricity distribution operations as 9.6 percent to 11.0 percent, with a midpoint of 10.3 percent.⁵⁴ Dr. Morin further explained that the implementation of Rider DCI does not reduce the financial risk faced by the Company.⁵⁵ Therefore, the Company's proposed ROE for Rider DCI is just and reasonable and should be approved.

b. Rider DSR (Distribution Storm Recovery)

In addition to the benefits proposed in Rider DCI and consistent with provisions in R.C.4928.143(B)(2)(h), Duke Energy Ohio is also proposing a non-bypassable Distribution Storm Rider (Rider DSR) that is designed to enable the Company to defer and recover expenses incurred by the Company in responding to major storm events. Duke Energy Ohio witness Laub explained that the Company proposes to establish a regulatory asset account to defer the costs above and below the amount currently in base rates of \$4.4 million. The Company proposes to

⁵¹ Duke Energy Ohio Exhibit 40 (Rebuttal Testimony of Roger A. Morin), pg. 3.

⁵² *Id.*, pg. 4.

⁵³ OCC Exhibit 32 (Direct Testimony of Matthew I. Kahal), pp. 8-12.

⁵⁴ Duke Energy Ohio Exhibit 40, pg. 6.

⁵⁵ *Id.*, pp. 70-75.

recover the balance of this deferral in its next base distribution case unless the cumulative balance exceeds \$5 million at the end of a calendar year. If the balance exceeds \$5 million, the Company will file an application with the Commission to adjust Rider DSR in order to collect the then-current balance in the regulatory account. Insofar as the proposal only relates to expenses, capital costs related to major storm recovery would be recovered through Rider DCI or in a subsequent rate case. The Company further proposes that any monthly positive or negative balance in this deferral account would accrue a carrying cost at the Company's long-term cost of debt as approved in its most recent base distribution case.⁵⁶

c. Rider DDR (Distribution Decoupling)

Ohio law also permits an ESP to include provisions regarding revenue decoupling.⁵⁷ In these proceedings, Duke Energy Ohio seeks Commission approval to continue its existing Rider DDR (distribution decoupling), a rider the inception for which was in the Company's ESP II proceedings.⁵⁸ By adjusting rates, or truing up base distribution revenues for applicable rate classes, between base rate cases, Rider DDR eliminates any incentive that the Company may have to increase volumetric consumption. As discussed in the Direct Testimony of Company witness Ziolkowski, Duke Energy Ohio proposes to continue this rider until the Commission approves its next base distribution rate case filing, at which time it anticipates pursuing an alternative decoupling proposal, consistent with existing Commission instruction.⁵⁹ At that time and assuming Commission approval of an alternate rate design, the need for Rider DDR would be eliminated such that the rider would terminate subsequent to any necessary true up.⁶⁰

⁵⁶ Duke Energy Ohio Exhibit 9, pp. 7-8.

⁵⁷ R.C. 4928.143(B)(2)(h).

⁵⁸ OCC Exhibit 2, pp. 30-31 and OMA Exhibit 2, pg. 51.

⁵⁹ *In the Matter of Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation*, Case No. 10-3126-EL-UNC, Finding and Order, para. 64 (August 21, 2013).

⁶⁰ Duke Energy Ohio Exhibit 18, pp. 19-21.

Consistent with the current structure of Rider DDR, Duke Energy Ohio proposes that the following rate classes be excluded from its scope: Rate DS, Rate DP, and Rate TS.

2. Rider PSR (Price Stability Rider)

Ohio law also allows an ESP to include terms, conditions, and charges relating to, among other things, bypassability, as would have the effect of stabilizing or providing certainty regarding retail electric service.⁶¹ It is under this provision that Duke Energy Ohio seeks Commission approval of its proposed Price Stability Rider (Rider PSR) – a rider that is intended to mitigate anticipated, yet undefined, volatility in the wholesale market.

As the Commission has previously found, assessing a rider under R.C. 4928.143 implicates three specific criteria; namely, whether the proposed rider involves a term, condition, or charge; whether that term, condition, or charge relates to one of the enumerated issues; and whether the rider would have the effect of stabilizing or providing certainty regarding retail electric service.⁶²

Here, Rider PSR undeniably involves a term, condition, or charge. The rider, as proposed by Duke Energy Ohio, would to provide to all customers the net benefits associated with Duke Energy Ohio's contractual entitlement in the Ohio Valley Electric Corporation (OVEC). The rider also concerns one of the issues delineated in the relevant statutory provision: bypassability. As the Commission has previously determined, the corollary to bypassability is non-bypassability. Therefore, a term, condition, or charge relating to a non-bypassable rider is properly included in an ESP, provided the third and final requirement is met. And, as structured, Duke Energy Ohio's proposed Rider PSR would have the effect of stabilizing or providing

⁶¹ R.C. 4928.143(B)(2)(d).

⁶² *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, *et al.*, Opinion and Order, pp. 21-22 (September 4, 2013).

certainty regarding retail electric service. Consequently, Rider PSR is lawful under R.C. 4928.143 and, as discussed herein, is a reasonable element of the proposed ESP.

The state of Ohio has implemented retail choice and, as a consequence, retail rates for generation supply are dependent upon the availability and pricing of energy and capacity in the wholesale markets. In recent years, this dependency benefitted customers in that wholesale prices were very low, attracting growing numbers of competitive suppliers with attractive offers to retail customers. As currently directed by R.C. Chapter 4928, retail choice will persist. There is nothing in Duke Energy Ohio's proposed ESP that will contradict, complicate, or compromise the continued development of the retail market. Indeed, the overwhelming evidence in this case confirms that all Duke Energy Ohio retail customers will continue to have the right to engage in choice and that all generation serving shopping and non-shopping customers will either be provided by CRES providers or procured from wholesale auction winners.

But the Commission should not consider retail choice in a vacuum, with disregard for factors that influence the markets that form the basis for retail rates. The Commission should not be persuaded to ignore events that will undeniably impact retail customers through higher prices simply because Ohio's EDUs have transferred or are legally transferring their legacy, owned generation to affiliates. State regulatory policy is not one-dimensional and should not be determined from a philosophical debate. Thus, despite the anticipated urgings from Staff and the intervenors in these proceedings, the Commission should not reject a proposal that will mitigate retail rates simply because it took some time for Ohio's EDUs to complete the transition to a retail market.⁶³ That the transition took time is indicative of the Commission's adherence to its mission of "assur[ing] all residential and business consumers access to adequate, safe and reliable utility services at fair prices, while facilitating an environment that provides competitive

⁶³ Staff Exhibit 1 (Direct Testimony of Hisham M. Choueiki, Ph.D.), pg. 11.

choices”⁶⁴ and its obligation to balance the interests of the state, public utilities, and customers. Indeed, as the history of Ohio regulation confirms, the Commission has been vigilant and steadfast in meeting its mission.

When Ohio choice first became effective, the EDUs proposed electric transition plans for their provision of retail electric service, including a rate unbundling plan, a corporate separation plan, an operational support plan, an employee assistance plan, and a consumer education plan.⁶⁵ The Commission approved these respective plans, after due process. As the transition plans were approaching their termination, the Commission did not merely sit back and subject retail customers to the anticipated price spikes. Rather, it directed the EDUs to propose rate stabilization plans in order to mitigate these consequences.⁶⁶ As the rate stabilization plans approached their respective termination dates, Ohio’s legislature modified R.C. Chapter 4928 by requiring each EDU to provide an SSO. Importantly, the General Assembly expressly permitted an EDU, operating under an ESP, to recover environmental expenditures for a generating facility, costs associated with newly used and useful generation, and costs for alternative energy resources. The law also permits the approval of terms, conditions, or charges as would have the effecting of stabilizing or providing certainty with regard to retail electric service, which includes retail generation supply.

