

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)	
Ohio for Authority to Establish a Standard)	Case No. 14-841-EL-SSO
Service Offer Pursuant to Section 4928.143,)	
Revised Code, in the Form of 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 Certified)	Case No. 14-842-EL-ATA
Supplier Tariff, P.U.C.O. No. 20.)	

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
REPLY BRIEF**

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December 29, 2014

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I. Introduction

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

II. Argument

A. Duke's ESP Does Not Protect At-risk Populations.

Duke claims that its ESP protects at-risk customers. Duke Brief at 48. Duke argues that its Distribution Capital Investment ("DCI") Rider protects at-risk populations by enabling timely and efficient improvements to Duke's distribution system through a "systematic, proactive approach under Rider DCI." Id. The DCI Rider as proposed by Duke simply provides for a practically automatic dollar-for-dollar cost recovery for distribution expenditures. This is certainly a protection

for Duke as it is guaranteed timely recovery, but does not protect at-risk populations from rate increases, which is what Ohio law requires. Duke claims that its Storm Damage Recovery (“SDR”) Rider provides for a “response to significant weather emergencies”, which again refers to Duke’s assurance of expedited cost recovery from ratepayers. Id. The SDR Rider does nothing to protect economically vulnerable customers from rate increases. Duke also argues that the rider that guarantees cost recovery from Duke’s Ohio Valley Energy Corporation (“OVEC”) units will mitigate the overall rates customers pay, thus protecting at-risk populations. Id. However, the OVEC Rider raises rates and mitigates nothing but Duke’s risk of financial losses from the OVEC generating units. The OVEC Rider, once again, protects Duke’s profits and does not protect low-income customers from rate increases resulting from the ESP.

Duke’s claims that more ratepayer money and less risk for Duke will protect vulnerable customers are remarkably callous. Duke’s application will raise rates, protecting Duke from financial risks but will not protect vulnerable customers in contravention of Ohio law. Vulnerable families should be exempt from these riders and protected from unreasonable rate increases.

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

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
...
- (L) Protect at-risk populations, including, but not limited to, when considering implementation of any new advanced energy or renewable energy resource;

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

Because Ohio law requires the Commission to assure affordability and protection of at-risk customers, OPAE recommends that the Commission deny several of the generation and distribution cost recovery riders that Duke is proposing in this ESP. The Commission must deny the OVEC Rider, which is an unlawful subsidy to Duke's generating units that shifts the risk of Duke's above-market generation costs to distribution ratepayers. Another rider that the Commission must deny is the Retail Capacity Rider, which is a vestige of cost-of-service regulation that has no place in competitive generation markets. Another rider that the Commission must deny is the DCI Rider, which will unlawfully collect routine maintenance expenses from customers on an expedited basis. A final rider that the Commission must deny is the SDR Rider, because storm damage costs are recovered through base distribution rates.

At the very least, at-risk customers, who can reasonably be defined as families with incomes under 200 percent of the federal poverty line, should be exempted from the riders. These riders will harm customers and especially harm at-risk populations. OCC Ex. 47 at 5. The riders will increase rates and undermine affordability and protection of vulnerable customers. The Commission should deny these riders. If the Commission approves any of these riders, the Commission should order that at-risk populations be exempt from payment of the riders.

B. Duke's Proposed Price Stability Rider Violates Ohio and Federal Law.

Duke's Price Stability Rider would include revenues and expenses associated with Duke's entitlement share of the OVEC generating stations. The term of the OVEC Rider is associated with Duke's entitlement share of the OVEC stations, which means that the OVEC Rider will continue to exist long after May 31, 2018, the end of this ESP term. Staff Exhibit 1 at 5.

Duke claims that the OVEC Rider is authorized under R.C. 4928.143(B)(2)(d). Duke claims falsely that the OVEC Rider is an allowable charge in the ESP because it concerns one of the categories delineated in R.C. 4928.143(B)(2)(d). Absurdly enough, Duke claims that the OVEC Rider concerns "bypassability" because the "corollary to bypassability is non-bypassability". Therefore, in Duke's wonderland, the OVEC Rider is a charge related to bypassability because the OVEC Rider is a non-bypassable charge. Duke Brief at 18.

