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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Consolidated Duke Energy Ohio, Inc.,) Case Nos.	03-93-EL-ATA
Rate Stabilization Plan Remand, and)	03-2079-EL-AAM
Rider Adjustment Cases)	03-2081-EL-AAM
)	03-2080-EL-ATA
)	05-725-EL-UNC
)	06-1069-EL-UNC
)	05-724-EL-UNC
)	06-1085-EL-UNC
)	06-1068-EL-UNC

SECOND SUPPLEMENTAL TESTIMONY OF

JOHN P. STEFFEN

ON BEHALF OF

DUKE ENERGY OHIO

____ Management policies, practices, and organization
____ Operating income
____ Rate base
____ Allocations
____ Rate of return
____ Rates and tariffs
 x Other – Second Supplemental Testimony

202554

February 28, 2007

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1 testimony in the Initial MBSSO Cases; (3) discuss and support the Company's
2 various proposals to establish a market price in the Initial MBSSO Cases,
3 including (i) a competitive market option (CMO), (ii) the Stipulated MBSSO that
4 was fully litigated and agreed to by most of the parties, but not approved by the
5 Commission in its September 29, 2004, Opinion and Order, (iii) the Alternative
6 MBSSO Proposal submitted by the Company in its Application for Rehearing on
7 October 29, 2004, but substantially modified by the Commission, and (iv) the
8 final MBSSO approved by the Commission in its November 23, 2004, Entry on
9 Rehearing; and (4) address the issues presently before the Commission on remand
10 by the Supreme Court of Ohio.

11 **Q. WHAT ARE YOUR CONCLUSIONS AFTER YOUR REVIEW OF THE**
12 **EVIDENCE IN THESE PROCEEDINGS?**

13 A. Based on my review of the evidence, I have concluded that the evidence of record
14 supports the Commission's Entry on Rehearing dated November 23, 2004.

15 **Q. PLEASE DEFINE THE SIGNIFICANT TERMS THAT YOU WILL USE**
16 **IN YOUR TESTIMONY.**

17 A. Throughout my testimony, I will use some terms repeatedly. In order to be clear
18 about how I am using these terms, the following definitions are offered:

- 19 • Alternative Proposal: the MBSSO pricing methodology included in
20 DE-Ohio's October 29, 2004, Application for Rehearing.
- 21 • Approved MBSSO: the MBSSO pricing methodology approved by the
22 Commission in its November 23, 2004, Entry on Rehearing.

- 1 • Competitive Market Option (CMO): the pricing methodology
2 proposed by DE-Ohio in its January 10, 2003, Application in the Initial
3 MBSSO Cases.
- 4 • Competitive Retail Electric Service (CRES) provider: an entity
5 certified by the Commission to offer to sell generation at retail to
6 customers within Ohio.
- 7 • DE-Ohio: Duke Energy Ohio, Inc., formerly known as The Cincinnati
8 Gas & Electric Company in the Initial MBSSO Cases.
- 9 • January 2004 MBSSO: the MBSSO proposed by DE-Ohio in its
10 January 26, 2004, filing in the initial MBSSO Cases in response to the
11 Commission's request that utilities propose a rate stabilization plan.
- 12 • MBSSO: a market based standard service offer for the generation
13 component of DE-Ohio's price.
- 14 • Provider of Last Resort (POLR): the legal obligation of electric
15 distribution utilities, including DE-Ohio, to provide a firm supply of
16 generation to all consumers.
- 17 • Price to Compare: the component of an MBSSO which is 100%
18 bypassable by consumers who take service from a CRES provider. (It
19 is important to note that, even though my testimony focuses on the
20 price to compare for the bypassable components of the price of
21 generation, DE-Ohio's transmission charge is also bypassable, and a
22 component of the total price to compare).

- Rate Stabilization Plan (RSP): an MBSSO that conforms with the Commission's goals of providing rate certainty for consumers, financial stability for utilities, and the further development of competitive markets.
- Stipulated AAC: the variable POLR component of DE-Ohio's Stipulated MBSSO.
- Stipulated MBSSO: the MBSSO pricing methodology filed by DE-Ohio on May 19, 2004, as part of a Stipulation with many of the parties to the Initial MBSSO Cases.

II. DISCUSSION

PROCEDURAL HISTORY

Q. PLEASE SUMMARIZE THE PROCEDURAL HISTORY OF THE MBSSO CASES.

A. On January 10, 2003, the Company filed its initial Application to establish an MBSSO. This Application included a 100% bypassable CMO with a non-bypassable POLR component. The proposed POLR component is non-bypassable, supporting recognition of DE-Ohio's sole responsibility to function as the POLR in its service territory. The POLR market price compensates for the risks and costs associated with standing ready to serve consumers and maintaining a reserve margin for all consumers in DE-Ohio's certified territory. In this context, the reserve margin is the supply capacity in excess of expected demand that is necessary to ensure that an adequate supply exists for unexpected changes

1 in demand (*e.g.*, weather or returning shoppers), or changes in supply (*e.g.*, forced
2 outages or supplier default).

3 On December 9, 2003, the Commission issued an Entry that, among other
4 things, requested that DE-Ohio file a rate stabilization plan (RSP). On January
5 26, 2004, in response to this request by the Commission, DE-Ohio filed its
6 January 2004 MBSSO that met the Commission's stated goals for rate stabilized
7 MBSSOs: (1) rate certainty for consumers; (2) financial stability for the utility;
8 and (3) the further development of competitive markets. Like its CMO proposal,
9 DE-Ohio's January 24 MBSSO contained a market price for its POLR service and
10 a market price to compare for competitive retail electric service.

11 On May 19, 2004, DE-Ohio and many parties filed a Stipulation and
12 Recommendation (Stipulated MBSSO) resolving all issues in the case. The
13 Commission held a hearing on DE-Ohio's Stipulated MBSSO that concluded on
14 June 1, 2004 (May Hearing).

15 On September 29, 2004, the Commission issued an Opinion and Order
16 that substantially modified the Stipulation, effectively rejecting it by requiring
17 material modifications as a condition for approval.

18 On October 29, 2004, DE-Ohio filed an Application for Rehearing. In that
19 Application, DE-Ohio presented three proposals. First, DE-Ohio requested that
20 the Commission reconsider its decision and adopt the Stipulation as agreed to by
21 the signing parties. Next, DE-Ohio presented its Alternative Proposal that
22 included a revised market price for its POLR service and the market price to
23 compare, and argued that the evidence of record from the hearing held by the

1 Commission supported the Alternative MBSSO. Finally, the Company's third
2 proposal was to adopt the original CMO.

3 On November 23, 2004, the Commission issued its Entry on Rehearing
4 (November Entry) that ultimately resulted in DE-Ohio's Approved MBSSO. The
5 Commission's Entry on Rehearing purported to approve DE-Ohio's Alternative
6 MBSSO but, in fact, it made modifications to the Alternative MBSSO.
7 Significantly, in the November Entry, the Commission increased the price to
8 compare component of the MBSSO, the price against which CRES providers
9 compete for customers, and decreased the POLR component. The Commission
10 then directed DE-Ohio to file proposed tariffs consistent with the November
11 Entry, to be effective January 1, 2005.

12 On May 23, 2005, following additional Orders by the Commission, the
13 OCC filed an appeal to the Supreme Court of Ohio, opposing DE-Ohio's
14 Approved MBSSO and the Commission's November 23, 2004, Entry on
15 Rehearing.

16 On November 22, 2006, the Supreme Court of Ohio released its Opinion
17 affirming in part and remanding in part the Commissions Order. The Court
18 remanded the case to the Commission for further consideration of two specific
19 issues. In particular, the Court required the Commission to (1) explain its
20 conclusion that its POLR modifications on Rehearing are reasonable and identify
21 the evidence it considered to support its findings and (2) "compel disclosure of the
22 previously requested information" regarding "side agreements."
23

1 **PREVIOUS TESTIMONY**

2 **Q. PLEASE BRIEFLY DESCRIBE THE SUBJECT MATTER OF YOUR**
3 **TESTIMONY IN THE INITIAL MBSSO PROCEEDINGS.**

4 A. On April 15, 2004, I filed Direct Testimony which, among other things, explained
5 the components and calculations of DE-Ohio's January 2004 MBSSO and agreed
6 to incorporate several comments made by parties to the proceeding. I also
7 supported the reasonableness of the January 2004 MBSSO, explained and
8 supported the need for a POLR charge, supported a request for deferral of certain
9 transmission and distribution costs, and supported DE-Ohio's proposed
10 Transmission Cost Recovery Tracker (Rider TCR) and its proposed Capital
11 Investment Reliability Rider (Rider CIR). On May 20, 2004, I filed Supplemental
12 Testimony which explained and supported the Stipulation DE-Ohio entered into
13 with many of the parties to the proceeding and the resulting Stipulated MBSSO.
14 The signing parties to the Stipulation included Commission Staff, the Ohio
15 Energy Group (OEG), Cognis Corporation (Cognis), Industrial Energy Users
16 Group (IEU), the Kroger Company (Kroger), the Ohio Hospital Association
17 (OHA), People Working Cooperatively (PWC), Citizens United for Action
18 (CUFA), First Energy Solutions, Dominion Retail, Inc. (Dominion), and Green
19 Mountain Energy (Green Mountain).

20 **MBSSO PROPOSALS**

21 **Q. PLEASE BRIEFLY DESCRIBE DE-OHIO'S CMO PROPOSAL.**

22 A. The details of the CMO are more fully discussed in the testimony of DE-Ohio
23 witness Judah Rose. In general, however, the CMO established a standard service

1 offer market price and a competitive bid process (CBP) for non-residential end-
2 use consumers whose market development period was set to expire on December
3 31, 2004. Residential consumers were not subject to the proposed CMO because
4 their market development period would not expire until December 31, 2005.

5 The CMO's standard service offer is a retail market based generation price
6 for end-use consumers who did not switch to either a CRES provider or the CBP
7 for their generation service. The CMO's standard service market price was to be
8 made up of transparent and publicly available fixed and variable price components
9 along with POLR components charged to all non-residential consumers. The
10 CMO also included the ability for DE-Ohio to defer certain costs associated with
11 capital investments in transmission and distribution system improvements for
12 recovery in a subsequently filed transmission or distribution rate case. The CBP
13 was another pricing option for consumers consisting of a competitive retail
14 offering by a CRES provider. The CBP would be facilitated through a Request
15 for Proposals (RFP) process to solicit retail bids from alternative generation
16 suppliers who committed to comply with the Commission's competitive retail
17 electric service rules.

18 **Q. PLEASE BRIEFLY DESCRIBE DE-OHIO'S JANUARY 2004 MBSSO**
19 **FILING.**

20 **A.** DE-Ohio's January 2004 MBSSO filing included two pricing options for the
21 Commission to consider: (1) the previously proposed CMO and (2) a rate
22 stabilized pricing option. The second option, the January 2004 MBSSO, was
23 captioned as a "Rate Stabilization Plan" that responded to the Commission's

1 request for a pricing methodology that provided rate certainty for consumers,
2 financial stability for utilities and furthered the development of competitive
3 markets. In summary, the January 2004 MBSSO included a non-bypassable
4 POLR charge that included incremental costs for taxes, fuel, environmental
5 compliance costs, emission allowances, purchased power, transmission
6 congestion, homeland security and reserve margin capacity.

7 **Q. PLEASE BRIEFLY DESCRIBE THE MBSSO PROPOSAL AS**
8 **SUPPORTED BY YOUR DIRECT TESTIMONY FILED APRIL 15, 2004.**

9 A. Following the submission of DE-Ohio's January 2004 MBSSO proposal, many
10 parties submitted comments, offering suggestions to improve the plan. Many of
11 these suggestions were taken into account in my Direct Testimony and, as I
12 explained in that testimony, were incorporated into the pricing structure. The
13 proposal included a non-bypassable POLR charge for all non-residential
14 consumers effective January 1, 2005, which included costs related to reserve
15 margin, and incremental costs for environmental compliance, emission
16 allowances, homeland security and taxes. Increases to those components were to
17 be capped at 10% of little g on an annual basis.¹ Transmission congestion and
18 wholesale market costs became bypassable, along with fuel and purchased power
19 expenses. The proposal also included a Rate Stabilization Charge (RSC) which
20 was to be established at 15% of little g and collected as a non-bypassable wires

¹ The company's unbundled generation price for each customer class as determined in Case No. 99-1658-EL-ETP ("Big G"), minus the Regulatory Transition Charge (RTC) as determined in that same case equals "Little g".

1 charge. The RSC was part of the POLR charge and was excluded from the 10%
2 cap calculation.

3 The remaining 85% of little g, plus the incremental fuel and economy
4 purchased power costs, formed the Company's price to compare and was 100%
5 avoidable. The price to compare was adjustable for each consumer class via
6 quarterly market pricing updates to fuel and purchased power (Rider FPP),
7 exclusive of emission allowances, in a manner similar to the Electric Fuel Cost
8 Component (EFC) previously provided for under cost of service regulation. DE-
9 Ohio also proposed setting the October 6, 1999, frozen fuel rate as the base level
10 for fuel and purchased power to be used in the Rider FPP calculation. This
11 proposal also provided the Commission the ability to test DE-Ohio's price to
12 compare through a competitive bidding process.

13 **Q. DID YOU SUBMIT ANY SUPPORTING SCHEDULES FOR THE**
14 **JANUARY 2004 MBSSO COMPONENTS AND PRICE?**

15 A. Yes. Attachments JPS-1 through JPS-11 supported the Company's proposed
16 MBSSO structure and identified all of the underlying cost components and
17 pricing.

18 **Q. PLEASE BRIEFLY DESCRIBE THE STIPULATED MBSSO, WHICH**
19 **WAS THE SUBJECT OF YOUR SUPPLEMENTAL TESTIMONY FILED**
20 **MAY 20, 2004.**

21 A. My Supplemental Testimony filed on May 20, 2004, supported the Stipulation
22 entered into by many of the parties to the Initial MBSSO Cases. As explained in
23 that testimony, the Stipulation was reasonable and in the public interest for the

1 following reasons. First, it was the product of serious bargaining among capable
2 and knowledgeable parties because it included representatives from every
3 consumer group including CRES providers, residential consumers, and non-
4 residential consumers, all with significant experience in Commission proceedings.
5 Second, it did not violate any regulatory principle because there was significant
6 switching, and opportunities to switch, in DE-Ohio's certified territory. In
7 particular, the Stipulation included an offer of firm generation service for all
8 consumers at prices negotiated at arm's length, the prices were within the range of
9 prices found in the market, and there was a provision for a reasonable competitive
10 bid process. Third, as a package, the Stipulation provided consumers with benefits
11 not otherwise achievable such as capped price components. The Stipulated
12 MBSSO, like the previously proposed MBSSOs, included two basic pricing
13 components, a price to compare and a POLR charge.

14 **Q. PLEASE BRIEFLY DESCRIBE THE PRICE TO COMPARE IN THE**
15 **STIPULATED MBSSO.**

16 **A.** The price to compare pursuant to the Stipulation was the Company's unbundled
17 generation charge as established in the Company's transition plan Case No. 99-
18 1658-EL-ETP (Big G), less the Regulatory Transition Charge (RTC), less the Rate
19 Stabilization Charge (RSC [*i.e.*, 15% of little g]), plus Fuel and Purchased Power
20 (Rider FPP).

21 **Q. PLEASE BRIEFLY DESCRIBE THE STIPULATED MBSSO POLR**
22 **CHARGE.**

1 A. The Stipulated POLR charge included two pricing components, a fixed RSC and a
2 variable annually adjusted component (Stipulated AAC). The fixed RSC equaled
3 15% of little g and compensates DE-Ohio for risks associated with providing
4 provider of last resort service. The Stipulated AAC contained charges for reserve
5 margin capacity and recovery of incremental homeland security costs, taxes,
6 environmental compliance and emission allowance expenses. The Stipulated
7 AAC was variable through a defined process in which DE-Ohio would either
8 initiate an automatic annual increase of 6% of little g or demonstrate and justify
9 an increase up to 8% of little g, based upon documentation of actual costs of the
10 underlying Stipulated AAC cost components. The baseline of the Stipulated AAC
11 was the costs for the calendar year 2000. Current period and calendar year 2000
12 costs were subject to Staff audit and verification.

13 The POLR charge was to be effective for non-residential consumers
14 beginning January 1, 2005, and for residential consumers beginning January 1,
15 2006. Additionally, the Commission could implement a competitive bidding
16 process to test DE-Ohio's price to compare against the prevailing retail market
17 conditions.

18 **Q. WERE ANY OF THE STIPULATED MBSSO COSTS AVOIDABLE?**

19 A. Yes. The price to compare, including fuel and purchased power, was 100%
20 avoidable by all consumers who switched to a CRES provider. In addition, the
21 first 25% of eligible load, by customer class, to switch to a CRES provider could
22 avoid the RSC component of the POLR. Customers wishing to avoid the RSC
23 had to comply with certain requirements including contracting with a CRES

1 provider and with minimum stay and notice provisions. Returning customers
2 were subject to pricing at either (1) the Company's highest purchased power costs
3 incurred or (2) the highest dispatched generation price necessary to serve DE-
4 Ohio's consumers during the applicable calendar month.

5 **DEVELOPMENT OF THE APPROVED MBSSO**

6 **Q. WAS THERE AN EVIDENTIARY HEARING IN THE MBSSO CASE?**

7 A. Yes. A hearing began on May 20, 2004, and concluded on June 1, 2004. During
8 the hearing, I offered testimony in support of the Stipulation and was subject to
9 cross-examination. All parties to the case had the opportunity to present evidence
10 opposing DE-Ohio's CMO and the Stipulation. The Stipulation and DE-Ohio's
11 MBSSO pricing structure were extensively and fully litigated.

12 **Q. WAS THE STIPULATION ULTIMATELY ADOPTED BY THE**
13 **COMMISSION?**

14 A. No. On September 29, 2004, the Commission issued an Opinion and Order
15 which, although it purported to approve a Stipulated MBSSO price, made such
16 substantial and material changes to the Stipulated MBSSO that it constituted an
17 outright rejection. The Commission's changes *fundamentally* altered the bargain
18 between DE-Ohio and the parties to the Stipulation. The Opinion and Order set
19 forth a market pricing structure that DE-Ohio had not agreed to, or even
20 contemplated, in its negotiations with the parties to the Stipulation. DE-Ohio,
21 therefore, filed an Application for Rehearing.

22 **Q. PLEASE EXPLAIN THE SUBSTANCE OF DE-OHIO'S APPLICATION**
23 **FOR REHEARING.**

1 A. On October 29, 2004, DE-Ohio filed its Application for Rehearing requesting that
2 the Commission reinstate the Stipulation as filed and agreed upon by the signatory
3 parties, including Commission Staff, or adopt the CMO originally filed by the
4 Company on January 10, 2003. DE-Ohio also submitted an alternative pricing
5 structure that was consistent with evidence presented in the record (Alternative
6 Proposal), which was based on components of the previously filed Stipulated
7 MBSSO and the modifications made by the Commission in its September 29,
8 2004, Opinion and Order.

9 **Q. PLEASE EXPLAIN DE-OHIO'S ALTERNATIVE PROPOSAL PRICING**
10 **STRUCTURE.**

11 A. Like the Stipulation, the Alternative Proposal was designed to achieve the
12 Commission's stated goals for developing rate stabilized MBSSO pricing
13 structures.

14 The Alternative Proposal was similar in structure to the Stipulated
15 MBSSO in that it contained a two-part MBSSO, made up of a price to compare
16 and a POLR charge. In fact, the price to compare formula in the Alternative
17 Proposal is identical to the price to compare in the Stipulated MBSSO, except the
18 emission allowances (EAs)² were added to the Rider FPP component in the
19 Alternative Proposal. The underlying POLR charges in the Alternative Proposal
20 contained a fixed component consisting of the RSC and variable components.
21 The variable components compensated DE-Ohio for maintaining a sufficient

² The AAC, as originally proposed, and Rider FPP, as implemented, include only EA expenses associated with SO₂ compliance.

1 reserve margin (the System Reliability Tracker or SRT), for first call dedication of
2 its efficient, low cost generating assets (the Infrastructure Maintenance Fund or
3 IMF), and for recovery of certain incremental environmental compliance,
4 homeland security, and tax costs (the Annually Adjusted Component or AAC).
5 The variable components were adjusted on either an annual or a quarterly basis.
6 Some of the individual components became avoidable in certain circumstances
7 and under specific conditions.

8 Also in the Alternative Proposal, DE-Ohio agreed to include several
9 changes made by the Commission to the *Stipulation* in its Opinion and Order.
10 These changes included: (1) an end to the 5% residential generation rate reduction
11 effective December 31, 2005; (2) disallowance of deferral and future recovery of
12 residential distribution costs (but included deferral and future recovery of non-
13 residential distribution costs); (3) no extension of the residential Regulatory
14 Transition Charge (RTC) past December 31, 2008; (4) a market price for returning
15 consumers based solely on the Company's wholesale market costs; and (5) the
16 calculation of actual AAC and Rider FPP costs, including both cost decreases and
17 increases in each cost category.

18 **Q. WHAT IS THE DIFFERENCE BETWEEN THE STIPULATED MBSSO**
19 **AND THE ALTERNATIVE PROPOSAL MBSSO?**

20 A. As discussed previously, the basic structure is the same and the underlying factors
21 that make up the pricing structure remain the same. There are, however, two
22 primary differences between the Alternative Proposal and the Stipulated MBSSO.

1 The first is that the Alternative Proposal reassigned or shuffled some of the
2 underlying pricing components and increased the avoidability of some of the
3 components. Examples of this include moving the recovery of certain EA
4 expenses from the variable POLR component to Rider FPP, increasing the
5 percentage of non-residential load that could avoid the RSC, and making the AAC
6 bypassable for the first 50% of switched non-residential consumer load and the
7 first 25% of residential load, thereby enhancing the competitive market.

8 The second difference is that the Alternative Proposal carved out several
9 of the underlying cost and pricing factors previously embedded elsewhere in the
10 Stipulated AAC, and included them as separately named POLR components or
11 trackers. These carved out components became the IMF and the SRT.

12 The Alternative Proposal, as a whole, amounted to a lower price than that
13 contained in the Stipulated MBSSO. The reshuffling of the pricing components
14 actually resulted in the avoidable price to compare portion of the MBSSO
15 increasing, while the unavoidable portion of the POLR decreased. This change
16 further encouraged competition in that the higher price to compare provided a
17 greater pricing margin for CRES providers and was an encouragement to
18 shopping in support of the Commission's three stated goals.