As the current law confirms, the Commission acts as a steward for ratepayers. Rather than blindly accepting the consequences of a fully competitive market, regardless of that market’s behavior, the Commission has the authority to fashion an ESP that encourages

⁶⁴ <http://www.puco.ohio.gov/puco/index.cfm/about-the-commission/mission-and-commitments> (accessed Dec. 10, 2014).

⁶⁵ See *In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan, Approval of Tariff Changes and New Tariffs, Authority to Modify Current Accounting Procedures, and Approval to Transfer its Generating Assets to an Exempt Wholesale Generator*, Case No. 99-1658-EL-ETP, *et al.*, pg. 3.

⁶⁶ *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, *et al.*, pg. 29.

competition and, indeed, helps competition to prosper, while reasonably protecting customers' well-being.

The wholesale market is changing. Existing generation supply is retiring, with approximately 27,000 megawatts (MWs) of generation slated to retire by 2019. And, of this amount, the majority of it is coal fired. Indeed, over 76 percent of the generation facilities expected to retire by 2019 are coal plants.⁶⁷ This significant loss of generation from one type of fuel will undeniably reduce fuel diversity. It is simple math: Moving away from coal to natural gas increases dependence on natural gas. Some – particularly those driven only by environmental concerns without regard to the cost or the financial burden to customers – may argue that this is the right outcome. But fuel diversity has its benefits. Indeed, it was uncontested in these proceedings that a reduction in fuel diversity, with the resultant increased dependency on other fuel types, increases the risk from price spikes for remaining fuels.⁶⁸ These price spikes translate into increases in production costs and, ultimately, energy prices. And neither generators nor competitive suppliers can sustain the absorption of these increases. Ultimately, such cost increases must be passed on to end-use customers.

The polar vortex and other extreme cold periods in January 2014 are also driving undeniable change in the wholesale market. As Ohio and neighboring states witnessed during those events, less than one year ago, not all generating resources performed as expected and reduced energy supply forced load reductions, voltage drops, and shortage pricing. In addition, wholesale energy prices skyrocketed. PJM has reacted to these exposed vulnerabilities, and is seeking to alter the existing capacity market so as to further ensure a reliable grid. Most notably, PJM is proposing to implement a capacity performance initiative that is likely to lead to

⁶⁷ Tr. IX, 2653.

⁶⁸ Tr. V, pg. 1167.

increased wholesale capacity prices.⁶⁹ And these potential price increases will likely not be delayed until some future, yet to be conducted BRA. Rather, if the changes are implemented, there will likely be impacts on the prices for capacity that has already cleared a BRA or even incremental auctions. In other words, the initiatives being pursued by PJM are likely to impact wholesale capacity prices within and subsequent to the term of the Company's proposed ESP.

There are also legal proceedings that create uncertainty while pending, further confirming the volatile and uncertain nature of the wholesale market. These proceedings include the reversal of FERC Order 745 and a complaint, initiated at the FERC, to remove demand response as a capacity resource and rerun BRAs in which demand response cleared.⁷⁰

Even before the polar vortex, recent court rulings, and PJM-sponsored initiatives, the wholesale energy and capacity markets have been volatile. Every witness in these proceedings who was asked this question answered in the affirmative. And the recent events serve only to underscore this volatility and uncertainty – volatility and uncertainty that are ultimately reflected in higher prices. Indeed, even Governor Kasich remarked in April 2014 that “we are in a challenging time.”⁷¹

The Commission now has the opportunity to approve a measure that is intended to mitigate retail rate volatility, affording all of Duke Energy Ohio's customers a level of additional stability and predictability, without prejudicing the continued development of the retail market or customers' ability to choose their retail generation supplier. The measure is Rider PSR – a non-bypassable rider through which Duke Energy Ohio proposes to provide all of the net benefits associated with its 9 percent contractual entitlement in OVEC to all retail customers.

⁶⁹ Tr. VI, pp. 1695-1696. See PJM Interconnection, L.L.C., Reforms to Reliability Pricing Market (“RPM”) and Related Rules in the PJM Open Access Transmission Tariff (“Tariff”) and Reliability Assurance Agreement Among Load Serving Entities (“RAA”), FERC Docket Nos. EL15-29-000 and ER15-623-000 (December 12, 2014).

⁷⁰ Tr. VI, pp. 1696, 1698-1699.

⁷¹ Duke Energy Ohio Exhibit 2 (Direct Testimony of James P. Henning), pg. 20.

To appreciate how the rider would function, a brief history of OVEC is important. OVEC and its wholly owned subsidiary, Indiana Kentucky Electric Corporation (IKEC),⁷² were created in 1952 for the purpose of providing power for the uranium enrichment facilities then under construction by the federal Atomic Energy Commission, near Portsmouth, Ohio. OVEC then entered into a 25-year contract (later extended) to provide energy to the U.S. Department of Energy (DOE).⁷³

OVEC owns two generation stations – Kyger Creek and Clifty Creek. The stock in OVEC, as a corporate entity, is owned by thirteen sponsoring companies, one of which is Duke Energy Ohio. The business relationship between OVEC and its stockholders is set forth in a FERC-approved Inter-Company Power Agreement (ICPA). After the DOE cancelled its contract with OVEC on April 30, 2003, the ICPA was revised. Ultimately, its term was extended to June 2040.⁷⁴ FERC approved these revisions.⁷⁵

Under the ICPA, Duke Energy Ohio is entitled to capacity from the OVEC-owned generating stations commensurate with its contractual entitlement, or approximately 200 MWs, and is required to pay its share of the fixed costs for that capacity. Duke Energy Ohio is also entitled to a share of the energy produced by the OVEC-owned stations, although the Company is not obligated to take energy. However, if it does opt to receive energy from OVEC, the Company must also pay OVEC's variable cost of producing that energy.⁷⁶

Under its proposal and as explained by Duke Energy Ohio witness James P. Henning, Duke Energy Ohio commits to sell its 9 percent entitlement from the OVEC-owned generating

⁷² OVEC and its subsidiary, IKEC, will be referred to simply as OVEC, for ease of reading.

⁷³ IEU Exhibit 7 (OVEC 2013 Annual Report), pg. 1.

⁷⁴ *Id.*, pg. 1.

⁷⁵ FERC Case No. ER-11-3441.

⁷⁶ Duke Energy Ohio Exhibit 14 (Amended and Restated Inter-Company Power Agreement, as filed with FERC on April 27, 2011) (ICPA).

facilities into PJM's wholesale capacity and energy markets. The Company will then net the revenues against the costs allocated to Duke Energy Ohio under the ICPA, with the net amount (positive or negative) passed through to all customers on a non-bypassable basis.⁷⁷ In other words, Rider PSR will function as a counter-cyclical hedge, such that in rising market price environments, the benefits under the rider will be positive, thereby offsetting other rates derived from market prices.

