

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Application of Duke Energy	)	
Ohio, Inc. for Authority to Establish a	)	Case No. 14-841-EL-SSO
Standard Service Offer Pursuant to R.C.	)	
4928.143 in the Form of an Electric Security	)	
Plan, Accounting Modifications, and Tariffs	)	
for Generation Service.	)	
	)	
In the Matter of Application of Duke Energy	)	Case No. 14-842-EL-AAM
Ohio, Inc. for Authority to Amend its	)	
Certified Supplier Tariff, P.U.C.O. No. 20.	)	

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**APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF THE  
OHIO MANUFACTURERS' ASSOCIATION**

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**May 4, 2015**

*Counsel for Ohio Manufacturers' Association*

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**APPLICATION FOR REHEARING OF THE  
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Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), the Ohio Manufacturers' Association (OMA) hereby respectfully requests rehearing of the Public Utilities Commission of Ohio's (Commission) April 2, 2015 Opinion and Order (Order)<sup>1</sup> issued in the above-captioned matters regarding the electric security plan (ESP) proposed by Duke Energy Ohio, Inc. (Duke or the Company). OMA contends that the Order is unlawful and unreasonable in the following respects:

1. The Commission erred in establishing the Price Stabilization Rider (PSR) as the PSR fails to meet the statutory requirements of Section 4928.143(B), Revised Code.
  - a. The Commission unreasonably and unlawfully determined that the PSR functions as a limitation on customer shopping for retail electric generation service under Section 4928.143(B)(2)(d), Revised Code.

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<sup>1</sup> *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 14-841-EL-SSO, et al., Opinion and Order (April 2, 2015).

- b. The Commission unreasonably and unlawfully found that Duke met its burden of demonstrating that the rider will have the effect of stabilizing or providing certainty regarding retail electric generation service, as required by Section 4928.143(B)(2)(d), Revised Code.
  - c. The Commission erred in establishing minimum standards to be considered when evaluating a Company's request for cost recovery through the PSR.
- 2. The Commission erred in permitting Duke to recover \$169 million through the Distribution Capital Investment Rider (Rider DCI) over the course of the ESP, as recovery of distribution investments of that order of magnitude is not supported by record evidence, and recovery of such costs is more appropriately addressed in the context of a base distribution rate case.
  - 3. Duke's proposed ESP fails to satisfy the statutory requirement that the ESP, including its pricing and all other terms and conditions, be more favorable in the aggregate than an MRO.

For these reasons, and as further explained in the Memorandum in Support attached hereto, OMA respectfully requests that the Commission grant its Application for Rehearing.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**A. INTRODUCTION AND PROCEDURAL HISTORY**

On May 29, 2014, Duke Energy Ohio, Inc. (Duke or the Company) filed an application (Application) for authority to establish a standard service offer pursuant to Section 4928.143, Revised Code, in the form of an electric security plan (ESP).<sup>2</sup> In its Application, Duke sought approval from the Public Utilities Commission of Ohio (Commission) to establish, inter alia, its proposed Distribution Capital Investment Rider (Rider DCI), to discontinue its interruptible program, and to establish and approve for use through 2040 its proposed Price Stabilization Rider (PSR). Numerous parties, including the Ohio Manufacturers' Association (OMA), were authorized by the Commission to participate in the above-captioned matters, and participated in an evidentiary hearing on Duke's proposed ESP, which commenced on October 22, 2014 and concluded on November 20, 2014.

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<sup>2</sup> Duke Energy Ohio Ex. 1.

On April 2, 2015, the Commission issued its Order which, inter alia, permitted Duke “to establish a placeholder PSR, at an initial rate of zero, for the term of the ESP.”<sup>3</sup> The Commission also determined that the large customer interruptible load program should continue and should be modified to make “participating customers subject to unlimited emergency only interruptions year round.”<sup>4</sup> The Commission further held that the level of credit should remain at 50 percent of Net CONE[,]” and that Rider DR-ECF “will also need to continue, through which Duke may apply for cost recovery.”<sup>5</sup> The Commission also established caps of \$17 million in 2015, \$50 million in 2016, \$67 million in 2017, and \$35 million for the first five months of 2018.<sup>6</sup> Finally, the Commission incorrectly determined that Duke’s proposed ESP satisfies the statutory requirement that the ESP, including its pricing and all other terms and conditions, is more favorable in the aggregate than a market rate offer (MRO).<sup>7</sup>

