

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY BRIEF**  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**INTRODUCTION**

Staff submits this reply brief in response to the parties' initial post-hearing briefs filed in this case. If a particular issue is not addressed in this reply, Staff believes its initial brief explains Staff's position on the issue.

**DISCUSSION**

**1. The Price Stability Rider ("PSR")**

The proposed PSR is not allowed under the law and is not a good deal for Duke customers.

**a. The PSR is not allowed under Ohio law<sup>1</sup>**

**i. The PSR cannot be authorized under R.C. 4928.143(B)(2)(d).**

Duke Energy Ohio (“Duke” or the “Company”) argues that the PSR can be authorized under Division (B)(2)(d).<sup>2</sup> Duke analyzes R.C. 4928.143(B)(2)(d) in three steps: (1) whether the proposed rider involves a term, condition, or charge; (2) whether that term, condition or charge relates to one of the enumerated issues; and (3) whether the rider would have the effect of stabilizing or providing certainty regarding retail electric service.<sup>3</sup> Because the Commission has followed this three-step process in past cases,<sup>4</sup> the Staff will do the same here.

**1. Condition 1- The PSR is a charge.**

The first condition in Duke’s analysis is whether the PSR is a “charge.” Staff concedes that the PSR is a charge.

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<sup>1</sup> The PSR violates federal law as well. *See* Staff Initial Brief at 18-20.

<sup>2</sup> Duke Initial Brief at 18.

<sup>3</sup> *Id.*

<sup>4</sup> *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Electric Security Plan*, Vase No. 12-426-EL-SSO, *et. al.*, (Opinion and Order at 21-22)(September 4, 2013).

**2. Condition 2 – the PSR does not relate to one of the enumerated issues**

Duke improperly claims that the PSR meets the second condition because it relates to bypassability.<sup>5</sup> The PSR does not relate to bypassability or any other enumerated issue.

**a. The PSR does not relate to bypassability.**

Duke does not cite any evidence showing that PSR is related to bypassability. Presumably, Duke claims that any rider it proposes meets this condition of R.C. 4928.143(B)(2)(d), so long as the charge is bypassable or nonbypassable. Not only is this interpretation of Division (B)(2)(d) circular, but it also leads to absurd results. If accepted by the Commission, this interpretation would render the second condition meaningless because *all charges* are either bypassable or nonbypassable. According to Duke’s interpretation, an EDU automatically meets condition one and two by merely requesting a rider (bypassable or nonbypassable) in its SSO application.

The Commission should avoid adopting a statutory interpretation that leads to an absurd or unreasonable result. The Supreme Court of Ohio has stated that “[i]t is a cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result.”<sup>6</sup> Duke interprets R.C. 4928.143 in a manner that removes almost all

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<sup>5</sup> Duke Initial Brief at 18.

<sup>6</sup> *Mishr v. Poland Bd. of Zoning Appeals*, 76 Ohio St. 3d 238, 240, 667 N.E.2d 365, 367 (1996); and *Canton v. Imperial Bowling Lanes, Inc.*, 16 Ohio St. 2d 47, 53, 242 N.E.2d 566, 570 (1968)(“The General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences.”).

limitations on what charges can be authorized in an ESP. Duke views R.C. 4928.143(B)(2)(d) as a “catch-all” provision, under which essentially any charge may be authorized.

The Commission should be wary of adopting Duke’s overly expansive interpretation of R.C. 4928.143. Only a few years ago, the Supreme Court reversed the Commission for an overbroad interpretation of R.C. 4928.143.<sup>7</sup> The Court stated that the Commission’s “interpretation [of R.C. 4923.143(B)(2)] would *remove any substantive limit to what an electric security plan may contain.*”<sup>8</sup> The Court stated this was not a result the “General Assembly intended.”<sup>9</sup> The Commission should reject Duke’s attempt to remove any “substantive limit” on the charges that can be authorized under R.C. 4928.143(B)(2)(d).

**b. The PSR does not relate to default service.**

The PSR also does not relate to default service which R.C. 4928.14 defines as a provision of retail electric generation service by the utility where the non-utility supplier fails to provide retail electric to customers.<sup>10</sup> If a supplier fails to provide retail electric generation service to customers within the utility’s service territory, the customers of the

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<sup>7</sup> *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 34.