Duke Energy Ohio further proposes that Rider PSR be in effect for as long as it is entitled to energy and capacity under the ICPA.⁷⁸ This will allow the benefits of the hedge to benefit customers for longer than the duration of the proposed ESP. In addition, as the Company's forecasts reflect, as energy and capacity prices continue to rise over time, those benefits are also likely to increase. Thus, the Company believes that the most reasonable approach is to allow customers to receive the difference between the OVEC-related costs and revenues for as long as possible.

Duke Energy Ohio has proposed a rider that can assist with the mitigation of price spikes, without causing any impact to the wholesale market.⁷⁹ In a time of increasing volatility, the Company's offer of Rider PSR is one that is reasonable and appropriate.

C. The Company Has Properly Discussed the Required Rate Impacts Associated with the Proposed ESP.

As discussed by Duke Energy Ohio witness Ziolkowski, under the proposed ESP certain riders will be terminated, others will continue unchanged, and a further group will continue with changes. Finally, the proposal includes a small number of new riders. For convenient reference Mr. Ziolkowski's listing of those riders is reproduced here:

⁷⁷ Duke Energy Ohio Exhibit 2, pg. 10.

⁷⁸ *Id.*, pg. 11.

⁷⁹ The existence of the PSR has no impact on Duke Energy Ohio's obligation under the ICPA to pay OVEC for its entitlement. Thus the capacity and energy from the OVEC plants will persist, with or without Rider PSR.

Table 1 – New Riders		
Rider Name	Tariff	Note
Distribution Capital Investment Rider	Rider DCI	Return, depreciation, property taxes on incremental distribution rate base
Distribution Storm Rider	Rider DSR	Tracks storm costs above or below base amount in last distribution rate case.
Price Stabilization Rider	Rider PSR	Flows through gain/loss on disposition of OVEC capacity and energy

Table 2 –Riders Being Eliminated		
Rider Name	Tariff	Note
Electric Security and Stabilization Rider	Rider ESSC	Expired on January 1, 2015
Load Factor Adjustment Rider	Rider LFA	Expires on May 31, 2015
Save-A-Watt Rider	Rider SAW	Replaced by Rider EE/PDR
Save-A-Watt Rider Rate	Rider SAW-R	Replaced by Rider EE/PDR
Economic Competitiveness Fund Rider	Rider ECF	Obsolete after May 31, 2015
Emergency Electrical Procedures for Long Term Fuel Shortages	Rider EEPF	Obsolete
PIPP Customer Discount	PIPP Customer Discount	Expires on May 31, 2015
Energy Efficiency Revolving Load Program	Rider EER	Terminated December 31, 2010

Table 3 –Riders Continuing with Modifications		
Rider Name	Tariff	Note
Retail Capacity Rider	Rider RC	Eliminate demand charges so that all SSO rates are energy-based
Retail Energy Rider	Rider RE	Migrate toward uniform rates for all residential customers.
Net Metering Rider	Rider NM	Adding text that clarifies billing determinants.

Table 4 –Riders Continuing with No Modifications		
Rider Name	Tariff	Note
Supplier Cost Reconciliation Rider	Rider SCR	Trues up SSO revenue with invoiced cost from suppliers and recovers auction-related costs.
Base Transmission Rider	Rider BTR	Recovers non-market based transmission costs
Alternative Energy Recovery Rider	Rider AER-R	Recovers cost of REC purchases to comply with alternative energy standards
Distribution Decoupling Rider	Rider DDR	Trues up weather-normalized base distribution revenue for customers not billed based on demand
Uncollectible Expense Riders	Rider UE-GEN, UE-D	Recovers bad debt charges related to generation and distribution services
SmartGrid Rider	Rider DR-IM	Recovers incremental costs related to SmartGrid deployment
Regional Transmission Organization Rider	Rider RTO	Currently zero.

Rates will be impacted by the above-referenced rider modifications. Undeniably, rates will also be impacted by the market-based results of future wholesale auctions. Impacts to customer rates are thus unavoidable.

As confirmed by Duke Energy Ohio witness Henning, the Company's rates for the term of the proposed ESP are undeniably just and reasonable. Indeed, Duke Energy Ohio will have the lowest residential rates and among the lowest non-residential rates.⁸⁰ Yet, under this rate structure, the Company will advance the state's policy in respect of retail competition, enable service reliability improvements, and realize stability and predictability with regard to retail electric service.

D. The Proposed ESP Satisfies the Better-in-the-Aggregate Test.

Where an EDU is able to show that a proposed ESP, "including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more

⁸⁰ Duke Energy Ohio Exhibit 2, pg. 13.

favorable in the aggregate as compared to the expected results that would otherwise apply” under an MRO pursuant to R.C. 4928.142, the ESP shall be approved.⁸¹ The Commission and the Ohio Supreme Court have both confirmed that this test is to be applied on the basis of more than a simple quantitative comparison. Rather, the qualitative differences must also be considered.⁸² Duke Energy Ohio’s proposed ESP is clearly more favorable to customers than an MRO would be, taking into account both qualitative and quantitative aspects.

1. Quantitative Comparison

The quantitative comparison is straight-forward. As explained by Duke Energy Ohio witness Wathen, no generation-related charges are proposed other than those charges that directly pass the auction-based cost of generation service to customers. All of the SSO generation service under an MRO would have to be procured through a competitive process, just as is proposed for the Company’s next ESP. And that competitive process would be no different under an MRO than is proposed here. The resultant cost of the service must therefore be the same.⁸³

2. Qualitative Comparison

A comparison of the qualitative aspects of the proposed ESP with an MRO results, on the other hand, in a substantial advantage to the ESP. Mr. Wathen identified four of the most conspicuous benefits of the proposal.⁸⁴

⁸¹ R.C. 4928.143(C)(1).

⁸² *In re Columbus Southern Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, ¶ 407; *In the Matter of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, *et al.*, Opinion and Order, pg. 48 (Sept. 4, 2013) (“[W]e must ensure that our analysis looks at the entire modified ESP as a total package, which includes a quantitative and a qualitative analysis.”); *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order, pp. 55-57 (July 18, 2012).

⁸³ Duke Energy Ohio Exhibit 6, pg. 25. *See also* OCC Exhibit 48 (Direct Testimony of Beth E. Hixon), pg. 4; Tr. XII, pg. 3604.

⁸⁴ Duke Energy Ohio Exhibit 6, pp. 26-27; Tr. II, pg. 544.

a. Modifying Rate Design and Eliminating Non-Market-Based Influences on Behavior.

In an ESP environment, the Company has the opportunity to refine rate design and cost allocation issues to better address state policy and current market forces.⁸⁵ In the context of such refinements, Duke Energy Ohio is proposing to modify the rate design of the two riders (Riders RC and REC) through which it recovers the cost of obtaining SSO generation for its non-shopping residential and small commercial customers.⁸⁶ This change is intended to provide customers with SSO rates that are more comparable with CRES offers, in that stepped, summer and winter rate differences are reduced. The proposal advances the state policies of ensuring the availability of comparable retail electric service and the ability of consumers to make informed choices.⁸⁷

In addition, the proposed ESP would result in changes to the allocation of capacity costs within Rider RC.⁸⁸ Specifically, the Company proposes to allocate capacity costs to customer classes on the same basis on which PJM determines the Duke Energy Ohio capacity requirement. This approach, allocating based on each class's contribution to the total 5 CP demand, will allow each class to appropriately bear those costs that it is responsible for causing. Aligning the rates on the basis of cost-causation is a standard rate-making principle that has been found, by the Commission, to result in reasonably priced retail electric service, as encouraged by state policy.⁸⁹

⁸⁵ Tr. II, pp. 545-546, 547-548.

