

**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 ) Case No. 14-841-EL-SSO  
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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**THE RETAIL ENERGY SUPPLY ASSOCIATION'S  
MEMORANDUM CONTRA  
THE APPLICATION FOR REHEARING  
OF  
DUKE ENERGY OHIO, INC.**

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**I. Introduction**

Now comes the Retail Energy Supply Association (“RESA”)<sup>1</sup> and, pursuant to Rule 4901-1-35(B), Ohio Administrative Code, RESA files this memorandum contra the application for rehearing filed by Duke Energy Ohio, Inc. (“Duke”) with respect to the Opinion and Order issued in these proceedings on April 2, 2015. RESA specifically requests that the Public Utilities Commission of Ohio (“Commission”) deny Duke’s first three assignments of error regarding the Price Stabilization Rider (“Rider PSR”) and the divestiture of Duke’s entitlement in the Ohio

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<sup>1</sup> The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

Valley Electric Corporation (“OVEC”). The Commission fully analyzed and correctly determined that Rider PSR as proposed by Duke should not be approved and that, before Duke can actually charge customers under such a rider, further relevant evidence must be presented and evaluated.<sup>2</sup> In addition, the Commission was well within its authority to state in the Opinion and Order its own intent and understanding that Duke would be divesting/transferring its entitlement in OVEC by the end of 2014. Inasmuch as the evidence in the record amply establishes that no divestiture or transfer occurred as expected by the Commission (as well as by numerous other parties), the Commission also was well within its authority to direct Duke to “pursue transfer of the OVEC contractual entitlement or to otherwise pursue divestiture of the OVEC asset.”<sup>3</sup>

**II. The Commission’s conclusions that Rider PSR should not be adopted as proposed by Duke were based on the proper weighing of the evidence and Duke raises nothing new in its rehearing application.**

Duke raised two interrelated assignments of error involving Rider PSR:

Assignment of error #1: The Commission’s conclusion with regard to Rider PSR unreasonably prohibits the Company from offering its customers a hedge against volatile wholesale prices, even though the Commission agrees that the proposed rider would act as a hedge.

Assignment of error #2: The Commission’s conclusion that Rider PSR should be approved, but that it should remain at zero until such time as the Company provides additional evidence, is unreasonable, in that sufficient evidence is currently available in the existing record.

Through both of these assignments of error, Duke is asking the Commission to reverse its findings of facts as to the lack of benefits which Rider PSR conveys on the public. Duke in its petition though raises no new facts based in the record that would merit a re-weighing of the

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<sup>2</sup> RESA has argued in its own application for rehearing in this proceeding that it was proper for the Commission to have concluded that Duke’s proposed Rider PSR should not be adopted. RESA also argued that it was error for the Commission to have nonetheless proceeded to establish a “placeholder Rider PSR” set at zero. Nothing in this Memorandum Contra is intended to diminish or otherwise change RESA’s position on the placeholder Rider PSR.

<sup>3</sup> Opinion and Order at 48.

factual findings. This in large part could be because the Commission within the Opinion and Order carefully addressed all the pertinent facts in the record.

In its first assignment of error, Duke claims that the Commission unreasonably rejected Rider PSR even though it found that Rider PSR would act as a hedge. That interpretation that the Opinion and Order found Rider PSR to be a hedge is in error. An examination of the Opinion and Order though shows that that the Commission actually concluded the opposite: “the Commission agrees with OCC, IEU, and other intervenors that the evidence of record reflects that the rider may result in a net cost to customers, with little offsetting benefit from the riders intended purpose as a hedge against market volatility.”<sup>4</sup> Indeed, the Commission stated that conclusion a second time, stating: “the Commission is not persuaded, based on the evidence of record in these proceedings, that Duke’s PSR proposal would provide customers with sufficient benefit from the rider’s financial hedging mechanism or any other benefit that is commensurate with the rider’s potential cost.”<sup>5</sup> The Commission added its belief that a properly conceived rider could do what Duke claimed its PSR proposal would do; however, that properly conceived rider proposal was not pending before the Commission. Nothing presented by Duke in its application for rehearing demonstrates that the Commission unjustly and unreasonably weighed the evidence presented.

Duke supports its first two assignments of error with arguments about the wholesale market, the structure of Rider PSR, the impact of the rider, and the existing mechanisms used today to address price volatility.<sup>6</sup> However, these are arguments that Duke addressed during the

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<sup>4</sup>Opinion and Order at 46.

<sup>5</sup> *Id.*

<sup>6</sup> Duke Application for Rehearing at 6-11.

hearing and in brief in these proceedings.<sup>7</sup> Duke has not presented anything new in its application for rehearing.

As RESA has noted in its own application for rehearing (page 7), the Commission properly concluded that Rider PSR as proposed by Duke should be rejected because Duke did not meet its burden of proof. Duke had the obligation to convince the Commission that its proposed Rider PSR should be adopted. The Commission fully explained why Duke did not meet its burden of proof. Nothing presented by Duke in its application for rehearing warrants a re-weighing of the evidence or a different conclusion.

Moreover, Duke takes issue with the Commission's decision to include guidance for another application, if Duke seeks to establish a rider rate at some point in the future. However, this guidance is a matter within the Commission's discretion. Duke cites no authority to substantiate its claim of error. And, there was no error in including that guidance for any future application. For all of these reasons, Duke's first two assignments of error should be rejected.

**III. The Commission's directive that Duke pursue divestiture/transfer of its OVEC entitlement was a proper finding within the scope of this proceeding and based on the proper weighing of the evidence.**

Duke seeks rehearing from the Commission's directive that Duke continue its efforts to divest its OVEC holdings:

Assignment of error #3: The Commission's direction, in dicta, that the Company must pursue divestiture of its stock in the Ohio Valley Electric Corporation (OVEC) is unreasonable, arbitrary, unconstitutional, beyond the scope of this proceeding, and outside the Commission's jurisdiction.

In addressing its third assignment of error, Duke overlooks that its own evidence in support of its ESP III Application in this matter raised the question of whether it had been

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<sup>7</sup> See, e.g., Duke Ex. 2 (Henning Direct Testimony) at 4-5, 8-11; Duke Ex. 6 (Wathen Direct Testimony) at 12-15; Duke Initial Brief at 21-24; and Duke's Reply Brief at 43-44, 54-55, 58, and 67.

obligated to divest the OVEC entitlement as part of the stipulated terms in its second ESP proceeding.<sup>8</sup> Duke also addressed the divestiture/transfer of its OVEC entitlement in its Reply Brief.<sup>9</sup> Given that Duke placed this question at issue as part of its evidence supporting its ESP III Application and Rider PSR, RESA first disagrees with Duke's claim on rehearing that the Commission's discussion of the issue was in dicta.

Next, Duke claims that its due process rights were violated because the Commission did not explain in its April 2<sup>nd</sup> Opinion and Order why it had intended in the ESP II proceeding to require to Duke to divest/transfer the OVEC entitlement and because the Commission's statement in the April 2<sup>nd</sup> Opinion and Order is a new interpretation of the ESP II requirements. Duke's due process rights were not violated. As explained above, Duke itself raised the question as to whether the ESP II required the OVEC divestiture/transfer, Duke presented evidence regarding the question, and addressed the question in its brief.

Duke also argues that Ohio law does not require the divestiture/transfer of its OVEC entitlement and it would be illogical to require the OVEC divestiture/transfer when other generating assets are owned as well. These arguments miss the mark because the question as to whether Duke was obligated to divest/transfer stems from the stipulated terms of Duke's ESP II. As a result, Duke's due process rights were not violated and there is no "governmental taking" of private property in the instant proceedings.

As to the remainder of the arguments raised in Duke's third assignment of error, Duke is rehashing the same points of whether the stipulated terms of the ESP II required it to divest/transfer its OVEC entitlement. These are matters that the Commission weighed and

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<sup>8</sup> Duke Ex. 6 (Wathen Direct Testimony) at 11.

<sup>9</sup> Duke Reply Brief at 70-76.

considered at the time it issued its April 2<sup>nd</sup> Opinion and Order<sup>10</sup> and Duke is asking the Commission to re-weigh the evidence and arguments. As a result, Duke raises nothing new.

The Commission's ruling was not unreasonable, arbitrary, unconstitutional, beyond the scope of this proceeding, or outside the Commission's jurisdiction. For all of the foregoing reasons, the Commission should reject Duke's third assignment of error.

#### **IV. Conclusion**

For the foregoing reasons, the Commission should reject Duke's first three assignments of error, which relate to Riders PSR and Duke's OVEC entitlement. Those assignments of error have no merit and should be denied.

Respectfully Submitted,



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M. Howard Petricoff (0008287)  
Michael J. Settineri (0073369)  
Gretchen L. Petrucci (0046608)  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Tel. (614) 464-5414  
Fax (614) 464-6350  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

*Attorneys for the Retail Energy Supply Association*

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<sup>10</sup> Opinion and Order at 36-38, 48.

### CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on 14<sup>th</sup> day of May 2015 upon all persons/entities listed below.

  
Gretchen L. Petrucci

Duke Energy Ohio, Inc.

Amy B. Spiller  
Rocco O. D'Ascenzo  
Jeanne W. Kingery  
Elizabeth H. Watts  
139 E. Fourth Street, 1303-Main  
P.O. Box 961  
Cincinnati, OH 45201-0960  
[amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com)  
[rocco.dascenzo@duke-energy.com](mailto:rocco.dascenzo@duke-energy.com)  
[elizabeth.watts@duke-energy.com](mailto:elizabeth.watts@duke-energy.com)  
[jeanne.kingery@duke-energy.com](mailto:jeanne.kingery@duke-energy.com)

Office of the Ohio Consumers' Counsel

Maureen R. Grady  
Joseph P. Serio  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
[maureen.grady@occ.ohio.gov](mailto:maureen.grady@occ.ohio.gov)  
[joseph.serio@occ.ohio.gov](mailto:joseph.serio@occ.ohio.gov)

Dane Stinson  
Dylan F. Borchers  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)

Ohio Energy Group

David Boehm  
Michael L. Kurtz  
Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
[dboehm@BKLlawfirm.com](mailto:dboehm@BKLlawfirm.com)  
[mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com)  
[jkylercohn@BKLlawfirm.com](mailto:jkylercohn@BKLlawfirm.com)

FirstEnergy Solutions Corp.

Mark A. Hayden  
Jacob A. McDermott  
Scott J. Casto  
FirstEnergy Service Company  
76 S. Main Street  
Akron, OH 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)  
[jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com)  
[scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com)

Ohio Manufacturers' Association

Kimberly W. Bojko  
Jonathan Allison  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus OH 43215  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[allison@carpenterlipps.com](mailto:allison@carpenterlipps.com)

The Energy Professionals of Ohio

Kevin R. Schmidt  
88 East Broad Street, Suite 1770  
Columbus, OH 43215  
[schmidt@sppgrp.com](mailto:schmidt@sppgrp.com)

Direct Energy Services, LLC and Direct Energy Business, LLC

Joseph M. Clark  
21 East State Street, 19th Floor  
Columbus, Ohio 43215  
[joseph.clark@directenergy.com](mailto:joseph.clark@directenergy.com)

Gerit F. Hull  
Eckert Seamans Cherin & Mellott, LLC  
1717 Pennsylvania Ave., N.W., 12th Floor  
Washington, DC 20006  
[ghull@eckertseamans.com](mailto:ghull@eckertseamans.com)

Industrial Energy Users-Ohio

Samuel C. Randazzo  
Frank P. Darr  
Matthew R. Pritchard  
McNees Wallace & Nurick  
21 East State Street, 17th Floor  
Columbus, OH 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)

IGS Energy

Joseph Olikier  
6100 Emerald Parkway  
Dublin, Ohio 43016  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)

The Dayton Power and Light Company

Judi L. Sobecki  
1065 Woodman Drive  
Dayton, OH 45432  
[judi.sobecki@aes.com](mailto:judi.sobecki@aes.com)

Staff of the Public Utilities Commission of Ohio

Steven Beeler  
Thomas Lindgren  
Ryan O'Rourke  
Attorney General's Section  
Public Utilities Commission of Ohio  
180 E. Broad St., 6th Floor  
Columbus, OH 43215  
[steven.beeler@puc.state.oh.us](mailto:steven.beeler@puc.state.oh.us)  
[thomas.lindgren@puc.state.oh.us](mailto:thomas.lindgren@puc.state.oh.us)  
[ryan.orourke@puc.state.oh.us](mailto:ryan.orourke@puc.state.oh.us)

Duke Company

Steven T. Nourse  
Matthew J. Satterwhite  
Yazen Alami  
American Electric Power Service Corp.  
1 Riverside Plaza 29th Floor  
Columbus, Ohio 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[yalami@aep.com](mailto:yalami@aep.com)



People Working Cooperatively, Inc.

Andrew J. Sonderman  
Margeaux Kimbrough  
Kegler Brown Hill & Ritter LPA  
65 East State Street  
Columbus, Ohio 43215-4294  
[asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com)  
[mkinbrough@keglerbrown.com](mailto:mkinbrough@keglerbrown.com)

Ohio Environmental Council

Trent Dougherty  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)

Constellation NewEnergy Inc. and Exelon  
Generation Company LLC

David I. Fein  
Exelon Corporation  
10 South Dearborn Street, 47th Floor  
Chicago, IL 60603  
[david.fein@exeloncorp.com](mailto:david.fein@exeloncorp.com)

Cynthia Fonner Brady  
Exelon Business Services Company  
4300 Winfield Road  
Warrenville, IL 60555  
[cynthia.brady@constellation.com](mailto:cynthia.brady@constellation.com)

Lael Campbell  
Exelon  
101 Constitution Avenue, NW  
Washington, DC 20001  
[lael.campbell@constellation.com](mailto:lael.campbell@constellation.com)

Sierra Club

Christopher J. Allwein  
Kegler Brown Hill & Ritter Co. LPA  
65 E. State Street, Suite 1800  
Columbus, Ohio 43215-4295  
[callwein@keglerbrown.com](mailto:callwein@keglerbrown.com)

The Greater Cincinnati Health Council

Douglas E. Hart  
441 Vine Street, Suite 4192  
Cincinnati, OH 45202  
[dhart@douglasshart.com](mailto:dhart@douglasshart.com)

Wal-Mart Stores East LP and Sam's East Inc.

Donald L. Mason  
Michael R. Traven  
Roetzel & Andress LPA  
155 East Broad Street, 12th Floor  
Columbus, Ohio 43215  
[dmason@ralaw.com](mailto:dmason@ralaw.com)  
[mtraven@ralaw.com](mailto:mtraven@ralaw.com)

Rick D. Chamberlain  
Behrens, Wheeler & Chamberlain  
6 N.E. 63rd, Suite 400  
Oklahoma City, OK 73105  
[rdc\\_law@swbell.net](mailto:rdc_law@swbell.net)

The Kroger Company

Rebecca L. Hussey  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus OH 43215  
[hussey@carpenterlipps.com](mailto:hussey@carpenterlipps.com)

Natural Resources Defense Council

Samantha Williams  
20 N Wacker Drive, Suite 1600  
Chicago, IL 60606  
[swilliams@nrdc.org](mailto:swilliams@nrdc.org)

Environmental Law & Policy Center

Justin Vickers  
33 East Wacker Drive, Suite 1600  
Chicago, IL 60601  
[jvickers@elpc.org](mailto:jvickers@elpc.org)

Ohio Development Services Agency

Dane Stinson  
Dylan Borchers  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)

Ohio Partners for Affordable Energy

Colleen L. Mooney  
231 West Lima Street  
Findlay, OH 45839-1793  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)

EnerNOC, Inc.

Gregory J. Poulos  
471 E. Broad St., Suite 1520  
Columbus, OH 43054  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)

Joel E. Sechler  
Carpenter Lipps & Leland LLP  
280 North High Street – Suite 1300  
Columbus, OH 43215  
[Sechler@carpenterlipps.com](mailto:Sechler@carpenterlipps.com)

City of Cincinnati

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

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electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association