The OVEC Rider is not authorized under any of the categories listed in R.C. 4928.143(B)(2)(d). The statute states that an ESP charge must be related to these specific categories: limitations on customer shopping, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, or accounting or deferrals as would have the effect of stabilizing or providing certainty regarding retail electric service.

Obviously, the OVEC Rider is not related to limitations on customer shopping, standby, backup, supplemental, or default service. The OVEC Rider has no relationship to carrying charges, amortization periods, or accounting or deferrals. That leaves Duke with bypassability, but the concept is absurd. All utility charges are either bypassable or non-bypassable, but the General Assembly did not intend that every charge would qualify under R.C.

4928.143(B)(2)(d). The General Assembly listed the charges that could be approved in an ESP; the General Assembly did not say that any conceivable charge could be approved in an ESP. The OVEC Rider is not related to any of the kinds of the categories that may be addressed through an ESP charge authorized under R.C. 4928.143(B)(2)(d). Duke has not demonstrated that the OVEC Rider covers any of the categories of the statute.

Moreover, even if the OVEC Rider fell into any of the categories, which it does not, in order to be an allowable ESP charge the OVEC Rider would still have to have the effect of stabilizing or providing certainty regarding retail electric service. It is clear that the OVEC Rider will not provide stability or certainty regarding retail electric service. Its effects would be far too insignificant to

provide any stability or certainty to customers. The OVEC Rider shields Duke by ensuring that none of the risk associated with the financial losses of the OVEC generating stations will be paid by Duke. Customers will pay the losses. This stability of the guarantee of Duke's profit from its OVEC units is not relevant to R.C. 4828.143(B)(2)(d) because it is not a component of retail electric service. There is no provision for the OVEC Rider in Ohio law.

The OVEC Rider is wholly contradictory to Ohio's regulatory scheme for retail electric service. For over a decade, the Commission, following the dictates of the Ohio General Assembly, has been transitioning electric utilities to a fully competitive retail generation market. The OVEC Rider is a step backward that does not comply with Ohio law.

Under Ohio law, Duke is an electric distribution public utility and as such Duke is not in the business of selling electric generation. Duke will not use its OVEC entitlement to provide generation supply to any retail customers. Tr. Vol. II at 464-465. For SSO supply, Duke secures generation through a full requirements auction process that ladders and staggers the auctions. The Commission administers this auction process. Duke will not bid its OVEC entitlement into the SSO auctions.

There is only one situation where a distribution utility such as Duke can recover the costs of a power plant. Under R.C. 4928.143(B)(2)(b), a utility may recover the costs associated with constructing a new generation facility, but only if "the Commission first determines...there is a need for the facility based on resource planning projections submitted by the electric distribution utility." Duke

has not demonstrated the need for a new facility. The auctions which provide generation service to SSO customers have been oversubscribed, and there is excess generation available in PJM, the regional transmission organization. OVEC is not a new facility, and Duke has not demonstrated that there is a need for new generation to serve its SSO load. Ohio law does not authorize the OVEC subsidy Duke is requesting.

In addition to SSO service, Duke's customers may also secure generation from competitive retail electric service ("CRES") providers. OVEC generation does not affect the generation service of CRES providers. OVEC generation will not be used to provide default service. Tr. Vol. II at 470.

To obtain generation service, all of Duke's distribution customers either shop individually or through a governmental aggregation for their generation or have their generation procured through the Commission-administered SSO auctions. Under Ohio's competitive retail generation market, Duke's distribution customers cannot be required to subsidize energy and capacity produced by any power plants unless Duke demonstrates a need for a new plant and wins the right to build one.

The purpose of the OVEC Rider is to shift the risk associated with the OVEC generating stations to Duke's distribution customers. This is unlawful. The OVEC Rider violates the state's policy at R.C. 4928.02(H), which declares that it is the state's policy to ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service. The

OVEC Rider will force all of Duke's distribution customers, including those paying directly for generation supplied by CRES providers, to subsidize Duke's OVEC units when under Ohio law it is Duke's shareholders that should bear the risk of OVEC's profits or losses in the market.

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

Either way – either by the withholding of OVEC generation from the SSO bidding process or by subsidizing OVEC – Duke's OVEC Rider will corrupt the operation of the regional wholesale market, which violates federal law.