⁸⁶ These modifications are more fully described in Section III.A.2, above.

⁸⁷ R.C. 4928.02(B) and (C).

⁸⁸ Duke Energy Ohio Exhibit 6, pg. 18; Duke Energy Ohio Exhibit 18, pg. 5.

⁸⁹ R.C. 4928.02(A); *In the Matter of Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation*, Case No. 10-3126-EL-UNC, Finding and Order, pg. 31 (Aug. 21, 2013) and *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Opinion and Order, pg. 42 (May 25, 2011).

The Rider RC rate structure is also being modified for non-residential customers served under Rates DS, DP, and TS.⁹⁰ As discussed in more detail previously,⁹¹ the rate structure under Rider RC is being adjusted such that the rates are based solely on energy consumed rather than including any demand aspect. This modification will minimize the penalty experienced by low load factor customers, thereby advancing the state policy of providing reasonable rates⁹² and will better align SSO rates with the reality of a purely competitive market for retail generation service.⁹³

Duke Energy Ohio's proposal would also eliminate the existing Load Factor Adjustment Rider (Rider LFA). A provision that had been adopted as a result of a prior stipulation, Rider LFA represented a non-market-based influence on usage behavior for all demand-metered customers. Thus, its continued existence undermines the state's objective to have market influences alone determine the cost of competitive generation service.⁹⁴

Another non-market-based factor being eliminated is the demand response program that was narrowly focused on transmission voltage customers with loads in excess of 10 MW. The program, adopted through the ESP II Stipulation, provided these customers the ability to receive an above-market credit in exchange for Duke Energy Ohio's use of interruptible load in the Company's Fixed Resource Requirement (FRR) plan. The Company will no longer be an FRR entity as of June 1, 2015, leaving it with no need for such demand resources. It is noteworthy that these customers continue to have options to participate in other demand response

⁹⁰ Service at Secondary Distribution Voltage, Service at Primary Distribution Voltage, and Service at Transmission Voltage, respectively.

⁹¹ See section III.A.2, above.

⁹² R.C. 4928.02(A).

⁹³ Duke Energy Ohio Exhibit 6, pg. 19.

⁹⁴ *Id.*, pp. 21-22.

programs.⁹⁵ Elimination is thus rational and fair, as well as a positive move toward pure market pricing.⁹⁶

Finally, the change to Rider NM, Net Metering, will clarify that net metering credits will be calculated on the same basis as comparable charges, thereby enhancing reasonable rates for all customers.⁹⁷

b. Promoting Competition through Further Leveling of the Playing Field between SSO Auction Winners and CRES Providers.

Another benefit of the proposed ESP is that it allows the Company to promote competition by leveling the playing field between CRES providers and wholesale auction winners. For example, the Company proposes to move to a rate design based exclusively on usage.

As discussed above, the proposed ESP would also result in allocation of capacity costs to all customer classes on the 5 CP basis used by PJM. As noted by Duke Energy Ohio witness Wathen, the allocation of SSO costs in a manner corresponding to PJM calculations will help to avoid a disparity between SSO rates and CRES offers that could, otherwise, result in unfair incentives for customers to shop or to stay on SSO service.⁹⁸

The Company is also proposing to continue its successful program under which it purchases accounts receivable (POR) from CRES providers and recovers the cost of uncollectible bills from all ratepayers. SSO auction winners are made whole for their service by virtue of the nature of the auction and Rider SCR. The existing POR program allows CRES providers to be made equally whole. Thus, by retaining this program, the Company helps assure

⁹⁵ Ohio Energy Group Exhibit 2 (Direct Testimony of Stephen J. Baron), pg. 15.

⁹⁶ Duke Energy Ohio Exhibit 6, pp. 22-23.

⁹⁷ Duke Energy Ohio Exhibit 18, pp. 17-19.

⁹⁸ Duke Energy Ohio Exhibit 6, pg. 20.

that retail and wholesale providers have equal abilities to collect all of their revenue from sales, thereby adding to the competitive neutrality of the Company's ESP and further addressing state policy.⁹⁹

c. Fostering Improvements to the Safety and Reliability of the Distribution System.

Another qualitative benefit of the proposed ESP is its inclusion of a plan that would encourage the Company to accelerate improvements to and modernization of the safety and reliability of the distribution system. The details of this approach, and of Rider DCI which allows accelerated recovery of its costs,¹⁰⁰ are discussed elsewhere.¹⁰¹ Such a program could not be included within the terms of an MRO.

The Commission has evaluated the benefits of such a program previously. It has concluded that proactive, accelerated distribution modernization plans are valuable and reasonable as an appropriate incentive to facilitate improved service reliability and better align a utility's expectations with those of its customers.¹⁰² This is a clear benefit of the proposed ESP.

⁹⁹ Tr. II, pg. 547.

¹⁰⁰ *Id.*, pp. 552-556.

¹⁰¹ See section III.B.1.A., above.

¹⁰² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order, pp. 11-12, 46 (August 25, 2010)(approval of Delivery Capital Recovery Rider); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order, pp. 10-11, 57 (July 18, 2012)(approval to continue the Delivery Capital Recovery Rider); *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order, pp. 46-47 (August 8, 2012)(approval of Distribution Investment Rider).

d. Stabilizing Competitive Generation Prices for Shopping and Non-Shopping Customers.

As recent market events have demonstrated,¹⁰³ the market for capacity is both volatile and unpredictable. The changes in the market price of capacity must affect the ultimate prices that consumers pay. Unfortunately, many consumers are negatively impacted by unpredictable price swings. The Company has taken advantage of the flexibility inherent in ESPs to propose a solution. Rider PSR would, as discussed above, provide a level of stability – balanced with conservative cost increases – that would otherwise not exist.¹⁰⁴ As capacity prices continue their dramatic fluctuations, the benefit of Rider PSR will continue to grow. And, although the Company might be able to seek such a rider outside of setting SSO rates, it would not be available as part of an SSO filing in the form of an MRO.

E. The Company's Proposed Parameters for Administering the Significantly Excessive Earnings Test are Reasonable.

The Commission is required to review each EDU's earnings on a yearly basis, to determine whether any adjustments to that EDU's ESP resulted in the receipt of significantly excessive earnings.¹⁰⁵ The Commission has previously approved the parameters pursuant to which the significantly excessive earnings test would be administered to Duke Energy Ohio.¹⁰⁶ And the Commission has efficiently processed the Company's required SEET filings using these parameters.¹⁰⁷ To enable the continued efficient administration of the SEET, Duke Energy Ohio

¹⁰³ See, e.g., Duke Energy Ohio Exhibit 2, pp. 8-10.

¹⁰⁴ See, e.g., *Id.*, pp. 10-11.

¹⁰⁵ R.C. 4928.143(F).

¹⁰⁶ Ohio Manufacturers' Association Exhibit 2 (Case No. 11-3549-EL-SSO, Opinion and Order); *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, *et al.*, Opinion and Order (Dec. 17, 2008).

