BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	)))	Case No. 17-32-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	))	Case No. 17-33-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 17-34-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR.	)))	Case No. 17-872-EL-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR.	)))	Case No. 17-873-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 17-874-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., 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. 17-1263-EL-SSO
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	)))	Case No. 17-1264-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Vegetation Management Costs.	))))	Case No. 17-1265-EL-AAM

In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards Pursuant to Chapter 4901:1-10, Ohio Administrative Code.	)))))	Case No. 16-1602-EL-ESS

INTITIAL POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTLITIES COMMISSION OF OHIO

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TABLE OF CONTENTS

Page

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	)))	Case No. 17-32-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	))	Case No. 17-33-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 17-34-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR.	)))	Case No. 17-872-EL-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR.	)))	Case No. 17-873-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 17-874-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., 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. 17-1263-EL-SSO
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	))))	Case No. 17-1264-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Vegetation Management Costs.	)))	Case No. 17-1265-EL-AAM

In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards Pursuant to Chapter 4901:1-10, Ohio Administrative Code.	)))))	Case No. 16-1602-EL-ESS

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INTRODUCTION

The Public Utilities Commission of Ohio (Commission) is presented with a Stipulation that resolves all the issues in ten complex cases that were consolidated to form this proceeding. The Stipulation is reasonable and meets the Commission's three-part test for approval of stipulations. It should be adopted by this Commission.

PROCEDURAL SCHEDULE

On April 13, 2018, Duke Energy Ohio (the Company or Duke) and certain parties filed a stipulation and recommendation (Stipulation) that purports to resolve issues in four pending cases. The cases included in the Stipulation are:

- *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case 17-32-EL-AIR, et al. (Rate Case);

- *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR*, Case No. 17-872-EL-RDR, et al. (PSR Case);

- *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer,* Case No. 17-1263-EL-SSO, et al. (ESP Case); and

- *In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards,* Case No. 16-1602-EL-ESS (Reliability Standards Case).

The parties that signed the Stipulation are: Duke, the Staff of the Public Utilities Commission of Ohio (Staff), the City of Cincinnati, Ohio Partners for Affordable Energy (OPAE), Ohio Energy Group (OEG), Ohio Hospital Association (OHA), and People Working Cooperatively, Inc. (PWC). Non-opposing signatories are the Kroger Company (Kroger), Industrial Energy Users-Ohio (IEU), Ohio Manufacturers' Association Energy Group (OMA), and Wal-Mart Stores East LP and Sam's East, Inc. (Wal-Mart).

Concurrently with the Stipulation, Duke filed a motion to consolidate the cases included in the Stipulation. On May 9, 2018, Duke's motion to consolidate the Rate Case, the ESP Case, the PSR Case, and the Standards Case was granted. The hearing on these consolidated began July 9, 2018 and concluded August 6, 2018.

DISCUSSION

I. The Stipulation meets the Three-Part Test for reasonableness.

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.[1] The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.[2] In considering the reasonableness of a stipulation, the Commission has used the following criteria:

> (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
>
> (2) Does the settlement, as a package, benefit ratepayers and the public interest?
>
> (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.[3] When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission "may place substantial weight on the terms of

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1 *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St, 3d 123, at 125, citing *Akron v. Pub. Util. Comm*. (1978), 55 Ohio St, 2d 155.

2 See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (January 31, 1989); and *Restatement of Accounts and Records* (Zimmer Plant); Case No, 84-1187-EL-UNC (November 26, 1985).

3 *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St. 3d 559, citing, *Consumers' Counsel, supra*, at 126.

a stipulation," it "must determine, from the evidence, what is just and reasonable."[4] The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement.[5]

Below is a summary of some of the major components of the Stipulation, but is not meant to be a comprehensive list:

- ESP Term is June 1, 2018 – May 31, 2025,
- SSO Procurement continues,
- PIPP Auction cost will be collected in the nonbypassable Rider UE-ED (Uncollectible Expense Rider – Electric Distribution),
- Overall base rate reduction of $19.17 million,
- Return on Equity of 9.84%,
- Equity ratio of 50.75%,
- Staff's proposed depreciation rate schedule,
- Continuation of the Distribution Capital Investment Rider (Rider DCI), which includes:
    - Caps on the amount to be recovered by the Company,
    - Potential battery storage recovery, and
    - A sunset provision,

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4 *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370.

5 *In re Application of Columbus S. Power Co.* (2011), 129 Ohio St.3d 46.

- Creation of the PowerForward Rider (Rider PF), which allows for:
    - Recovery of costs associated with Commission directives resulting from the PowerForward initiative,
    - Recovery of costs associated with the communications infrastructure needed to support advanced metering infrastructure (AMI) and data access enhancements, and
    - Recovery of costs associated with an infrastructure modernization plan to be filed in a future case,
- Reduction of earnings-related incentives to both Rider PF and Rider DCI,
- Allowance for recovery of distribution vegetation management expenses,
    - Creation of Electric Service Reliability Rider (Rider ESRR),
    - Rate base allowance is $10,720,877,[6]
    - Overall recovery cap of $20,720,877 for both Rider ESRR and base rates, and
    - The Company will move to a five-year trim cycle,
- Modification to the distribution storm rider (Rider DSR) revenue requirement, by reducing the base distribution revenue requirement to an annual baseline of $4.3 million,
- Elimination of the distribution reliability - infrastructure modernization rider (Rider DR-IM),
- Modification of the base transmission rider (Rider BTR),

[6] Joint Ex. 1 (Stipulation and Recommendation), Attachment D, Schedule A-1.

- The Company agrees to eliminate the proposed ability to offer additional products and/or services other than retail electric service,

- Allows for net metering credits to conform with the Commission's Order in Case No. 12-2050-EL-ORD,

- Allows for auditing elements of the Company's purchase of accounts receivables (PAR),

- Gradual reduction to the backup delivery point tariff (BDP),

- Changes to the Company's certified supplier tariff,

- Agreement that the Company has fulfilled its Operational Support Plan,

- Population of Rider PSR to recover or credit the net amount of the Company's entitlement with Ohio Valley Electric Corporation (OVEC),

- Withdrawal of the Company's proposed Regulatory Mandates Rider (Rider RMR) and Incentive Ratemaking Mechanism Rider (Rider IRM),

- Maintains the current Significantly Excessive Earnings Test (SEET) parameters,

- Creates a working group to engage the Ohio Hospital Association (OHA) on issues of reliability, maintenance, and load growth that may impact OHA members,

- $522,000 in annual funding for low-income programs as administered by People Working Cooperatively, Inc. (PWC), and

- $250,000 in annual funding to the city of Cincinnati for low-income programs.

The signatory parties, and the Commission staff, respectfully submit that the stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

A. Serious Bargaining

The Stipulation is the product of serious negotiations among knowledgeable parties. The list of parties that signed the stipulation represents a variety of diverse interests, which include low-income customer advocates – Ohio Partners for Affordable Energy (OPAE), People Working Cooperatively (PWC), and the city of Cincinnati; industrial and commercial advocates – the Ohio Energy Group (OEG); and commercial customers – the Ohio Hospital Association (OHA).[7] The signatories are a listing of the major users of power in the Duke service territory and the Staff. The signatory parties have an extensive history of participation and experience in matters before the Commission. The non-opposing parties are The Kroger Co.; Industrial Energy Users-Ohio (IEU-Ohio); Ohio Manufactures' Association Energy Group (OMAEG); and Wal-Mart Stores East, LP and Sam's East, Inc (Wal-Mart).[8]

The signatory parties and non-opposing parties are knowledgeable on regulatory matters before the Commission, regularly participate in proceedings before the Commission, employ experts in the industry, and are represented by experienced and

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[7] Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 8.

[8] *Id*.

competent counsel.[9] All intervenors were provided an opportunity to participate in discussions and the settlement process.[10] The terms of the Stipulation represent serious bargaining among diverse parties to find a mutually acceptable agreement for all signatory and non-opposing parties.[11] Concessions were made by parties to mitigate the litigation risk inherent in proceeding to a hearing.[12]

The hearing included the testimony of 19 Company witnesses, 12 Staff witnesses, and 16 witnesses representing other parties to the case. The Attorney Examiner granted numerous Staff motions to extend the hearings in this case so that the Parties could work on a settlement agreement. The Parties then met and communicated over some months leading to the Signatory Parties agreeing to the proposed Stipulation filed on April 13, 2018. The meeting process that led to the Stipulation was open and available to all parties. Meetings were noticed, well attended and many of non-signatory parties participated in the discussions. The parties involved in these negotiations were capable and knowledgeable about the issues raised in this case. Several parties opposing the Stipulation argue that the Signatory Parties do not represent a variety of diverse interests. These claims are baseless. As mentioned above, both the Staff and a variety of diverse interests, which include low-income customer advocates, industrial and commercial

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9 *Id.* at 9.

10 *Id.*

11 *Id.*

12 *Id.*

advocates, and commercial customers were signatory parties. Although the conclusion that the Stipulation results from serious bargaining among knowledgeable parties is obvious, that does not prevent opposing parties from challenging it. In sum, the Stipulation is the product of serious negotiations among knowledgeable parties.

B. Public Interest

The Stipulation benefits customers and is the public interest.[13] The Stipulation resolves a multitude of issues that span ten open cases before the Commission,[14] including Duke's pending SSO application, the Company's pending base electric distribution rate case application, the Company's application to populate its existing Price Stabilization Rider (Rider PSR), and the Commission's review of the Company's electric service standards for 2016.

The Stipulation provides long-term certainty and predictability for all parties, including customers.[15] The Stipulation supports and advances the Commission's PowerForward initiative, which is a review of the latest in technological and regulatory innovation that could serve to enhance the customer electricity experience, while providing the proper guardrails and caps.[16] The reliability and safety of the grid is properly accounted for to ensure that the Company continues to effectively operate and

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[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id.* at 9-10.

maintain its distribution system.[17] The Stipulation also provides for the continued support of low-income weatherization initiatives.[18] Finally, the Stipulation proposes to allow the Company to populate Rider PSR with the costs the Company has incurred related to the Company's ownership percentages in OVEC units, starting in January 2018 and continuing through the end of the ESP.[19]

Rider PSR is also in the public interest. Rider PSR recovers or credits back the net profit or loss of the Company's ownership percentage in the OVEC units.[20] The Commission previously approved the rider in Case No. 14-841-EL-SSO, *et al*.[21] Through the Stipulation, the Company is able to populate the rider with the net profit or net loss the Company incurred starting in January 2018 and through the end of the term of the ESP.[22] For each Ohio Electric Distribution Utility (EDU) which has direct ownership shares of OVEC units, the Commission has granted a nonbypassable rider to allow the credits or costs to be flowed back to that utility's customers.[23] While each EDU has its

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17 *Id.* at 10.

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.* at 10-11 citing In the Matter of the Application of Ohio Power Company for Authority to *Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan,* Case No 16-1852-EL-SSO, et al., Opinion and Order at 22-23 (April 25, 2018); *In the Matter of the Application of The Dayton Power and Light*

own unique issues, circumstances and situations that should be evaluated on their own merits, OVEC is a unique issue and circumstance that three of the Ohio EDUs share in common.[24] To date, the Commission has approved the Ohio Power Company and the Dayton Power and Light Company to recover or credit their individual ownership share of the OVEC plants through a rider.[25] The Commission has deemed that those riders operate as a hedge for the costs and associated revenues of the EDU's ownership share of OVEC and are in the public interest.[26] Staff does not believe that the facts in this case differ enough to merit a change in Commission precedent.

Many of the benefits of Duke's pending SSO application, the Company's pending base electric distribution rate case application, the Company's application to populate its existing Rider PSR, and the Commission's review of the Company's electric service standards for 2016 will be explained in more detail below. Overall, the Stipulation benefits customers and is in the public interest.

Company to Establish a Standard Service Offer in the Form of an Electric Security Plan, Case No. 16-395-EL-SSO, et al., Opinion and Order at 34-35 (Oct. 20, 2017).

24 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 11.

25 *Id.*

26 *Id.*

C. The Stipulation does not violate any important regulatory principle or practice, rather it promoted public policy.

The Stipulation complies with all relevant and important regulatory principles and practices.[27] R.C. 4928.02 provides guidelines for the Commission to weigh in evaluating an electric distribution utility's SSO. The Stipulation advances this state policy in a number of ways.

The Stipulation ensures the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.[28] The Stipulation will ensure that Duke has the appropriate programs and infrastructure to provide reliable and sufficient supply of retail electric service for its customers.[29] Retail customers will also continue to have the option of purchasing generation service from the company via the competitively sourced SSO or from CRES providers.[30] In either case, an adequate, safe, reliable, efficient, and reasonably prices electric service is made available to all retail load.[31]

The Stipulation ensures the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and

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27 *Id.* at 9.

28 R.C. 4928.02(A).

29 Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 14.

30 *Id.*

31 *Id.*

quality options they elect to meet their respective needs.[32] The Stipulation enables market forces to set the price for generation service for all customers, whether they take SSO service from the Company or take service from a CRES provider.[33] The generation service provided to customer taking SSO service represents an unbundled generation service that customers can compare with generation services offered by CRES providers.[34] The Company's tariffs for SSO service provide all of the required information regarding pricing, terms, conditions, and quality to meet customers' needs.[35]

The Stipulation ensures diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities.[36] Duke has 81 registered and active CRES providers in its service territory.[37] The Stipulation continues to facilitate the competitive market that currently exists in several ways.[38] Duke will maintain the Purchase of Accounts Receivables program with the corresponding uncollectable generation expense rider (Rider UE-GEN).[39] Also, the

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[32] R.C. 4928.02(B).

[33] Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 14.

[34] *Id.* at 14-15.

[35] *Id.* at 15.

[36] R.C. 4928.02(C).

[37] Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 15.

[38] *Id.*

[39] *Id.*

Company will continue to impose minimal limits of switching, which should ensure that there will continue to be numerous and diverse suppliers willing to make CRES offers in Duke's territory.[40]

The Stipulation encourages innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure.[41] The Stipulation does not affect Duke's commitment to meet energy efficiency and peak demand reduction standard.[42] Duke will continue to explore all cost-effective energy efficiency offerings to meet the statutory thresholds.[43] The Stipulation allows for the continuation of Rider DDR that decouples volumetric sales from revenue, which also advances state policy goals in that it eliminates Duke's incentive to increase volumetric consumption and, thus, supports the advancement of energy efficiency measures.[44] The billing determinants will be adjusted to reflect the agreed upon rate reduction for rates as set forth in Attachment E of the Stipulation.[45]

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[40] *Id.*

[41] R.C. 4928.02(D).

[42] Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 16.

[43] *Id*.

[44] *Id.*

[45] *Id.* at 16-17.

The Stipulation encourages cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language.[46] Rider PF will provide the vehicle to enable system enhancements to enable the Company to provide such information to customers.[47] Rider PF is a new rider to recover the costs of programs, modifications and service s related to the continued evolution of the distribution grid and an enhanced customer experience.[48]

The Stipulation ensures that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces.[49] Duke's net metering and interconnection tariffs will continue and customer generators will still have access to Duke's system.[50] The Stipulation also recognizes the continuing emergence of competitive electricity markets through the development and

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46 R.C. 4928.02(E).

47 Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 17.

48 *Id.*

49 R.C. 4928.02(F).

50 Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 18.

implementation of flexible regulatory treatment.[51] The Stipulation will ensure continuation of a vigorous competitive environment in southwestern Ohio by maintaining the current auction-based structure, thereby perpetuating to assure a level playing field between those wholesale suppliers responsible for service and those retail suppliers providing CRES offers.[52]

The Stipulation ensures effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.[53] The Stipulation resolves the ESP by continuing competitive procurements in which Duke will provide an SSO of competitive retail service.[54] Duke will rely on third parties to provide sufficient supply for SSO and percentage of income payment plan (PIPP) customers.[55] There will be no subsidies flowing from non-competitive retail service to competitive retail electric

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[51] R.C. 4928.02(G).

[52] Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 18.

[53] R.C. 4928.02(H).

[54] Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 18-19.

[55] *Id.* at 19.

generation service.[56] Also, no generation-related costs will be recovered through transmission or distribution rates.[57]

The Stipulation ensures retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power through the existing Commission consumer protection rules, Commission investigations, and the Commission oversight of competitive procurements.[58]

The Stipulation provides coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates by allowing for an open market for purchasing generation through 2025.[59] And the Stipulation provides battery storage opportunities to reflect a potential solution for backup power.[60]

The Stipulation encourages implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and

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[56] *Id.*

[57] *Id.*

[58] R.C. 4928.02(I); Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 20.

[59] R.C. 4928.02(J); Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 21.

[60] Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 22.

net metering.[61] The Stipulation does not create any barriers to customers who choose to build distributed generation.[62]

The Stipulation protects at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.[63] The Stipulation continues the existing RFP process to procure generation supply for PIPP customers.[64] The Stipulation also provides funding for programs to be administered for the PWC and the city of Cincinnati.[65] The Stipulation also does not place any barriers on the continual education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses.[66]

And finally the Stipulation facilitates the state's effectiveness in the global economy by proving long-term stability for Duke's customers.[67] The Stipulation provides for reasonable, stable, and transparent price structures that will contribute to Ohio global effectiveness.[68]

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61 R.C. 4928.02(K).

62 Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 22.

63 R.C. 4928.02(L).

64 Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 23.

65 *Id.*

66 R.C. 4928.02(M); Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 24.

67 R.C. 4928.02(N); Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 24.

68 Duke Ex. 5 (Spiller Direct in Support of the Stipulation) at 24.

The Stipulation does not violate any important regulatory principle or practice. The Stipulation, in fact, promotes public policy.

II. The Electric Security Plan Case

A. Rider DCI

The Stipulation provides for the continuation of Duke's existing Rider DCI.[69] The Stipulation importantly provides numerous parameters which will apply to Rider DCI.[70] The Stipulation has modified Duke's Rider DCI proposal such that there are revenue caps, a continuation of the annual audits, a requirement for the prospective assessment and approval of new capitalization policy changes, a credit to remove the impact of capitalized employee bonus expenses, a revenue cap adjustment for 2019 and 2020 for missed reliability targets, and an incentive for Duke to timely file its next base distribution rate case and electric service plan.[71] The inclusion of the parameters is a beneficial provision of the Stipulation.[72]

B. Rider ESRR

The Stipulation provides that the Company can implement Rider ESRR to recover costs recorded in FERC Account 593 related to distribution vegetation management in

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[69] Joint Ex. 1 (Stipulation and Recommendation) at 10-13.

[70] *Id.*

[71] Staff Ex. 8 (McCarter Direct in Support of the Stipulation) at 3.

[72] *Id.*

excess of what will be recovered in base rates.[73] Vegetation management is an important activity of the Company in order to avoid outages.[74] Upon review of recent contractor (or third party) invoices, Staff recognizes that the cost of tree trimming by third-party has spiked recently.[75] Rider ESRR will enable the Company to maintain its vegetation management requirements, while also ensuring that the funding is entirely directed to vegetation management as the annual audit of the ESRR will verify that all vegetation management dollars embedded in base rates are prudently expensed prior to recovery within the rider for incremental expenses up to a cost cap of $10 million annually.[76]

C. Rider PF

Per the Stipulation, Rider PF is a new non-bypassable rider intended to support the modernization of energy delivery infrastructure, along with the development of innovative products and services for retail electric customers.[77] There are three components of Rider PF.[78]

The first component is a placeholder to recover costs associated with the implementation of directives resulting from PowerForward, the Commission's initiative

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73 Joint Exhibit 1 (Stipulation and Recommendation) at 14-15.

74 Staff Ex. 12 (Lipthratt Direct in Support of the Stipulation) at 3.

75 *Id.*

76 *Id.*

77 Staff Ex. 10 (Schaefer Direct in Support of the Stipulation) at 2.

78 *Id.*

to review the latest in technological and regulatory innovation that could serve to enhance the customer electricity experience.[79] Cost recovery for component one will be subject to a hearing in a separate proceeding, following an application by the Company.[80]

The second component will recover costs associated with the communications infrastructure needed to support the Company's AMI transition and enhancements to the ability of competitive retail electric service (CRES) providers, and potentially other third parties, to access and utilize customer energy usage data (CEUD) made available through smart meters.[81] The scope and functionality of each of the enhancements to data access and utilization are detailed in Attachment F of the Stipulation.[82] Both the communications infrastructure and individual phases of data access enhancements are subject to cost caps.[83] Recovery of prudently incurred costs associated with each individual phase of data access enhancements will not be made available until the functionality detailed in Attachment F is successfully implemented.[84] Staff also has an opportunity to hire a consultant to assist in the review of the functionality of the data access enhancements.[85]

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79 *Id.* at 2-3.

80 *Id.* at 3.

81 *Id.*

82 *Id.*

83 *Id.*

84 *Id.*

85 *Id.*

The third component is a placeholder to recover costs associated with an infrastructure modernization plan to be filed by the Company in a future case.[86] The plan will include a proposal to upgrade the Company's Customer Information System (CIS).[87] Like component one of Rider PF, cost recovery for component three will be subject to a hearing in a separate proceeding, following an application by the Company.[88]

Rider PF is a beneficial provision of the Stipulation. Rider PF will further state policy and provide benefits to the overall Stipulation.[89] R.C. 4828.02(D) states it is the policy of the state to:

> encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure.[90]

The implementation of Rider PF furthers that objective by supporting the development of innovative products and services and giving Ohio customers more control over their energy usage.[91] Specifically, the implementation of Rider PF will make granular CEUD available to CRES providers and update the settlement systems and processes for

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86 *Id.* at 3-4.

87 *Id.* at 4.

88 *Id.*

89 *Id.*

90 R.C. 4928.02(D)

91 Staff Ex. 10 (Schaefer Direct in Support of the Stipulation) at 4.

wholesale market data, so it can be monetized in the provision of retail electric service.[92] This includes calculating and settling individual total hourly energy obligation (THEO), peak load contribution (PLC) and network service peak load (NSPL) values for each customer, instead of relying on generic load profiles.[93] This customer-specific data will give customers more control over their energy consumption, so they can save money.[94] Finally, while the first and third components of Rider PF are currently placeholders, they provide future opportunities for the Commission to examine proposals that would further state policy objectives through grid modernization and enhancements to the customer experience.[95]

D. Eliminating Rider DR-IM

Once new base rates are implemented, the current rider for recovery of Duke's initial deployment of SmartGrid will be eliminated.[96] From that point on, the costs currently being recovered in the distribution reliability – infrastructure modernization rider (Rider DR-IM) will be recovered in base distribution rates eliminating the need for Rider DR-IM.[97]

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92 *Id.*

93 *Id.* at 4-5

94 *Id.* at 5.

95 *Id.*

96 Duke Ex. 30 (Wathen Second Supplemental in Support of Stipulation) at 19.

97 *Id.*

E. Eliminating Rider RMR

In its ESP Application and in the Rate Case Application, the Company proposed to establish Rider RMR for the recovery of costs related to regulatory mandates. In the Stipulation, Duke withdrew its proposal for Rider RMR.[98] The removal of Rider RMR is a beneficial provision of the Stipulation.[99]

F. Rider UE-GEN and PAR Program

The Stipulation continues Duke's Rider UE-GEN and the PAR program.[100] Staff recommends that the Commission approve the hiring of an independent auditor to audit Duke's PAR program and related Rider UE-GEN.[101] The scope of the audit shall include without limitation, the sufficiency of Duke's internal processes and controls for ensuring that Duke is purchasing only those receivables it is authorized to purchase and recover through the PAR program; the sufficiency of internal processes and controls for monitoring CRES provider's compliance with Duke's PAR program agreement; and findings and recommendations regarding the foregoing.[102]

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98 Joint Ex. 1 (Stipulation and Recommendation) at 24.

99 Staff Ex. 8 (McCarter Direct in Support of the Stipulation) at 3.

100 Joint Ex. 1 (Stipulation and Recommendation) at 22.

101 Staff Ex. 14 (Smith Direct in Support of the Stipulation) at 3.

102 *Id.*

An independent audit of the PAR and Rider UE-GEN is necessary.[103] During the review of the various processes for debt collection, the Company expressed a reliance on several agreements to provide the rules, procedures, and controls for the PAR program.[104] These agreements include The Account Receivables Purchase Agreement, the Duke Supplier Retail Tariff, and the Sale and Assignment Agreements.[105] Together these agreements provide the Company with the authority to inspect the CRES accounting records, make inquiries into internal and external reports, and review individual transactions.[106]

Staff found that the Company did not actively review, inquire, or inspect any supplier receivable between 2014 and 2017.[107] Furthermore, the Company did not review a single internal or external audit report regarding the CRES receivables.[108] The Company relies on a math check as the rate ready control but has no such math check for bill ready.[109] Internal controls are important tools for management in the creation of financial statements to ensure that management's presentation is accurate and free from

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103 *Id.*

104 *Id.*

105 *Id.*

106 *Id.* at 3-4.

107 *Id.* at 4.

108 *Id.*

109 *Id.*

fraud.[110] The Company has within its agreements with CRES suppliers multiple opportunities to ensure that the terms of the agreements are fulfilled and that errors or fraud are discovered or avoided.[111]

G. Rider DSR

The Stipulation modifies the mechanism for Rider DSR by updating the amount assumed to be in base rates.[112] Staff determined that $4.3 million be the amount included in baes and distribution revenue requirement; therefore, once the Stipulation is approved, the basis for measuring storm costs will be to compare the actual costs for major storms to a base amount of $4.3 million.[113] The Stipulation also abandons the current model of the threshold trigger for flowing through difference between the actual costs and the amount in base rates and, instead requires that Duke, beginning in 2019, annually update the Rider DSR and begin flowing through the balance of the deferral (positive or negative) that exists on December 31 of the prior year.[114]

The storm costs update will be part of a separate docket and subject to audit.[115] The filing will be made around March 31 each year at which time Staff may audit the

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110 *Id.*

111 *Id.*

112 Joint Ex. 1 (Stipulation and Recommendation) at 15-16.

113 Duke Ex. 30 (Wathen Second Supplemental in Support of Stipulation) at 18.

114 *Id.*

115 *Id.*

prior year's expenditures and, if so, will submit a report.[116] To the extent the Commission uses outside auditors that paid by Duke, the expense of such audit will be recovered in the rider.[117]

H. Net Metering

The Stipulation settles issues regarding the manner in which credits for net metering are calculated and how the costs incurred by Duke for such payments will be recovered.[118] Upon approval of this Stipulation, Duke will begin providing that credits for net metering will be available to customers taking service under the SSO rates or from a CRES provider.[119] The credit is limited to the then current rate for Rider RE, only.[120] The cost incurred by Duke to provide the credits will be recovered in Rider SCR.[121]

I. Rider BDP

As part of the Stipulation, Duke agreed to modify it rates for service under its Back-up Delivery Point Rider.[122] Upon approval of the Stipulation, Rider BDP rates will be reduced in three steps from the current rates as outlined on page 23 of the

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116 *Id.*

117 *Id.*

118 Duke Ex. 30 (Wathen Second Supplemental in Support of Stipulation) at 23.

119 *Id.*

120 *Id.* at 23-24.

121 *Id.* at 24.

122 Duke Ex. 30 (Wathen Second Supplemental in Support of Stipulation) at 25.

Stipulation.[123] The result of this modification is an overall reduction in the charges for this service to customers wishing to have enhanced reliability service through a redundant feed.[124]

J. Rider BTR

The Stipulation provides that demand-related charges in Rider BTR will be allocated to the rate classes based on their respective contribution to the 1 CP in Duke's zone in order to better align the cost of transmission service with the basis for the costs are incurred.[125] Although this change will have the effect of increasing and decreasing various customer classes, it is an appropriate correction to the current allocation methodology and is consistent with traditional principles of cost causation.[126]

K. Corporate Separation Plan Modifications

Duke has agreed to withdraw proposed modifications to its corporate separation plan that would have enabled the Company to offer customers products and services other than electric retail services.[127] The Stipulation updates the corporate separation plan by eliminating the proposed ability to offer these additional services.[128]

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[123] *Id.*

[124] *Id.*

[125] Duke Ex. 30 (Wathen Second Supplemental in Support of Stipulation) at 22.

[126] *Id.*

[127] Duke Ex. 30 (Wathen Second Supplemental in Support of Stipulation) at 23.

[128] *Id.*

L. SSO Procurement and Pricing

The Stipulation provides that the Company will continue using an auction process for procuring generation and generation-related services as it has done since 2011.[129] The process for converting the resulting wholesale auction price into separate retail process for capacity and energy is also essentially unchanged.[130] The template for converting wholesale SSO auction priced into retail prices for capacity (Rider RC) and energy (Rider RE) is outlines in Stipulation Attachment B.[131] In order to ensure that customers and the Company are made whole, the existing Supplier Cost Recovery Rider (Rider SCR) will continue.[132] Rider SCR provides that the Company will refund Rider RC and Rider RE, plus the costs incurred by Duke with conducting the auctions.[133] Currently, the costs related to the procurement of SSO service for PIPP customers is also collected in Rider SCR; however, this cost will no longer be collected in Rider SCR upon approval of the Stipulation.[134]

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[129] Duke Ex. 30 (Wathen Second Supplemental in Support of the Stipulation) at 4.

[130] *Id.*

[131] *Id.* at 4-5.

[132] *Id.* at 5.

[133] *Id.*

[134] *Id.*

Since the last ESP was approved, the Company began conducting separate requests for proposal (RFPs) to procure power for customers served under the PIPP.[135] Although the Stipulation provides for a continuation of that process, there will be a change in how the costs incurred by Duke for conducting such requests will be recovered.[136]

M. Significantly Excessive Earnings Test

As part of the Stipulation, the parties agreed to maintain the current formula for calculating Duke's ROE for purposes of annual significantly excessive earning test (SEET) review.[137] The Stipulation also commits Duke to initiate a proceeding mid-way through the term of the ESP to address the provisions in R.C. 4928.143(E) comparing the ESP to an MRO for the balance of the proposed ESP term.[138]

N. Certified Supplier Tariff

Duke agreed to several modifications in the Stipulation to its Certified Supplier Tariffs.[139]

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135 *Id.*

136 *Id.*

137 Duke Ex. 30 (Wathen Second Supplemental in Support of Stipulation) at 27.

138 *Id.*

139 Duke Ex. 30 (Wathen Second Supplemental in Support of Stipulation) at 25-26.

O. Large Customer Interruptible Load Program

The Stipulation provides that Duke's existing Large Customer Interruptible Load Program will terminate effective May 31, 2018, subject to any final reconciliation.[140] However, to properly balance the need for qualifying mercantile customers to enter into Commission-approved reasonable arrangements for their electric service with Duke's interest in ensuring cost recovery and revenue neutrality for such customers receiving a Commission-approved unique arrangement for electric service, provision is mode to strike that necessary balance.[141] Any costs incurred by Duke as a result of Commission-approved reasonable arrangement between Duke and a customer will be recovered via the Company's economic competitiveness fund rider (Rider ECF).[142] The Stipulation also provides that any dollars to be collected under rider ECF will be applied to customers' bills as a percentage of their monthly charge for base distribution service.[143] This provision is consistent with similar rate structured for other EDUs that have been authorized by the Commission.[144]

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140 *Id.* at 27.

141 *Id.* at 27-28.

142 *Id.* at 28.

143 *Id.*

144 *Id.*

P. Hospital Working Group

Adding to its current commitment to provide safe, reliable, and efficient service, Duke has agreed to establish an internal working group to engage with OHA on issues of reliability, maintenance, and load growth that may impact the OHA.[145]

Q. Low Income Assistance

The Stipulation provides significant benefits to low-income customers.[146] First, the base distribution rates will continue supporting $522,000 in annual funding for low-income programs administered by PWC.[147] Second, the Company will contribute $250,000, annually, to the city of Cincinnati for additional low-income programs.[148] Third, the overall result of the Stipulation will have the effect of maintaining Duke's relatively low rates for electric service.[149] Finally, for those low-income customers who are also low-usage customers, the Stipulation will keep the customer charge at a much lower rate than other electric or gas utilities and will eliminate all of the other existing fixed charges.[150]

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145 *Id.* at 29.

146 *Id.* at 30.

147 *Id.*

148 *Id.*

149 *Id.*

150 *Id.*

R. City of Cincinnati

The Company and the city of Cincinnati have entered into a cooperation agreement that is set forth in Stipulation Attachment G.[151] The terms of this agreement resolve issues surrounding the City's use of Rider BDP service for its Critical Facilities, as well as commitments to cooperate on matters of mutual and local concern including, but not limited to facility relocation, provide expertise to the City for its Solar initiative and for battery storage.[152] The resolution of the issue of BDP service will also result in the dismissal of a complaint between the City and Duke that is currently pending before the Commission.[153]

S. Term of the ESP

The Stipulation provides that the new ESP will begin with the effective date of an Order by the Commission approving this Stipulation through May 31, 2025.[154] This term will provide rate stability for Duke customers and will mark the longest period of stability for Duke since the passing of the ESP statute.[155]

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151 *Id.*

152 *Id.* at 29-30.

153 *Id.* at 30.

154 *Id.* at 3.

155 *Id.* at 4.

T. The MRO v. ESP Test

The Electric Security Plan (ESP) proposed is more favorable in the aggregate than a Market-Rate Offer (MRO). Considering the ESP's pricing and all other terms and conditions, as proposed in the Stipulation, the ESP recommended by the Signatory Parties is more favorable in the aggregate than the expected results of an MRO under R.C. 4928.142.[156]

In Staff's quantitative analysis of the MRO versus ESP test, Staff reviewed past precedent with respect to which riders and costs should be included in the quantitative analysis of the MRO versus ESP test.[157] Under the ESP in the proposed Stipulation, the base generation rates to be charged to SSO customers will continue to be established through a fully auction-based process and, therefore, generation rates are considered equivalent to the results that would be obtained under R.C. 4928.142.[158] The recovery of the revenue requirements associated with distribution-related riders are considered to be the same whether recovered through the ESP or a distribution rate case conducted in conjunction with an MRO[159] and, accordingly, Staff did not consider such investments in

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156 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 11-12.

157 *Id.* at 12

158 *Id.*

159 *Id.* citing *In the Matter of the Application of the Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 16-1852-EL-SSO, *et al*., Opinion and Order at 123 (April 25, 2018).

our quantitative MRO versus ESP analysis.[160] The lone rider that would not be allowable under an MRO would be Rider PSR, which was previously approved, and under the Stipulation, the Company will be allowed to populate the rider.[161] The quantitative analysis of the MRO versus ESP test will be dependent on the cost and revenue associated and collected or credited through Rider PSR.[162]

The difficulty of forecasting the impact of Rider PSR on consumers has increased due to recent events.[163] It is typically difficult to forecast total revenues out past PJM's capacity auction, but based on the current auction results it becomes even more difficult to forecast cost out into the future.[164] The 2021/2022 capacity payment results were $140 MW-day, while the 2020/2021 capacity payment results were $76.53 MW-day. Therefore, for the 2021/2022 PJM delivery year, the capacity payment almost doubled.[165] The steep increase in capacity payments, while still showing a 22% reserve margin, which was 5.7% higher than PJM's target, points to a potential increase in generators' concern of the capacity performance market and adding the risk factor into the cost of capacity.[166] Capacity performance will be effective starting in the 2020/2021 delivery

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160 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 12.

161 *Id.*

162 *Id.* at 12-13.

163 *Id.* at 13.

164 *Id.*

165 *Id.*

166 *Id.*

year, thus accurately predicting generators added risk factor for the capacity payments will be extremely difficult as the capacity payments fluctuate year to year and until the generators are able to get comfortable with the actual results.[167]

Adding to the difficulty of forecasting the energy market, President Trump directed the Secretary of the Department of Energy (DOE) to prepare immediate steps to stop the loss of fuel-secure power facilities.[168] While the DOE has not yet issued an order to this effect, it has drafted a memorandum, described as an Addendum, that provides for the potential use of its authority under Section 202(C) of the Federal Power Act to provide relief to coal and nuclear facilities.[169]

The quantitative costs and benefits of the ESP when compared to the MRO are difficult to forecast with a high level of accuracy and/or certainty due to the multiple variables that are in flux.[170] However, Staff does recognize that Company Witness Rose's current forecast projects a negative result for Rider PSR, when sunk cost are included.[171] Since Rider PSR is the lone rider which would not be allowable under an

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167 *Id.*

168 *Id.* at 13-14 citing, Sarah Huckabee Sanders, The White House, Statement from the Press Secretary on Fuel-Secure Power Facilities (June 1, 2018), https://www.whitehouse.gov/briefings-statements/statement-press-secretary-fuel-secure-power-facilities/

169 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 14 citing, Draft Addendum (May 29, 2018), available at https://www.documentcloud.org/documents/4491203-Grid-Memo.html.

170 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 14.

171 *Id.*

MRO, it would result in a negative outcome for the quantitative analysis of the ESP versus MRO test.[172] Based on the forecast available at this time, Staff believes that the negative quantitative results associated with Rider PSR are offset by the qualitative benefits of the ESP, as described below.[173]

The qualitative benefits of the ESP should also be considered when reviewing the MRO versus ESP test.[174] The ESP proposed in this Stipulation provides Duke customers numerous benefits and advances many of the state policy objectives enumerated in R.C. 4928.02.[175] An ESP filing provides the most flexibility in order to achieve outcomes that are advantageous for all of the parties involved.[176] The qualitative benefits provided for in the Stipulation include provisions for enhancements to the retail competitive market, battery storage options, low income protections, promotion of innovative measures related to the PowerForward initiatives, and vegetation management flexibility.[177]

The Stipulation provides qualitative benefits in regard to retail market enhancements. Through the creation of Rider PF, the Stipulation allows for recovery of costs associated with the communications infrastructure needed to support AMI, along

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172 *Id.*

173 *Id.*

174 *Id.* at 15.

175 *Id.*

176 *Id.*

177 *Id.*

with enhancements to the accessibility and usability of customer energy usage data (CEUD).[178] The Stipulation provides a detailed plan for potential recovery, with specific guidelines and parameters to ensure that data is available to marketers.[179] Without the customer data, innovative products and services cannot be made available.[180] While there are diverse group of marketers in the Duke service territory, we are still just scratching the surface of what products and services can be offered to the consumers in a competitive market.[181] With interval data and individual peak load contributions (PLC), marketers can develop customer-specific products that can benefit consumers.[182] Many of these offers are currently available to large industrials, but are not available to residential consumers due to the lack of information on their specific usage profile.[183] Additionally, with the availability of data, new and inventive technologies and opportunities will arise, but the data has to be available to allow for new technology to emerge.[184] The Stipulation sets up a detailed plan with incentives for the Company to

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178 *Id.* at 15-16 citing Joint Ex. 1 (Stipulation and Recommendation) at 16-17.

179 *Id.* at 16.

180 *Id.*

181 *Id.*

182 *Id.*

183 *Id.*

184 *Id.*

ensure the proper deployment of data access which will allow for market enhancements that can benefit customers.[185]

The Stipulation states that the Company will withdraw its proposal to offer products and services other than retail electric service that are included in the proposed tariff language set forth in the entirety of "Part 6 – Special Customer Services," which is found in the Company's ESP Application, Attachments JEZ-1 and JEZ-2 to the Direct Testimony of James E. Ziolkowski, as detailed in the Stipulation.[186] The Company's agreement to withdraw the proposal to offer products and services other than retail electric services allows for the competitive market to offer those products and continue to grow and thrive.[187]

Rider DCI provides qualitative benefits in the Stipulation for the ESP.[188] The structure of the DCI provides an economical and efficient process that enables the Company to make investments in its distribution system, which improves both the safety and reliability of the distribution system.[189] Additionally, the Company is required to file at least one base distribution rate case application on or before May 31, 2024 or lose the

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185 *Id.*

186 *Id.* at 16-17.

187 *Id.* at 17.

188 *Id.*

189 *Id.*

DCI. This provision provides the opportunity to quantify, through the natural course of a rate case, the benefits of Rider PF and other initiatives provided for in this stipulation.[190]

The battery storage provision in the Stipulation for this ESP provides qualitative benefits.[191] To the extent the Commission would approve distribution-related battery storage, the investment associated with it can be recovered through the DCI Rider.[192] For purposes of the qualitative benefits to the ESP, battery storage will allow the Company more flexibility when addressing distribution reliability and poor performing circuits.[193] Defining the parameters for recovery of prudent investments into battery storage allows the Company a clear path for cost recovery.[194] With a clear path for cost recovery, the Company can deploy battery technology with more confidence, when it is the least cost option and prudent decision for addressing distribution reliability issues and poorly performing circuits.[195] This provides qualitative benefits to the customers in increased reliability at a reduced cost, while also providing additional data points on how battery storage can be deployed on the distribution system to increase reliability at a lower cost than upgrading and expanding circuits and distribution lines.[196]

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[190] *Id.*

[191] *Id.*

[192] *Id.*

[193] *Id.* at 17-18.

[194] *Id.* at 18.

[195] *Id.*

[196] *Id.*

The provision in the Stipulation for the hospital working group provides a qualitative benefit.[197] The Stipulation calls for the Company to establish an internal working group that shall be readily available to engage active members of the OHA in respect to issues related to reliability, maintenance and load growth.[198] Hospitals are an essential part of our society and ensuring that hospitals have consistent continuous power is essential to Ohio and its residents.[199] Likewise, the provision for low-income customers also provides qualitative benefits.[200] The Stipulation provides funds for weatherization programs to be administered by People Working Cooperatively to assist low-income families.[201] These programs help low income families by providing various weatherization techniques to help reduce the amount of energy low income families need to heat and/or cool their residencies, which will reduce their usage and thus their overall bills. Additionally, through the Stipulation, funds will be made available to the City of Cincinnati to assist customers at or below 200 percent of the federal poverty guidelines, with disconnections for nonpayment and energy efficiency programs and public service announcements.[202]

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[197] *Id.*

[198] *Id.*

[199] *Id.*

[200] *Id.* at 19.

[201] *Id.*

[202] *Id.*

The Stipulation's PowerForward initiatives provide qualitative benefits.[203] The electric industry is experiencing its first major transformation in over 100 years.[204] In many ways, the electric grid is the same today as it was then, but with new technology – and a new desire on how we control, view and use power – the industry is changing.[205] To ensure that Ohio is poised to move into the future in an intelligent, measured and deliberate way, the Commission commenced its PowerForward initiative.[206] Within the PowerForward initiative, the Commission intends to potentially establish the direction that the Commission wishes to take to usher Ohio into the future to benefit the consumers in Ohio.[207] To allow for the Company to enact the specific directives that the Commission may initiate in its policy framework document, the Company must have a venue to recover the prudent costs associated with the Commission's directives.[208] The Stipulation sets up a placeholder rider to ensure the Company can initiate the Commission's directives to enhance the electric industry for the betterment of all Ohio's customers without the need for a new ESP or rate case being filed after the Commission issues the policy framework document.[209]

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203 *Id.*

204 *Id.*

205 *Id.*

206 *Id.* at 19-20.

207 *Id.* at 20.

208 *Id.*

209 *Id.*

The infrastructure modernization plan in the Stipulation is yet another qualitative benefit. The infrastructure modernization plan is a placeholder for the Company to provide a detailed proposal for a Customer Information System (CIS), which will be a project to update the system that manages the billing, accounts receivable, rates, and is the central repository for all of the customer information for all the Duke companies.[210] The updated CIS should provide a holistic view of the customer's information and enable the expected customer capabilities.[211] Rider ESRR also provides qualitative benefits.[212] Vegetation management is an important activity of the Company in order to avoid outages.[213] Rider ESRR will enable the Company to maintain its vegetation management requirements, while allowing for prudently incurred price flexibility without burdening ratepayers with a guaranteed higher allotment of fixed expenses in base rates.[214]

Even though Rider PSR was projected to incur the losses, when sunk costs are included, as forecasted by Company Witness Rose, the ESP is still better in the aggregate than an MRO.[215] In other words, if Rider PSR does end up being net negative, quantitatively, over the term of the ESP in the amount projected by Company Witness

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210 *Id.* at 20-21.

211 *Id.* at 21.

212 *Id.*

213 *Id.*

214 *Id.*

215 *Id.* at 22.

Rose, all of the qualitative benefits still outweigh the potential for a negative quantitative result.[216] In the aggregate, the ESP is more beneficial than a hypothetical MRO, even if Witness Rose's net impact is assumed with sunk costs included.[217] In the end, the qualitative benefits of the ESP when factored with the quantitative factors cause the ESP to be more beneficial than the MRO in the aggregate.

III. The Rate Case

A. Base Rate Reduction

The Stipulation reflects an overall reduction in base distribution revenue of $19.17 million.[218] The reduction in base revenues is to be allocated evenly across all rate classes such that each rate class will see, on average, an approximate 4% reduction in base revenue.[219] For all rate classes, except for Distribution Secondary (DS) customers, the customer charge will be unchanged from current.[220] For rate DS, the customer charge will be reduced from $229 per bill to $100 per bill to more closely align with the cost of service and the demand rate for Rate DS is adjusted upward to make the change to the customer charge revenue neutral.[221]

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216 *Id.*

217 *Id.*

218 Duke Ex. 30 (Wathen Second Supplemental in Support of Stipulation) at 6.

219 *Id.*

220 *Id.*

221 *Id.*

The base rate reduction reflects (1) a return on equity of 9.84%; (2) an equity ratio of 50.75%; and (3) depreciation expense calculated at rates proposed by the Staff, including amortization of existing meters and equipment related to the initial deployment of SmartGrid that will be retired early.[222]

B. Objections related to Rider DCI and Rider RMR

The Ohio Consumers' Counsel (OCC) states that it has a statutory-based concern regarding the appropriateness of addressing the DCI in the rate case.[223] Duke's DCI has been addressed in the Stipulation as part of the ESP.[224] Therefore, OCC's statutory concern has no merit. OCC also objects to the revenue caps recommended by Staff in the Staff Report stating that Staff should have considered the impact that the caps will have on customers' bills and the overall affordability of Duke's retail rates.[225] As part of the Stipulation, the DCI revenue caps were calculated as a percentage growth based upon the base distribution revenue requirement authorized in this case.[226] The DCI revenue caps are therefore based not solely upon a company's desired budget and its ability to raise capital to fund any particular investment level, but also upon how much a customer's bill

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222 *Id.*

223 Objections to the Staff Report by OCC at 5 (October 26, 2017).

224 Staff Ex. 8 (McCarter Direct in Response to Objections to the Staff Report) at 3.

225 Objections to the Staff Report by OCC at 5 (October 26, 2017).

226 Staff Ex. 8 (McCarter Direct in Response to Objections to the Staff Report) at 3.

may increase due to distribution plant spending.[227] As such, the caps balance the level of distribution investments with the amount that will appear on a customer's bill.[228] The DCI revenue caps are, therefore, treated properly.

The Retail Energy Supply Association's (RESA), in its Objection No. 5, seeks clarification on whether the words, "Staff does not recommend…." equates to Staff being neutral on whether the Commission rejects or accepts Duke's proposed Rider RMR.[229] Staff does not support Duke's proposed Rider RMR and Rider RMR was expressly removed from Duke's SSO request in the pending Stipulation.[230]

In its Objection 2, OCC objects to Staff's recommendation in the Staff Report to accelerate the amortization of Duke's current AMI meters, arguing that the installation of the technology was not prudent and that the costs should be excluded from rate base.[231] Staff disagrees. Staff properly set the cost of the meters on an accelerated recovery schedule based on the Commission's decision to allow recovery of those costs.[232] Because the Echelon Meter is being removed and that meter type would no longer be

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227 *Id.* at 3-4.

228 *Id.* at 4.

229 RESA/IGS Ex. 2 (Objections to the Staff Report by RESA) at Objection No. 5.

230 Staff Ex. 8 (McCarter Direct in Response to Objections to the Staff Report) at 4.

231 Objections to the Staff Report by OCC at 7 (October 26, 2017).

232 Staff Ex. 8 (McCarter Direct in Response to Objections to the Staff Report) at 5.

available for additional installation, Staff set the account as a dying account with an accelerated recovery period.[233]

C. Objections related to Green Button Direct, Time-Differentiated Rates, the Customer Information System, and the LED Outdoor Electric Service Tariff.

The Environmental Defense Fund (EDF), Environmental Law and Policy Center (ELPC), Natural Resources Defense Council (NRDC), and Ohio Environmental Council (OEC) (Environmental Intervenors) stated that the Staff Report did not recommend that Duke implement Green Button[234] "Connect My Data", which is a standard that enables retail electricity customers to authorize the release of customer energy usage data to third parties, either through a one-time data transfer or on an ongoing basis.[235] For this reason, the Environmental Intervenors believe the Staff Report is unjust and unreasonable. Staff disagrees.[236] Staff recognizes that providing access to customer energy usage data for retail customers and third parties, including competitive retail electric service providers, is an important measure to ensure that the benefits associated with smart meters are maximized.[237] However, Staff notes that the Stipulation was filed in the current cases that advances smart meter data access. Specifically, the Stipulation establishes a new

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233 *Id.*

234 *See* Green Button Data, *available at* http://www.greenbuttondata.org/.

235 Objections to the Staff Report by the Environmental Intervenors at 1 (Oct. 26, 2017).

236 Staff Ex. 11 (Schaefer Direct in Response to Objections to the Staff Report) at 3.

237 *Id.*

non-bypassable rider, Rider PF, which is intended to support the modernization of energy delivery infrastructure, along with the development of innovative products and services for retail electric customers.[238] Again, there are three components of Rider PF:

- The first component is a placeholder to recover costs associated with the implementation of directives resulting from PowerForward, the Commission's initiative to review the latest in technological and regulatory innovation that could serve to enhance the customer electricity experience;

- The second component will recover costs associated with the communications infrastructure needed to support the Company's AMI transition and enhancements to the ability of competitive retail electric service (CRES) providers, and potentially other third parties, to access and utilize customer energy usage data (CEUD) made available through smart meters; and

- The third component is a placeholder to recover costs associated with an infrastructure modernization plan to be filed by the Company in a future case. The plan will include a proposal to upgrade the Company's Customer Information System (CIS).[239]

The Commission's PowerForward initiative is still underway. Staff notes that during phase three of the workshops (PowerForward: Ratemaking & Regulation), there was a panel devoted to the need for and accessibility of customer energy usage data.[240] The Green Button standard was discussed within the context of several speaker presentations.

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238 Joint Ex. 1 (Stipulation and Recommendation) at 16-18.

239 Staff Ex. 11 (Schaefer Direct in Response to Objections to the Staff Report) at 3-4.

240 *Id.* citing PowerFoward: Ratemaking and Regulation, *available at* https://www.puco.ohio.gov/industry-information/industry-topics/powerforward/phase-3-ratemaking-and-regulation/.

Further, the second component of Rider PF requires the Company to file an application in an electric rider (EL-RDR) case for the costs associated with providing the data enhancements for CRES providers listed in Attachment F of the Stipulation, along with the costs of the communications infrastructure needed to support the AMI transition.[241] In addition, if a non-CRES third party is interested in receiving customer energy usage data, the Company is required to develop a proposal to provide retail customers with the ability to authorize the release of customer energy usage data to third parties. To the extent the Environmental Intervenors believe this proposal should include an evaluation of Green Button "Connect My Data", Staff encourages the Environmental Intervenors to provide input into the electric rider case, once it is initiated.

Both RESA and IGS objected to Staff's recommendation in the Staff Report[242] that, "the Company continue to offer a time-differentiated rate to residential customers until such time the Commission has made a determination that time-of-day rates are available to customers in the retail marketplace."[243] IGS further objected that the Staff Report failed to recommend that generation-related time-differentiated rates should be based on wholesale market prices and not recovered through distribution rates.[244] Staff

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[241] *Id.* at 5 citing Joint Ex. 1 (Stipulation and Recommendation) at 16-17.

[242] RESA/IGS Ex. 2 (Objections to the Staff Report by RESA) at Objection No. 3; IGS Ex. 3 (Objections to the Staff Report by IGS) at 10-11.

[243] Staff Ex. 11 (Schaefer Direct in Response to Objections to the Staff Report) at 5 citing Staff Ex. 2 (Staff Report) at 21 (Sept. 26, 2017).

[244] IGS Ex. 3 (Objections to the Staff Report by IGS) at 11.

disagrees.[245] As described in the Staff Report in this case, in Case No. 12-3151-EL-COI, the Commission stated that: "EDUs time-differentiated rate pilot programs should be made available to SSO customers until the market sufficiently develops for CRES providers to begin offering this service."[246] As of now, Staff is unaware of any CRES providers offering time-differentiated rates to residential customers in the Company's service territory.[247] As referenced earlier, the Stipulation adopted in the current case includes a number of provisions that will enable CRES providers to offer additional products and services in the future, including time-differentiated rates.[248] However, until the market sufficiently develops, Staff believes that the Company should continue to offer time-differentiated rates to residential customers.[249] Staff agrees that the rates for time-differentiated generation service should reflect wholesale market prices and should not be recovered through distribution rates.[250]

IGS objected to the Staff Report because it did not comprehensively evaluate the Company's proposed Customer Information System (CIS), including the ability of the proposed CIS to accommodate supplier consolidated billing and non-commodity

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245 Staff Ex. 11 (Schaefer Direct in Response to Objections to the Staff Report) at 6.

246 *Id.* citing *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding & Order at 38 (March 26, 2014).

247 *Id.* at 6.

248 *Id.*

249 *Id.*

250 *Id.* at 6-7.

billing.[251] IGS also objected to the Staff Report because it failed to address the Company's ability to provide access to customer energy usage data.[252] Similarly, IGS objected to the Staff Report because it did not require the Company to update its wholesale settlement systems and processes to calculate the total hourly energy obligation (THEO), peak load contribution (PLC), and network service peak load (NSPL) values on an individual basis for all customers.[253] Staff disagrees.[254] Staff believes that these issues have been resolved or additional direction has been provided by the Stipulation filed in the current case. As mentioned earlier, the Stipulation establishes a new non-bypassable rider, Rider PF, which includes three components.

The second component will recover costs associated with the communications infrastructure needed to support the Company's AMI transition and enhancements to the ability of CRES providers, and potentially other third parties, to access and utilize customer energy usage data (CEUD) made available through smart meters.[255] The scope and functionality of each of the enhancements to data access and utilization are detailed in Attachment F of the Stipulation.[256] This includes calculating and settling individual

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251 Objections to the Staff Report by IGS at 16-17 (Oct. 26, 2017).

252 *Id*. at 12-13.

253 *Id*. at 16.

254 Staff Ex. 11 (Schaefer Direct in Response to Objections to the Staff Report) at 7-8.

255 *Id.* at 8 citing Joint Ex. 1 (Stipulation and Recommendation) at 16-17.

256 *Id.* at 8.

THEO, PLC, and NSPL values for each customer, instead of relying on generic load profiles, along with the enhancements needed to provide access to the data for CRES providers.[257]

Both the communications infrastructure and individual phases of data access enhancements are subject to cost caps.[258] Recovery of prudently incurred costs associated with each individual phase of data access enhancements will not be made available until the functionality detailed in Attachment F is successfully implemented.[259] Staff also has an opportunity to hire a consultant to assist in the review of the functionality of the data access enhancements.[260]

Finally, the third component is a placeholder to recover costs associated with an infrastructure modernization plan filed by the Company.[261] The plan will include a proposal to upgrade the CIS.[262] Cost recovery for component three will be subject to a hearing in a separate proceeding, following an application by the Company.[263] Staff recommends that IGS provide input regarding the CIS within that case.[264]

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257 *Id.*

258 *Id.*

259 *Id.*

260 *Id.* at 8-9.

261 *Id*. at 9 citing Joint Ex. 1 (Stipulation and Recommendation) at 16-17.

262 *Id.* at 9.

263 *Id.*

264 *Id.*

In the Staff Report, Staff recommended approval of the Company's proposed LED Outdoor Lighting Electric Service tariff, which offers service through Company-owned LED lighting fixtures.[265] RESA and IGS object to Staff's recommendation because they state that LED technology is available in the competitive marketplace.[266] Staff disagrees.[267] The Company currently has street lighting service for other Company-owned lighting fixtures using other lighting technologies, including: mercury vapor, metal halide, and sodium vapor.[268] Staff does not understand why RESA and IGS would object to LED lighting services at the tariffed rate, but has not objected to the other lighting services.[269]

D. Objections related to test year operating expenses, Rider DR-IM, and rate base calculation.

OCC claims the Staff Report erred by increasing test year operating expenses by $67,787 for generation related net metering costs.[270] As part of the Stipulation, however,

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[265] *Id.* citing Staff Ex. 1 (Staff Report) at 21.

[266] *Id.* citing RESA/IGS Ex. 2 (Objections to the Staff Report by RESA) at Objection No. 4; IGS Ex. 3 (Objections to the Staff Report) by IGS at 17.

[267] *Id.* at 10.

[268] *Id.*

[269] *Id.*

[270] Objections to the Staff Report by OCC, Objection No. 4.

the $67,787 associated with net metering costs was removed from test year operating expenses in calculating the revenue requirement.[271]

OCC claims the Staff Report should have verified that the expenses in the test year are not also being collected from customers through Rider DR-IM.[272] Staff, however, did verify that the expenses in the test year were not also being collected from customers through Rider DR-IM.[273] The DR-IM rates in effect during the test year were for smart grid related expenses associated with calendar year 2014. These amounts were verified as part of Staff's audit in Case No. 15-883-GE-RDR.[274] Once base rates go into effect, Rider DR-IM rates will be set to zero and the rider eliminated in order to roll smart grid costs into base rates.[275]

RESA objects to Staff's recommended revenue requirements and Staff's calculation of rate and operating income based on Staff's acceptance of Duke's cost of service study (COSS).[276] For purposes of calculating the revenue requirement, rate base,

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271 Staff Ex. 13 (Lipthratt Direct in Response to Objections to the Staff Report) at 3-4.

272 Objections to the Staff Report by OCC at 15.

273 Staff Ex. 13 (Lipthratt Direct in Response to Objections to the Staff Report) at 4.

274 *Id.* citing *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider AU for 2014 Grid Modernization Costs*, Case No. 15-883-GE-RDR, Staff Review and Recommendation (Nov. 13, 2015).

275 Staff Ex. 13 (Lipthratt Direct in Response to Objections to the Staff Report) at 4.

276 RESA/IGS Ex. 2 (Objections to Staff Report by RESA) at Objection Nos. 1 and 2.

and operating income, Staff utilized the Company's COSS that was deemed reasonable.[277]

E. Objections related to Duke's PAR program, the withdrawal of the Company's proposed net metering tariff; and lack of an SSO cost allocation.

OCC recommended discontinuing the entire PAR program.[278] Discontinuing the PAR program, however, would be premature.[279] Depending on the findings of a comprehensive audit and the willingness of the Company to implement internal controls, a separate proceeding may be necessary to revisit discount rates, credit practices and accounting practices.[280]

RESA and IGS object to the incorporation of a discount rate into the PAR program,[281] and IGS further advocates for a separate proceeding and a structured implementation process if a discount rate is being considered.[282] The Stipulation and

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277 Staff Ex. 13 (Lipthratt Direct in Response to Objections to the Staff Report) at 4.

278 *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Objections to the Staff Report by OCC at 11 (Oct. 26, 2018) (*Duke Rate Case*).

279 Staff Ex. 15 (Smith Direct in Response to Objections to the Staff Report) at 3.

280 *Id.* at 3-4.

281 RESA/IGS Ex. 2 (Objections to the Staff Report by RESA) at Objection 8; IGS Ex. 3 (Objections to the Staff Report by IGS) at 7-8.

282 IGS Ex. 3 (Objections to the Staff Report by IGS) at 9-10.

Recommendation does not include a discount rate making RESA's and IGS's objections irrelevant.[283]

The Environmental Intervenors objected, collectively, to the net-metering tariff to the extent that Staff failed to recognize that the Company has withdrawn the proposal.[284] Staff's recommendation in the Staff Report recognized that the Company has expenses in the provision of net metering services that are not currently captured through a rider or base rates.[285] Per the Stipulation, Staff's net metering test year adjustment of $67,787 as part of the Rate Case Staff Report was withdrawn and costs incurred shall be recovered by Supplier Cost Reconciliation Rider (SCR).[286]

RESA and IGS objected to the lack of an allocation for SSO costs. RESA further claims that costs are not correctly allocated and that choice customers pay these costs twice.[287] IGS claims that the Cost of Service Study accepted by Staff failed to allocate certain costs to the standard service offer and that the Company charges competitive suppliers certain fees that it does not charge to SSO customers.[288] Staff was not directed by the Commission to examine the Cost of Service Study regarding the embedded

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283 Staff Ex. 15 (Smith Direct in Response to Objections to the Staff Report) at 4.

284 Objections to the Staff Report by Environmental Intervenors at 3-4 (Oct. 26, 2017).

285 Staff Ex. 15 (Smith Direct in Response to Objections to the Staff Report) at 4-5.

286 *Id.* at 5.

287 RESA/IGS Ex. 2 (Objections to the Staff Report by RESA) at Objection No. 6.

288 IGS Ex. 2 (Objections to the Staff Report by IGS) at 4-7.

administrative, operating, and non-operating costs associated with the provision of Choice or SSO generation.[289] If the Commission had directed Staff to examine the administrative, operating, and non-operating costs associated with the provision of Choice or SSO generation, a comprehensive study would have been required.[290] Even if such a study was directed by the Commission, it is unclear if the Company could comply depending on its accounting system.[291] The study would need to compare the services and costs associated with choice and SSO and find that there is a substantial difference between the provision of SSO and choice service by the Company.[292]

Choice customers do not pay the administrative, operating, and non-operating costs associated with the provision of generation twice.[293] All customers pay for the Company's distribution costs in distribution rates.[294] Choice customers do not pay for the Company's distribution costs in the CRES supplier's charges; rather, Choice customers pay for generation service through the CRES supplier's charges.[295] Also, Choice customers are not charged fees that SSO customers are not charged. Certain fees, such as switching fees, billing fees, and interval data fees, are not charged directly to the

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289 Staff Ex. 15 (Smith Direct in Response to Objections to the Staff Report) at 5-6.

290 *Id.* at 6.

291 *Id.*

292 *Id.*

293 *Id.*

294 *Id.*

295 *Id.*

customer but to the generation provider by the Company.[296] Furthermore, switching fees and interval data charges are marginal expenses, and cost causation dictates the assets used individually shall be charged individually.[297]

RESA and IGS, in its prefiled testimony, propose that: (i) SSO customers be charged an additional $23 million per year for distribution service and (ii) customers who shop for their generation with a CRES be charged $23 million less per year for distribution service.[298] RESA and IGS propose that this be done by creating two new riders.[299] The first rider would be a credit rider allowing all customers to allegedly avoid distribution costs and the second rider would be paid only by SSO customers.[300] The total negative revenue requirement under the first rider would be the same as the total positive revenue requirement under the second rider.[301] The net effect is that millions of dollars per year would be shifted from shopping customers (lowering their electric bills) to SSO customers (raising their electric bills).[302]

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296 *Id.* at 7.

297 *Id.*

298 IGS/RESA Ex. 1 (Hess Direct in Opposition to the Stipulation) at 4, Exhibit JEH-1.

299 OCC Ex. 22 (Willis Rebuttal Testimony) at 3.

300 *Id.* at 3-4.

301 *Id.* at 4.

302 *Id.*

The RESA and IGS proposal increases charges to SSO customers by over $23 million per year which harms customers and is not in the public interest.[303] The RESA and IGS proposal also includes an unjust and unreasonable cross-subsidization of the avoidable rider charged to the non-shopping residential customers that harms residential customers and violates the regulatory principle of cost causation.[304]

The Staff did not make any adjustments to any potential costs associated with non-shopping customers in this case.[305] All electric distribution utilities are required to provide a standard service offer to consumers[306] and the existence of a standard service offer benefits all customers, including shopping customers.[307] The standard service offer provides a safety net for all customers.[308] If a customer's supplier fails to provide service, the customer receives the SSO as a default service from the electric distribution utility in that service territory.[309]

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303 *Id.* at 5.

304 *Id.*

305 *Id.* at 6.

306 R.C. 4928.141 ("Beginning January 1, 2009, an electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.")

307 OCC Ex. 22 (Willis Rebuttal Testimony) at 6.

308 *Id.*

309 *Id.* at 6-7.

All costs that Duke incurs to provide services to or on behalf of shopping and non-shopping customers are appropriately assigned to the distribution function of Duke.[310] Duke's competitively bid standard service offer is a benefit to both shopping and non-shopping customers.[311] Non-shopping customers can receive electric service that is competitively bid (i.e., the standard service offer) without needing to engage in the time-consuming and sometimes confusing process of selecting an alternative supplier.[312] Shopping customers can receive that same benefit when they consider other choices and shopping customers benefit from the standard service offer because they have a safety net in case the supplier they have chosen defaults.[313] The SSO also provides the benefit of a competitive price-to-compare that customers can use to evaluate marketer offers when deciding whether to shop for their generation.[314] All customers (shoppers and non-shoppers) benefit from the SSO and all customers should share in the costs of providing and administering the standard.[315]

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310 *Id.* at 7.

311 *Id.*

312 *Id.*

313 *Id.*

314 *Id.* at 7-8.

315 *Id.* at 8.

F. Objections related to Staff's recommendations regarding demand meters that are capable of measuring an individual customer's monthly demand.

The Environmental Intervenors object to Staff's recommendation to the extent that Staff suggests it may be appropriate to adopt a demand charge rate design in the future, once smart meters are fully deployed in Duke's service territory, and Staff's statement endorsing the idea that rates reflect costs.[316]

The Staff Report does state that once the Applicant deploys demand meters that are capable of measuring an individual customer's monthly demand, a proxy for demand charges may no longer be necessary.[317] That statement is accurate.[318] The Staff Report did not state that the Commission should adopt a demand based rate design for residential customers without taking into account other important principles like energy conservation, as pointed out by the Environmental Intervenors.[319] But, as indicated in the Staff Report, Staff believes that the installation of demand meters will provide additional individual customer load data that will assist in determining what rate design is more appropriate to achieve the intended PowerForward/smart grid initiatives.[320] Staff does

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316 Objections to the Staff Report by Environmental Intervenors at 4 (Oct. 26, 2017).

317 Staff Ex. 7 (Rutherford Direct in Response to Objections to the Staff Report) at 3.

318 *Id.*

319 *Id.*

320 *Id.*

not agree with the assertion that Staff recommended a blanket approval of a demand based residential rate design.[321]

G. Objections related to Staff not reviewing the cost related to the Supplier Tariff, Sheet No. 20.

RESA objects to Staff not evaluating whether the Supplier Tariff, Sheet No. 20 charge is just and reasonable.[322] Staff reviews tariffs in a proposed application when the Company is proposing tariff modifications. Because the Company did not propose changing the current tariff, Staff did not review the cost related charge in its investigation of the Company's application and disagrees with RESA that it had an obligation to do so.[323]

H. Objections related to Staff's acceptance of the COSS for classifying poles and conductor.

The Environmental Intervenors' object to Staff's acceptance of the COSS as reasonable because the COSS uses a minimum system analysis for classifying poles and conductor between customer number and peak load.[324]

The Minimum Size methodology used by Duke in its COSS analysis is an accepted practice used in the electric industry, and it does properly classify, functionalize and allocate costs used in the COSS analysis.[325]

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321 *Id.*

322 Objections to the Staff Report by RESA at Objection No. 7 (Oct. 27, 2017).

323 Staff Ex. 7 (Rutherford Direct in Response to Objections to the Staff Report) at 4.

324 Objections to the Staff Report by Environmental Intervenors at 5 (Oct. 26, 2017).

I. Objections related to Staff's test-year conclusions regarding the customer education funds.

In its objection, Cincinnati Clean Energy Foundation (CCEF) states that it "objects to the removal of customer education funds based on the Staff's conclusion that the funds were not expended during the test year. In particular, CCEF objects to the extent that this conclusion will result in Duke Energy not expending future funds on needed customer education, especially as it relates to customer education regarding clean energy, energy efficiency, and conservation."[326] The objection goes on to say "nothing on the face of R.C. 4909.15 precludes the use of an estimate, projection, or forecast in the test period analysis."[327]

It has been a long-standing practice of the Staff to assess whether costs are prudent to include in test year expenses by applying two key criteria: (1) whether the cost is known and measurable; and (2) whether the cost is related to something that is used and useful in providing utility service to customers.[328] The approximately $2 million in question pertains to a proposed customer education campaign that did not occur during the test year, nor was it planned to occur during the test year.[329] Furthermore, since the

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325 Staff Ex. 16 (Goins Direct in Response to Objections to the Staff Report) at 3.

326 Objections to the Staff Report by CCEF at 4 (Oct. 26, 2017).

327 *Id.*

328 Staff Ex. 2 (Berringer Direct in Response to Objections to the Staff Report) at 2-3.

329 *Id.* at 3.

campaign was not implemented during the test year, it could not be considered used and useful in the provision of service to customers, thereby making the associated costs for the program inappropriate to include in test year expenses.[330] Therefore, Staff made its recommendation to remove the expense for the proposed customer education campaign.[331]

J. Objections related to Staff's rate of return calculation

OCC argues that the Staff Report used an unduly high 4.45% risk-free return in the Capital Asset Pricing Model (CAPM) analysis,[332] used an unduly high 7% risk premium in its cost of common equity calculation,[333] and inappropriately applied unequal weights to the CAPM and DCF model.[334] OCC also alleges that the Staff Report made improper adjustments for equity issuance and other costs.[335] Finally, OCC claims that the Staff Report's recommended rate of return and return on equity are unreasonable because they far exceed the rate of return and return on equity authorized for electric distribution utilities nationwide that are similar to Duke.[336]

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330 *Id.*

331 *Id.*

332 Objections to the Staff Report by OCC at 8 (Oct. 26, 2017).

333 *Id.* at 9.

334 *Id.* at 9-10.

335 *Id.* at 10.

336 *Id.* at 10-11.

Staff made adjustments to its traditional CAPM analysis to achieve an appropriate risk premium that would result in a return on equity that is more appropriate for setting long-term rates and keeps the Company competitive for attracting investment.[337] Staff believes there are many ways to establish a reasonable rate of return and does not believe altering an individual component is appropriate if it would create a return that is outside a reasonable range.[338] Here, the rate of return range proposed by Staff, and accepted by the Company, is reasonable, making these objections raised by OCC immaterial.[339]

K. Objections related to Staff's adjustment to issuance cost

OCC argues that Staff made an improper adjustment to issuance cost.[340] Common stock issuance costs include expenditures made directly by the company issuing stock, for the purpose of issuing stock and does not include flotation costs.[341] Some of these expenditures would be for filing with the Security and Exchange Commission (SEC), accounting, legal representation, printing, and exchange listing.[342] Issuance costs also include the underwriting spread, which is not an expenditure for the issuing company.[343]

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[337] Staff Ex. 4 (Buckley Direct in Response to Objections to the Staff Report) at 4.

[338] *Id.*

[339] *Id.*

[340] Objections to the Staff Report by OCC at 8 (Oct. 26, 2017).

[341] Staff Ex. 4 (Buckley Direct in Response to Objections to the Staff Report) at 4.

[342] *Id.* at 4-5.

[343] *Id.* at 5

Basically, the underwriting spread is the difference between the proceeds to the company and the price paid by the primary purchasers of an issue.[344] Issuance costs are the difference between the amount paid by the primary purchasers and the net proceeds, which is the amount available for investment by the company.[345]

An adjustment for issuance cost is necessary.[346] The cost of issuance is properly spread over the life of the stock issue.[347] As long as stock has been issued, an equity adjustment is necessary.[348] It does not matter what future financing plans have been prepared.[349] The investor requires a full return as long as the investor owns the stock.[350] The company issuing new equity initially receives funds in the amount of the equity issued.[351] The amount of equity issued less the issuance cost is the amount available to the company for investment, yet the investor is, as required, paid a return on the full amount of investment.[352] A greater return, therefore, must be earned on the lesser amount

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[344] *Id.*

[345] *Id.*

[346] *Id.*

[347] *Id.*

[348] *Id.*

[349] *Id.*

[350] *Id.*

[351] *Id.*

[352] *Id.*

that can be invested. This is made possible by the Staff's adjustment to the baseline cost of equity.[353]

L. Objections related to Staff's ROE range and ROR.

OCC argues that the overall rate of return and return on equity are unreasonable.[354] Staff believes that the ROE range proposed in the Staff Report is reasonable because the average ROE nationwide over five years is 9.79%, well within the range of reasonableness Staff recommended.[355] In fact the mid-point of the Staff recommendation is 9.73%.[356]

Staff also believes that the rate of return range proposed in the Staff Report is reasonable because the average rate of return nationwide during that same five-year period is 7.39%. When a range of reasonableness is applied to that average, the result is a rate of return range of 6.89% to 7.89%.[357] The Stipulation provides a rate of return of 7.54%, which falls within the range of reasonableness that is based on the nationwide average.[358] Staff used a five-year average when comparing nationwide rates of return

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353 *Id.*

354 Objections to the Staff Report by OCC at 8 (Oct. 26, 2017).

355 Staff Ex. 4 (Buckley Direct in Response to Objections to the Staff Report) at 6.

356 *Id.*

357 *Id.*

358 *Id.*

because rate cases are not typically filed annually.[359] Therefore, a five-year average is more representative of a long-term rate of return, as is set in a distribution rate case.[360]

M. Objection related to whether the Staff properly recognized growth being experienced in the residential service rate class.

OCC objected to the Staff Report on the basis that it failed to recognize the growth being experienced in the residential service (RS) rate class, and that it should have annualized residential customer bills using the last month of the year.[361] There is no merit to this objection.

As Staff witness Snider explained, Staff adjusted the test year revenue to reflect all actual billing determinants for the entire test year.[362] Included in Staff's adjustment is an increase of 19,853 to the RS bill count.[363] This approach reasonably accounts for the growth in residential customers being experienced by Duke.[364]

OCC's recommended approach of annualizing only the RS customer bills based on the last month of the test year would create problems.[365] First, other tariff classes are

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359 *Id.*

360 *Id.*

361 Objections to the Staff Report by OCC at 7 (Oct. 26, 2017).

362 Staff Ex. 5 (Snider Direct in Response to Objections to the Staff Report) at 3.

363 *Id.*

364 *Id.*

365 *Id.*

not experiencing similar levels of growth as the RS class.[366] In order to be consistent, it was appropriate to update the billing determinants for all tariff classes.[367]

Another problem with OCC's approach is that, although Duke has experienced RS customer growth on an annual basis, this growth is not consistent on a monthly basis.[368] Annualizing the last month of the test period ignores the impact of seasonality and could result in overstating or understating the number of customer bills depending on the month being used.[369] Therefore, it would be unreasonable to simply take the last month of the test year and annualize it.[370]

N. Objections related to smart grid issues

OCC objected to certain aspects of the Staff Report concerning smart grid issues. First, OCC objected that the Staff Report failed to address whether Duke's current smart grid infrastructure delivers all of the capabilities and functionality that Duke promised in past cases and in its application for federal funding.[371] As Staff witness Schweitzer explained, this objection is outside the scope of this proceeding.[372] In a stipulation signed

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366 *Id.*

367 *Id.*

368 *Id.*

369 *Id.*

370 *Id.*

371 Objections to the Staff Report by OCC at 12 (Oct. 26, 2017).

372 Staff Ex. 6 (Schweitzer Direct in Response to Objections to the Staff Report) at 2.

by OCC in a prior proceeding, the parties agreed that Duke would file a rate case in the year after full deployment "such that the revenue requirement requested in that case will reflect the level of the benefits attributable to SmartGrid which have actually been achieved by the Company and all prudently incurred current costs associated with the costs associated with the program."[373]

OCC also objected to the Staff Report because if failed to address whether Duke's smart grid infrastructure is capable of providing customers with safe, reliable, and reasonably priced electric service as required by statute.[374] This issue, however, is outside the scope of this proceeding and will not be addressed here.[375]

OCC also objected that the Staff Report failed to address the prudence of Duke's spending on smart grid infrastructure.[376] OCC further objected that the Staff Report failed to address whether Duke's current smart grid infrastructure is used and useful for consumers.[377] These objections are not valid. The assets and expenses associated with

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[373] *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust and Set Its Gas and Electric Recovery Rate for 2010 SmartGrid Costs Under Riders AU and Rider DRIM and Mid-deployment Review of AMI/Smart Grid Programs (Duke Smart Grid Review Case),* Case No. 10-2326-GE-RDR (Stipulation and Recommendation at 7-8) (Feb. 24, 2012).

[374] Objection to the Staff Report by OCC at 13 (Oct. 26, 2017).

[375] Staff Ex. 6 (Schweitzer Direct in Response to Objections to the Staff Report) at 3.

[376] Objections to the Staff Report, OCC at 13-14 (Oct. 26, 2017).

[377] *Id.* at 14.

the smart grid that are included in this rate case have historically been recovered through Duke's Rider DR-IM.[378]

The Commission has approved Rider DR-IM annually since 2010, and OCC has been a party each year in these rider review cases.[379] Each year, Staff conducted an audit to determine the reasonableness and prudence of all expenses to be reviewed through the rider.[380] Only those expenses associated with assets deemed used and useful are approved for recovery.[381] Since all smart grid costs in this rate case originated in Rider DR-IM. These expenses have already been reviewed and approved as prudent and used and useful.[382]

Finally, OCC objected that the Staff Report failed to address whether the revenue requirement reflects the savings that have been achieved for customers from Duke's smart grid investments.[383] However, the level of expenses included in this rate case dues reflect the benefits of Duke's completed smart grid project.[384] On October 22, 2015, Staff filed its Notice of Staff Determination in the Duke Smart Grid case that Duke had

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378 Staff Ex. 6 (Schweitzer Direct in Response to Objections to the Staff Report) at 3.

379 *In the Matter of the Application of Duke Energy Ohio to Adjust and Set its Gas and Electric Recovery Rate for Smart Grid Deployment under Rider AU and Rider DR-IM*, Case No. 09-543-GE-UNC.

380 Staff Ex. 6 (Schweitzer Direct in Response to Objections to the Staff Report) at 4.

381 *Id.*

382 *Id*.

383 Objections to the Staff Report by OCC at 13-14.

384 Staff Ex. 6 (Schweitzer Direct in Response to Objections to the Staff Report) at 4.

achieved full deployment of its smart grid project.[385] From that date forward, the benefits of the smart grid would be reflected in Duke's operating expenses.[386] Expenses included in the test period have been impacted by the full deployment of Duke's smart grid project and therefore include the savings or benefits of the smart grid.[387]

IV. The Price Stability Rider (Rider PSR) Case

Again, Rider PSR is in the public interest and a beneficial provision of the Stipulation. Rider PSR recovers or credits back the net profit or loss of the Company's ownership percentage in the OVEC units.[388] The Commission previously approved the rider in Case No. 14-841-EL-SSO, *et al*.[389] In the Stipulation, Duke can populate the rider with the net profit or net loss the Company incurred starting in January 2018 and through the end of the term of the ESP.[390] For each Ohio EDU which has direct ownership shares of OVEC units, the Commission has granted a nonbypassable rider to allow the credits or costs to be flowed back to that utility's customers.[391] While each

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385 *Duke Smart Grid Review Case*, Case No. 09-543-GE-UNC, Notice of Staff Determination (Oct. 22, 2015).

386 Staff Ex. 6 (Schweitzer Direct in Response to Objections to the Staff Report) at 4.

387 *Id.* at 4-5.

388 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 8.

389 *Id.*

390 *Id.*

391 *Id.* at 10-11 citing *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No 16-1852-EL-SSO, *et al.*, Opinion and Order at 22-

EDU in Ohio has its own unique issues, circumstances and situations that should be evaluated on their own merits, OVEC is a unique issue and circumstance that three of the Ohio EDUs share in common.[392]

The Commission has already approved the Ohio Power Company and the Dayton Power and Light Company to recover or credit their individual ownership share of the OVEC plants through a rider.[393] The Commission has deemed that those riders operate as a hedge for the costs and associated revenues of the EDU's ownership share of OVEC and are in the public interest.[394] Again, Staff does not believe that the facts in this case differ enough to merit a change in Commission precedent.

V. The Reliability Standards Case

In the Stipulation, Duke commits to reliability standards that will benefit customers. Reliability is primarily measured through the CAIDI and SAIFI indices.[395] CAIDI is a measure of the average time required to restore a customer who experienced an outage, reported as minutes per customer interrupted.[396] SAIFI is a measure of the

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23 (April 25, 2018); *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 16-395-EL-SSO, *et al*., Opinion and Order at 34-35 (Oct. 20, 2017).

392 *Id.* at 11.

393 *Id*.

394 *Id*.

395 Staff Ex. 3 (Nicodemus Direct in Support of the Stipulation) at 3.

396 *Id*. at 4.

average number of interruptions that a customer may experience, reported as interruptions per customer.[397]

Per the Stipulation and Recommendation filed in this case on April 13, 2018, Duke commits to the following reliability standards through 2025:[398]

YEAR	**CAIDI**	**SAIFI**
2018	134.34	1.12
2019	134.34	1.00
2020	134.34	0.91
2021	135.52	0.83
2022 through 2025	137.00	0.75

Duke's currently-approved CAIDI standard is 122.81. Per the Stipulation, the CAIDI standard increases initially to 134.34, 135.52, and then 137.00.[399] It might appear that an increasing CAIDI represents worsening reliability performance. However, Duke has also committed to a reduced SAIFI standard, which will result in improved overall system reliability.[400]

A decreasing SAIFI indicates that fewer customers experience an outage. Because CAIDI is calculated by dividing total outage time, the numerator, by the number of customers who experience an outage, the denominator, an increase in CAIDI can be the

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397 *Id*.

398 *Id*. at 9.

399 *Id*.

400 *Id*.

mathematical result of a lower denominator, or fewer customers experiencing an outage. Therefore, Staff also evaluates SAIDI, which is more representative of average outage duration across all customers in the service territory.[401]

The combination of Duke's CAIDI and SAIFI commitments results in SAIDI that improves each of the next four years, and in 2022 through 2025 it will be the lowest it has been since the EDUs began to report reliability performance in 2010. If Duke exceeds either its CAIDI or SAIFI standards, the resulting SAIDI will be even lower. Therefore, on a system-wide basis, Duke's customers will experience improved reliability.[402]

The table below illustrates Duke's SAIDI performance for each of the last five years, and SAIDI commitments for the next eight years.[403]

YEAR	**SAIDI PERFORMANCE**	**SAIDI COMMITMENT**
2013	115.44	
2014	107.20	
2015	122.01	
2016	143.24	
2017	147.64	
2018		150.46
2019		134.34
2020		122.25
2021		112.48
2022 through 2025		102.75

401 *Id*. at 10.

402 *Id*.

403 *Id*. at 11.

Duke's reliability commitments in this case are aligned with the expectations of its customers. Duke has committed to a nearly 30% reduction in SAIFI, which translates to 30% fewer customers who will experience an outage at all. CAIDI is increasing about 12%, but this is not necessarily indicative of worsening reliability. The combination of Duke's SAIFI and CAIDI commitments results in SAIDI that improves each of the next four years. In years 2022 through 2025, Duke's customers system-wide will experience a 30% improvement in overall reliability when compared to 2017 performance.[404] Staff believes that Duke's commitment to improved reliability aligns the Company's and its customers' expectations.

Duke's reliability commitments in this case allow the Commission to ensure that Duke is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system. Duke has committed to reliability standards as part of a stipulated agreement negotiated in good faith. It is Staff's expectation that by doing so, Duke intends to place sufficient emphasis on and dedicate sufficient resources to meeting those standards for the duration of the ESP.[405]

VI. Bill Impacts

Duke witness Wathen created a typical bill summary reflecting an estimate of the overall rate changes from the Stipulation and known changes in the SSO process for

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[404] *Id*. at 11.

[405] *Id*. at 12.

various usage levels.[406] Despite the numerous issues being resolved in this case, customers' bills will not be changing much from current rates with the approval of this Stipulation.[407] It is likely that rates will rise at rates substantially less than inflation of the course of the ESP.[408] The Stipulation will maintain stability for Duke's customers will into the future.[409]

VII. The Tax Cut and Jobs Act (TCJA)

In the Stipulation, Duke agrees to incorporate the reduced federal income tax rate in the calculation of all riders for electric distribution service that include a return on equity component.[410] The reduced revenue requirement associated with the reduction to the federal income tax rate was captured in the DCI.[411] Based on Staff's calculations, accounting for the tax reduction in the DCI captures 75% of the value of what the reduction to the revenue requirement would have been had it instead been captured in base rates.[412]

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406 Duke Ex. 30 (Wathen Second Supplemental in Support of Stipulation) at WDW-2.

407 *Id.* at 34.

408 *Id.* at 35

409 *Id.*

410 Joint Ex. 1 (Stipulation and Recommendation) at 25.

411 Staff Ex. 12 (Lipthratt Direct in Support of the Stipulation) at 4.

412 *Id.*

To the extent which any effects of the tax reduction are not approved by the Commission in this case, the effects should be addressed in Case No. 18-0047-AU-COI (Tax COI case).[413] This would include, but not be limited to, the value of the tax reduction not captured in the DCI and any excess Accumulated Deferred Income Taxes (ADIT).[414]

Furthermore, the Company proposes that all the TCJA excess ADIT be reflected in the DCI.[415] At this time, Staff recommends that the manner in which all the excess ADIT is returned to customers remain open.[416] Other vehicles could be utilized as well to return a portion or all of the excess ADIT.[417]

CONCLUSION

The Stipulation meets all prongs of the three-part test. The Commission should adopt the Stipulation as its order in this case.

Respectfully submitted,

Michael DeWine

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[413] *Id.* at 5.

[414] *Id.*

[415] Duke Ex. 30 (Wathen Second Supplemental in Support of the Stipulation) at 12-13.

[416] Staff Ex. 8 (McCarter Direct in Support of the Stipulation) at 4.

[417] *Id.*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Initial Post-Hearing Brief submitted on behalf of the Public Utilities Commission of Ohio has been served upon the below-named counsel via electronic mail, this 11th day of September, 2018.

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