EnergyPlus LLC v. Nazarian, 753 F. 3d 467 (4th Cir. 2014) (affirming *PPL EnergyPlus, LLC v. Nazarian*, 974 F. Supp.2nd 790 (D. Md. 2013), and *PPL EnergyPlus, LLC v. Hanna*, Case No. 13-4330 (slip opinion) (3rd Cir.2014 (affirming *PPL EnergyPlus, LLC v. Hanna*, 977 F. Supp.2d 372 (D.N.J. 2013)). The OVEC generation must be treated like any other generation in the PJM market or there is a violation of the Federal Power Act.

The OVEC Rider gives Duke assurance of cost recovery not afforded to all other generators in the federal PJM and Ohio SSO markets. Duke could bid the

generation into PJM at zero cost as a price taker making it virtually impossible to determine the cost of the subsidy for the OVEC generation in a market where prices change hourly. The only way to avoid this problem is not to allow an unlawful subsidy from distribution customers to the OVEC generation.

In addition, assigning the costs of above-market generation to all distribution customers makes customers once again responsible for Duke's legacy generation costs long after the period for transition cost recovery has ended. Kroger Exhibit 1 at 5. The subsidy would insulate Duke and its shareholders from the risk of the competitive market associated with Duke's interest in the OVEC units when Ohio law requires that the utility shall be fully on its own in the competitive market. IGS Ex. 12 at 3; Adopted by IGS witness Joseph Haugen, IGS Ex. 13. The OVEC Rider is a form of transition revenues because it will continue for as long as Duke receives energy and capacity from OVEC. Duke's contractual commitment to OVEC extends through June 2040, nearly thirty-five years after the December 31, 2005 deadline for generation transition cost recovery. Under R.C. 4928.38 and 4928.39, recovery of above-market generation transition costs by Ohio public utilities has long ended.

The OVEC Rider will pass through to Duke's retail distribution ratepayers the costs and revenues of the OVEC units although the Commission lacks jurisdiction to review those costs and revenues. Duke will receive the OVEC generation through a wholesale contract with OVEC, which is subject solely to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). FERC has long held jurisdiction over the field of wholesale power sales, and federal law

preempts state law in this field. This makes the OVEC Rider wholly inappropriate as a non-bypassable retail charge on Duke's captive distribution customers. The wholesale contract between Duke and the managers of the OVEC units is under the jurisdiction of FERC. The Commission does not regulate wholesale energy and capacity prices, which are the exclusive jurisdiction of FERC. The Commission has no authority to regulate the costs that OVEC charges to Duke or Duke's obligation to pay such charges. If all of Duke's costs associated with OVEC are guaranteed by Ohio's retail distribution ratepayers, Duke has no incentive to minimize costs when the Commission has no authority to regulate the costs. Therefore, those costs must not be recovered through a retail rider.

The OVEC Subsidy has no basis in Ohio law; it violates Ohio law. The OVEC Subsidy violates R.C. 4928.02(H), R.C. 4928.38, and 4928.39 to name but a few of the statutes. The OVEC Rider is not an authorized ESP charge under R.C. 4928.143(B)(2)(d). The OVEC Subsidy is anti-competitive as it clearly puts electric generators on a different level if one generator's costs are guaranteed by distribution ratepayers. R.C. 4928.02(H). The OVEC Subsidy corrupts the concept of competitive generation markets in Ohio. Finally, the OVEC subsidy violates the Federal Power Act.

C. The Evidence of Record Demonstrates that Duke's OVEC Rider Will Not Provide Stability and Certainty in the Provision of Retail Electric Service.

In order for a charge to be authorized under R.C. 4928.143(B)(2)(d), it must have the effect of stabilizing or providing certainty regarding retail electric service. However, Duke has not demonstrated with any evidence that the OVEC

Rider will provide stability and certainty in the provision of retail electric service. Because the OVEC Rider does not fit into any categories authorized by R.C. 4928.143(B)(2)(d), it is unlawful in any event.

Duke claims that the OVEC rider will mitigate retail rate volatility, affording all of its 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. Duke Brief at 22. Duke claims that the non-bypassable OVEC rider will provide all of the net benefits associated with Duke's share of OVEC to all Duke's retail customers. Duke Brief at 22. Duke claims that the OVEC Rider will function as a counter-cyclical hedge, such that in the case of rising market prices the benefits under the rider will be positive and thereby offset other rates derived from market prices. Duke Brief at 24. Stability and certainty are, as noted above, requirements for a charge to be properly included in an ESP. R.C. 4928.143(B)(2)(d).