¹⁰⁷ See e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 13-0804-EL-UNC (April 15, 2013), and *In the Matter of the Application of Duke Energy Ohio, Inc., for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 14-0577-EL-UNC (April 30, 2014).

proposes here that it would continue operating under the parameters approved in its last two ESP proceedings.¹⁰⁸

F. The Remaining Terms and Conditions of the Proposed ESP are Just and Reasonable

1. Rider Amendments

a. Purchase-of-Accounts-Receiveable Program

Duke Energy Ohio currently offers a program to purchase the accounts receivable of CRES providers operating in its service territory (namely, the POR), together with a corresponding rider to collect uncollectible funds from ratepayers. The program has been very well received and Duke Energy Ohio is aware that the Commission has recently encouraged the other Ohio electric distribution utilities to offer a similar program.¹⁰⁹

In these proceedings, Duke Energy Ohio seeks permission to make POR mandatory for all CRES providers that take advantage of the Company's consolidated billing service. This is a change that was suggested in discussions held in the context of the Commission's recent investigation into the retail market, as a change that could improve operations and reduce administrative costs.¹¹⁰ This is a reasonable change, and one that will not have any negative impact on the Company's successful program.

2. Rider and Arrangement Terminations

a. Rider ESSC (Electric Security Stabilization)

Rider ESSC was approved by the Commission, as part of ESP II, as a three-year rider, subject to true-up. It was established to provide stability and certainty, for which Duke Energy

¹⁰⁸ Duke Energy Ohio Exhibit 9, pg. 8.

¹⁰⁹ *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding and Order, Finding 19, pg. 21 (March 26, 2014).

¹¹⁰ Duke Energy Ohio Exhibit 13 (Direct Testimony of Daniel L. Jones), pp. 7-8.

Ohio would recover a specific total dollar amount.¹¹¹ Rider ESSC will terminate after calendar year 2014, pursuant to its terms, subject to a final true-up to ensure that the total collected under that rider is neither more nor less than the agreed-upon amount.¹¹²

b. Rider LFA (Load Factor Adjustment)

Rider LFA is also proposed for termination, effective June 1, 2015, subject to true-up to ensure that customers are ultimately made whole and that the rider is revenue-neutral to the Company. Rider LFA was approved as a part of a package of compromises that formed the ESP II Stipulation.¹¹³ As such, while it was appropriate at that time, it must now be considered as a stand-alone provision. As explained by Mr. Wathen, Rider LFA represents a non-market-based influence on the usage behavior for all demand-metered customers' bills, thus undermining Ohio's objective of having the cost of competitive generation services determined by market influences alone.¹¹⁴

c. Rider ECF (Economic Competitiveness Fund)

Another rider that was initiated in ESP II is Rider ECF, under which transmission customers with loads in excess of 10 MW participated in a demand response program. The program allowed those customers to receive an above-market credit in exchange for Duke Energy Ohio's ability to use the interruptible load in its FRR plan. The cost of that program was recovered through Rider ECF.¹¹⁵

Duke Energy Ohio's status as an FRR entity in PJM will terminate, effective June 1, 2015. After that date, Duke Energy Ohio will have no need for demand response as a capacity resource to fulfill an FRR obligation. Thus, the rationale for this program will no longer exist.

¹¹¹ OCC Exhibit 2, pp. 15-16.

¹¹² Duke Energy Ohio Exhibit 18, pg. 6; Tr. VI, pp. 1543-1544.

¹¹³ Duke Energy Ohio Exhibit 6, pp. 21-22; OCC Exhibit 2, para. VII.J., pg. 22.

¹¹⁴ *Id.*, pp. 21-22. *See also* Duke Energy Ohio Exhibit 18, pp. 6-7.

¹¹⁵ Duke Energy Ohio Exhibit 6, pg. 22.

In addition, it should be noted that elimination of this program and Rider ECF will also help to ensure that market forces determine the competitive generation charges that customers experience. It is therefore reasonable and appropriate for this rider to terminate as of June 1, 2015, subject to a final true-up.¹¹⁶

d. PIPP Contract

The Company also proposes the elimination of the special contract for the PIPP customer load, which was another part of the package of compromises that resulted in the ESP II Stipulation. Instead, beginning on June 1, 2015, the load comprising PIPP customers will be combined with the non-PIPP load and will be supplied through the SSO auction process, subject to the statutory right of the Ohio Development Services Agency to aggregate the PIPP load and solicit generation supply from CRES providers.¹¹⁷

3. Early Termination

Duke Energy Ohio's application in these proceedings seeks approval of a two-year ESP, with a one-year extension that would be automatically effective unless Duke Energy Ohio exercises its option for the extension not to occur. As described in the application, Duke Energy Ohio would have the ability to exercise that option in the event there has been a substantive change in Ohio or federal law that affects SSOs or rate plans concerning SSOs. The application spells out that such a substantive change could arise, with regard to Ohio law, in the context of statutes, rules, regulations, decisions of the Ohio Supreme Court, and decisions of the Commission. Further, it states that federal law changes could be reflected in statutes, rules, regulations, decisions of federal courts, decisions of FERC, and the rules, tariffs, and agreements

¹¹⁶ *Id.*, pp. 22-23; Duke Energy Ohio Exhibit 18, pg. 8.

¹¹⁷ Duke Energy Ohio Exhibit 18, pp. 7-8.

of PJM or any successor thereto.¹¹⁸ In the rapidly changing market environment that utilities face, this provision is a reasonable risk-mitigation measure. The Company's ability to terminate the ESP one year early is limited to circumstances in which dramatic changes have already occurred. It should be allowed.

4. Supplier Tariff

In keeping with its commitment to enhance retail competition in Ohio, Duke Energy Ohio proposes certain amendments to its certified supplier tariff, designed to streamline and better serve the competitive retail market. Specifically, the Company proposes five changes, including ones related to billing, purchase of accounts receivable, and interactions with suppliers. Mr. Jones testified concerning the enhancements already completed by the Company to its customer choice program during the last three years and how such improvements impacted choice in Duke Energy Ohio's service territory. As noted by Mr. Jones, at the time of the submission of his direct testimony, there were approximately fifty-five active suppliers doing business in the service territory,¹¹⁹ a number that continues to rise.¹²⁰

The first proposed change addresses the administration of bill-ready billing. The Company proposes to change operations so that it will not base the number of charge descriptions and charge amounts on the number of metered and unmetered services on an account. The change is consistent with how bill-ready billing is otherwise administered throughout Ohio in response to CRES providers' requirements.¹²¹

Next and as briefly discussed above, the Company proposes to make the POR program mandatory in its service territory. The Company proposes this change in order to align

¹¹⁸ Duke Energy Ohio Exhibit 1 (Application), para. III.F, pg. 16.

¹¹⁹ Duke Energy Ohio Exhibit 13, pp. 5-6.

¹²⁰ Tr. I, pg. 110.

¹²¹ Duke Energy Ohio Exhibit 13, pg. 6; Tr. IV, pp. 1060-1061.

operations consistently and obviate the need to incur additional administrative costs for a few providers not presently participating.¹²²

A third change encompasses the need to ensure that the POR program is properly managed and accounted for, by ensuring that CRES providers use the bill-ready option for billing electric commodity charges only. As Mr. Jones explained, if a supplier includes a non-commodity service on a bill-ready bill, the charge would flow through and be included in the Company's POR program, which was not designed for collection of services other than electric services.¹²³ The Company's billing system does not accommodate a means by which to separate out such charges. Changes to the billing system to include such charges in the accounting would be costly. It is also noteworthy that such charges were not anticipated by the Ohio Energy Working Group in devising the original electronic data interchange (or EDI) transactions.¹²⁴ Thus, it is reasonable to limit supplier charges for bill-ready billing to commodity services only.