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> *Id.* (emphasis added).

<sup>10</sup> R.C. 4928.14.

supplier default to the utility's standard service offer until they choose an alternative supplier.<sup>11</sup>

The Supreme Court of Ohio has addressed default service requirements in R.C. 4928.14.<sup>12</sup> The Court has recognized that default service is related to a utility's provider-of-last-resort ("POLR") obligations. The Commission has also determined that the default service requirements of R.C. 4928.14 relate to POLR obligations.<sup>13</sup> The PSR is not a POLR obligation and, therefore, does not relate to a default service.

**3. Condition 3- The PSR does not stabilize or provide certainty regarding retail electric service.**

The third consideration under R.C. 4928.143(B)(2)(d) is whether the PSR has the "effect of stabilizing or providing certainty regarding retail electric service." There are two separate issues for the Commission to consider under Condition 3. First, the Commission should determine if the PSR will actually stabilize customer rates. This is largely a factual dispute, which Staff addresses later in this reply.<sup>14</sup> The second issue is

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<sup>11</sup> *Id.*

<sup>12</sup> *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E. 195; *In re Columbus S. Power Co., et al.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 665, ¶¶22-30; *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St. 3d 340, 2007-Ohio-4267, 872 N.E.2d 269, ¶¶18-26.

<sup>13</sup> *In re the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO (Order on Remand at 18)(October 3, 2011).

<sup>14</sup> Staff also addressed this issue in its initial post-hearing brief.



whether the PSR relates to “*retail electric service*.” Retail electric service “means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption.”<sup>15</sup>

The Supreme Court has addressed what constitutes “retail electric service” within the context of R.C. 4928.143(B)(2)(d), and when generation-related charges are allowed under this provision. *In re Application of Columbus S. Power Co.*, 138 Ohio St.3d 448, 8 N.E.3d 863, 2014-Ohio-462 at ¶ 32 (“*CSP Remand Case*”). In the *CSP Remand Case*, the Court affirmed a Commission finding that carrying costs were allowed under R.C. 4928.143(B)(2)(d) because the “carrying charges had the effect of providing certainty regarding retail electric service, specifically by providing reasonably priced electric generation service.”<sup>16</sup> AEP-Ohio incurred carrying costs when it was the primary supplier of generation to SSO customers. In the *CSP Remand Case*, there was evidence that the carrying charges resulted in the generation of lower-cost power from AEP-Ohio’s coal-fired plants, and that this lower-cost power was actually being supplied to customers by AEP-Ohio.<sup>17</sup> Therefore, the carrying costs associated with the generation of this lower-cost power were “generation service” related costs associated with AEP-Ohio’s

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<sup>15</sup> R.C. 4928.01(A)(27).

<sup>16</sup> *CSP Remand Case*, at ¶ 32.

<sup>17</sup> *CSP Remand Case*, at ¶¶ 31-35.

actual “supply of electricity to ultimate consumers...from the point of generation to the point of consumption.”<sup>18</sup>

The PSR is distinguishable from the carrying charges at issue in the *CSP Remand Case*. The PSR does not relate to the “supply or arranging for the supply of electricity to ultimate consumers...from the point of generation to the point of consumption.”<sup>19</sup> It is not related to “generation service,”<sup>20</sup> and does not fit into any of the other specified categories of R.C. 4928.01(A)(27). Duke is a “wires only” company that no longer sells electricity to Ohio ratepayers and is out of the business of selling generation service.<sup>21</sup> Because the PSR does not relate to “retail electric service,” it cannot be authorized under R.C. 4928.143(B)(2)(d).

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<sup>18</sup> R.C. 4928.01(A)(27); *CSP Remand Case*, at ¶ 32.

<sup>19</sup> R.C. 4928.01(A)(27).

<sup>20</sup> “Generation service” is the only “service component” listed under in R.C. 4928.01(A)(27) that Duke can arguably claim the PSR is related to. Duke has not argued, nor has it presented any evidence that the PPA rider can be considered an “aggregation service,” “power marketing service,” “power brokerage service,” “transmission service,” “distribution service,” “ancillary service,” “metering service” or “billing and collection service.” Therefore, Staff will not address these other service components listed in R.C. 4928.01(A)(27).