The OVEC Rider does nothing to address electric service rate volatility. Duke claims that the OVEC Rider will provide a hedge for consumers against market volatility. However, the OVEC entitlement would account for no more than 8.67% of Duke's total retail sales, assuming that Duke would take the full amount of its OVEC entitlement, that the OVEC units would be run at 100% for the full year, and that the full capacity of the OVEC plants would be available to Duke. None of these circumstances has ever occurred. Tr. Vol. II at 461-462; Tr. Vol. III at 607-608. In short, the OVEC Rider will not provide a hedge for

customers against the risk of market volatility but will only protect Duke from the risk associated with financial losses from its retention of its interest in OVEC.

As Staff witness Hisham M. Choueiki explained, there are far more effective approaches for mitigating price volatility that do not violate Ohio law. Staff Exhibit 1 at 12-13. In administering all past SSO procurement auctions, the Commission has adopted a staggering and laddering approach that has already effectively mitigated price volatility for SSO customers. Id. Under the SSO, customers are served under one to three-year full requirements contracts established through periodic auctions. Therefore, SSO customers are not exposed to market price volatility. OCC Exhibit 43 at 12.

Customers choosing CRES contracts select among available offerings according to their preferences and can choose offerings that hedge prices and provide greater stability to the extent customers desire. Direct Energy's witness Teresa Ringenbach testified that the OVEC Rider will require customers to pay twice for generation service without receiving any additional benefit. Ms. Ringenbach noted that under the OVEC Rider, CRES customers will pay for generation supplied by their CRES provider and then will make a second payment to Duke through the OVEC Rider. RESA Ex. 3 at 9-11; Direct Ex. 1 at 6-8. This is generation that the CRES customer will never use. There is no benefit for customers taking generation service from a CRES provider.

If a CRES customer has a fixed price contract, the OVEC Rider will expose that customer to the volatility of the wholesale market for the OVEC output. The CRES customer choosing a fixed contract has sought to avoid the

volatility of the wholesale market but the OVEC Rider eliminates the very protection from market volatility that the CRES customer has sought. Direct Exhibit 1 at 6. Duke's proposal adds an additional generation charge on each customer's bill and subjects the customer to volatility even though the customer receives no generation supply or any other benefit from OVEC.

OCC witness James F. Wilson also testified that the OVEC Rider could add to volatility. The OVEC Rider could potentially move in the same direction as market prices. Under the OVEC Rider, the cost incurred in one quarter by OVEC would appear on the distribution customers' bills in the next quarter. The potential for the OVEC Rider to act as a hedge against volatile market prices or contribute to price stability is doubtful. OCC Ex. 43 at 13. Any benefit from the OVEC Rider would be insignificant when compared to the expected net cost and the risk of even higher costs to Duke's captive distribution customers. OCC Ex. 43 at 14. Customers that are served by a fixed-rate CRES contract or the SSO are not subject to price volatility; it is the OVEC rider that introduces the volatility that will render customer bills unstable.

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

The OVEC Rider will certainly increase costs to customers during the ESP period. There is no doubt that for the three years of the ESP term, the cost of producing power at the OVEC plants will exceed revenues provided by the wholesale market, requiring customers to subsidize unregulated generation. Duke admits OVEC costs will exceed revenues over the period 2015 through 2018 resulting in a net charge to customers. The benefits, if any, are dependent on assumptions of higher market prices in the distant future and are dependent on market price assumptions several years into the future which may not prove to be accurate. It is only beginning in 2019 that Duke projects the revenue from the sale of its OVEC entitlement will exceed costs. Kroger Ex. 1 at 6. Given that the entire analysis beginning in 2019 is speculative, there is no evidence upon which the Commission can base a factual decision on the impact of the OVEC subsidy on Duke's distribution customers beyond the negative impact during the term of the ESP.

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

regulations will increase the costs of the coal-fired OVEC units. Because Duke's distribution customers bear all the risk associated with Duke's share of the cost of the OVEC units, Duke will have no incentive to use a profit-maximizing bidding strategy when selling OVEC generation into PJM markets.