The next required change to the Company's supplier tariff is a clarification of the definition for "Interval Meter." This change is necessary because the Company has deployed advanced meters across its service territory, which meters provide interval usage data. When the term was originally defined, it referred to a specific set of meters then in existence, known as solid state recorders (SSRs).¹²⁵ The SSRs were used historically to provide measured, hourly data to PJM, to enable settlement with suppliers serving commercial customers. However the installation of a new type of interval meter is causing confusion as to the Company's capabilities. Accordingly, as explained by Mr. Jones in his direct testimony and on cross-examination, the interval data that the Company can presently provide to CRES providers is the interval data that

¹²² This change is discussed more fully in section III.F.1.a., above.

¹²³ Tr. IV, pg. 1065.

¹²⁴ *Id.*, pg. 1066.

¹²⁵ SSR meters are also sometimes referred to as IDR meters.

comes from the SSRs. As Mr. Jones explained, the Company does not yet have in place a means by which to share customer energy usage data from residential customers such that the sharing of the data would comply with new Commission rules. Moreover, the advisability of creating systems to provide such data will require input from many interested stakeholders and will be very costly. The resolution of cost recovery and the details related to transactions with CRES providers to supply such data will involve stakeholder engagement and Commission guidance.¹²⁶

The final proposed change to the supplier tariff is related to meter data management. The language change would clarify that, should the Company elect to pursue resettlement with PJM, all suppliers will agree to participate. The PJM tariff presently makes participation in resettlement discretionary, allowing unpredictable results. This change to the tariff will enable a smooth process in the event that a supplier resettlement process is initiated,¹²⁷ while ensuring that PJM continues to control the resettlement process.

G. Miscellaneous Requirements

1. Corporate Separation Plan

An EDU seeking approval of an ESP is required, by Commission rules, to address its existing corporate separation plan (CSP) in its application. Specifically, the Company must describe its CSP, including, but not limited to, the current status of the plan, a list of all previously granted waivers regarding that plan, and a timeline of any anticipated revisions.¹²⁸ In addition, the Company is required to demonstrate that its current CSP is in compliance with applicable law and rules, as well as state policy. Any existing waivers must also be justified if they are to be continued.

¹²⁶ Duke Energy Ohio Exhibit 13, pp. 8-9; Tr. IV, pg. 1053-1057 (RESA examination of Jones).

¹²⁷ Duke Energy Ohio Exhibit 13, pg. 9.

¹²⁸ O.A.C. 4901:1-35-03(C)(4).

As part of the application in these proceedings, Duke Energy Ohio presented the testimony of Mark E. Hollis in this regard. Mr. Hollis thoroughly explained the existing CSP, including its current status.¹²⁹ He explained that no waivers had been granted¹³⁰ and that a revised CSP would be filed after the transfer of the last legacy generating asset from Duke Energy Ohio.¹³¹ Assuring the Commission that the current CSP complies with applicable law, rules, and policy, Mr. Hollis noted that Duke Energy Ohio's CSP was audited by an independent auditor in 2009-2010. The Commission found, in that proceeding, that the plan was in compliance.¹³² Furthermore, Mr. Hollis pointed out, during the hearing, that the Commission had recently approved the previously pending amendments to the Duke Energy Ohio CSP.¹³³ Thus, it was during the pendency of the SSO proceedings that the Commission most recently approved the plan.

Duke Energy Ohio has met its burden of proof with regard to corporate separation.

2. Operational Support Plan

The Operational Support Plan (OSP) is a document that was mandated at the start of Ohio deregulation and that was required to be filed with utilities' transition plan. The ESP filing rules now simply require a statement as to whether the OSP has been implemented and whether there are any outstanding problems with that implementation.¹³⁴

Duke Energy Ohio witness Daniel L. Jones confirmed that the OSP has been implemented and that there are no outstanding implementation problems.¹³⁵ No party to these

¹²⁹ Duke Energy Ohio Exhibit 11 (Direct Testimony of Mark E. Hollis), pp. 3-4.

¹³⁰ *Id.*, pg. 4.

¹³¹ *Id.*, pg. 5.

¹³² *Id.*, pg. 4.

¹³³ Tr. IV, pp. 845-846.

¹³⁴ O.A.C. 4901:1-35-03(C)(5).

¹³⁵ Duke Energy Ohio Exhibit 13, pp. 3-4.

proceedings challenged the Company's OSP or disputed that this filing requirement has not been met.

3. Effect on Governmental Aggregations

The Commission's ESP rules require a description of how the utility will address certain governmental aggregation issues. Specifically, O.A.C. 4901:1-35-01(C)(6) requires "[a] description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code." And O.A.C. 4901:1-35-01(C)(7) requires "[a] description of the effect of large-scale governmental aggregation on any unavoidable generation charge proposed to be established in the ESP." As confirmed by the undisputed testimony of Company witness Wathen, Duke Energy Ohio's proposed ESP will not hinder the continued existence of governmental aggregations in southwest Ohio or implementation of R.C. 4928.20(I)-(K) and does not include any non-bypassable generation charge.

R.C. 4928.20(I) details that portion of a surcharge, approved under R.C. 4928.144, for which customers in a governmental aggregation program are responsible. Here, Duke Energy Ohio is not seeking to phase in any charge established via its ESP and, as such, the requirements of R.C. 4928.20(I) are not implicated in these proceedings. Moreover, as discussed by Mr. Wathen, to the extent the policy underlying this statutory provision is intended to assist in governmental aggregation, the proposed ESP will provide no impediment.¹³⁶

R.C. 4928.20(J) allows a legislative authority that has or is aggregating to elect not to receive standby service from the local EDU. As Mr. Wathen explained, the Company is not

¹³⁶ Duke Energy Ohio Exhibit 6, pg. 30.

proposing any charge for standby service and, therefore, the provisions of R.C. 4928.20(J) are not applicable.¹³⁷

The final provision is R.C. 4928.20(K) concerns obligations imposed upon the Commission. Namely, this division requires the Commission to adopt rules concerning governmental aggregation and further directs the Commission to consider the effect of a non-bypassable generation charge on large-scale governmental aggregation. As the Company is not responsible for fulfilling these mandates, its proposed ESP cannot determine whether this statutory division is implemented.¹³⁸ However, with regard to the Commission's requirements, Duke Energy Ohio states that its proposed ESP does not include any non-bypassable generation charges.¹³⁹ Consequently, there is nothing for the Commission to consider in terms of the effect of such charges.

No party to these proceedings disputes that Duke Energy Ohio has satisfied those filing requirements applicable to governmental aggregation programs and has further demonstrated that such programs will not be adversely affected by the proposed ESP.

4. The proposed ESP advances state policy

The Commission, through its rules, requires an EDU to demonstrate that its ESP advances state policy,¹⁴⁰ which is set forth in R.C. 4928.02. Duke Energy Ohio has met this requirement, as discussed in the direct testimony of Company witness Henning and as borne out at hearing.

¹³⁷ Duke Energy Ohio Exhibit 6, pp. 30-31.

¹³⁸ *Id.*, pg. 31.

¹³⁹ *Id.*

¹⁴⁰ O.A.C. 4935:1-35-01(C)(8).

- a. **The proposed ESP ensures that customers will have access to adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service, ensures the availability of unbundled and comparable retail electric service that provides customers with information and options to meet their needs, and recognizes the continuing emergence of competitive electricity markets.**

Duke Energy Ohio's proposed ESP makes provision for SSO supply to be procured through market-based, competitive auctions and contains no barriers to or limitations on a customer's ability to select an alternate retail generation supplier. Furthermore, the proposed ESP includes provisions intended to provide stability and predictability with regard to retail service. As discussed previously, Rider PSR is structured to yield increased benefits during periods of high or rising market prices, thereby mitigating the overall rates paid by customers. Indeed, assuming the ESP is approved as filed, Duke Energy Ohio's customers will continue, as they do now, to have the lowest residential rates and among the lowest non-residential rates in the state.¹⁴¹

Certain intervenors may challenge this statement, suggesting that a measure of reasonableness is not the rates charged by other EDUs. But this challenge is grossly misplaced as the rates charged by all EDUs in Ohio are reasonable, as confirmed by the Commission's approval of same.¹⁴² To conclude otherwise requires finding, first, that the Commission would approve unreasonable and thus unlawful rates.

The proposed ESP also properly reflects unbundled services. Again, retail generation supply and the charges associated with same (*e.g.*, Riders RC, RE, and SCR) are separately delineated in the Company's tariffs. Further, the cost allocation and rate design changes proposed in these proceedings in respect of Rider RC and Rider RE better provide customers

¹⁴¹ Duke Energy Ohio Exhibit 2, pp. 12-13; Tr. I, pp. 270-271.

¹⁴² *See, e.g.*, R.C. 4905.22, which mandates that all charges for the provision of necessary and adequate service and facilities be just, reasonable, and not more than allowed by law or Commission order.

with access to more transparent information on which they can rely in making knowledgeable decisions regarding customer choice.

The proposed ESP thus advances the policies of the state as set forth in R.C. 4928.02(A), (B), and (G).

- b. The proposed ESP ensures diversity in supplies and suppliers, ensures availability of the Company's transmission and distribution systems to customer-generators or owners of distributed generation, and encourages implementation of distributed generation.**

No party to these proceedings can legitimately claim that competition does not exist in Duke Energy Ohio's service territory. As of the initiation of these proceedings, there were fifty-five registered and active CRES providers in southwest Ohio and this number continues to increase.¹⁴³ The ability of CRES providers to continue to engage in or to enter Duke Energy Ohio's service territory is advanced by the Company's proposals here. By way of example, the Company intends to continue its purchase of accounts receivable program and associated uncollectible generation expense rider. Such a proposal is consistent with the Staff's recommendations, as adopted by the Commission, in the retail market investigation and has been affirmatively received by certain intervenors.¹⁴⁴

Further, and as contemplated under R.C. 4928.02(C), Duke Energy Ohio will continue to offer customer generators a net metering and interconnection tariff, which is used to encourage the development of distributed and small generation facilities.¹⁴⁵ The minor modification to the net metering tariff will not compromise access to the Company's transmission and distribution

¹⁴³ Duke Energy Ohio Exhibit 2, pg. 14. *See also* Tr. I, pg. 110.

¹⁴⁴ *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding and Order, Finding 19, pg. 20 (March 26, 2014). *See also* RESA Exhibit 1 (Direct Testimony of Teresa Ringenbach), pg. 8.

¹⁴⁵ Duke Energy Ohio Exhibit 2, pg. 15.

systems by customer generators or the administrative proceedings related to interconnection standards, standby charges, and net metering.¹⁴⁶

The proposed ESP advances the policies enumerated in R.C. 4928.02(C), (F), and (K).

- c. **The proposed ESP encourages innovation and market access for cost-effective supply- and demand-side retail electric service and encourages the use of energy efficiency and alternative energy resources by small business owners.**

The provisions of the proposed ESP will not affect the Company's commitment to meeting the energy efficiency and demand-side management standards to which it is subject. Duke Energy Ohio will continue to implement approved energy efficient measures and to deploy its grid modernization program. There are no changes to these programs requested here.

Further, as discussed by Duke Energy Ohio witness Ziolkowski, the Company seeks to continue its existing Rider DDR, a rider designed to remove any incentive to not reduce volumetric sales. The rider, as confirmed by Company witness Ziolkowski, has been successful to date and should continue to be so in the future.

Additionally, as discussed in the undisputed testimony of Duke Energy Ohio witness Jonathan L. Byrd, the Company's plan to purchase renewable energy credits serves to stimulate investment in renewable energy projects. This plan, therefore, encourages small business owners to use renewable energy resources, if able, in their business.¹⁴⁷

The policy of the state as set forth in R.C. 4928.02(D) and (M) are advanced through the proposed ESP.

¹⁴⁶ Duke Energy Ohio Exhibit 2, pp. 17-18 and Duke Energy Ohio 18, pp. 17-18.

¹⁴⁷ Duke Energy Ohio Exhibit 4 (Direct Testimony of Jonathan A. Byrd), pp. 6-7.

d. The proposed ESP encourages cost-effective and efficient access to operating information.

The General Assembly has found that access to readily understandable information about transmission and distribution system operation may promote customer choice and the development of performance standards and targets for service quality. Duke Energy Ohio's proposed ESP will not impede access to information contained in various Company documents, information that customers may find useful in making effective and appropriate choices. This state policy, codified in R.C. 4928.02(E) is thus advanced under the proposed ESP.

e. The proposed ESP ensures effective competition in the provision of retail electric service.

Customers' ability to freely participate in Ohio's competition retail market is not, in any way, limited by any element of the proposed ESP. And, as it naturally follows, wholesale auction participants and CRES providers are ensured effective and balanced competition for load, through the implementation of a market-based CBP plan, rate revisions, and other proposals that better align SSO rates with competitive offers. Further, the Company's rates, as proposed herein, are unbundled and void of any impermissible, anti-competitive subsidies. No generation-related costs will be recovered through distribution or transmission rates.

IGS implies that improper cross-subsidies are occurring, because Duke Energy Ohio recovers certain costs (*e.g.*, administrative and legal) associated with its SSO through base distribution rates. And, in an effort that undeniably will result in an increase to the price against which IGS competes, it is asking the Commission to force Duke Energy Ohio to carve out these costs and recover them only from SSO customers. But IGS's claims reflect a misunderstanding of applicable law and the very nature of an EDU's obligation to provide SSO service.

As an initial, Duke Energy Ohio is legally required to “provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers.”¹⁴⁸ This obligation extends to all retail customers, whether or not they receive generation supply from a CRES provider at any given point in time, as all customers have the right to return to the SSO. Indeed, Duke Energy Ohio must, under R.C. 4928.14, stand ready to serve **any** customer at **any** time. The ability to switch back to SSO service is a benefit that all customers enjoy; it is thus axiomatic that all Duke Energy Ohio customers should be responsible for certain administrative costs incurred by an EDU in providing a statutorily mandated SSO. Duke Energy Ohio’s cost of providing SSO service do not vary with the magnitude of the SSO load. Whether one customer is taking SSO service or all retail customers are doing so is unrelated to the costs (other than the cost of supply) incurred by the Company to make that service available.