19 **Q. DID THE COMMISSION APPROVE THE ALTERNATIVE PROPOSAL**
20 **AS SUBMITTED BY DE-OHIO?**

21 A. No. Once again, in its Entry on Rehearing, the Commission made changes to DE-
22 Ohio's proposal. The Commission did approve the basic MBSSO pricing
23 structure consisting of a price to compare and a POLR charge, as well as the

1 underlying pricing components. However, the Commission made changes which,
2 among other things, increased the avoidability of charges and increased the
3 shopping incentives.

4 **Q. PLEASE EXPLAIN THE MODIFICATIONS MADE BY THE**
5 **COMMISSION ON REHEARING.**

6 A. As I explained above, the Commission approved the transfer of the incremental
7 EA cost recovery from the AAC to Rider FPP, thereby increasing the price to
8 compare and lowering the POLR charge. In addition, in DE-Ohio's Alternative
9 MBSSO Proposal, the SRT was non-bypassable. In its modification, the
10 Commission did not approve the SRT as a non-bypassable charge and stated that
11 the avoidability of the SRT would be considered in another case. Ultimately, the
12 final SRT price became bypassable to non-residential consumers who agreed to
13 stay off DE-Ohio's system until December 31, 2008, with the provision that return
14 prior to that date would be at the higher of DE-Ohio's standard MBSSO price or
15 the applicable monthly average hourly Locational Marginal Price (LMP).

16 The Commission found that current non-residential shopping customers
17 should avoid the AAC, RSC and SRT during 2005. The Commission further
18 required DE-Ohio to file an annual application to establish its SRT, Rider FPP
19 and AAC levels for the following year and that those pricing components would
20 be subject to an annual audit and review by the Commission. The first filing for
21 the AAC would apply to the year 2007³, since the price for 2005 and 2006 was
22 already established. This pricing structure became the Approved MBSSO.

³ The Company made its filing in Case No. 06-1085-EL-UNC on September 5, 2006.

1 **Q. DID DE-OHIO FILE AN APPLICATION FOR REHEARING**
2 **REGARDING THE COMMISSION'S MODIFICATIONS ON**
3 **REHEARING?**

4 A. *No. The Commission amended the Alternative Proposal made by DE-Ohio on*
5 *Rehearing. Thereafter, the Company litigated the avoidability of the Rider SRT*
6 *and the market price for returning consumers, which the Commission resolved in*
7 *subsequent entries in these proceedings.*

8 **REMANDED MBSSO**

9 **Q. ARE YOU FAMILIAR WITH THE SUPREME COURT OF OHIO'S**
10 **REMAND OF DE-OHIO'S APPROVED MBSSO THAT IS THE SUBJECT**
11 **OF THIS PROCEEDING?**

12 A. Yes. I am generally familiar with the Court's remand.

13 **Q. PLEASE EXPLAIN THE PURPOSE OF THE REMAND, AS YOU**
14 **UNDERSTAND IT.**

15 A. As I stated previously, it is my understanding that on November 22, 2006, the
16 Supreme Court of Ohio released its Opinion, which remanded these cases to the
17 Commission on two issues. The first issue is that the Court ordered the
18 Commission to explain its conclusion that its modifications to DE-Ohio's
19 MBSSO on rehearing were reasonable and to identify the evidence it considered
20 to support its findings. Specifically, the Court pointed to the Company's SRT and
21 IMF as not being properly supported in the Commission's Entry on Rehearing.
22 The second issue in the Court's remand is that the Commission should have

1 required the Company to comply with an OCC discovery request regarding
2 confidential agreements.

3 **THE IMF AND SRT**

4 **Q. WERE THE IMF AND SRT COMPONENTS THAT WERE APPROVED**
5 **BY THE COMMISSION IN ITS ENTRY ON REHEARING PART OF DE-**
6 **OHIO'S PREVIOUSLY PROPOSED MBSSOs?**

7 A. Yes. While the acronyms IMF and SRT do not appear in the record until the
8 Company filed its Alternative Proposal, the underlying costs and obligations that
9 are represented by the SRT and IMF, respectively, were previously in the record
10 and were fully litigated.

11 **Q. PLEASE EXPLAIN HOW THE IMF AND SRT WERE REFLECTED IN**
12 **THE JANUARY 2004 MBSSO, STIPULATED MBSSO AND THE**
13 **APPROVED MBSSO.**

14 A. The IMF and the SRT prices in the Alternative Proposal represent compensation
15 for and recovery of certain cost factors, obligations and expenses previously
16 embedded in the AAC provided for in the January 2004 MBSSO and in the
17 Stipulation. As I explained in my Direct Testimony and under cross-examination
18 during the initial hearing on this matter, the Company's MBSSO proposals were
19 overall packages that included, among other things, compensation for the
20 Company to stand ready to meet its POLR obligation. In other words, the POLR
21 price included in the two MBSSO proposals that the parties to the Stipulation
22 agreed to, included not only certain dollar for dollar cost recovery, but also
23 reasonable compensation for the Company's POLR obligation.

1 In my Direct Testimony, I explained that the AAC component of the
2 POLR included compensation to the Company for the risks and costs associated
3 with maintaining adequate capacity reserves and to recover incremental costs
4 associated with homeland security, taxes, environmental compliance and emission
5 allowances.⁴ Attachments JPS-2 through JPS-7 included in my Direct Testimony
6 and included as Attachments to the Stipulation presented the supporting pricing
7 calculations. These components were based upon historical and projected costs
8 for the year ended June 30, 2004.

9 Specifically, Attachment JPS-2 supported the Company's pricing
10 calculation for the Stipulated AAC POLR charge.⁵ This schedule included the
11 following components and estimated total pricing requirements:

12	Emission Allowances	\$11,030,529
13	Environmental Compliance	42,748,169
14	Homeland Security	837,275
15	Taxes	0
16	Reserve Margin	<u>52,898,560</u>
17	Total pricing requirements	\$107,514,533 ⁶

18 **Q. PLEASE CONTINUE YOUR DISCUSSION OF THE IMF AND SRT IN**
19 **THE STIPULATED AND APPROVED MBSSO.**

20 **A.** In my Direct Testimony, I explained that the reserve margin price in the AAC
21 component of the POLR included charges related to maintaining reserve margins

⁴ See Direct Testimony of John P. Steffen at 11-15.

⁵ *Id.*

⁶ *Id.*

1 for all load as well as call options to cover switched load.⁷ This description is the
2 same for the Stipulated AAC. During cross-examination, I also testified that the
3 Stipulated AAC provided DE-Ohio's POLR consumers with first call on
4 generating assets owned by DE-Ohio.⁸ By granting retail customers first call,
5 there is a lost opportunity in terms of DE-Ohio having the ability to sell that
6 capacity and energy into the market (*i.e.*, opportunity cost).

7 In the Stipulated MBSSO, charges related to all of these underlying
8 expenses (reserve margin, call option and opportunity costs) were included as part
9 of the Stipulated AAC's reserve margin pricing component (\$52,898,560). In
10 other words, the price for reserve capacity supported by DE-Ohio at the
11 evidentiary hearing was not simply a cost-recovery charge, but was essentially
12 compensation for providing an actual capacity reserve, and for the foregone
13 opportunity to sell its generation output in the market at higher prices. In the
14 Alternative Proposal and in the Approved MBSSO, charges for those underlying
15 expenses became the SRT and the IMF. Attachment JPS-SS1 to this Second
16 Supplemental Testimony demonstrates the revenue impact of the reassignment.

17 **Q. PLEASE EXPLAIN RIDER SRT AND ITS DEVELOPMENT.**

18 A. The Rider SRT approved in the Entry on Rehearing recovers the cost of
19 purchasing capacity in the market to cover DE-Ohio's system peak load plus a
20 reserve capacity requirement on a dollar-for-dollar basis.⁹ In the Stipulation, these

⁷ *Id.*

⁸ TR Vol IV, May 26, 2004 at 83 and 115.

⁹ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA, *et al.*, (October 29, 2004) (Application for Rehearing at Attachment 2, page 2.)

1 costs were embedded in the \$52,898,560 calculated for reserve margin in the
2 Company's Stipulated AAC as shown on Attachment JPS-2.¹⁰ The reserve
3 margin charge in the Stipulated AAC was based on the levelized annual cost per
4 kilowatt-year of constructing a peaking unit, including a reasonable return.¹¹ In
5 my testimony supporting the Stipulation, DE-Ohio proposed maintaining a reserve
6 capacity of 17% of its switched and non-switched load.¹²

7 Acceptance of the SRT is a concession by the Company after considering
8 the significant changes made by the Commission in its Opinion and Order. In
9 contrast to the fixed reserve margin amount proposed in the Stipulated AAC, the
10 SRT is a mechanism of pure cost recovery of maintaining necessary capacity
11 reserves (15% planning reserve for switched and non-switched load), and is
12 subject to an annual review and true-up. The SRT became effective for non-
13 residential consumers in 2005 and for residential consumers in 2006.

14 In the Stipulated AAC, the entire reserve margin charge was unavoidable.
15 However, Rider SRT became avoidable to non-residential consumers to the extent
16 they sign an agreement to stay off the system until December 31, 2008, and agree
17 that if they come back in the interim, they return at the higher of DE-Ohio's
18 standard MBSSO price or the applicable monthly average hourly LMP. The SRT
19 strikes a balance between the Commission's goals in that it is conditionally
20 avoidable, encouraging the competitive market, and, to the extent it is not
21 avoidable, provides some revenue certainty for DE-Ohio.

¹⁰ *In re. DE-Ohio's MBSSO*, Case no. 03-93-EL-ATA *et al.*, (May 20, 2004) (Stipulation at JPS-2).

¹¹ See Direct Testimony of John P. Steffen; TR. IV at 102.

¹² See Testimony of John P. Steffen at 15 (April 15, 2004).

1 **Q. WHAT IS THE BASELINE OF THE SRT?**

2 A. As the Commission correctly explained in its Entry on Rehearing, the baseline for
3 the SRT was set in the Company's last rate case.¹³ Specifically, the Commission
4 held that in Case No. 92-1464-EL-AIR, the Commission Staff determined that
5 DE-Ohio had sufficient generation capacity to cover all of its peak load
6 requirements and POLR obligation.¹⁴ Therefore, the amount currently included in
7 its approved generation cost for these obligations was zero. As a result, all
8 amounts in the SRT are in excess of the cost of capacity requirement which are
9 part of little g.¹⁵

10 **Q. DID THE COMMISSION SET AN ACTUAL SRT PRICE IN THE 03-93-**
11 **EL-ATA MBSSO CASES?**

12 A. No. The Commission did not set an actual price for the SRT in these cases. The
13 Commission did, however, approve the mechanism and process as a direct pass
14 through of costs.¹⁶ In its Application for Rehearing, DE-Ohio committed that,
15 starting in 2004, it would provide a load forecast estimate each year for
16 Commission review and approval. DE-Ohio would then develop a plan consisting
17 of purchases necessary to meet that load obligation and file that plan with the
18 Commission.¹⁷

¹³ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA, *et al.*, (November 23, 2004) (Entry on Rehearing at 11)

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 11-12.

¹⁷ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA, *et al.*, (November 23, 2004) (Entry on Rehearing at 9)

1 In its Entry on Rehearing, the Commission directed DE-Ohio to file an
2 application to set the initial level of the SRT and that the avoidability or non-
3 avoidability would be determined in subsequent filings.

4 **Q. WHEN WAS THE FIRST SRT PRICE SET?**

5 A. On December 3, 2004, in Case No. 04-1820-EL-ATA, DE-Ohio filed its
6 Application, with accompanying schedules, to establish its initial SRT price for
7 reserve capacity and requested permission to track and recover its actual costs of
8 capacity to provide reliable POLR service for 2005.¹⁸ In that filing, the
9 Company's witnesses supported the inclusion of approximately \$14,898,000 of
10 reserve capacity purchases representing the estimated costs for maintaining a 15%
11 reserve capacity level for 2005. This amount is significantly less than the
12 \$52,898,560 initially proposed as a component of the Stipulated AAC's reserve
13 margin. The Commission ultimately approved the \$14,898,000 in costs, subject
14 to true-up, in its December 21, 2004 Entry.¹⁹

15 **Q. DO YOU BELIEVE THE SRT IS A REASONABLE CHARGE?**

16 A. Yes. The SRT is a reasonable charge. It is a pure cost recovery mechanism of a
17 necessary expense to fulfill DE-Ohio's POLR obligation. DE-Ohio recovers only
18 its actual costs for maintaining a 15% planning reserve capacity level. The SRT is

¹⁸ *In re DE-Ohio's Application to establish its SRT* Case No 04-1820-EL-ATA, (December 3, 2004) (Application).

¹⁹ *In re DE-Ohio's Application to establish its SRT* Case No 04-1820-EL-ATA, (December 21, 2004) (Entry).

1 subject to an annual review and hearing in which the Commission performs an
2 audit of expenditures and allows any party to comment regarding the costs
3 charged to consumers.

4 **Q. IS THE IMF A COST-BASED PRICE?**

5 A. The IMF is not tied directly to a specific out of pocket expense and it is not a pass
6 through of actual tracked costs. It is a component of the formula for calculating
7 the total market price DE-Ohio is offering and is willing to accept in order to
8 supply consumers and to support its POLR risks and obligations.

9 In the deregulated electric generation environment, market prices are not
10 set using cost-based recovery in the traditional regulatory sense. There is no
11 longer an opportunity to file a rate case for electric generation and receive cost
12 recovery, including a reasonable rate of return. As a supplier of deregulated
13 generation, DE-Ohio is not in the business of simply recovering its costs. A
14 market price offered in any market, whether it is new cars or groceries, inherently
15 includes margin over costs. The same is true with respect to retail electric service.

16 DE-Ohio has the sole obligation to provide POLR service to consumers
17 within its service territory. Accordingly, it must be compensated for the risks
18 inherent in this obligation. The IMF is part of the compensation for this service.
19 It is compensation for the first call dedication of its generation assets to native
20 load consumers and the foregone opportunity to sell that energy and capacity and
21 take advantage of pure retail market prices. The IMF allows DE-Ohio to provide
22 stable prices to its consumers and provides some level of revenue certainty to the
23 Company. Similarly, the IMF provides consumers with a dedicated capacity

1 supply that DE-Ohio cannot contract to a third party, assuring consumers of
2 adequate capacity to maintain system reliability.

3 **Q. PLEASE EXPLAIN THE IMF CHARGE AND ITS DEVELOPMENT.**

4 A. The IMF was previously embedded in the reserve margin component of the
5 Stipulated AAC price of \$52,898,560.

6 The IMF is a non-bypassable component of DE-Ohio's POLR component
7 of its MBSSO. The IMF charge is equal to 4% of little g during 2005 and 2006,
8 and equal to 6% of little g during 2007 and 2008.²⁰ The IMF pricing methodology
9 as percentages of little g are simply the way DE-Ohio proposed to calculate an
10 acceptable dollar figure to compensate DE-Ohio for the first call dedication of
11 generating assets and the opportunity costs of not simply selling its generation into
12 the market at potentially higher prices.

13 **Q. DO YOU BELIEVE THE IMF IS A REASONABLE CHARGE?**

14 A. Yes. The IMF pricing mechanism approved is reasonable and supportable in a
15 number of ways. First, DE-Ohio's proposed IMF is consistent with the
16 Commission's previously stated goals for Rate Stabilization Plans in that the IMF
17 provides revenue stability for DE-Ohio and price certainty for consumers.²¹

18 The IMF was also supported by the evidentiary record in this case. The
19 IMF charge, as included in the Company's Alternative Proposal, would result in
20 projected revenues of approximately \$19.7 million in 2005, and \$30.1 million in

²⁰ *In re. DE-Ohio's MBSSO*, Case no. 03-93-EL-ATA *et al.*, (November 23, 2004) (Entry Rehearing at 8),
citing *In re DP&L's RSP and First Energy's RSP*.

²¹ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA, *et al.*, (September 29, 2004) Opinion and Order at
15).

1 2006²² from DE-Ohio's non-residential and residential consumer classes. Even
2 with the addition of the cost-based SRT (\$14,898,000) for reserve capacity, and
3 taking the IMF at its fully implemented (*i.e.*, residential and non-residential) level,
4 DE-Ohio is charging less than the \$52,898,560 originally proposed and supported
5 by the Company as its market price for reserve margin and the dedication of its
6 physical capacity.²³ Attachment JPS-SS1 to my Second Supplemental Testimony
7 demonstrates how the IMF and SRT were derived from the evidence of record.

8 All consumers in DE-Ohio's certified territory benefit by having a first call
9 on DE-Ohio's physical generating capacity at a price certain. Otherwise,
10 consumers would be subject to price volatility in the energy and capacity markets
11 and decreased reliability should capacity be unavailable.

12 **THE APPROVED AAC CALCULATION**

13 **Q. PLEASE EXPLAIN THE AAC PRICE THAT WAS ULTIMATELY**
14 **APPROVED BY THE COMMISSION.**

15 A. The AAC as approved by the Commission includes charges for incremental
16 environmental compliance costs, taxes, and homeland security.²⁴ These same
17 components were part of the Company's proposed Stipulated AAC, with the
18 notable exceptions of the removal of the EA charges and the reserve margin price.

²² In 2005, only non-residential consumers were subject to the MBSSO prices. DE-Ohio began charging residential consumers MBSSO prices January 1, 2006.

²³ *In re. De-Ohio's MBSSO*, Case no. 03-93-EL-ATA *et al.*, (May 19, 2004) (Stipulation at JPS-2); *See Testimony of John P. Steffen* (April 15, 2004).

²⁴ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA, *et al.*, (November 23, 2004) (Entry on Rehearing at 10).

1 In approving an AAC charge, the Commission applied avoidability terms
2 to enhance the competitive market. Previously, in the Stipulated AAC, this
3 charge was completely non-bypassable.²⁵ The AAC price as approved in the
4 Entry on Rehearing became avoidable by the first 25% of residential load that
5 switches to a competitive supplier and the first 50% of switched non-residential
6 load.²⁶ The Commission approved AAC component price for 2005 was projected
7 to produce approximately \$19.7 million in revenue, exclusive of switching. Given
8 that DE-Ohio had approximately 20% switching of non-residential load at the
9 time of the MBSSO approval, the AAC would generate only approximately \$15.7
10 million in revenue.

11 **Q. HOW DID DE-OHIO CALCULATE THE STIPULATED AAC**
12 **COMPONENTS?**

13 A. For the EA component, DE-Ohio compared the actual costs of SO₂ EAs for the
14 twelve months ended June 30, 2004,²⁷ to the amounts allowed when the EFC rate
15 was frozen in October 1999. For environmental compliance costs, a revenue
16 requirement type calculation was developed for the year ended June 30, 2004, and
17 compared to a similar calculation for calendar year 2000. The reserve margin
18 component was calculated by estimating the value of peaking capacity and
19 estimating the number of megawatts DE-Ohio needs to meet its planning reserve
20 requirement. The product of these two estimates was the reserve margin

²⁵ *In re. De-Ohio's MBSSO*, Case no. 03-93-EL-ATA *et al.*, (May 19, 2004)

²⁶ *Id.*

²⁷ *Id.*, at JPS-2, JPS-5, JPS-6, and JPS-7.

1 component of the Stipulated AAC. Other items included were incremental
2 expenses associated with Homeland Security and incremental tax changes.

3 **Q. AT ANY TIME DURING THIS PROCEEDING DID THE CALCULATION**
4 **OF THE POLR CHARGE DISCUSSED IN YOUR DIRECT TESTIMONY**
5 **CHANGE?**

6 A. Not until the Alternative Proposal was suggested in the Company's Request for
7 Rehearing. Prior to that filing, the calculation of the POLR charge was as shown
8 on Attachments JPS-2 through JPS-7 of my Direct Testimony. This calculation
9 was audited by the Commission's Staff in the summer of 2004 and with only
10 minor corrections was found to be reasonable. The Commission did not cite any
11 problem with the calculation of the various components, including the CWIP
12 balance in the environmental compliance support, as shown on Attachment JPS-4.

13 **Q. IS THE STIPULATED AAC CONSISTENT WITH THE COMMISSION'S**
14 **THREE GOALS FOR RATE STABILIZED MBSSOS?**

15 A. Yes. As approved, the AAC is a component of DE-Ohio's complete market price
16 that provides revenue certainty for the Company in that it allows DE-Ohio to
17 recover its incremental costs for taxes, environmental compliance and homeland
18 security. Additionally, the AAC enhances the competitive market because it is
19 avoidable by the first 25% of switched residential consumer load and first 50% of
20 switched non-residential load.

21 **EVIDENTIARY SUPPORT THAT DE-OHIO'S MBSSO IS JUST**
22 **AND REASONABLE**

1 Q. IS THE APPROVED MBSSO A MARKET PRICE AND IS IT
2 SUPPORTED BY THE EVIDENTIARY RECORD IN THE
3 PROCEEDING?

4 A. Yes. The evidence of record from the May Hearing fully supported the
5 Stipulation and consequently the Alternative Proposal as modified and adopted by
6 the Commission. The underlying base components of the pricing structure
7 between the two did not change. The Commission repositioned those
8 components, increasing the avoidability of many of the charges and increasing the
9 shopping incentives, to benefit the competitive market and consumers.

10 Q. PLEASE EXPLAIN THIS FURTHER.

11 A. The structure of the MBSSO's price to compare is identical in the Stipulation and
12 the Approved MBSSO. The only difference is that in the latter, the avoidable
13 portion of the price actually increased. Also, in its initial filing and in the
14 Stipulation, DE-Ohio supported a variable POLR charge totaling \$107,514,533.²⁸
15 Attachment JPS-2 to my Direct Testimony supports the price and the underlying
16 components of reserve margin, homeland security, taxes, environmental
17 compliance costs, and EAs. These underlying components were fully litigated
18 and supported in the record on both direct and cross-examination. These
19 underlying pricing components are present in the final approved MBSSO market
20 price. As I previously explained, these underlying costs were merely reduced,
21 repositioned, made avoidable, or carved out into the IMF and SRT charges.

²⁸ *Id.*

1 **Q. IS DE-OHIO'S MBSSO PRICE ANTI-COMPETITIVE?**

2 A. No. For DE-Ohio's market price to be anticompetitive, it must be below cost for
3 the purpose of destroying competition. The MBSSO, as ultimately approved by
4 the Commission, is within the range of reasonable market prices supported by DE-
5 Ohio in the evidentiary hearing, as demonstrated by DE-Ohio's witness Judah
6 Rose. The Approved MBSSO raised the bypassable price to compare from the
7 level proposed in the Stipulated MBSSO by including emission allowances,
8 eliminating the 5% residential rate reduction, increasing the avoidability of the
9 RSC and AAC for non-residential consumers, and increasing the avoidability of
10 the AAC for residential consumers.²⁹

11 The Approved MBSSO also sets the various non-bypassable POLR charges at
12 lower levels than the Stipulated MBSSO supported with the evidence.³⁰ The total
13 MBSSO market price is lower than the stipulated market price but higher than the
14 price stated by the Commission in its Opinion and Order. Therefore, the approved
15 MBSSO is just and reasonable in that it results in an overall lower market price
16 for consumers than the market price supported by the evidence, is above DE-
17 Ohio's costs, and contains lower pricing structures for the non-bypassable
18 components.

19 **Q. WHAT ACTION IS DE-OHIO ASKING THE COMMISSION TO TAKE**
20 **IN THESE CASES?**

²⁹ *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA, *et al.*, (*DE-Ohio's Application for Rehearing* at 13) (October 29, 2004); *In re DE-Ohio's MBSSO*, Case No. 03-93-EL-ATA (*Entry on Rehearing* at 14) (November 23, 2004)

³⁰ *Id.* See subsequent discussion of IMF at IV below.

1 A. DE-Ohio is requesting that the Commission affirm its November 23, 2004, Entry
2 on Rehearing and the MBSSO pricing that resulted from that Entry on Rehearing.
3 DE-Ohio also requests that the Commission resume the proceedings to establish
4 the 2007 Rider FPP, Rider SRT, and Rider AAC and approve those market price
5 components subject to true-up to January 1, 2007, consistent with the formula
6 established in the Approved MBSSO, plus carrying costs.

7 **CONFIDENTIAL COMMERCIAL CONTRACTS**

8 **Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF WHY THE SUPREME**
9 **COURT OF OHIO REMANDED THE ISSUE OF ALLEGED "SIDE**
10 **AGREEMENTS" TO THE COMMISSION.**

11 A. As I understand it, there is a three-part test for determining whether a settlement
12 agreement or stipulation is reasonable. The Commission considers: (1) whether
13 the settlement was a product of serious bargaining among capable, knowledgeable
14 parties; (2) whether the settlement benefits ratepayers and is in the public interest;
15 and (3) whether the settlement package violates any important regulatory principle
16 or practice.

17 During discovery and at the evidentiary hearing, the OCC requested
18 production of all agreements entered into on or after January 26, 2004, between
19 DE-Ohio and the parties to the matters before the Commission. The Commission
20 denied this request, ruling that the Stipulation, on its face, must withstand
21 scrutiny, and the existence or non-existence of any "side agreements" was
22 irrelevant. The OCC appealed this issue, among others, to the Supreme Court of
23 Ohio. In its Opinion, the Court ruled that although the existence of "side

1 agreements” is irrelevant to the second and third parts of the three-part
2 reasonableness test., it is, however, relevant to the first part, whether the
3 stipulation was the product of serious bargaining. The Court remanded the matter
4 to the Commission to compel disclosure of the requested information. The Court
5 also stated that upon disclosure, the Commission may, if necessary, decide any
6 issues pertaining to admissibility of that information.

7 **Q. DID DE-OHIO HAVE ANY AGREEMENTS WITH PARTIES TO THE**
8 **MBSSO PROCEEDING WHICH WERE RESPONSIVE TO THE OCC’S**
9 **REQUEST?**

10 A. Yes, as I previously explained there was one such agreement and it has been
11 produced.

12 **Q. PLEASE EXPLAIN THE AGREEMENT.**

13 A. DE-Ohio has an agreement with the City of Cincinnati. The agreement amended
14 previous agreements DE-Ohio had with the City of Cincinnati and consisted of a
15 payment of \$1,000,000 as consideration for the amendments. In return, the City
16 agreed to withdraw from the MBSSO proceeding. DE-Ohio provided OCC with a
17 copy of this agreement. This agreement was actually available to the parties at all
18 times because Cincinnati City Council had to approve the agreement by vote,
19 which is a matter of public record.

20 **Q. DID DE-OHIO ENTER INTO ANY OTHER AGREEMENTS WITH ANY**
21 **OTHER PARTY TO THE MBSSO PROCEEDINGS?**

22 A. No.

1 **Q. ARE YOU AWARE OF THE COMMERCIAL CONTRACTS ENTERED**
2 **INTO BY DUKE ENERGY RETAIL SALES, LLC, AND A PARTY OR**
3 **MEMBER OF A PARTY TO THE PROCEEDING?**

4 A. I am aware of commercial contracts in the form of option agreements entered into
5 by Duke Energy Retail Sales, LLC (DERS), formerly Cinergy Retail Sales, Inc.
6 (CRS) (collectively referred to as DERS).

7 **Q. WERE YOU INVOLVED IN THE NEGOTIATION OF THESE**
8 **AGREEMENTS?**

9 A. No.

10 **Q. HAVE YOU READ THE AGREEMENTS?**

11 A. I have read them.

12 **Q. DID YOU HAVE A BUSINESS PURPOSE FOR READING THESE**
13 **AGREEMENTS?**

14 A. Yes, I did. Certain provision of those agreements required extraction of data from
15 the customer billing system, and that data was compiled in my organization.

16 **Q. WERE THOSE AGREEMENTS ENTERED INTO AS PART OF THE**
17 **STIPULATION FILED TO SETTLE THE MBSSO CASE?**

18 A. No.

19 **Q. PLEASE EXPLAIN.**

20 A. The Commission in its Opinion and Order fundamentally changed the Stipulation,
21 thereby rejecting it. DE-Ohio filed an Application for Rehearing on October 29,
22 2004, requesting that the Commission reconsider adopting the Stipulation without
23 modification, or adopt an Alternative Proposal. As with the Stipulation, the

1 Commission made modifications to the Alternative Proposal, including changes to
2 the SRT avoidability and the market price charged to returning customers.
3 Effectively, the Commission ordered its own RSP MBSSO, mixing parts of the
4 Stipulation and the Alternative Proposal with its own ideas. Accordingly, there
5 was no Stipulation in settlement of this case as the Approved MBSSO ultimately
6 approved by the Commission is substantially different than the MBSSO proposed
7 in the Stipulation. The option agreements were all entered into after the
8 Commission issued its Entry on Rehearing on November 23, 2004, approving DE-
9 Ohio's Approved MBSSO. In some instances, those option agreements were
10 signed several months later. The terms and conditions of these commercial
11 contracts are confidential so I will not describe them here.

12 **Q. WERE THERE ANY AGREEMENTS, OTHER THAN THE OPTION**
13 **AGREEMENTS, BETWEEN DERS AND A PARTY TO THE MBSSO**
14 **CASE PROCEEDING, PRIOR TO THE APPROVAL OF THE MBSSO IN**
15 **NOVEMBER 2004?**

16 **A. Yes.**

17 **Q. PLEASE EXPLAIN.**

18 **A.** There were two sets of prior agreements entered into between the signing parties
19 to the Stipulation and CRS. The first set of agreements provided that CRS would
20 serve the customers at a specific price. The price was determined based upon the
21 Stipulation filed publicly in the docket. Since the Commission did not approve
22 the Stipulation, those agreements never went into effect. The second set of
23 agreements was entered into following DE-Ohio's Application for Rehearing.

1 Once again, the Commission did not approve either the initial Stipulation or the
2 Alternative Proposal without modification, so those agreements never went into
3 effect.

4 **Q. DO ANY OF THE AGREEMENTS REFERENCED ABOVE AFFECT THE**
5 **FINAL APPROVAL OF THE MBSSO?**

6 A. No. DE-Ohio only had one agreement with a party to the case, the City of
7 Cincinnati. The other agreements were negotiated between the other parties and
8 CRS, which is an affiliate of DE-Ohio. Those contracts related to a separate offer
9 to provide competitive retail electric service. They referred to the price offered by
10 DE-Ohio as part of the Stipulation as the price at which CRS was willing to serve
11 the customers. As I just described, the first and second sets of those agreements
12 never went into effect because the Commission fundamentally changed the price
13 of the MBSSO on which CRS based its price. CRS entered into the option
14 agreements after the approval of the MBSSO by the Commission. There was no
15 Stipulation at that time. Importantly, DE-Ohio is not subsidizing DERS and DE-
16 Ohio's MBSSO consumers are not paying for any of the costs of those
17 commercial contracts. These contracts are not related to the establishment of DE-
18 Ohio's MBSSO.

19 **Q. ARE DE-OHIO AND DERS SEPARATE LEGAL ENTITIES OWNED BY**
20 **DUKE ENERGY CORPORATION?**

21 A. Yes, they are. DE-Ohio is a regulated utility and DERS is a non-regulated
22 company. DERS is certified with the Commission to provide competitive retail

1 electric service in Ohio and is registered to do business in DE-Ohio's service
2 territory. DERS and DE-Ohio maintain separate books and records.

3 **Q. DID DERS COMPENSATE DE-OHIO FOR ANY SYSTEM CHANGES**
4 **NECESSITATED BY ITS COMMERCIAL CONTRACTS?**

5 A. Yes, it did. Similar to any other CRES provider, DERS paid pursuant to the
6 Company's tariff, PUCO Electric No. 20, Sheet No. 52.2, for work performed by
7 DE-Ohio to amend its billing system. The invoice for that work is attached to my
8 testimony as Attachment JPS-SS2.

9 **Q. DID DE-OHIO PERFORM ANY SERVICE FOR DERS?**

10 A. Yes. DE-Ohio performed consolidated billing services for DERS as it is required
11 to perform pursuant to its tariffs. DE-Ohio is not permitted to charge CRES
12 providers for consolidated billing services, and therefore, did not charge DERS.
13 DE-Ohio's billing services resulted in payments made by DERS to its customers
14 and customer payments made to DERS, depending on the contract terms and
15 conditions.

16 **Q. WHILE DE-OHIO'S INITIAL MBSSO CASE WAS STILL PENDING,**
17 **WERE THERE ANY OTHER AGREEMENTS ENTERED INTO**
18 **BETWEEN A DE-OHIO AFFILIATE OR CENERGY CORP. OWNED**
19 **COMPANY, AND A PARTY TO THE MBSSO CASE THAT EITHER**
20 **DIRECTLY OR INDIRECTLY REFER TO SPECIFIC PRICING**
21 **COMPONENTS OF DE-OHIO'S MBSSO?**

22 A. Yes. There is one other commercial agreement between Cinergy Corp. and a large
23 customer.

1 **Q. HAVE YOU READ THIS AGREEMENT?**

2 A. Yes.

3 **Q. DID YOU HAVE A BUSINESS PURPOSE FOR READING THIS**
4 **AGREEMENT?**

5 A. Yes, I did. Certain provisions of the agreement required extraction of data from
6 the customer billing system, and that data was compiled in my organization.
7 Additionally, since the agreement is with Cinergy Corp., as an officer of Cinergy
8 Services, Inc., I authorized payments pursuant to the terms of the agreement. The
9 terms and conditions of the commercial contract are confidential, so I will not
10 describe the terms and conditions in my testimony.

11 **Q. IS DE-OHIO PAYING ANY OF THE AMOUNTS, OR IS IT A PARTY IN**
12 **ANY WAY, TO THIS AGREEMENT?**

13 A. No. Cinergy Corp. shareholders pay all costs associated with this agreement. In
14 addition, DE-Ohio is collecting all of its Approved MBSSO prices from the
15 consumer.

16 **Q. DID THIS AGREEMENT HAVE ANY EFFECT ON THE**
17 **ESTABLISHMENT OF DE-OHIO'S MBSSO?**

18 A. No. The Commission did not approve any of the MBSSO pricing proposals as
19 submitted by DE-Ohio, including both the Stipulated MBSSO price and the
20 Alternative Proposal. Therefore, irrespective of the existence of any agreement,
21 no agreement had any bearing on the Commission's decision to establish a market
22 price.

23

III. CONCLUSION

1 Q. DOES THIS CONCLUDE YOUR SECOND SUPPLEMENTAL
2 TESTIMONY?
3 A. Yes.

DUKE ENERGY OHIO
Support for IMF and SRT

	JPS Testimony April 15, 2004 (a)	November 23, 2004 Entry on Rehearing
	\$	\$
Little g (12-months ended Dec 31, 2003)	752,000,000	752,000,000
Fuel & Purchased Power Tracker (FPP) Emission Allowances moved from AAC		11,030,529
Provider of Last Resort (POLR) Rate Stabilization Charge (RSC) (15%)	112,800,000	112,800,000
Annually Adjusted Component (AAC)		
Emission Allowances	11,030,529	(To FPP)
Environmental Compliance	42,748,169	42,748,169
Homeland Security	837,275	837,275
Tax Changes	0	0
Reserve Margin	52,898,560	(To SRT & IMF)
	<u>107,514,533 (b)</u>	<u>43,585,444</u>
System Reliability Tracker (SRT) Portion of Reserve Margin moved from AAC		15,000,000
Infrastructure Maintenance Fund (IMF) (4%) Portion of Reserve Margin moved from AAC		30,080,000
Total Generation Revenue	<u>972,314,533</u>	<u>964,495,973</u>

(a) Amounts are also supported in the record through cross examination at the Hearing and Stipulation Exhibits.

(b) In its September 29, 2004 Opinion and Order at 32, the Commission stated it had no reason to dispute the 2004 costs supported by DE-Ohio for its AAC component charges. The \$107,514,533 in costs was supported through the Stipulation filed on May 19, 2004 and in JPS-2 through 7.

INVOICE # 468

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 CERTIFIED SUPPLIER BUSINESS CENTER
 PHONE (513) 287-2322
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ACCOUNT NO. 2621

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 EA 503
 Cincinnati, OH 45202

BILL PREPARED ON Feb 01, 2005

AMOUNT TO PAY	\$61,950.00
DUE DATE	February 14, 2005

BILLING SUMMARY

Previous Amount Due
 Payments Received as of 2/1/2005

\$11,286.00
 \$11,286.00

January Charges

\$61,950.00

Amount to pay

\$61,950.00

Balance

\$61,950.00

EXPLANATION OF JANUARY BILLING CHARGES

Description
 CG&E Consolidated Billing Program Modification Fee

Quantity
 326

Rate
 \$75.00

Amount
 \$61,950.00

January Charges

\$61,950.00

ACCOUNT NO. 2621

INVOICE # 468

PLEASE RETURN THIS PORTION
 WITH YOUR PAYMENT.
 MAKE CHECK PAYABLE TO
 Cinergy/Cincinnati Gas & Electric

Please mail payment to
 Cinergy/Cincinnati Gas & Electric
 1290 Solutions Center
 Chicago, IL 60677-1002

BILL PREPARED ON Feb 01, 2005

AMOUNT TO PAY	\$61,950.00
DUE DATE	February 14, 2005

Cinergy Retail Sales
 Jason Barker
 139 E. Fourth Street
 EA 603
 Cincinnati, OH 45202