There is no evidentiary basis for the OVEC Subsidy. The OVEC Rider will not work as a hedge against volatility in SSO or wholesale market prices. SSO prices are not volatile. The Commission-administered auction system for determining SSO prices resolves any issues of extreme changes in SSO rates. CRES customers may obtain fixed-price contracts that resolve issues of volatility. There is also no evidentiary basis upon which the Commission can determine that there is any benefit to ratepayers from the OVEC Subsidy especially when even Duke admits that for the three-year term of the ESP, ratepayers will pay more for the subsidy and when any analysis beyond the term of the ESP is speculative at best.

D. Duke's Proposed Retail Capacity Rider Serves No Valid Purpose.

Duke proposes to modify the customer class allocation percentages for SSO supply. Duke intends to unbundle SSO supplier bids to create an implied capacity component. Then Duke intends to perform a separate calculation of the implied capacity charge for each customer class with the residential SSO customers being required to pay a cost premium as compared to other customer classes. Duke's allocation method is highly adverse to the residential class, as it increases the residential share of capacity costs from 39.12% to 45.37%, a 16% increase in the residential allocation when compared to the current ESP. This

would translate into an \$11 million per year increased cost for residential SSO customers. OCC Ex. 32 at 19. Imposing this residential cost premium is both unnecessary and improper. OCC Ex. 32 at 5.

Duke argues that PJM bills load serving entities on a 5 coincident peak (“CP”) method and that this method therefore reflects the manner in which capacity costs are incurred. Duke Brief at 6. While it cannot be certain that the 5 CP method reflects actual capacity costs, the question is irrelevant. In the SSO auctions, CRES suppliers bid a price for energy only. The capacity cost is built into the rate. Using the 5 CP rate design simply shifts costs from non-residential customers to residential customers because it reduces the average rate for customers as their load factors increase.

Duke also claims that the 5 CP rate design for the SSO “better reflects the rates that are offered by CRES providers” and better enables customers to more readily compare offers and make informed decisions.” Duke Brief at 7. Duke claims this will ensure competitive neutrality between SSO prices and CRES offers and enhance competitive markets. Duke Brief at 8. However, Duke has no way of knowing how CRES providers develop their rates. All we do know is that if the Duke proposal is accepted, residential SSO rates will increase. Customers can compare and make informed decisions regardless of how the SSO rate is calculated. Artificially inflating residential rates does not provide customers with any greater clarity when they are comparing options.

Duke’s efforts to improve the competitive market by making the SSO rate design more costly to residential SSO customers must be rejected. OCC witness

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

Shifting SSO costs to the residential class accomplishes nothing other than subsidizing non-residential customers. It is not reasonable to charge residential customers a premium for capacity in the context of a purely market-based SSO. Moreover, the residential premium is not justified. The residential class is more than 70% of the SSO kWh sales, and absent the residential class, Duke's SSO auctions would be quite small and therefore much less attractive to potential bidders. In addition, bidders are exposed to unpredictable SSO load changes over the term due to customer migration. Large non-residential customers have a greater tendency to migrate and the departure of a single large industrial user can have a tremendous impact on the cost to serve the customers receiving service through the SSO. The risk will be priced into bids. Half of residential and small commercial customers remain on Duke's SSO, and these

customers are already paying more and would pay more still under Duke's proposal because they pay the risk premium. But there is no showing that bidders in the auction require a price premium to serve the residential or small commercial classes. OCC Ex. 32 at 21.

Therefore, Duke's capacity allocation adjustment for the customer class pricing should be rejected. Duke does not incur capacity costs to serve SSO load. Customers are not comparing CRES offers to the SSO on the basis of unbundled capacity and energy charges. There is no need for the capacity rider at all. Denying approval of the proposed capacity rider will simplify the setting of SSO retail rates and eliminate the unwarranted cost premium shifted to the residential class. Residential SSO customers are already paying for the risk faced by SSO suppliers caused by the likely migration of large customers because the risk is factored into SSO suppliers' bids. There is no justification for the proposed capacity rider, and it should be rejected.

E. Duke's Proposed Distribution Capital Investment and Storm Damage Riders Would Recover Costs Best Recovered in Distribution Base Rate Proceedings.