## **B. ARGUMENT**

### **1. The Commission erred in establishing the PSR as the PSR fails to meet the statutory requirements of Section 4928.143(B), Revised Code.**

As explained in the Order, when evaluating the proposed PSR, the Commission must initially “determine whether the proposed PSR mechanism may be considered a permissible provision of an ESP, in accordance with R.C. 4928.143(B)(1) or (B)(2).”<sup>8</sup> If the proposed PSR does not fall within the categories specifically enumerated in Sections 4928.143(B)(1) or (2), Revised Code, the Commission may not lawfully authorize AEP to establish the rider, as “[t]he

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<sup>3</sup> Order at 47.

<sup>4</sup> Id. at 77.

<sup>5</sup> Id at 77-78.

<sup>6</sup> Id. at 72.

<sup>7</sup> Id. at 96-97.

<sup>8</sup> Id. at 43.

Commission has the authority to approve, as a component of an ESP, only items that are expressly listed in the statute.”<sup>9</sup> As discussed herein, the PSR is not properly interpreted as falling within the categories of items delineated in the statute; therefore, the Commission may not lawfully authorize Duke to establish the PSR. “The Commission is a creature of statute and can exercise only the authority conferred upon it by the General Assembly.”<sup>10</sup>

**a. The Commission erred in unreasonably determining that the PSR functions as a limitation on customer shopping for retail electric generation service under Section 4928.143(B)(2)(d), Revised Code.**

The Commission determined, without credible record support, that the PSR functions as a limitation on customer shopping for retail electric generation service pursuant to Section 4928.143(B)(2)(d), Revised Code. Temporarily setting aside the requirement under Section 4928.143(B)(2)(d), Revised Code, that an ESP may include terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service only in the event that such terms, conditions, or charges would have the effect of stabilizing or providing certainty regarding retail electric generation service, the PSR does not function as a limitation on customer shopping, financially or otherwise.

Duke’s customers, unless constrained by the terms of the mechanism under which they take service, are free to shop for retail electric generation service. As the Commission notes, pursuant to Duke’s Application, shopping customers will still purchase all of their physical retail electric generation supply from the market through a certified retail electric service (CRES) provider; therefore, the proposed PSR would provide no physical constraints on retail

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<sup>9</sup> Id.

<sup>10</sup> *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 88, 706 N.E.2d 1255 (1999).

shopping.”<sup>11</sup> The Commission opines, however, that “[a]lthough the proposed PSR would have no impact on customers’ physical generation supply, the effect of the PSR is that the bills of all customers would reflect a price for retail electric generation service that is approximately 3 percent based on the cost of service of the OVEC units and 97 percent based on the retail market.”<sup>12</sup> The Commission, therefore, concludes that the rider would “*effectively . . . function as a financial restraint on complete reliance on the retail market for the pricing of retail electric generation service.*”<sup>13</sup> The Commission’s conclusion overlooks several factors. First, as explained more fully below, the “price” referenced by the Order is not a price associated with the provision of retail electric generation service. Rather, it is a charge or credit associated with netting the costs of operating certain generating facilities against the revenue obtained from selling the proportionate output of the generating facilities into the wholesale market, if any. If the calculation results in net costs, there will be a charge reflected on the bills of all customers. If the calculation results in net revenues, there will be a credit reflected on the bills of all customers. The Commission acknowledges that the “evidence of record reflects that the rider may result in a net cost to customers, with little offsetting benefit from the rider’s intended purpose as a hedge against market volatility.”<sup>14</sup>

Second, the Order ignores the fact that many customers, including SSO customers, do not rely on the fluctuations of the spot energy market for their retail electric generation service. For the term of the proposed ESP, most customers will have either entered into fixed-price contracts for retail electric generation service or will take service pursuant to the SSO, with the resulting

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<sup>11</sup> Id. at 45.

<sup>12</sup> Id.

<sup>13</sup> Id. (emphasis added).

<sup>14</sup> Id. at 46.

price reflecting the product of negotiations with CRES suppliers or a competitively bid process utilizing a laddering approach. For those customers with fixed-price generation contracts during various periods of time corresponding with the proposed ESP, the PSR will merely add unwanted charges (as the record indicates) to their electric distribution bills; thereby, increasing the price that customers will ultimately pay for electricity. Increasing the cost of electricity will impact manufacturers' overall cost to do business in the state of Ohio, decreasing manufactures' productivity and ability to compete in the global market.

In the unlikely event that a credit occurs from PSR calculation, there will be a credit assessed on the customers' distribution bills. The PSR will not, financially or otherwise, alleviate or somehow constrain customers' "reliance on the retail market for the pricing of retail electric generation service."<sup>15</sup> In fact, the PSR will adversely affect the overall benefits of fixed, known costs for which customers with fixed-price generation contracts bargained when negotiating those contracts.

Further, the PSR was proposed by Duke to be reconciled and trued-up on a quarterly basis. When reviewed on a quarterly basis, which is a relatively long period of time in energy markets, the PSR is unlikely to provide any of the positive outcomes that might be associated with any purported benefit of a financial hedge to retail electric generation service against high prices in the wholesale energy market at a given point in time. True-ups of the PSR on a quarterly basis, as proposed, will not provide price stability even if it is assumed, for instance, that market prices do in fact increase during "periods of extreme weather"<sup>16</sup> and then return to average market prices. Thus, in addition to being unlikely to produce a financial benefit for customers during the proposed ESP term, the touted rate stabilizing benefits of the PSR as a

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<sup>15</sup> Order at 45.

<sup>16</sup> Id. at 47.



limitation on customer shopping will not come to fruition under the reconciliation and true-up periods proposed by Duke.

Further, Duke is bound by the requirements of Rule 4901:1-35-03(C)(9)(c), O.A.C., to the extent that it proposes to include in an ESP terms, conditions, or charges related to retail shopping by customers. Rule 4901:1-35-03(C)(9)(c), O.A.C., provides, in pertinent part:

- (c) Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:
  - (i) *A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service.* Such components would include, but are not limited to, terms and conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale and, to the extent possible, a quantitative justification shall be provided.
  - (ii) A description and quantification or estimation of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery, together with the carrying costs, amortization periods, and avoidability of such charges.
  - (iii) A listing, description, and quantitative justification of any unavoidable charges for standby, back-up, or supplemental power.

(Emphasis added). Duke did not allege in its Application that the PSR would have the effect of preventing, limiting, or inhibiting customer shopping for retail electric generation service, financially or otherwise, nor did it request a waiver of Rule 4901:1-35-03(C)(9)(c), O.A.C., from the Commission during the course of this proceeding. The sole witness that advanced an argument at hearing that the PSR represents a financial limitation on shopping was witness

Taylor.<sup>17</sup> Witness Taylor explained the limitation as a financial constraint that would help stabilize rates.<sup>18</sup> First, the unknown potential of adding an additional charge or credit to customers' distribution bills is in no way a "constraint." The PSR also does not constrain the costs that Duke may pass on to customers; there is no cap. As the Commission recognized, there is "uncertainty and speculation inherent in the process of projecting the net impact of the proposed PSR[.]"<sup>19</sup> Thus, the PSR cannot create financial certainty for customers. Accordingly, the Commission improperly depended on witness Taylor's testimony, despite Duke's failure to comply with filing requirements set forth in Rule 4901:1-35-03(C)(9)(c), O.A.C., or to seek a waiver from the Commission regarding said filing requirements.

In light of the aforementioned items, the Commission unreasonably determined that the PSR functions as a limitation on customer shopping for retail electric generation service under Section 4928.143(B)(2)(d), Revised Code.

**b. The Commission unreasonably and unlawfully found that Duke met its burden to demonstrate that the PSR will have the effect of stabilizing or providing certainty regarding retail electric generation service, as required by Section 4928.143(B)(2)(d), Revised Code.**

The Commission unlawfully and unreasonably permitted Duke to establish a placeholder PSR, at an initial rate of zero, for the term of the ESP, as Duke failed to meet its burden to demonstrate that the PSR will stabilize or provide certainty regarding retail electric generation service. In the Order, the Commission states the following:

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<sup>17</sup> Tr. Vol. VII at 1875.

<sup>18</sup> Id.

<sup>19</sup> Id. at 46.

[C]onsidering the plain language of the statute, we find that there are *three criteria with which the PSR mechanism must comply*. Specifically, an ESP component approved under R.C. 4928.143(B)(2)(d) *must* first be a term, condition, or charge; next, relate to one of the enumerated types of terms, conditions, and charges; and, finally, *have the effect of stabilizing or providing certainty regarding retail electric service*.<sup>20</sup>

(Emphasis added). Pursuant to the language utilized by the Commission when interpreting the requirements of Section 4928.143, Revised Code, the PSR mechanism must have the effect of stabilizing or providing certainty regarding retail electric generation service. In its analysis of whether it may lawfully and reasonably establish the PSR mechanism, however, the Commission found merely that the PSR “is proposed to have the effect of stabilizing or providing certainty regarding retail electric service.”<sup>21</sup> Although the Commission soundly determined in the Order that Duke did not meet its burden to show that the proposed PSR would promote rate stability,<sup>22</sup> the Commission still approved the establishment of the PSR mechanism. This outcome diverges from the Commission’s interpretation, advanced in the Order, that the PSR mechanism or component must have the effect of stabilizing or providing certainty regarding retail electric generation service.<sup>23</sup> “Proposed” to have a particular effect or an “intent to mitigate, by design, the effects of market volatility” is insufficient.<sup>24</sup> By means of its reference to the PSR

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<sup>20</sup> Order at 43, citing, e.g., *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (February 25, 2015); *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* (ESP 2 Case), Case No. 11-346-EL-SSO, et al., Entry on Rehearing (Jan. 30, 2013) at 15-16; *In re Dayton Power and Light Company*, Case No. 12-426-EL-SSO, et al. (DP&L ESP Case), Opinion and Order (Sept. 4, 2013) at 21-22.

<sup>21</sup> Order at 44.

<sup>22</sup> Id. at 46, stating “we are not persuaded that the PSR proposal put forth by Duke in the present proceedings would, in fact, promote rate stability, as Duke claims, or that it is in the public interest. There is considerable uncertainty with respect to pending PJM market reform proposals, environmental regulations, and federal litigation, as Duke acknowledges, and, in light of this uncertainty, the Commission does not believe that it is appropriate to adopt the proposed PSR at this time.”

<sup>23</sup> See, e.g., Order at 43.

<sup>24</sup> Order at 44.

“mechanism” or “component,” the Commission is discussing the standard for establishing such a mechanism, not just the standard for authorizing the recovery of various costs (or passing benefits) through the PSR.

As the Commission determined, Duke did not adequately demonstrate that the PSR mechanism would have the effect of providing certainty regarding retail electric service or stabilizing the same.<sup>25</sup> Accordingly, the Commission erred when it authorized Duke to establish a placeholder PSR, even at an initial rate of zero, for the term of the ESP.<sup>26</sup> The PSR may not be properly established unless or until such time as Duke demonstrates that it will have the effect of stabilizing or providing certainty regarding retail electric generation service. Because Duke did not satisfy its burden, the Commission’s decision to authorize its establishment was unreasonable, erroneous, and unlawful, and should be reversed on rehearing.

The law also requires that the “limitation on customer shopping” be on “retail electric generation service.”<sup>27</sup> The PSR, however, is nonbypassable and has no bearing on retail electric generation service. The purported financial hedge is not related to the supply or provision of retail electric service to Ohio ratepayers. Equating a financial hedge assessed to all customers on their distribution bills to a limitation on retail electric generation service or shopping is tantamount to equating apples to oranges. The Commission should not depend on such a false comparison in order to authorize Duke to establish the PSR.

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<sup>25</sup> Id. at 46.

<sup>26</sup> Id. at 47.

<sup>27</sup> Section 4928.143(B)(2)(d), Revised Code.

**c. The Commission erred in establishing minimum standards to be considered when evaluating Duke's request for cost recovery through the PSR.**

The Commission erred in establishing minimum standards for Duke to address in a future PSR request proceeding.<sup>28</sup> It appears that the Commission arbitrarily selected certain factors to address and not others. Additionally, the Commission failed to require Duke to address regional factors that affect the wholesale energy and capacity markets in which the generating plants will participate. The entire PJM footprint will be affected by any decision to provide financial support to a particular generating plant and generation owner while not providing similar support to competing generating facilities/generation owners in the PJM footprint. The Commission also failed to require Duke to address the necessity of the generating plant with regard to reliability in the PJM region, as PJM is the reliability coordinator for the region.

Factors that the Commission should consider, and thus, require Duke to address in future filings include, but are not limited to, the following:

- The ownership of the generating plant;
- The extent to which the generating plant is serving Ohio customers;
- The geographic location of the generating plant;
- The necessity of the generating plant with regard to reliability in the PJM region;
- The economic viability of the generating plant with and without the establishment of the PSR;
- The generating plants' participation, or lack thereof, in PJM's wholesale energy and capacity markets;
- The cost of compliance with pending environmental regulations;
- The cost of maintaining operations of the generating plant and the resulting effect on economic development within the state;
- The resulting effect on other competing generating plants of providing financial support to a competitor;
- The impact on PJM's competitive wholesale energy and capacity markets;
- The impact on the generating plant if PJM is required to modify its dispatch order due to environmental constraints/regulations.

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<sup>28</sup> Order at 47.

If the Commission is going to authorize the establishment of a PSR and entertain future requests for cost recovery through the PSR, OMA respectfully requests that the Commission expand its list of minimum standards to be included in Duke's subsequent cost recovery requests to include those items delineated herein.

**2. The Commission erred in permitting Duke to recover \$169 million through Rider DCI over the course of the ESP, as recovery of distribution investments of that order of magnitude is not supported by record evidence, and recovery of such costs is more appropriately addressed in the context of a base distribution rate case.**

As noted in the Order, Duke sought Commission approval of nonbypassable Rider DCI pursuant to Section 4928.143(B)(2)(h), Revised Code, in the proposed ESP.<sup>29</sup> The Commission appropriately denied Duke's request to include general plant in Rider DCI; however, the rate caps it established for the term of the ESP are still excessive and unreasonable, as they are unsupported by record evidence. The rate caps approved by the Commission for the corresponding years of the ESP are set forth herein:<sup>30</sup>

<b>Year</b>	<b>Rider DCI Cap Approved by Commission</b>
2015	\$17 million
2016	\$50 million
2017	\$67 million
2018 (January through May)	\$35 million
<b>Total</b>	\$169 million

As stated above, the Commission properly rejected Duke's request to include general plant in Rider DCI; however, the Commission erred in authorizing the collection of expenditures totaling up to \$169 million for the ESP term. Duke's recovery of hundreds of millions of dollars

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<sup>29</sup> Order at 66.

<sup>30</sup> Id. at 72.

in distribution investment costs is significant and unsupported by record evidence. In fact, as the Commission also explained in its Order:

[Duke's proposed Rider DCI general plant investments] would be better considered and reviewed in the context of a distribution rate case where the costs can be evaluated in the context of the Company's total distribution revenues and expenses, and the Company's opportunity to recover a return on and of its investment can be balanced against the customers' right to reasonably priced service.<sup>31</sup>

OMA submits that the above-cited argument equally applies to Duke's Rider DCI investments at the level approved in the Order, and respectfully requests that the Commission revisit its decision to cap Rider DCI at such extreme, unsupported levels over the course of the ESP.

**3. The Commission erred in determining that Duke's proposed ESP, as modified, is more favorable in the aggregate than an MRO.**

Section 4928.143(C)(1), Revised Code, provides, in pertinent part, that the Commission shall do the following:

modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.

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Otherwise, the commission by order shall disapprove the application.<sup>32</sup>

As stated above, before approving an ESP, the Commission must determine that the proposed ESP is more favorable in the aggregate as compared to the expected results that would

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<sup>31</sup> Order at 72.

<sup>32</sup> Section 4928.143(C)(1), Revised Code.

otherwise apply under a market rate offer (MRO), otherwise known as the MRO test.<sup>33</sup> Duke had the burden of demonstrating, during the course of the proceeding, that its proposed ESP was, in fact, more favorable than an MRO.<sup>34</sup> Duke did not meet its burden, and therefore, the Commission incorrectly determined that the proposed ESP is more favorable than the results expected under an MRO both quantitatively and qualitatively.<sup>35</sup>

The Commission's conclusion that the ESP was quantitatively and qualitatively more favorable was based in large part on the approval of distribution-related riders, stating that such approval "should enable Duke to hold base distribution rates constant over the ESP period."<sup>36</sup> The Commission failed, however, to take into account the fact that Duke has not committed to refrain from filing a distribution rate case during the term of the proposed ESP.<sup>37</sup> Additionally, Duke failed to quantify such benefits, and the Commission has previously determined that no such quantifiable benefits exist between recovering distribution investment through a rider rather than a base distribution case.<sup>38</sup>

Also illusory under the ESP are any qualitative benefits associated with the continuation of Rider DCI and other distribution-related riders. Although the Commission notes that many of the provisions of the modified ESP advance the state policies enumerated in Section 4928.02, Revised Code,<sup>39</sup> it is extremely unclear whether the qualitative benefits attributed to the ESP by

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<sup>33</sup> Id.; see also *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, Opinion and Order at 48 (September 4, 2013).

<sup>34</sup> Id.

<sup>35</sup> Order at 96-97.

<sup>36</sup> Order at 97.

<sup>37</sup> Tr. Vol. XIII at 3784-85.

<sup>38</sup> *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 at 55-56 (July 18, 2012).

<sup>39</sup> Order at 97.



the Commission will come to fruition without the imposition of additional distribution costs on ratepayers during the term of the ESP.

The Commission also cites as a qualitative benefit of the ESP the fact that Duke “will implement fully market-based prices beginning on June 1, 2015.”<sup>40</sup> Respectfully, considering the implementation of fully market-based prices beginning on June 1, 2015 to be a qualitative benefit of the ESP, but also agreeing that the PSR may be established as a financial limitation on shopping that will provide certainty and less reliance on the retail market appear to be contradictory positions.<sup>41</sup> If “mov[ing] more quickly to market rate pricing than would be expected under an MRO”<sup>42</sup> represents a qualitative benefit of the ESP, establishing the PSR as a financial limitation on shopping that would purportedly alleviate the risk associated with market-based pricing represents a step in the opposite direction and is not a benefit of the ESP.

Although the PSR has been approved and set at zero, the Commission still must consider the effect that the establishment of the PSR in an ESP will have on customers as compared to the expected results that would otherwise apply under a MRO. Section 4928.143(C)(1), Revised Code, requires the Commission to look at the ESP in the aggregate and ensure that all of “its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals” are more favorable than an MRO. The creation and establishment of the riders is clearly a term and condition of the ESP approved by the Commission, which must be considered. Additionally, a PSR would not be able to be established under an MRO. Therefore, the Commission must consider future recovery of costs under all riders that are explicitly established as a provision of an ESP. Future recovery of costs authorized by an ESP was clearly intended to

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<sup>40</sup> Id.

<sup>41</sup> See Order at 45 (stating that “the proposed PSR would function as a financial restraint on complete reliance on the retail market for the pricing of retail electric generation service.”)

<sup>42</sup> Id.

be considered in the context of the MRO test as the statute specifically cites to one instance of future recovery of costs as an illustration. Although the statute does not explicitly contemplate a rider established at a zero cost and the future costs that may be collected under that rider, the statute does provide guidance. When discussing future recovery of costs regarding deferrals, the statute requires a consideration of such future costs. Similarly, with regard to the future recovery of costs regarding the PSR, the Commission is required to consider the level of those future costs or the potential of costs to be recovered under the authorized riders for purposes of the MRO test.

Considering potential costs is particularly important in the instant case as the Commission has recognized that during the three-year period of the ESP, the PSR would, in all likelihood, result in a net cost to customers. Accordingly, the level of potential costs that could be associated with the PSR during the term of the ESP must be considered, and the range of potential costs to customers that should be considered is extremely considerable over the term of the ESP.<sup>43</sup>

Even with the modifications approved by the Commission, the ESP continues to be neither quantitatively nor qualitatively more favorable in the aggregate than an MRO. Consequently, it was erroneous for the Commission to determine that the ESP passed the MRO test and should be approved as modified. Given that the proposed ESP and the modified ESP were not more favorable in the aggregate than an MRO, the Commission erred in approving the proposed ESP.

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<sup>43</sup> Order at 45-46.

### C. CONCLUSION

OMA respectfully requests that the Commission grant its application for rehearing of the issues set forth above. Specifically, OMA requests that the Commission reevaluate its decision authorizing Duke to recover \$169 million through Rider DCI over the course of the ESP. OMA also requests that the Commission reevaluate the perceived quantitative and qualitative benefits of the proposed ESP.

Finally, OMA requests that the Commission find that the PSR proposed by Duke does not represent a financial limitation on customer shopping, and reverse its decision authorizing Duke to establish the PSR. The Commission should carefully consider the effect that the establishment of Rider PSR could have on Ohio's customers and any costs associated therewith that could be passed onto customers. Increases in the number and/or magnitude of charges assessed to customers will negatively impact Ohio businesses and their ability to retain jobs and invest in Ohio's economy.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on May 4, 2015.

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Summary: Application for Rehearing electronically filed by Ms. Cheryl A Smith on behalf of  
The Ohio Manufacturers' Association