IGS’s argument cannot also be reconciled under R.C. 4928.02(H), despite the anticipated arguments to the contrary. That provision, which is informative,¹⁴⁹ prohibits anti-competitive subsidies and, specifically, the recovery of generation-related costs through distribution or transmission rates. To understand this provision, one must first accept the meaning of generation-related costs, as intentionally used by the Ohio legislature. This term must refer to generation service provided under an SSO; namely, energy, capacity, costs of procuring supply, costs for environmental compliance and emission allowances, and costs for alternative energy resources. To expand the term to include more, such as administrative costs to provide a required SSO would force one to rewrite the provision to prohibit any and all costs associated with

¹⁴⁸ R.C. 4928.141(A).

¹⁴⁹ *Ohio Consumers’ Counsel v. Public Utilities Commission of Ohio*, 125 Ohio St.3d 57, 2010-Ohio-134, ¶39.

providing an SSO of all competitive retail electric services through distribution or transmission rates.” The law, however, is not so expansive.

IGS’s misreading of the controlling statutory language is undoubtedly intentional. As a CRES provider, IGS is better positioned to attract customers when the price against it is competing is artificially inflated, which would occur if the Commission were to accept IGS’s suggested retail price adder. But the Commission is striving for a properly functioning competitive market and arbitrary price adjustments that are not supported by law or facts run afoul of that effort.

f. The proposed ESP protects customers, including at-risk populations, in connection with the provision of retail electric service.

It is the policy of the state to protect customers against unreasonable sales practices, market deficiencies and market power. It is also the policy of the state to protect at-risk populations in connection with, among other matters, implementation of any new advanced energy or renewable energy resource. The proposed ESP aligns with these state policies.

Duke Energy Ohio will procure SSO supply through a CBP plan that is dependent upon PJM’s wholesale markets. These markets are overseen by an independent market monitor, Monitoring Analytics, LLC (Monitoring Analytics), which functions, in part, to identify actual or potential market design flaws that result in the ability of utility to exercise market power. Marketing Analytics monitors the competitiveness of PJM’s market, investigates claimed rule violations, and may make recommendations to PJM.¹⁵⁰ The existence of an independent monitor at the wholesale level ensures that customers are protected, at the retail level from market deficiencies and market power. And at the state level, customers are protected against unreasonable sales practices on the part of CRES providers through the Commission’s rules. The

¹⁵⁰ Tr. XV, pp. 4086-4087, 4130-4131; Tr. XVI, pp. 4317, *et seq.*

ESP does not seek to excuse CRES providers' adherence to same. Further, at the retail level, the Commission will have oversight of the Company's CBP plan and approval authority over the results of the auctions. It will also benefit from an independent, Commission consultant, who will provide guidance and recommendations, as the Commission deems necessary.

The proposed ESP also protects at-risk populations. As mentioned previously, the proposed ESP includes provisions intended to enable timely and efficient improvements to the Company's distribution system, whether through a systematic, proactive approach under Rider DCI or through a response to significant weather emergencies under Rider DSR. The ESP also provides for a mechanism – Rider PSR – to mitigate the overall rates they pay. The ESP is not one through which the Company proposes to implement a new advanced energy or renewable energy resource. Adherence to the alternative energy requirements will be satisfied through the existing efficient and cost-effective process, as expressly contemplated in the current ESP.¹⁵¹ As contemplated under R.C. 4928.02(I) and (L), customers are properly protected against identified risks under Duke Energy Ohio's proposed ESP.

- g. The proposed ESP provides a coherent and transparent means of given appropriate incentives to technologies that can adapt successfully to potential environmental mandates.**

The proposed ESP reflects a continuation of Rider AER-R (Alternative Energy Recovery Rider), the rider through which Duke Energy Ohio recovers the costs associated with complying with the state's alternative energy mandates. And as detailed in the uncontested testimony of Jonathan Byrd, Duke Energy Ohio will continue to follow a proven process for procuring renewable energy credits (RECs); a process that appropriately incentivizes technologies that are situated to adapt to future environmental mandates.¹⁵²

¹⁵¹ OCC Exhibit 2, part VI, pg. 14, *et seq.*; and OMA Exhibit 2, pg. 51.

¹⁵² Duke Energy Ohio Exhibit 4, pg. 6.

The ESP, therefore, advances the state policy described in R.C. 4928.02(J).

h. The proposed ESP facilitate the state's effectiveness in the global economy.

The uncontroverted testimony of Company witness Henning provides that global effectiveness is fostered by many factors, one of which is reasonable power prices.¹⁵³ As discussed previously, upon approval of the ESP as proposed herein, Duke Energy Ohio will have the lowest residential rates and among the lowest non-residential rates in the state of Ohio. Importantly, these rates reflect a stable and transparent structure that will positively affect the state's role in the global economy. Further, the ESP provides for stability in respect of retail electric service, in reliance upon Ohio-based generating facilities, thereby mitigating customers' exposure to uncertainty and volatility in market-based prices, which is sure to happen.

But the ESP further encompasses distribution service, also a critical aspect of customers' ability to prosper, by including provisions to enhance distribution facilities or enable their timely restoration.

And the ESP enables unfettered access to customer choice – to individual decision making regarding competitive retail supply – and thus functions as an integral aspect of economic development.

As proposed, the ESP advances the policy of the state's effectiveness in the global economy.

IV. CONFIDENTIALITY AGREEMENT DECISIONS

In the months leading up to the hearing in these proceedings, the parties disputed a number of issues relating to confidentiality and, specifically, the terms of the confidentiality agreements pursuant to which the Company would disclose its proprietary information to

¹⁵³ Duke Energy Ohio Exhibit 2, pg. 24.

intervenors. As the Commission is aware, those disagreements were ultimately ruled upon by the Commission itself, in response to an interlocutory appeal under O.A.C. 4901-1-15, and a subsequent application for rehearing, filed by Duke Energy Ohio.

The issues and arguments related to the confidentiality agreements, to the extent included in the interlocutory appeal, were thus preserved, as recognized during the hearing itself.¹⁵⁴ In an abundance of caution, however, Duke Energy Ohio would repeat here those arguments made in its interlocutory appeal and application for rehearing related to the Commission's decision on that appeal. Therefore, those arguments are hereby incorporated fully by this reference.

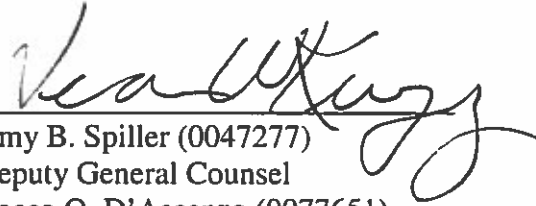
V. CONCLUSION

The ESP proposed by Duke Energy Ohio in these proceedings complies with Ohio law and regulations and will result in Duke Energy Ohio providing services thereunder at just and reasonable prices, under terms and conditions that, considered in the aggregate, are more favorable than the expected result under R.C. 4928.142. Duke Energy Ohio respectfully requests that the Commission approve the proposed ESP, without modification.

¹⁵⁴ Tr. III, pg. 730.

Respectfully submitted,

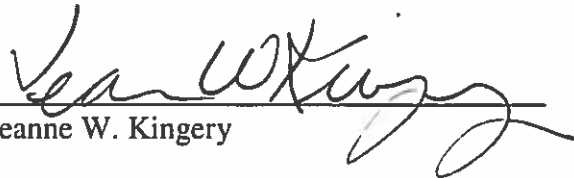
DUKE ENERGY OHIO, INC.

A handwritten signature in dark ink, appearing to read 'Amy B. Spiller', is written over a horizontal line.

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