<sup>21</sup> Staff Ex. 1 (Choueiki Direct at 10).

**ii. The PSR cannot be authorized under any other provision of R.C. 4928.143.**

R.C. 4928.143(B)(2)(a) does not provide authority to the Commission to adopt the PSR.<sup>22</sup> R.C. 4928.143(B)(2)(a) states that an ESP may include:

Automatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred,... the cost of purchased power *supplied under the offer*, including the cost of energy and capacity, and including purchased power acquired from an affiliate.... (emphasis added).

The PSR cannot be authorized under this provision because the PSR does not relate to “the cost of purchased power *supplied under the offer*.”<sup>23</sup> Duke will not be supplying any purchased power to customers under the SSO. The Commission cannot ignore language within R.C. 4928.143:

When interpreting a statute, a court must first examine the plain language of the statute to determine legislative intent. *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 113 Ohio St.3d 394, 2007-Ohio-2203, 865 N.E.2d 1275, ¶ 12. The court must give effect to the words used, making neither additions nor deletions from words chosen by the General Assembly.<sup>24</sup>

The Commission should avoid statutory interpretations that read words out of the statute. The Supreme Court of Ohio has reversed the Commission before for improperly

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<sup>22</sup> R.C. 4928.143(B)(2)(a).

<sup>23</sup> *Id.* (emphasis added).

<sup>24</sup> *In re Application of Columbus S. Power Co.*, 138 Ohio St. 3d 448, 454, 2014-Ohio-462, 8 N.E.3d 863, at ¶ 26.

interpreting statutes.<sup>25</sup> In *East Ohio Gas*, the Court stated that “the commission ...failed to abide by a basic rule of statutory construction—that words in statutes should not be construed to be redundant, *nor should any words be ignored.*”<sup>26</sup> The Commission can easily avoid the Court second-guessing its statutory interpretation in this case because the language of R.C. 4928.143(B)(2)(a) is clear: only costs related “purchased power *supplied under the offer*” can be recovered under this provision.

The PSR cannot be authorized under R.C. 4928.143(B)(2)(e), which states that the ESP plan may include a provision for “[a]utomatic increases or decreases in any component of the standard service offer price.” The PSR would not increase or decrease any component of the SSO price automatically. The PSR is an additional “hedging” charge, separate and apart from the SSO price.

R.C. 4928.143(B)(2)(f) provides for provisions related to the securitization of a phase-in and recovery of the electric distribution utility’s (“EDU”) cost of securitization. Duke states that the PSR is unrelated to a securitization.<sup>27</sup>

R.C. 4928.143(B)(2)(g) provides for provisions relating to transmission, ancillary, congestion, or any related service required for the SSO. Again, the charge or credit provided by the PSR is unrelated to the services required by the SSO and is not required

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<sup>25</sup> *East Ohio Gas Co. v. Pub. Utilities Comm’n of Ohio*, 39 Ohio St. 3d 295, 530 N.E.2d 875, 879 (1988).

<sup>26</sup> *East Ohio Gas Co. v. Pub. Utilities Comm’n of Ohio*, 39 Ohio St. 3d 295, 530 N.E.2d 875, 879 (1988) (emphasis added).

<sup>27</sup> Tr. Vol. II at 465.

for the SSO.<sup>28</sup> Further, the charge or credit to customer bills resulting from the PSR is unrelated to transmission, ancillary, congestion, or a related service.<sup>29</sup> The charge or credit is the difference between what Duke is billed by OVEC and what Duke recovers when it liquidates the capacity and energy associated with the OVEC Entitlement into the PJM markets.<sup>30</sup> Accordingly, R.C. 4928.143(B)(2)(g) does not provide a basis to authorize the PSR.

R.C. 4928.143(B)(2)(h) authorizes provisions related to the EDU's distribution service. The PSR is unrelated to the EDU's distribution service. Accordingly, the PSR is not a provision that the Commission may authorize under R.C. 4928.143(B)(2)(h).