Duke has also proposed a Distribution Capital Investment ("DCI") Rider whose purpose is to recover distribution costs and investments from customers through a pre-approved rider instead of through base distribution rates set in distribution rate cases. Duke argues that R.C. 4928.143(B)(2)(h) authorizes single-issue ratemaking including distribution infrastructure and modernization riders. Duke Brief at 11. Duke claims that maintaining reliability is a continuing obligation that requires regular capital investment and awareness of customers'

needs. Duke argues that the DCI Rider will allow Duke to address reliability concerns proactively and enable it to direct sufficient resources to the reliability of the distribution system. Duke Brief at 12-13. Duke also claims that the Storm Damage Recovery Rider (“SDR”) is justified by R.C. 4928.143(B)(2)(h) and is designed to enable Duke to defer and recover expenses in responding to major storm events. Duke Brief at 16.

The move to cost recovery through distribution riders approved in SSO cases allows the distribution utility to recover costs and investments on an expedited basis without the Commission’s consideration of all the cost factors that would be reviewed in a base rate case. This move is harmful to distribution ratepayers who are forced to pay higher rates as a result of the riders, without any consideration of whether those higher rider rates reflect the actual cost of distribution service. The cost of service remains relevant to regulated distribution service rates. Riders should be used only to address specific needs. Funds are provided through base rates to ensure the distribution system is adequately maintained to ensure reliability. The effect of distribution riders approved in SSO cases is to make the cost of distribution service irrelevant to the amount paid by customers for distribution service.

OCC witness Jerome D. Mierzwa testified that riders provide for the automatic collection of certain costs from customers outside the context of a base rate proceeding where all elements of the cost of service are examined. OCC Ex. 45 at 3. This is contrary to sound ratemaking principles. When the utility is permitted to collect costs through a rider, the incentive for the utility to

control costs is reduced. The existence of riders can cause the utility to incur costs that are allowed through the riders when customers are already paying for these costs in base rates.

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

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

Duke did not demonstrate that it is necessary to increase rates through this DCI rider to maintain the present level of service reliability. OCC Ex. 45 at 9. Duke did not demonstrate that the rider was necessary to avoid putting Duke in a dire financial situation. Duke presented no evidence that funding system improvements through a base rate proceeding would impact the reliability of its distribution system to the detriment of its customers. Duke's current distribution rates were recently approved and provided for an annual revenue increase of \$45 million. See *Opinion and Order*, Case No. 12-1682-EL-AIR, et al. (May 1, 2013). There is no evidence that current rates for distribution service, which are designed to produce revenue of \$413,559,278 annually, are inadequate to provide reliable distribution service.

Duke is already required to maintain its distribution facilities under R.C. 4905.22. Current distribution rates already compensate Duke for this responsibility. Duke already has met or exceeded reliability standards for each year since 2011. OCC Ex. 47 at 21. In fact, the reliability of Duke's distribution system has been increasing under the base rate setting process. OCC Ex. 45 at 10-11. The evidence demonstrates that Duke is already dedicating sufficient resources to the reliability of its distribution system. *Id.* at 17.

Duke does not claim there will be a reliability benefit to customers associated with the DCI Rider. OCC Ex. 47 at 15-16. All of the programs proposed for inclusion in the rider are maintenance programs rather than infrastructure modernization programs that might qualify for incentive ratemaking through an ESP rider. OCC Ex. 47 at 17-19. While R.C. 4928.143(B)(2)(a) may

permit distribution expenses to be collected as part of an ESP if the distribution expense relates to infrastructure modernization, the statute does not permit expenses associated with simply maintaining a distribution system to be collected through an ESP rider. Duke has not demonstrated that this rider is an infrastructure modernization program as required by law. R.C. 4928.143(B)(2)(a).

OCC witness Williams testified that because affordability of electric service is an issue in this ESP, the expected increase for each residential customer of \$100 a year by 2018 resulting from the DCI rider could result in even more customers being disconnected for non-payment, more customers ending up on payment plans, and more at-risk customers being faced with potential health and safety issues. OCC Ex. 47 at 15. Based on the number of at-risk customers in Duke's service territory who will be hurt by unreasonable price increases for electric service resulting from this ESP, the DCI rider should be rejected.

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

As with the DCI rider, Duke has not demonstrated that base rate procedures for storm damage expenses have threatened Duke's financial integrity. With the storm damage rider, there will only be limited review of the costs. A full review of storm costs would more likely occur in a separate emergency proceeding, if necessary, or in a base rate case. With the storm rider, customer rates may increase with little oversight.

The Commission should not approve the DCI and SDR riders and instead rely on base rate proceedings to determine distribution rates. The Commission did so just last year. The base rates just approved were adequate to maintain the distribution system and meet reliability standards. However, in the event that the Commission approves these riders, the Commission should adopt the recommendations of OCC witnesses Mierzwa, Kahal and Yankel to mitigate the basic unfairness of these riders. The issue here is not cost recovery of prudently incurred costs but the method of cost recovery. Simply put, distribution service cost recovery is best accomplished through base rate proceedings. Riders frustrate the public policy inherent in base rate proceedings. Duke's distribution rates were recently approved by the Commission and there is no showing that those rates provide inadequate revenues to ensure the maintenance and reliability of the distribution system. The proposed riders should be rejected.

F. Duke's SEET Parameters Are Better Left to SEET Proceedings.

Duke argues that it should continue calculating the annual Significantly Excessive Earnings Test ("SEET") under the parameters approved in the last two

ESP proceedings. Duke Brief at 32-33. Duke proposes that the SEET threshold be based on a 15% Return on Equity (“ROE”) as the trigger for customer refunds.

Duke’s proposed SEET ROE threshold is too high. Current market conditions, Duke’s extremely low risk, and the riders proposed in these cases simply do not justify a 15% ROE SEET threshold.

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

G. Duke’s Energy Efficiency Programs and its Shared Savings Incentives Are Not Issues in these Proceedings.

The Natural Resources Defense Council (“NRDC”) supports Duke’s request to extend Duke’s Distribution Decoupling Rider, which currently is in its final year of a three-year pilot program, until Duke’s next distribution base rate case. NDRC Brief at 2-3. OPAE has not objected to the extension of the decoupling rider as proposed by Duke.

However, in supporting the extension of the decoupling rider, NDRC unnecessarily and inappropriately makes reference to contested issues that are pending before the Commission in other cases. NDRC refers to “significant benefits Duke has delivered to customers via its energy efficiency programs.” NDRC Brief at 4. NDRC refers to the “excellent performance in Duke’s energy efficiency programming” and states that this enabled Duke “to exceed the

savings benchmarks that year [2012] by 31%” and that Duke “achieved its statutory benchmarks in 2013 with the use of banked savings”. NDRC Brief at 4.

These comments, while gratuitous and irrelevant to the ESP proceedings, cannot go unchallenged. Duke has admitted it did not meet energy efficiency standards in 2013. See *Application*, Case No. 14-456-EL-EEC at 3, 6 (March 26, 2014). These highly contentious issues are being litigated in other cases currently pending before the Commission. In one of those cases, Duke filed an application for “Approval to Continue Cost Recovery Mechanism for Energy Efficiency Programs through 2016”. Case No. 14-1580-EL-RDR. OPAE filed a motion to dismiss the Case No. 14-1580-EL-RDR application on September 30, 2014. OPAE argued that the application is unlawful for several reasons. Multiple parties, including NRDC, have also filed to intervene in Case No. 14-1580-EL-RDR. Multiple parties filed comments in Case No 14-1580-EL-RDR on December 5, 2014. These issues should not be considered in these SSO proceedings.

III. Conclusion

In conclusion, OPAE makes the following recommendations.

- 1) In order to assure the affordability of electric retail service in Duke’s service territory, the Commission must order that low-income residential customers in Duke’s service territory be exempt from Duke’s requested riders. This recommendation is contemplated by Ohio law. R.C. 4928.02(L).
- 2) Duke’s proposed price stability rider must be rejected.
- 3) Duke’s proposed retail capacity rider must be rejected.

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

5) Duke's SEET proposal must be rejected.

6) Duke's energy efficiency programs and shared savings incentives are issues in other proceedings before the Commission and should not be approved herein.

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

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of Ohio Partners for Affordable Energy was served by electronic transmission this 29th day of December 2014 upon the following:

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This foregoing document was electronically filed with the Public Utilities

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12/29/2014 10:43:31 AM

in

Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA

Summary: Reply Brief of Ohio Partners for Affordable Energy electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy