BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY BRIEF OF ENVIRONMENTAL LAW AND POLICY CENTER

Respectfully submitted,
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I. INTRODUCTION

This case involves the Application of Duke Energy Ohio (“Duke” or “Company”) for approval of an Electric Security Plan (“ESP”).[1] The Environmental Law and Policy Center (“ELPC”) responds to Duke’s proposed Price Stabilization Rider (“PSR”), which Duke claims “will mitigate some of the volatility in overall rates that customers pay for generation service,”[2] but in reality improperly transfers ownership of Ohio Valley Electric Corporation (“OVEC”) coal plants to customers.

Given the comprehensive nature of expert testimony in this case, the parties’ briefs present little that was not addressed in ELPC’s Initial Brief. Hence, ELPC’s Reply Brief will focus on the Company’s argument that the PSR is an appropriate way for the Commission to stabilize wholesale rates for Ohio retail customers. While ELPC agrees that it can be appropriate for the Commission to approve hedges and other ways of

[1] Pursuant to R.C. 4928.141(A), 4928.143, and Ohio Adm. Code 4901:1-35
[2] Application at 13.

ensuring the stable procurement of electricity for customers, Duke has not presented compelling evidence in this case that the PSR is in the best interest of customers.

II. ARGUMENT

Duke Has Not Shown The Price Stabilization Rider Will Be A Net Benefit For Customers

The Company argues that "the Commission acts as a steward for ratepayers" and "has the authority to fashion an ESP that encourages competition and, indeed, helps competition to prosper, while reasonably protecting customers' well-being."[3] ELPC agrees with Duke's assessment. However, the facts in this proceeding show that Duke has failed to meet its burden of proof – not just that Duke can and should hedge for customers, but that the contract with OVEC represents the best hedge. In its Merit Brief Duke acknowledges that it has the burden of proof, ELPC submits that when a utility seeks to put the risk of financial losses on its customers the Commission must give the deal increased scrutiny to ensure that it protects those customers.

While Duke presents the hedge as a protection for customers, all but one party representing customers in this case, including ELPC, rejects Duke's offer to use the PSR as a hedge on wholesale electricity prices. First, Duke has not provided evidence that the hedge provided to customers through the PSR offsets the risks that come along with effectively transferring ownership of aging coal plants to those same customers. Second, Duke fails to provide evidence that the OVEC self-deal constitutes the best hedge for customers.

In its Merit Brief, Duke argues that "in rising market price environments, the benefits under the [PSR] will be positive, thereby offsetting other rates derived from

[3] Duke Merit Brief at 20-21.

market prices."[4] The Company, however, has not provided any numerical analysis of the anticipated impact of the PSR on customers. Duke witness Wathen stated that Duke "did not include any numerical analysis in this case" of the estimated costs of OVEC to customers.[5] According to Mr. Wathen, whether the cost to customers of the PSR is "a dollar or a million dollars, it has value as a hedge."[6] Duke's testimony does not meet any reasonable standard of proof.

While ELPC does not dispute that the PSR can act as a hedge, Duke has not shown that it is the best hedge available to customers or even that the benefits of the hedge outweigh the risks. Duke admits that it did not consider any alternatives to protect customers from price instability,[7] so there is no way for the Commission to know if this is the best option. As ELPC explained in its Initial Brief, there is significant uncertainty about what the markets will do between today and 2040 when Duke's obligation to OVEC ends. These uncertainties include new potential impacts from the Environmental Protection Agency's upcoming greenhouse gas rules discussed in ELPC's Initial Brief, as well as market changes stemming from reliability concerns. Duke itself cites PJM's proposed capacity performance initiative in reaction to January 2014's polar vortex as an example of uncertainty in the markets.[8] That proposal would impose new requirements on generators such as the OVEC facilities.[9] The Commission should not assume that the

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[4] Id. at 24.
[5] Transcript at page 668, lines 19-20.
[6] Id. at page 669, lines 2-3.
[7] Id. at page 627, lines 8-22.
[8] Duke Merit Brief at 21-22.
[9] 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 No. ER-15-623 (December 12, 2014) (requiring generation resources to meet new performance and

OVEC facilities would meet these new requirements, especially in light of the fact that not all of the OVEC units were available during the January 2014 severe weather that included the polar vortex.[10] Therefore, even if market prices rise, there is no guarantee that the increased costs of operating OVEC – due to compliance with the new performance requirements or other regulations, such as the anticipated Environmental Protection Agency Greenhouse Gas rules – will not outpace the rising prices and impose further costs on Duke's customers.

Given that the Company has committed to bidding OVEC's capacity assets into the market at $0, customers will simply have to take whatever price the market offers, regardless of whether or not that price is enough to offset the escalating costs of operating the OVEC facilities. In other words, the Company provides no analysis to ensure that the hedge will actually offset the costs of the OVEC units even in a rising wholesale market. If the units lose money even when wholesale prices go up, then the PSR, which passes the operational costs on to customers, would actually amplify market volatility rather than stabilize it. Duke has done nothing to alleviate these concerns other than to make conclusory statements to the contrary. The Commission should not approve a hedge that has the potential to do more harm than good, especially when, as here, the hedge effectively transfers ownership over a generation asset to retail customers.

III. CONCLUSION

The Commission should be wary of any proposal that attempts to transfer ownership of aging generation assets to customers. Duke fails to provide anything other than conclusory testimony that the hedge will be a net benefit to customers. The

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deliverability standards).

[10] Transcript at pages 620-622.

Company did not conduct any analysis of whether this is the best hedge available, and ignores the potential for the PSR to amplify rather than stabilize electricity prices for customers. The Commission should reject Duke's proposal for the PSR.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Brief of the Environmental Law and Policy Center* has been served electronically upon those persons listed below this 29th day of December, 2014.

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