The PSR cannot be authorized under R.C. 4928.143(B)(2)(i) because it does not "promote economic development" or "job retention." There is no expectation that the OVEC plants will close, with or without the approval of the PSR.<sup>31</sup> Accordingly, R.C. 4928.143(B)(2)(i) does not provide a basis to authorize the PSR.

### **iii. Conclusion**

R.C. 4928.143 provides the Commission the flexibility needed to ensure that Duke provides reliable and reasonably priced SSO service. But the statute is not limitless. Duke's PSR proposal goes well beyond the language and intent of the statute. This

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<sup>28</sup> IEU Initial Brief at 11.

<sup>29</sup> Tr. Vol. II at 465-466.

<sup>30</sup> IEU Initial Brief at 11.

<sup>31</sup> Tr. Vol. I at 63.

proposed rider will take the Commission down an unprecedented path. If the PSR is granted, this means that EDUs can charge customers for essentially any costs, even if these costs are completely unrelated to the supply of electricity to customers.

**b. The PSR is not a good deal for customers.**

Duke is proposing a “hedging” or “insurance product” to the Commission. The Commission should determine if the alleged benefits are worth the costs. The record shows that there are numerous reasons the Commission should not approve the PSR. Even if the Commission believes the PSR is permitted under Ohio and federal law, Staff maintains that the PSR should be denied because Duke failed to prove the benefits of the PSR outweigh the costs.<sup>32</sup>

**i. The Commission will not have ongoing authority to ensure the prudence of PSR costs.**

The Commission will have no authority over Duke’s PSR costs and Staff expressed this concern in its initial brief.<sup>33</sup> Duke wants the Commission to be bound by an initial prudence determination that will last the full term of the ICPA,<sup>34</sup> until 2040.

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<sup>32</sup> Duke has the burden of proving that the proposed ESP is more favorable, in the aggregate, than an MRO. R.C. 4928.143(C)(1). Because Duke cannot establish the true costs and benefits of the PSR, it is impossible to say the ESP, with a PSR, is more favorable than an MRO.

<sup>33</sup> Staff Initial Brief at 7.

<sup>34</sup> Duke Initial Brief at 24.

Duke tries to temper this concern by comparing the PSR to Duke's Alternative Energy Resource Rider ("AERR") approved in its *ESP II case*. The AERR, however, is distinguishable. The AERR is a bypassable rider intended only to recover costs that occurred during the *ESP II* term.<sup>35</sup> The proposed PSR, on the other hand, would be a nonbypassable rider that would, if the OVEC projections are accurate, only potentially recover costs beyond the *ESP III* term.<sup>36</sup>

Duke is not proposing that the PSR follow an RFP process. The PSR would have a one-time, up front prudence review, and then the Commission would have no authority to disallow costs related to the PSR. If the Commission is concerned about the prudence of PSR costs, the Commission's only recourse would be to file a complaint at FERC. The PSR is unnecessary because the structure of the SSO auctions and fixed-price contracts protect customers from volatile market rates.

The PSR is not the only way to protect customers from potential market volatility. Duke states that the PSR will afford of Duke's customers "a level of additional stability and predictability."<sup>37</sup> The Commission, however, currently mitigates market volatility by staggering and laddering its SSO auction products. These methods have been extremely successful in Ohio. Past SSO auction results for FirstEnergy are a great example. Capacity prices in the ATSI zone increased from \$108.89 to \$357 over a five-year

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<sup>35</sup> Tr. Vol. I at 263.

<sup>36</sup> *Id.* at 264-269.

<sup>37</sup> Duke Initial Brief at 22.

period.<sup>38</sup> This is a 228% increase in capacity price. During the same time, the blended SSO auction price increased slightly from \$55.60 to \$62.09 in FirstEnergy's territory.<sup>39</sup> This is only an 11.68% increase in generation prices for SSO customers. This is proof the SSO auction structure is already mitigating capacity market volatility without the assistance of a PSR.

In addition, Duke witness Lee stated that SSO customers pay a blended auction price, and are not exposed to real-time energy market volatility.<sup>40</sup> While the SSO auction structure mitigates market volatility for SSO customers, shopping customers have market-based options that alleviate market volatility. Most commercial and residential customers that are shopping purchase electricity on a fixed-price basis. Very few customers – primarily large customers – buy on an index that is tied to PJM's hourly or day-ahead market. Only these few customers are sophisticated enough to buy hedges or call options, which mitigate market volatility.

Although the current market contains these various hedging options for customers, Duke wants to force a nonmarket-based, nonbypassable hedge on all of its customers. The risk should be on the Company, not the customer.

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<sup>38</sup> <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/atsi-frr-integration-auction-results.ashx>; <https://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/20120518-2015-16-base-residual-auction-report.ashx> (Capacity prices in the ATSI zone from the 2011/2012 planning year to the 2015/2016 planning year).

<sup>39</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO (Staff Reply Brief at 16-17) (October 15, 2014).

<sup>40</sup> Tr. Vol. II at 307.



**ii. The PSR will impose significant costs on customers during the ESP period.**

The Commission, rightfully, will want to evaluate the true costs and benefits of the PSR before entering into this long-term commitment. The Commission will be unable to perform such an evaluation, however. This is because there are many unanswered questions regarding the costs and benefits of the PSR.

Many parties, including Staff, believe that Duke failed to prove that the PSR will stabilize rates for customers. Evidence shows that the PSR will impose significant costs on customers during the term of *ESP III*. Duke projects that annual OVEC costs will exceed revenues from 2015 through 2018, resulting in a net charge to customers under the Company's PSR proposal.<sup>41</sup> The PSR could be extremely costly for customers during the *ESP III* term. In 2019, Duke projects that revenues from the sale of its OVEC entitlement will exceed its costs, resulting in a credit to customers.<sup>42</sup> Thus, the claimed customer benefits of the PSR are not expected to be realized until after the proposed *ESP III* term.<sup>43</sup> However, the projected benefits are dependent on market-price assumptions several years into the future, which may or may not prove to be accurate.<sup>44</sup>

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<sup>41</sup> IGS Exhibit 12 (Hamilton/Haugen Direct at TH-4).

<sup>42</sup> Kroger Ex. 1 (Higgins Direct at 6).

<sup>43</sup> *Id.* at 6-7.

<sup>44</sup> *Id.* at 7.

**iii. Ohio Energy Group's support of the PSR is unfounded.**

Ohio Energy Group ("OEG") witness Taylor is the only non-Company witness that supports the PSR, but with modifications. Mr. Taylor proposed three significant changes to Duke's PSR: (1) to extend the PSR beyond the proposed ESP term of three years to a period of 9.5 years; (2) to levelize the expected benefits over the extended time period, with a true-up; and (3) allow customers "who can self-insure" to opt out of the rider.<sup>45</sup> The Commission should reject OEG's modified PSR.

First, R.C. 4928.143(B)(1) states that when the proposed ESP has a term longer than three years, "it may include provisions in the plan to permit the commission to test the plan."<sup>46</sup> OEG's proposal extends Duke's ESP beyond three years, but OEG's proposal contains no provision for Commission testing.<sup>47</sup> Second, OEG's proposed changes will force all customers, except those OEG members who opt out of it, to pay Duke's generation costs.<sup>48</sup> OEG supports the PSR only if its customers can avoid paying PSR.<sup>49</sup> By virtue of the opt-out section for self-insurers, OEG guarantees that its own members will not have to pay for the PSR, while all other Duke customers will have no such option.<sup>50</sup> This modification is discriminatory and self-serving. The Commission

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<sup>45</sup> OEG Ex. 1 (Taylor Direct at 18-22)

<sup>46</sup> R.C. 4928.143(B)(1); RESA Initial Brief at 21.

<sup>47</sup> RESA Initial Brief at 21.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

should be very skeptical of OEG's conditional support for the PSR. Third, OEG's proposal forces the customers who cannot opt out to pay for OVEC generation for significantly longer than Duke is proposing.<sup>51</sup>

With the flaws in OEG's proposed modification to the PSR, as well as the fact that the fundamental flaws with the rider would still remain, the Commission cannot lawfully or reasonably approve the PSR. Accordingly, the PSR and OEG's proposed changes to it, should be rejected.

**iv. Duke's proposed PSR is not the appropriate way to ensure rate stability for customers.**

Even if the Commission likes the general PSR concept, there is no way to determine if Duke's proposal is the best option for customers. The Commission should have the ability to compare different options, but the Commission will not have this ability because Duke is not proposing any request for proposal ("RFP") or competitive bidding process. If the Commission established an auction or RFP process, it would be able to establish a base price that customers will pay in generation-related cost. This construct would be superior to the PSR.

An auction or RFP process would allow the Commission to make an informed decision about the value of a particular PSR proposal. The PSR leaves the Commission

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<sup>51</sup> *Id.*

in the dark regarding the costs customers will ultimately bear, and provides the Commission no way of assessing the true value of Duke's proposal.

**c. Duke's other PSR arguments are not relevant.**

In its initial brief, Duke raises other arguments that are largely irrelevant. Duke discusses reform at PJM, and then states that this reform might cost money.<sup>52</sup> Even if Duke is correct, this is irrelevant. Duke's frustration with reform at PJM or FERC has nothing to do with whether the PSR is either lawful or effective. Duke is a "wires only" company, and there is no longer any legal justification for Duke's recovery of generation-related costs for units that are not committed to Duke's customers. The PSR is an "insurance product" that has nothing to do with providing generation service to SSO customers. This is why the PSR is not only unnecessary, but contrary to Ohio law.

Staff agrees with Duke that the energy prices in the PJM footprint have been quite volatile recently, especially during the polar vortex this past January.<sup>53</sup> Although the Company claims that rider PSR will provide a hedge for consumers against market volatility, Staff believes that a more effective approach for mitigating price volatility, an approach that does not violate any state policies, is the staggering and laddering approach that the Commission has adopted in administering all past SSO procurement auctions.<sup>54</sup>

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<sup>52</sup> Duke Initial Brief at 21-22.

<sup>53</sup> Staff Ex. 1 (Choueiki Direct at 13).

<sup>54</sup> Staff Initial Brief at 6.

Duke makes other arguments regarding the PSR that Staff disagrees with, but these arguments have been addressed in Staff's initial brief.

## **2. Distribution Capital Investment Rider ("DCI")**

As noted in its initial Post-Hearing Brief, Staff generally supports the Distribution Capital Expense Rider ("DCI") as proposed by Duke, but Staff had several recommendations to modify the proposed rider. Many intervenors who commented on the DCI generally oppose its continuation, preferring to see any increases for recovery of distribution investments occur in the context of a rate case. The criticisms focused largely on the lack of quantifiable system improvement, and the failure to account for the cost at which consumers are no longer willing to pay to have their expectations met by Duke.

The Commission has emphasized the need for the EDUs to quantify actual reliability improvements achieved as a result of implementation of DCI plans. While Staff agrees with the intervenors that improvement quantification is and should be a critical expectation of the accelerated recovery that the DCI provides, it concurs with the Company that the Company's efforts have been in alignment with those of its customers.<sup>55</sup>

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<sup>55</sup> Staff Ex. 7 (Baker Direct at 5).

### **3. The Retail Capacity Rider (“Rider RC”) and The Retail Energy Rider (“Rider RE”)**

RESA indicates that the new RC rate is simply a kilowatt-hour (“kWh”) rate, but in reality it is an hours-use rate for the DS, DP and TS rate classes with and, as a result, the customer’s demand is instrumental in determining the customer’s monthly charge.<sup>56</sup> In other words, although the rate is charged as a \$/kWh rate, the rate design includes a declining-block rate structure and the actual kWh rate a customer pays is in part based on the customer’s demand. As a result this design should perform as Duke avers, protecting low-load factor customers and providing benefits for high load factor customers.

RESA also indicates that Duke’s rate design will eliminate the incentive for customers to reduce peak usage.<sup>57</sup> Staff disagrees since, as previously discussed, the rate design proposed by Duke is an hours-use rate design for the customer classes with demand meters. Therefore, reducing peak demand and increasing load factor will result in lower customer costs. Staff believes the incentive to reduce the peak demand will still exist under the proposed rate design.

RESA further argues that the rate design frustrates the CRES provider’s ability to craft an offer for a customer based on the customer’s actual contribution and Duke witness Ziolkowski agreed that a CRES provider would be able, if they were getting integral meter readings, to basically charge the customer based on exactly what the

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<sup>56</sup> RESA Initial Brief at 23.

<sup>57</sup> *Id.*

customers contribution was to the 5 CP.<sup>58</sup> Staff does not understand how Duke's rate design frustrates the CRES provider's ability to craft its offers because, regardless of how Duke designs its rates, the CRES provider can design its offer however it desires. If the CRES providers are not getting the interval-meter readings, then that may be an information-exchange issue and is not affected by the rate design for SSO customers.

RESA indicates that Staff witness Turkenton acknowledged that her review of the proposed rate design changes was focused on the specific effect those changes would have on customers and that her review did not analyze whether the new rates would reflect the cost of service or properly allocate costs to individual customers.<sup>59</sup> Staff witness Turkenton stated that she did not perform a cost-of-service study.<sup>60</sup> Staff believes that a cost-of-service study – as Staff generally thinks about a cost-of-service study performed during a distribution rate case for example – is not necessary to determine the appropriateness of the proposed rate design. The Rider RC costs reflect capacity costs and capacity costs are allocated to the suppliers based on 5 CP. Therefore, once Duke determines how much of the SSO auction-price revenue should be considered capacity costs, it allocates these costs to the customer classes based on the 5 CP methodology. Staff believes this method properly allocates capacity costs to the classes and a complicated cost-of-service study is not necessary. Staff does not know what form

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<sup>58</sup> *Id.* at 24.

<sup>59</sup> *Id.* at 25.

<sup>60</sup> Tr. Vol. XIII at 3791-3792.

a cost-of-service study for these types of costs would take as these costs reflect a proxy of capacity costs included in winning auction prices.

As far as RESA's assertion that the rate design does not properly allocate costs to individual customers, Staff admits that the rate design does not attempt to individually assign costs to each customer based on each customer's contribution to the 5 CPs, rather the costs are allocated to the various classes based on the classes contribution to the 5 CPs. Staff does not believe it would be feasible for Duke to calculate a separate monthly capacity charge for each and every customer. However, if in the future, each and every customer's demand could be accurately measured on each of the 5 CPs so that each customer could be accurately billed the exact costs it has created and, it could be done in a cost effective manner, then this issue could be explored at that time.

#### **4. The Load Factor Adjustment Rider ("LFA")**

The Company continues to support the immediate elimination of the load-factor adjustment rider ("Rider LFA"). As explained in the Company's initial brief, Rider LFA was the part of a package of compromises that cannot be justified when examined as a stand-alone measure. The Company, however, completely ignores the rate impact of its flash-cut proposal on some customers as discussed by Staff witness Donlon in his direct testimony. While most parties did not comment on Rider LFA in their initial briefs, both the OMA and the Kroger Company support Staff's proposal for a gradual phase-out over the term of the ESP.



OEG continues to advocate the continuation of the LFA with modifications, as proposed by its witness, Mr. Baron. OEG recommends retaining the rider for customers taking service under rates DP and TS while eliminating it for Rate DS customers. This proposal, then, would deny the benefit of gradualism to some customers while granting the benefit to others. OEG has failed to justify this disparate treatment of customer classes. While continuing to promote its own approach, OEG does recognize that Staff's gradual phase-down is preferable to the Company's flash-cut proposal.

In contrast to the proposals of the Company and OEG, Staff's proposal would permit customers in any rate class to gradually adjust to any rate increases resulting from the elimination of Rider LFA. The Commission should adopt Staff's proposal as described in the testimony of Staff witness Donlon.

## **CONCLUSION**

Staff recommends that the Commission approve Duke's application, with the modifications recommended by Staff in its initial brief and this reply. Staff believes these modifications will result in an ESP that will benefit all parties involved.

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**Michael DeWine**  
Ohio Attorney General

**William L. Wright**  
Section Chief

*/s/ Steven L. Beeler*

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## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 29<sup>th</sup> day of December, 2014.

*/s/ Steven L. Beeler*

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Summary: Brief Reply Brief electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO