

Large Filing Separator Sheet

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Description of Document: Application

California Public Service Commission
Canadian Radio-Television & Telecommunications Comm.
City of New Orleans Council
Colorado Public Utilities Commission
Delaware Public Service Commission
District of Columbia Public Service Commission
Federal Communications Commission
Federal Energy Regulatory Commission
Florida Public Service Commission
Georgia Public Service Commission
Georgia Senate Committee on Regulated Industries
Hawaii Public Utilities Commission
Illinois Commerce Commission
Indiana Utility Regulatory Commission
Iowa Utilities Board
Kentucky Public Service Commission
Louisiana Public Service Commission
Maine Public Utilities Commission
Manitoba Board of Public Utilities
Maryland Public Service Commission
Michigan Public Service Commission
Minnesota Public Utilities Commission
Mississippi Public Service Commission
Missouri Public Service Commission
Montana Public Service Commission
National Energy Board of Canada
Nevada Public Utilities Commission
New Brunswick Board of Public Commissioners
New Hampshire Public Utilities Commission
New Jersey Board of Public Utilities

New Mexico Public Regulation Commission
New Orleans City Council
New York Public Service Commission
Newfoundland Board of Commissioners of Public Utilities
North Carolina Utilities Commission
Nova Scotia Board of Public Utilities
Ohio Public Utilities Commission
Oklahoma Corporation Commission
Ontario Telephone Service Commission
Ontario Energy Board
Oregon Public Utility Service Commission
Pennsylvania Public Utility Commission
Quebec Regie de l'Energie
Quebec Telephone Service Commission
South Carolina Public Service Commission
South Dakota Public Utilities Commission
Tennessee Regulatory Authority
Texas Public Utility Commission
Utah Public Service Commission
Vermont Department of Public Services
Virginia State Corporation Commission
Washington Utilities & Transportation Commission
West Virginia Public Service Commission

SERVICE AS EXPERT WITNESS

Southern Bell, So. Carolina PSC, Docket #81-201C
Southern Bell, So. Carolina PSC, Docket #82-294C
Southern Bell, North Carolina PSC, Docket #P-55-816
Metropolitan Edison, Pennsylvania PUC, Docket #R-822249
Pennsylvania Electric, Pennsylvania PUC, Docket #R-822250

Georgia Power, Georgia PSC, Docket # 3270-U, 1981
Georgia Power, Georgia PSC, Docket # 3397-U, 1983
Georgia Power, Georgia PSC, Docket # 3673-U, 1987
Georgia Power, F.E.R.C., Docket # ER 80-326, 80-327
Georgia Power, F.E.R.C., Docket # ER 81-730, 80-731
Georgia Power, F.E.R.C., Docket # ER 85-730, 85-731
Bell Canada, CRTC 1987
Northern Telephone, Ontario PSC
GTE-Quebec Telephone, Quebec PSC, Docket 84-052B
Newtel., Nfld. Brd of Public Commission PU 11-87
CN-CP Telecommunications, CRTC
Quebec Northern Telephone, Quebec PSC
Edmonton Power Company, Alberta Public Service Board
Kansas Power & Light, F.E.R.C., Docket # ER 83-418
NYNEX, FCC generic cost of capital Docket #84-800
Bell South, FCC generic cost of capital Docket #84-800
American Water Works - Tennessee, Docket #7226
Burlington-Northern - Oklahoma State Board of Taxes
Georgia Power, Georgia PSC, Docket # 3549-U
GTE Service Corp., FCC Docket #84-200
Mississippi Power Co., Miss. PSC, Docket U-4761
Citizens Utilities, Ariz. Corp. Comm., Docket U2334-86020
Quebec Telephone, Quebec PSC, 1986, 1987, 1992
Newfoundland L & P, Nfld. Brd. Publ Comm. 1987, 1991
Northwestern Bell, Minnesota PSC, Docket P-421/CI-86-354
GTE Service Corp., FCC Docket #87-463
Anchorage Municipal Power & Light, Alaska PUC, 1988
New Brunswick Telephone, N.B. PUC, 1988
Trans-Quebec Maritime, Nat'l Energy Brd. of Cda, '88-92
Gulf Power Co., Florida PSC, Docket #88-1167-EI

Mountain States Bell, Montana PSC, #88-1.2
Mountain States Bell, Arizona CC, #E-1051-88-146
Georgia Power, Georgia PSC, Docket # 3840-U, 1989
Rochester Telephone, New York PSC, Docket # 89-C-022
Noverco - Gaz Metro, Quebec Natural Gas PSC, #R-3164-89
GTE Northwest, Washington UTC, #U-89-3031
Orange & Rockland, New York PSC, Case 89-E-175
Central Illinois Light Company, ICC, Case 90-0127
Peoples Natural Gas, Pennsylvania PSC, Case
Gulf Power, Florida PSC, Case # 891345-EI
ICG Utilities, Manitoba BPU, Case 1989
New Tel Enterprises, CRTC, Docket #90-15
Peoples Gas Systems, Florida PSC
Jersey Central Pwr & Light, N.J. PUB, Case ER 89110912J
Alabama Gas Co., Alabama PSC, Case 890001
Trans-Quebec Maritime Pipeline, Cdn. Nat'l Energy Board
Mountain Bell, Utah PSC,
Mountain Bell, Colorado PUB
South Central Bell, Louisiana PS
Hope Gas, West Virginia PSC
Vermont Gas Systems, Vermont PSC
Alberta Power Ltd., Alberta PUB
Ohio Utilities Company, Ohio PSC
Georgia Power Company, Georgia PSC
Sun City Water Company
Havasu Water Inc.
Centra Gas (Manitoba) Co.
Central Telephone Co. Nevada
AGT Ltd., CRTC 1992
BC GAS, BCPUB 1992

California Water Association, California PUC 1992
Maritime Telephone 1993
BCE Enterprises, Bell Canada, 1993
Citizens Utilities Arizona gas division 1993
PSI Resources 1993-5
CILCORP gas division 1994
GTE Northwest Oregon 1993
Stentor Group 1994-5
Bell Canada 1994-1995
PSI Energy 1993, 1994, 1995, 1999
Cincinnati Gas & Electric 1994, 1996, 1999, 2004
Southern States Utilities, 1995
CILCO 1995, 1999, 2001
Commonwealth Telephone 1996
Edison International 1996, 1998
Citizens Utilities 1997
Stentor Companies 1997
Hydro-Quebec 1998
Entergy Gulf States Louisiana 1998, 1999, 2001, 2002, 2003
Detroit Edison, 1999, 2003
Entergy Gulf States, Texas, 2000, 2004
Hydro Quebec TransEnergie, 2001, 2004
Sierra Pacific Company, 2000, 2001, 2002, 2007, 2010
Nevada Power Company, 2001
Mid American Energy, 2001, 2002
Entergy Louisiana Inc. 2001, 2002, 2004
Mississippi Power Company, 2001, 2002, 2007
Oklahoma Gas & Electric Company, 2002 -2003
Public Service Electric & Gas, 2001, 2002
NUI Corp (Elizabethtown Gas Company), 2002

Jersey Central Power & Light, 2002
San Diego Gas & Electric, 2002
New Brunswick Power, 2002
Entergy New Orleans, 2002, 2008
Hydro-Quebec Distribution 2002
PSI Energy 2003
Fortis – Newfoundland Power & Light 2002
Emera – Nova Scotia Power 2004
Hydro-Quebec TransEnergie 2004
Hawaiian Electric 2004
Missouri Gas Energy 2004
AGL Resources 2004
Arkansas Western Gas 2004
Public Service of New Hampshire 2005
Hawaiian Electric Company 2005, 2008, 2009
Delmarva Power & Light Company 2005, 2009
Union Heat Power & Light 2005
Puget Sound Energy 2006, 2007, 2009
Cascade Natural Gas 2006
Entergy Arkansas 2006-7
Bangor Hydro 2006-7
Delmarva 2006, 2007, 2009
Potomac Electric Power Co. 2006, 2007, 2009
Duke Energy Ohio, 2007, 2008, 2009
Duke Energy Kentucky 2009
Consolidated Edison 2007 Docket 07-E-0523
Duke Energy Ohio Docket 07-589-GA-AIR
Hawaiian Electric Company Docket 05-0315
Sierra Pacific Power Docket ER07-1371-000
Public Service New Mexico Docket 06-00210-UT

Detroit Edison Docket U-15244

Potomac Electric Power Docket FC-1053

Delmarva, Delaware, Docket 09-414

Atlantic City Electric, New Jersey, Docket ER-09080664

Maui Electric Co, Hawaii, Docket 2009-0163, 2011

Niagara Mohawk, New York, Docket 10E-0050

PROFESSIONAL AND LEARNED SOCIETIES

- Engineering Institute of Canada, 1967-1972
- Canada Council Award, recipient 1971 and 1972
- Canadian Association Administrative Sciences, 1973-80
- American Association of Decision Sciences, 1974-1978
- American Finance Association, 1975-2002
- Financial Management Association, 1978-2002

ACTIVITIES IN PROFESSIONAL ASSOCIATIONS AND MEETINGS

- Chairman of meeting on "New Developments in Utility Cost of Capital", Southern Finance Association, Atlanta, Nov. 1982
- Chairman of meeting on "Public Utility Rate of Return", Southeastern Public Utility Conference, Atlanta, Oct. 1982
- Chairman of meeting on "Current Issues in Regulatory Finance", Financial Management Association, Atlanta, Oct. 1983
- Chairman of meeting on "Utility Cost of Capital", Financial Management Association, Toronto, Canada, Oct. 1984.
- Committee on New Product Development, FMA, 1985

- Discussant, "Tobin's Q Ratio", paper presented at Financial Management Association, New York, N.Y., Oct. 1986
- Guest speaker, "Utility Capital Structure: New Developments", National Society of Rate of Return Analysts 18th Financial Forum, Wash., D.C. Oct. 1986
- Opening address, "Capital Expenditures Analysis: Methodology vs Mythology," Bellcore Economic Analysis Conference, Naples Fl., 1988.
- Guest speaker, "Mythodology in Regulatory Finance", Society of Utility Rate of Return Analysts (SURFA), Annual Conference, Wash., D.C. February 2007.

PAPERS PRESENTED:

"An Empirical Study of Multi-Period Asset Pricing," annual meeting of Financial Management Assoc., Las Vegas Nevada, 1987.

"Utility Capital Expenditures Analysis: Net Present Value vs Revenue Requirements", annual meeting of Financial Management Assoc., Denver, Colorado, October 1985.

"Intervention Analysis and the Dynamics of Market Efficiency", annual meeting of Financial Management Assoc., San Francisco, Oct. 1982

"Intertemporal Market-Line Theory: An Empirical Study," annual meeting of Eastern Finance Assoc., Newport, R.I. 1981

"Option Writing for Financial Institutions: A Cost-Benefit Analysis", 1979 annual meeting Financial Research Foundation

"Free-lunch on the Toronto Stock Exchange", annual meeting of Financial Research Foundation of Canada, 1978.

"Simulation System Computer Software SIMFIN", HP International Business Computer Users Group, London, 1975.

"Inflation Accounting: Implications for Financial Analysis." Institute of Certified Public Accountants Symposium, 1979.

OFFICES IN PROFESSIONAL ASSOCIATIONS

- President, International Hewlett-Packard Business Computers Users Group, 1977
- Chairman Program Committee, International HP Business Computers Users Group, London, England, 1975
- Program Coordinator, Canadian Assoc. of Administrative Sciences, 1976
- Member, New Product Development Committee, Financial Management Association, 1985-1986
- Reviewer: Journal of Financial Research
Financial Management
Financial Review
Journal of Finance

PUBLICATIONS

"Risk Aversion Revisited", Journal of Finance, Sept. 1983

"Hedging Regulatory Lag with Financial Futures," Journal of Finance, May 1983. (with G. Gay, R. Kolb)

"The Effect of CWIP on Cost of Capital," Public Utilities Fortnightly, July 1986.

"The Effect of CWIP on Revenue Requirements" Public Utilities Fortnightly, August 1986.

"Intervention Analysis and the Dynamics of Market Efficiency," Time-Series Applications, New York: North Holland, 1983. (with K. El-Sheshai)

"Market-Line Theory and the Canadian Equity Market," Journal of Business Administration, Jan. 1982, M. Brennan, editor

"Efficiency of Canadian Equity Markets," International Management Review, Feb. 1978.

"Intertemporal Market-Line Theory: An Empirical Test," Financial Review, Proceedings of the Eastern Finance Association, 1981.

BOOKS

Utilities' Cost of Capital, Public Utilities Reports Inc., Arlington, Va., 1984.

Regulatory Finance, Public Utilities Reports Inc., Arlington, Va., 2004

Driving Shareholder Value, McGraw-Hill, January 2001.

The New Regulatory Finance, Public Utilities Reports Inc., Arlington, Va., 2006.

MONOGRAPHS

Determining Cost of Capital for Regulated Industries, Public Utilities Reports, Inc., and The Management Exchange Inc., 1982 - 1993. (with V.L. Andrews)

Alternative Regulatory Frameworks, Public Utilities Reports, Inc., and The Management Exchange Inc., 1993. (with V.L. Andrews)

Risk and Return in Capital Projects, The Management Exchange Inc., 1980. (with B. Deschamps)

Utility Capital Expenditure Analysis, The Management Exchange Inc., 1983.

Regulation of Cable Television: An Econometric Planning Model, Quebec Department of Communications, 1978.

"An Economic & Financial Profile of the Canadian Cablevision Industry," Canadian Radio-Television & Telecommunication Commission (CRTC), 1978.

Computer Users' Manual: Finance and Investment Programs, University of Montreal Press, 1974, revised 1978.

Fiber Optics Communications: Economic Characteristics, Quebec Department of Communications, 1978.

"Canadian Equity Market Inefficiencies", Capital Market Research Memorandum, Garmaise & Thomson Investment Consultants, 1979.

MISCELLANEOUS CONSULTING REPORTS

"Operational Risk Analysis: California Water Utilities," Calif. Water Association, 1993.

"Cost of Capital Methodologies for Independent Telephone Systems", Ontario Telephone Service Commission, March 1989.

"The Effect of CWIP on Cost of Capital and Revenue Requirements", Georgia Power Company, 1985.

"Costing Methodology and the Effect of Alternate Depreciation and Costing Methods on Revenue Requirements and Utility Finances", Gaz Metropolitan Inc., 1985.

"Simulated Capital Structure of CN-CP Telecommunications: A Critique", CRTC, 1977.

"Telecommunications Cost Inquiry: Critique," CRTC, 1977.

"Social Rate of Discount in the Public Sector", CRTC Policy Statement, 1974.

"Technical Problems in Capital Projects Analysis", CRTC Policy Statement, 1974.

RESEARCH GRANTS

"Econometric Planning Model of the Cablevision Industry," International Institute of Quantitative Economics, CRTC.

"Application of the Averch-Johnson Model to Telecommunications Utilities," Canadian Radio-Television Commission. (CRTC)

"Economics of the Fiber Optics Industry", Quebec Dept. of Communications.

"Intervention Analysis and the Dynamics of Market Efficiency", Georgia State Univ. College of Business, 1981.

"Firm Size and Beta Stability", Georgia State University College of Business, 1982.

"Risk Aversion and the Demand for Risky Assets", Georgia State University College of Business, 1981.

Chase Econometrics, Interactive Data Corp., Research Grant, \$50,000 per annum, 1986-1989.

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Integrated Elec Utilities

	(1)	(2)
<u>Line No.</u>	<u>Company Name</u>	<u>Beta</u>
1	ALLETE	0.70
2	Alliant Energy	0.70
3	Amer. Elec. Power	0.70
4	Ameren Corp.	0.80
5	Cleco Corp.	0.65
6	CMS Energy Corp.	0.75
7	DPL Inc.	0.60
8	DTE Energy	0.75
9	Duke Energy	0.65
10	Edison Int'l	0.80
11	Entergy Corp.	0.70
12	Exelon Corp.	0.85
13	FirstEnergy Corp.	0.80
14	G't Plains Energy	0.75
15	Hawaiian Elec.	0.70
16	IDACORP Inc.	0.70
17	NextEra Energy	0.75
18	NV Energy Inc.	0.85
19	OGE Energy	0.75
20	Pepco Holdings	0.80
21	PG&E Corp.	0.55
22	Pinnacle West Capital	0.70
23	PNM Resources	0.95
24	Portland General	0.75
25	Progress Energy	0.60
26	Southern Co.	0.55
27	TECO Energy	0.85
28	UniSource Energy	0.70
29	Westar Energy	0.75
30	Wisconsin Energy	0.60
31	Xcel Energy Inc.	0.65
33	AVERAGE	0.72

Source: VLIA 03/2011

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S&P Electric Utility Index Companies

	(1)	(2)	(3)
Line No.	Company Name	Beta	Beta
1	Ameren Corp.	0.80	0.80
2	CenterPoint Energy	0.80	
3	CMS Energy Corp.	0.75	0.75
4	Consol. Edison	0.65	0.65
5	Dominion Resources	0.70	
6	DTE Energy	0.75	0.75
7	Duke Energy	0.65	0.65
8	Edison Int'l	0.80	0.80
9	Entergy Corp.	0.70	0.70
10	Exelon Corp.	0.85	0.85
11	FirstEnergy Corp.	0.80	0.80
12	Integrus Energy	0.90	
13	NextEra Energy	0.75	0.75
14	Pepco Holdings	0.80	0.80
15	PG&E Corp.	0.55	0.55
16	Pinnacle West Capital	0.70	0.70
17	PPL Corp.	0.65	
18	Progress Energy	0.60	0.60
19	Public Serv. Enterprise	0.80	
20	Sempra Energy	0.80	

Utility Industry Historical Risk Premium

		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		Long-Term Government Bond Yield	20 year Maturity Bond Value	Gain/Loss	Interest	Bond Total Return	S&P Utility Index Return	Utility Equity Risk Premium Over Bond Returns	Utility Equity Risk Premium Over Bond Yields
1	1931	4.07%	1,000.00						
2	1932	3.15%	1,135.75	135.75	40.70	17.64%	-0.54%	-18.18%	-3.69%
3	1933	3.36%	969.60	-30.40	31.50	0.11%	-21.87%	-21.98%	-25.23%
4	1934	2.93%	1,064.73	64.73	33.60	9.83%	-20.41%	-30.24%	-23.34%
5	1935	2.76%	1,025.99	25.99	29.30	5.53%	76.63%	71.10%	73.87%
6	1936	2.55%	1,032.74	32.74	27.60	6.03%	20.69%	14.66%	18.14%
7	1937	2.73%	972.40	-27.60	25.50	-0.21%	-37.04%	-36.83%	-39.77%
8	1938	2.52%	1,032.83	32.83	27.30	6.01%	22.45%	16.44%	19.93%
9	1939	2.26%	1,041.65	41.65	25.20	6.68%	11.26%	4.58%	9.00%
10	1940	1.94%	1,052.84	52.84	22.60	7.54%	-17.15%	-24.69%	-19.09%
11	1941	2.04%	983.64	-16.36	19.40	0.30%	-31.57%	-31.87%	-33.61%
12	1942	2.46%	933.97	-66.03	20.40	-4.56%	15.39%	19.95%	12.93%
13	1943	2.48%	996.86	-3.14	24.60	2.15%	46.07%	43.92%	43.59%
14	1944	2.46%	1,003.14	3.14	24.80	2.79%	18.03%	15.24%	15.57%
15	1945	1.99%	1,077.23	77.23	24.60	10.18%	53.33%	43.15%	51.34%
16	1946	2.12%	978.90	-21.10	19.90	-0.12%	1.26%	1.38%	-0.86%
17	1947	2.43%	951.13	-48.87	21.20	-2.77%	-13.16%	-10.39%	-15.59%
18	1948	2.37%	1,009.51	9.51	24.30	3.38%	4.01%	0.63%	1.64%
19	1949	2.09%	1,045.58	45.58	23.70	6.93%	31.39%	24.46%	29.30%
20	1950	2.24%	975.93	-24.07	20.90	-0.32%	3.25%	3.57%	1.01%
21	1951	2.69%	930.75	-69.25	22.40	-4.69%	18.63%	23.32%	15.94%
22	1952	2.79%	984.75	-15.25	26.90	1.17%	19.25%	18.08%	16.46%
23	1953	2.74%	1,007.66	7.66	27.90	3.56%	7.85%	4.29%	5.11%
24	1954	2.72%	1,003.07	3.07	27.40	3.05%	24.72%	21.67%	22.00%
25	1955	2.95%	965.44	-34.56	27.20	-0.74%	11.26%	12.00%	8.31%
26	1956	3.45%	928.19	-71.81	29.50	-4.23%	5.06%	9.29%	1.61%
27	1957	3.23%	1,032.23	32.23	34.50	6.67%	6.36%	-0.31%	3.13%
28	1958	3.82%	918.01	-81.99	32.30	-4.97%	40.70%	45.67%	36.88%
29	1959	4.47%	914.65	-85.35	38.20	-4.71%	7.49%	12.20%	3.02%
30	1960	3.80%	1,093.27	93.27	44.70	13.80%	20.26%	6.46%	16.46%
31	1961	4.15%	952.75	-47.25	38.00	-0.92%	29.33%	30.25%	25.18%
32	1962	3.95%	1,027.48	27.48	41.50	6.90%	-2.44%	-9.34%	-6.39%
33	1963	4.17%	970.35	-29.65	39.50	0.99%	12.36%	11.37%	8.19%
34	1964	4.23%	991.96	-8.04	41.70	3.37%	15.91%	12.54%	11.68%
35	1965	4.50%	964.64	-35.36	42.30	0.69%	4.67%	3.98%	0.17%
36	1966	4.55%	993.48	-6.52	45.00	3.85%	-4.48%	-8.33%	-9.03%
37	1967	5.56%	879.01	-120.99	45.50	-7.55%	-0.63%	6.92%	-6.19%
38	1968	5.98%	951.38	-48.62	55.60	0.70%	10.32%	9.62%	4.34%
39	1969	6.87%	904.00	-96.00	59.80	-3.62%	-15.42%	-11.80%	-22.29%

40	1970	6.18%	1,043.38	43.38	68.70	11.21%	16.56%	5.35%	10.08%
41	1971	5.97%	1,059.09	59.09	64.80	12.39%	2.41%	-9.98%	-3.56%
42	1972	5.94%	997.69	-2.31	59.70	5.74%	8.15%	2.41%	2.16%
43	1973	7.26%	867.09	-132.91	59.90	-7.30%	-18.07%	-10.77%	-25.33%
44	1974	7.60%	965.33	-34.67	72.60	3.79%	-21.55%	-25.34%	-29.15%
45	1975	8.05%	955.63	-44.37	76.00	3.16%	44.49%	41.33%	36.44%
46	1976	7.21%	1,088.25	88.25	80.50	16.87%	31.81%	14.94%	24.60%
47	1977	8.03%	919.03	-80.97	72.10	-0.89%	8.64%	9.53%	0.61%
48	1978	8.98%	912.47	-87.53	80.30	-0.72%	-3.71%	-2.99%	-12.69%
49	1979	10.12%	902.99	-97.01	89.80	-0.72%	13.58%	14.30%	3.46%
50	1980	11.99%	859.23	-140.77	101.20	-3.96%	15.08%	19.04%	3.09%
51	1981	13.34%	906.45	-93.55	119.90	2.63%	11.74%	9.11%	-1.60%
52	1982	10.95%	1,192.38	192.38	133.40	32.58%	26.52%	-6.06%	15.57%
53	1983	11.97%	923.12	-76.88	109.50	3.26%	20.01%	16.75%	8.04%
54	1984	11.70%	1,020.70	20.70	119.70	14.04%	26.04%	12.00%	14.34%
55	1985	9.56%	1,189.27	189.27	117.00	30.63%	33.05%	2.42%	23.49%
56	1986	7.89%	1,166.63	166.63	95.60	26.22%	28.53%	2.31%	20.64%
57	1987	9.20%	881.17	-118.83	78.90	-3.99%	-2.92%	1.07%	-12.12%
58	1988	9.18%	1,001.82	1.82	92.00	9.38%	18.27%	8.89%	9.09%
59	1989	8.16%	1,099.75	99.75	91.80	19.16%	47.80%	28.64%	39.64%
60	1990	8.44%	973.17	-26.83	81.60	5.48%	-2.57%	-8.05%	-11.01%
61	1991	7.30%	1,118.94	118.94	84.40	20.33%	14.61%	-5.72%	7.31%
62	1992	7.26%	1,004.19	4.19	73.00	7.72%	8.10%	0.38%	0.84%
63	1993	6.54%	1,079.70	79.70	72.60	15.23%	14.41%	-0.82%	7.87%
64	1994	7.99%	856.40	-143.60	65.40	-7.82%	-7.94%	-0.12%	-15.93%
65	1995	6.03%	1,225.98	225.98	79.90	30.59%	42.15%	11.56%	36.12%
66	1996	6.73%	923.67	-76.33	60.30	-1.60%	3.14%	4.74%	-3.59%
67	1997	6.02%	1,081.92	81.92	67.30	14.92%	24.69%	9.77%	18.67%
68	1998	5.42%	1,072.71	72.71	60.20	13.29%	14.82%	1.53%	9.40%
69	1999	6.82%	848.41	-151.59	54.20	-9.74%	-8.85%	0.89%	-15.67%
70	2000	5.58%	1,148.30	148.30	68.20	21.65%	59.70%	38.05%	54.12%
71	2001	5.75%	979.95	-20.05	55.80	3.57%	-30.41%	-33.98%	-36.16%
72	2002	4.84%	1,115.77	115.77	57.50	17.33%	-30.04%	-47.37%	-34.88%
73	2003	5.11%	966.42	-33.58	48.40	1.48%	26.11%	24.63%	21.00%
74	2004	4.84%	1,034.35	34.35	51.10	8.54%	24.22%	15.68%	19.38%
75	2005	4.61%	1,029.84	29.84	48.40	7.82%	16.79%	8.97%	12.18%
76	2006	4.91%	962.06	-37.94	46.10	0.82%	20.95%	20.13%	16.04%
77	2007	4.50%	1,053.70	53.70	49.10	10.28%	19.36%	9.08%	14.86%
78	2008	3.03%	1,219.28	219.28	45.00	26.43%	-28.99%	-55.42%	-32.02%
79	2009	4.58%	798.39	-201.61	30.30	-17.13%	11.94%	29.07%	7.36%
80	2010	4.25%	1,044.16	44.16	45.80	9.00%	5.49%	-3.51%	1.24%
80	Mean							5.5%	5.7%

Exhibit RAM-4 Page 1 of 2
Integrated Electric Utilities
DCF Analysis Value Line Growth Rates

Attachment RAM-4
Page 1 of 2

Line No.	Company Name	(2) Current Dividend Yield	(3) Projected EPS Growth
1	ALLETE	4.58	1.00
2	Alliant Energy	4.26	7.00
3	Amer. Elec. Power	5.11	3.00
4	Ameren Corp.	5.48	2.50
5	Cleco Corp.	3.26	9.50
6	CMS Energy Corp.	4.32	10.00
7	DPL Inc.	5.08	7.00
8	DTE Energy	4.83	6.50
9	Duke Energy	5.47	5.00
10	Edison Int'l	3.39	1.00
11	Entergy Corp.	4.65	2.00
12	Exelon Corp.	5.07	1.50
13	FirstEnergy Corp.	5.92	3.00
14	G't Plains Energy	4.50	4.50
15	Hawaiian Elec.	4.97	11.50
16	IDACORP Inc.	3.16	5.50
17	NextEra Energy	4.04	5.00
18	NV Energy Inc.	3.37	6.50
19	OGE Energy	3.05	6.50
20	Pepco Holdings	5.69	0.50
21	PG&E Corp.	4.15	6.00
22	Pinnacle West Capital	4.83	6.00
23	PNM Resources	3.40	17.00
24	Portland General	4.51	3.00
25	Progress Energy	5.39	3.00
26	Southern Co.	4.97	5.00
27	TECO Energy	4.59	8.00
28	UniSource Energy	4.20	14.00
29	Westar Energy	4.93	8.50
30	Wisconsin Energy	3.50	9.50
31	Xcel Energy Inc.	4.30	5.50

Exhibit RAM-4 Page 2 of 2
Integrated Electric Utilities
DCF Analysis Value Line Growth Rates

Attachment RAM-4
Page 2 of 2

	(1)	(2)	(3)	(4)	(5)	(6)
Line No.	Company Name	Current Dividend Yield	Projected EPS Growth	% Expected Divid Yield	Cost of Equity	ROE
1	ALLETE	4.58	1.00	4.63	5.63	5.87
2	Alliant Energy	4.26	7.00	4.56	11.56	11.80
3	Amer. Elec. Power	5.11	3.00	5.26	8.26	8.54
4	Cleco Corp.	3.26	9.50	3.57	13.07	13.26
5	CMS Energy Corp.	4.32	10.00	4.75	14.75	15.00
6	DPL Inc.	5.08	7.00	5.44	12.44	12.72
7	DTE Energy	4.83	6.50	5.14	11.64	11.91
8	Duke Energy	5.47	5.00	5.74	10.74	11.05
9	Entergy Corp.	4.65	2.00	4.74	6.74	6.99
10	G't Plains Energy	4.50	4.50	4.70	9.20	9.45
11	Hawaiian Elec.	4.97	11.50	5.54	17.04	17.33
12	IDACORP Inc.	3.16	5.50	3.33	8.83	9.01
13	NextEra Energy	4.04	5.00	4.24	9.24	9.47
14	NV Energy Inc.	3.37	6.50	3.59	10.09	10.28
15	OGE Energy	3.05	6.50	3.25	9.75	9.92
16	Pepco Holdings	5.69	0.50	5.72	6.22	6.52
17	PG&E Corp.	4.15	6.00	4.40	10.40	10.63
18	Pinnacle West Capital	4.83	6.00	5.12	11.12	11.39
19	Portland General	4.51	3.00	4.65	7.65	7.89
20	Progress Energy	5.39	3.00	5.55	8.55	8.84
21	Southern Co.	4.97	5.00	5.22	10.22	10.49
22	TECO Energy	4.59	8.00	4.96	12.96	13.22
23	UniSource Energy	4.20	14.00	4.79	18.79	19.04
24	Westar Energy	4.93	8.50	5.35	13.85	14.13
25	Wisconsin Energy	3.50	9.50	3.83	13.33	13.53
26	Xcel Energy Inc.	4.30	5.50	4.54	10.04	10.28
28	AVERAGE	4.45	6.13	4.72	10.85	11.10

Notes:

Column 1, 2, 3: Value Line Investment Analyzer, 03/2011
Column 4 = Column 2 times (1 + Column 3/100)
Column 5 = Column 4 + Column 3
Column 6 = (Column 4 / 0.95) + Column 3

MEDIAN

10.6

Exhibit RAM-5 Page 1 of 2
Integrated Electric Utilities
DCF Analysis Analysts' Growth Forecasts

Line No.	(1) Company Name	(2) Current Dividend Yield	(3) Analysts' Growth Forecast
1	ALLETE	4.58	5.00
2	Alliant Energy	4.26	5.00
3	Amer. Elec. Power	5.11	4.00
4	Ameren Corp.	5.48	4.00
5	Cleco Corp.	3.26	7.00
6	CMS Energy Corp.	4.32	6.00
7	DPL Inc.	5.08	
8	DTE Energy	4.83	5.00
9	Duke Energy	5.47	4.25
10	Edison Int'l	3.39	5.00
11	Entergy Corp.	4.65	1.50
12	Exelon Corp.	5.07	
13	FirstEnergy Corp.	5.92	3.50
14	G't Plains Energy	4.50	9.00
15	Hawaiian Elec.	4.97	8.57
16	IDACORP Inc.	3.16	4.67
17	NextEra Energy	4.04	6.50
18	NV Energy Inc.	3.37	14.00
19	OGE Energy	3.05	5.50
20	Pepco Holdings	5.69	4.25
21	PG&E Corp.	4.15	7.67
22	Pinnacle West Capital	4.83	5.75
23	PNM Resources	3.40	15.00
24	Portland General	4.51	5.20
25	Progress Energy	5.39	4.67
26	Southern Co.	4.97	5.00
27	TECO Energy	4.59	5.33
28	UniSource Energy	4.20	5.00
29	Westar Energy	4.93	5.30
30	Wisconsin Energy	3.50	8.00
31	Xcel Energy Inc.	4.30	5.13

34 Notes:

Column 1, 2: Value Line Investment Analyzer, 03/2011

Column 3: Zacks long-term earnings growth forecast, 03/2011

Exhibit RAM-5 Page 2 of 2
Integrated Electric Utilities
DCF Analysis Analysts' Growth Forecasts

Line No.	(1) Company Name	(2) Current Dividend Yield	(3) Analysts' Growth Forecast	(4) % Expected Divid Yield	(5) Cost of Equity	(6) ROE
1	ALLETE	4.60	5.00	4.83	9.83	10.08
2	Alliant Energy	4.30	5.00	4.52	9.52	9.75
3	Amer. Elec. Power	5.10	4.00	5.30	9.30	9.58
4	Ameren Corp.	5.50	4.00	5.72	9.72	10.02
5	Cleco Corp.	3.30	7.00	3.53	10.53	10.72
6	CMS Energy Corp.	4.30	6.00	4.56	10.56	10.80
7	DTE Energy	4.80	5.00	5.04	10.04	10.31
8	Duke Energy	5.50	4.30	5.74	10.04	10.34
9	Edison Int'l	3.40	5.00	3.57	8.57	8.76
10	Entergy Corp.	4.70	1.50	4.77	6.27	6.52
11	FirstEnergy Corp.	5.90	3.50	6.11	9.61	9.93
12	G't Plains Energy	4.50	9.00	4.91	13.91	14.16
13	Hawaiian Elec.	5.00	8.60	5.43	14.03	14.32
14	IDACORP Inc.	3.20	4.70	3.35	8.05	8.23
15	NextEra Energy	4.00	6.50	4.26	10.76	10.98
16	NV Energy Inc.	3.40	14.00	3.88	17.88	18.08
17	OGE Energy	3.10	5.50	3.27	8.77	8.94
18	Pepco Holdings	5.70	4.30	5.95	10.25	10.56
19	PG&E Corp.	4.20	7.70	4.52	12.22	12.46
20	Pinnacle West Capital	4.80	5.80	5.08	10.88	11.15
21	PNM Resources	3.40	15.00	3.91	18.91	19.12
22	Portland General	4.50	5.20	4.73	9.93	10.18
23	Progress Energy	5.40	4.70	5.65	10.35	10.65
24	Southern Co.	5.00	5.00	5.25	10.25	10.53
25	TECO Energy	4.60	5.30	4.84	10.14	10.40
26	UniSource Energy	4.20	5.00	4.41	9.41	9.64
27	Westar Energy	4.90	5.30	5.16	10.46	10.73
28	Wisconsin Energy	3.50	8.00	3.78	11.78	11.98
29	Xcel Energy Inc.	4.30	5.10	4.52	9.62	9.86
31	AVERAGE	4.46	6.07	4.72	10.78	11.03

Notes:

Column 1, 2: Value Line Investment Analyzer, 09/2009

Column 3: Zacks long-term earnings growth forecast, 09/2009

Column 4 = Column 2 times (1 + Column 3/100)

Column 5 = Column 4 + Column 3

Column 6 = (Column 4 / 0.95) + Column 3

Note: No growth forecast available for DPL

Negative growth rates for Exelon.

S&P UTILITY INDEX ELECTRIC UTILITIES
DCF ANALYSIS: VALUE LINE GROWTH PROJECTIONS

Company	% Current Divid Yield	Proj EPS Growth
(1)	(2)	
1 Ameren Corp.	5.48	-2.50
2 CenterPoint Energy	5.02	3.00
3 CMS Energy Corp.	4.32	10.00
4 Consol. Edison	4.80	2.50
5 Dominion Resources	4.41	5.50
6 DTE Energy	4.83	6.50
7 Duke Energy	5.47	5.00
8 Edison Int'l	3.39	-1.00
9 Entergy Corp.	4.65	2.00
10 Exelon Corp.	5.07	-1.50
11 FirstEnergy Corp.	5.92	3.00
12 Integrys Energy	5.42	11.00
13 NextEra Energy	4.04	5.00
14 Pepco Holdings	5.69	0.50
15 PG&E Corp.	4.15	6.00
16 Pinnacle West Capital	4.83	6.00
17 PPL Corp.	5.44	4.00
18 Progress Energy	5.39	3.00
19 Public Serv. Enterprise	4.28	2.00
20 Sempra Energy	3.57	1.00
21 Southern Co.	4.97	5.00
22 TECO Energy	4.59	8.00
23 Wisconsin Energy	3.50	9.50
24 Xcel Energy Inc.	4.30	5.50

Notes:

Column 1, 2: Value Line Investment Analyzer, 3/2011

Negative growth rates for Ameren, Edison, Exelon and First Energy

S&P UTILITY INDEX ELECTRIC UTILITIES
DCF ANALYSIS: VALUE LINE GROWTH PROJECTIONS

Company	% Current Divid Yield	Proj EPS Growth	% Expected Divid Yield	Cost of Equity	ROE
	(1)	(2)	(3)	(4)	(5)
	(1)	(2)	(3)	(4)	(6)
1 CenterPoint Energy	5.02	3.00	5.17	8.17	8.44
2 CMS Energy Corp.	4.32	10.00	4.75	14.75	15.00
3 Consol. Edison	4.80	2.50	4.92	7.42	7.68
4 Dominion Resources	4.41	5.50	4.65	10.15	10.40
5 DTE Energy	4.83	6.50	5.14	11.64	11.91
6 Duke Energy	5.47	5.00	5.74	10.74	11.05
7 Entergy Corp.	4.65	2.00	4.74	6.74	6.99
8 Integrys Energy	5.42	11.00	6.02	17.02	17.33
9 NextEra Energy	4.04	5.00	4.24	9.24	9.47
10 Pepco Holdings	5.69	0.50	5.72	6.22	6.52
11 PG&E Corp.	4.15	6.00	4.40	10.40	10.63
12 Pinnacle West Capital	4.83	6.00	5.12	11.12	11.39
13 PPL Corp.	5.44	4.00	5.66	9.66	9.96
14 Progress Energy	5.39	3.00	5.55	8.55	8.84
15 Public Serv. Enterprise	4.28	2.00	4.37	6.37	6.60
16 Sempra Energy	3.57	1.00	3.61	4.61	4.80
17 Southern Co.	4.97	5.00	5.22	10.22	10.49
18 TECO Energy	4.59	8.00	4.96	12.96	13.22
19 Wisconsin Energy	3.50	9.50	3.83	13.33	13.53
20 Xcel Energy Inc.	4.30	5.50	4.54	10.04	10.28
22 AVERAGE	4.68	5.05	4.92	9.97	10.23
					10.50

24 Notes:

- Column 1, 2: Value Line Investment Analyzer, 3/2011
- Column 3 = Column 1 times (1 + Column 2/100)
- Column 4 = Column 3 + Column 2
- Column 5 = (Column 3 / 0.95) + Column 2
- Column 6 shows the ROE estimates for companies with
% regulated revenues > 50%

Negative growth rates for Ameren, Edison, Exelon and First Energy

**S&P UTILITY INDEX ELECTRIC UTILITIES
DCF ANALYSIS: ANALYSTS' GROWTH PROJECTIONS**

	Company	% Current Divid Yield (1)	Proj EPS Growth (2)
1	Ameren Corp.	5.48	4.00
2	CenterPoint Energy	5.02	5.50
3	CMS Energy Corp.	4.32	6.00
4	Consol. Edison	4.80	3.96
5	Dominion Resources	4.41	3.75
6	DTE Energy	4.83	5.00
7	Duke Energy	5.47	4.25
8	Edison Int'l	3.39	5.00
9	Entergy Corp.	4.65	1.50
10	Exelon Corp.	5.07	-2.50
11	FirstEnergy Corp.	5.92	3.50
12	Integrus Energy	5.42	10.37
13	NextEra Energy	4.04	6.50
14	Pepco Holdings	5.69	4.25
15	PG&E Corp.	4.15	7.67
16	Pinnacle West Capital	4.83	5.75
17	PPL Corp.	5.44	12.18
18	Progress Energy	5.39	4.67
19	Public Serv. Enterprise	4.28	0.50
20	Sempra Energy	3.57	7.00
21	Southern Co.	4.97	5.00
22	TECO Energy	4.59	5.33
23	Wisconsin Energy	3.50	8.00
24	Xcel Energy Inc.	4.30	5.13

Notes:

Column 1: Value Line Investment Analyzer, 3/2011
Column 2: Zacks Investment Research, 3/2011

Negative growth rates for Exelon

**S&P UTILITY INDEX ELECTRIC UTILITIES
DCF ANALYSIS: ANALYSTS' GROWTH PROJECTIONS**

	Company	% Current Divid Yield (1)	Proj EPS Growth (2)	% Expected Divid Yield (3)	Cost of Equity (4)	ROE (5)	ROE (6)
1	Ameren Corp.	5.48	4.00	5.70	9.70	10.00	10.00
2	CenterPoint Energy	5.02	5.50	5.30	10.80	11.07	
3	CMS Energy Corp.	4.32	6.00	4.58	10.58	10.82	10.82
4	Consol. Edison	4.80	3.96	4.99	8.95	9.21	9.21
5	Dominion Resources	4.41	3.75	4.58	8.33	8.57	
6	DTE Energy	4.83	5.00	5.07	10.07	10.34	10.34
7	Duke Energy	5.47	4.25	5.70	9.95	10.25	10.25
8	Edison Int'l	3.39	5.00	3.56	8.56	8.75	8.75
9	Entergy Corp.	4.65	1.50	4.72	6.22	6.47	6.47
10	FirstEnergy Corp.	5.92	3.50	6.13	9.63	9.95	9.95
11	Integrus Energy	5.42	10.37	5.98	16.35	16.67	
12	NextEra Energy	4.04	6.50	4.30	10.80	11.03	11.03
13	Pepco Holdings	5.69	4.25	5.93	10.18	10.49	10.49
14	PG&E Corp.	4.15	7.67	4.47	12.14	12.37	12.37
15	Pinnacle West Capital	4.83	5.75	5.11	10.86	11.13	11.13
16	PPL Corp.	5.44	12.18	6.10	18.28	18.60	
17	Progress Energy	5.39	4.67	5.64	10.31	10.61	10.61
18	Public Serv. Enterprise	4.28	0.50	4.30	4.80	5.03	
19	Sempra Energy	3.57	7.00	3.82	10.82	11.02	
20	Southern Co.	4.97	5.00	5.22	10.22	10.49	10.49
21	TECO Energy	4.59	5.33	4.83	10.16	10.42	10.42
22	Wisconsin Energy	3.50	8.00	3.78	11.78	11.98	11.98
23	Xcel Energy Inc.	4.30	5.13	4.52	9.65	9.89	9.89
	AVERAGE	4.72	5.43	4.97	10.40	10.66	10.25

Notes:

Column 1: Value Line Investment Analyzer, 3/2011

Column 2: Zacks Investment Research, 3/2011

Column 3 = Column 1 times (1 + Column 2/100)

Column 4 = Column 3 + Column 2

Column 5 = (Column 3 / 0.95) + Column 2

Column 6 shows the ROE estimates for companies with
% regulated revenues > 50%

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	
Standard Service Offer Pursuant to)	
Section 4928.143, Revised Code, in the	)	Case No. 11-3549-EL-SSO
Form of an Electric Security Plan,)	
Accounting Modifications and Tariffs for)	
Generation Service.)	
In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3550-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)	
In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3551-EL-UNC
Corporate Separation Plan.)	

DIRECT TESTIMONY OF

KENNETH J. JENNINGS

ON BEHALF OF

DUKE ENERGY OHIO, INC.

June 20, 2011

TABLE OF CONTENTS

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Attachment:

KJJ-1: FERC Docket ER10-1562-000, Order

I. INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Kenneth J. Jennings, and my business address is 139 East Fourth
3 Street, Cincinnati, Ohio 45202.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Duke Energy Commercial Enterprise, Inc., (DECE) as Director
6 of Market Policy & RTO Services. DECE provides various administrative and
7 other services to Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company)
8 and other affiliated companies of Duke Energy Corporation (Duke Energy).

9 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATION AND**
10 **PROFESSIONAL EXPERIENCE.**

11 A. I received an A.A.S. in Manufacturing Technology, and a B.S. in Manufacturing
12 from Northern Kentucky University in 1991 and 1993, respectively. I also
13 completed a Masters Degree in Business Administration from Thomas More
14 College in 2005. I have attended many seminars, workshops, and forums on
15 generation resource planning, generation unit performance management, and
16 other business and electric and gas utility related topics. Prior to joining Cinergy
17 Corp. (Cinergy), I was employed by Philips Services Corporation as a Project
18 Engineer and by Aurora Casket Company as a Process Engineer. I began working
19 for Cinergy in 1999 in the Engineering and Construction Group of Cinergy
20 Generation Resources, LLC. I have held positions such as Manager of Business
21 Analysis; Station Performance Engineer at Miami Fort Station in North Bend,
22 Ohio; Technical Analysis Engineer in the Business Development Support Group;
23 and Conditioned Based Maintenance Team Lead over thermal performance of all

1 Cincinnati Gas & Electric generation facilities in Cincinnati. I was promoted to
2 my current position in April of 2006.

3 **Q. PLEASE DESCRIBE YOUR DUTIES AS DIRECTOR OF MARKET**
4 **POLICY & RTO SERVICES.**

5 A. On behalf of Duke Energy Ohio, I am responsible for establishing and
6 maintaining a working relationship with PJM Interconnection, L.L.C., (PJM) and
7 stakeholders, in order to shape market policy and ensure compliance with market
8 rules in PJM for the 3,100 megawatts (MW) of gas-fired generation in PJM that is
9 owned and operated by Duke Energy Ohio.

10 I am also familiar with the Company's participation in the Midwest
11 Independent Transmission System Operator, Inc. (Midwest ISO).

12 Furthermore, I am the subject matter expert for Duke Energy with regard
13 to PJM. I actively participate in the PJM stakeholder process, where I am the
14 voting member for Duke Energy. I also follow the Federal Energy Regulatory
15 Commission (FERC) proceedings related to PJM activities and have actively
16 participated in settlements such as the PJM Reliability Pricing Model (RPM)
17 settlement at the FERC.

18 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC**
19 **UTILITIES COMMISSION OF OHIO?**

20 A. Yes. Earlier this year, I provided testimony in Case No. 10-2586-EL-SSO,
21 supporting Duke Energy Ohio's application for approval of a market rate offer.

22 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
23 **PROCEEDING?**

1 A. The purpose of my testimony is to discuss Duke Energy Ohio's realignment to
2 PJM, insofar as it concerns the proposed ESP. More specifically, I address the
3 following matters:

- 4 • The PJM and Duke Energy Ohio Out-of-Time Fixed Resource
5 Requirement (FRR) Plan (hereinafter referred to as the Transitional
6 FRR Plan) that was approved by the FERC, including the
7 correlation, if any, between the Transitional FRR Plan and Duke
8 Energy Ohio's proposal to implement its electric security plan
9 (ESP) in this proceeding;
- 10 • Duke Energy Ohio's election to become an FRR entity in PJM, for
11 after its Transitional FRR Plan, during the period beginning June
12 1, 2014, and ending May 31, 2016;
- 13 • The market monitor function under PJM; and,
- 14 • Duke Energy Ohio's proposal to ensure that competitive retail
15 electric service (CRES) providers that have opted out of Duke
16 Energy Ohio's Transitional FRR Plan will not be adversely
17 impacted by the proposed ESP.

18 **II. DISCUSSION**

19 **Q. DOES DUKE ENERGY OHIO BELONG TO A FERC-APPROVED
20 REGIONAL TRANSMISSION ORGANIZATION (RTO)?**

21 A. Yes. Currently Duke Energy Ohio is a transmission-owner in the Midwest ISO
22 and is a non-transmission owner in PJM. Both Midwest ISO and PJM are FERC-
approved RTOs. In 1997, PJM became the first fully functioning Independent

1 System Operator approved by the FERC. In 2002, PJM became the nation's first
2 fully functioning RTO.

3 On June 25, 2010, Duke Energy Ohio filed an application with the FERC,
4 (Docket ER10-1562-000), requesting permission to withdraw from the Midwest
5 ISO and to become a transmission-owning member of PJM. On October 21,
6 2010, the FERC approved, subject to minor conditions, Duke Energy Ohio's
7 withdrawal from Midwest ISO, and accepted the Company's FRR Integration
8 Plan, filed under FERC Docket ER10-2254-000. A copy of the FERC order is
9 attached as Exhibit KJJ-1. Duke Energy Ohio has already provided the Midwest
10 ISO with the required notice of its withdrawal and expects to be fully integrated
11 into PJM by January 1, 2012, to coincide with the effective date of the Company's
12 proposed ESP.

13 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY DUKE ENERGY OHIO'S**
14 **RTO REALIGNMENT TO PJM.**

15 **A.** The RTO realignment simply means that Duke Energy Ohio's transmission,
16 generation, and load will now be located in the PJM footprint instead of the
17 Midwest ISO. In Duke Energy Ohio's case, the realignment results in all of Duke
18 Energy Ohio's interest in its jointly owned, coal-fired generation being located in
19 PJM rather than split between Midwest ISO (Duke Energy Ohio's share) and PJM
20 (Joint Owners' share). The Midwest ISO will no longer have operational control
21 over Duke Energy Ohio's transmission, as that control will be transferred to PJM.
22 There will be no gap in RTO membership because the realignment and the switch

1 will be absolutely seamless. Duke Energy Ohio will remain in a FERC-approved
2 RTO throughout the entire ESP period.

3 **Q. PLEASE DESCRIBE HOW DUKE ENERGY OHIO WILL TRANSITION**
4 **INTO PJM FROM THE MIDWEST ISO.**

5 A. The FERC approved the first two steps of this realignment process – the
6 withdrawal and the Transitional FRR Plan. The Transitional FRR Plan is
7 necessary because PJM's Reliability Pricing Model (RPM) Base Residual
8 Auctions (BRA) for capacity have already occurred for the 2011-12, 2012-13, and
9 2013-14 delivery years. The calendar for PJM is the twelve months from June of
10 one year through May of the next year. Subsequently, another process is needed
11 to procure the capacity required by PJM for the Duke Energy Ohio Load Zone
12 capacity requirement during the delivery period. Prior to January 1, 2012, Duke
13 Energy Ohio will sign the PJM Reliability Assurance Agreement and the PJM
14 Transmission Owners Agreement. Duke Energy Ohio is already a signatory to the
15 PJM Operating Agreement.

16 In December of 2011, Duke Energy Ohio will submit its FRR Plan to PJM
17 for the transitional period, which will include all of the required unit-specific data
18 for capacity needed to match to the Duke Energy Ohio load for the transitional
19 period. Prior to the integration, as part of the annual FTR auction process, PJM
20 will administer a Special FTR Allocation, which will cover the period of time
21 between the implementation of the Duke Energy Ohio Load Zone and the next
22 annual auction revenue rights (ARR) allocation. PJM will accept FTR
23 nominations in October 2011 for FTRs effective January 1, 2012, through May

1 31, 2012. ARR will not be available for this partial-year, transitional period.
2 Allocated FTRs in the transitional allocation will be valued based on hourly
3 congestion component of Locational Marginal Price (LMP) from the day-ahead
4 market. Furthermore, allocated FTRs will shift with load, if load switches its
5 supply option.

6 **Q. PLEASE DESCRIBE DUKE ENERGY OHIO'S ROLE ONCE IT**
7 **REALIGNS WITH PJM.**

8 A. Duke Energy Ohio will be a transmission owner in PJM. Duke Energy Ohio, the
9 electric distribution company, will perform calculations that will support PJM's
10 billing of customers that reside within the Duke Energy Ohio Load Zone. These
11 calculations will include coincident-peak calculations, which support the
12 allocation of transmission charges. Another example would be the five
13 coincident-peak calculation, which supports the allocation of capacity costs.
14 Furthermore, Duke Energy Ohio, the electric distribution company, will continue
15 to perform transmission and distribution maintenance activities, including but not
16 limited to vegetation management, in respect of its transmission facilities.

17 **Q. DOES PJM HAVE AN INDEPENDENT MARKET MONITOR?**

18 A. Yes. PJM has an independent market monitor (IMM). PJM's IMM is Monitoring
19 Analytics, LLC (Monitoring Analytics). Monitoring Analytics was established in
20 2008 as a result of an uncontested settlement resolving issues among the
21 Organization of PJM States, in FERC Dockets EL07-56-000,-001,-002 EL07-58-
22 000, -001, 122 FERC 61,257 (March 21, 2008).

1 Monitoring Analytics functions, in part, to identify actual or potential
2 market design flaws that result in the ability of a utility to exercise market power.
3 More specifically, this independent entity monitors the competitiveness of PJM's
4 RTO market; investigates violations of market rules; addresses the conduct of
5 market participants exercising market power; and recommends specific actions to
6 PJM. Moreover, Monitoring Analytics may report its mitigation recommendations
7 to various federal and state governmental bodies, as appropriate, in order to
8 prevent the exercise of market power by the market participant going forward.

9 **Q. PLEASE BRIEFLY DESCRIBE DUKE ENERGY OHIO'S FERC-**
10 **APPROVED TRANSITIONAL FRR PLAN.**

11 **A.** Duke Energy Ohio, as the FERC has approved, will obtain firm capacity from
12 qualified capacity resources in an amount that would satisfy the criteria for an
13 FRR Alternative Capacity Plan, under Schedule 8.1 of the Reliability Assurance
14 Agreement and PJM's applicable rules and manuals for the entire Duke Energy
15 Zone. Load serving entities (LSEs) in the Duke Energy Load Zone were provided
16 the opportunity to choose to allow Duke Energy Ohio to procure capacity on their
17 behalf or to self-supply. For those LSEs that elect to self-supply, there were
18 three alternatives: (1) CRES providers were able to opt out of the Duke Energy
19 Ohio FRR Plan by submitting an opt-out notification to Duke Energy Ohio and
20 PJM and subsequently providing to PJM a resource plan composed of PJM-
21 approved capacity resources in a quantity adequate to cover their load and
22 pursuant to the Reliability Assurance Agreement; (2) a wholesale LSE was
23 permitted to enter into an independent Out-of-Time FRR Integration Plan

1 designed to last the twenty-nine months of the Duke Energy Ohio Transitional
2 FRR Plan; and (3) a wholesale LSE was also able to enter into its own FRR Plan
3 with PJM and commit to the FRR option for supply for the next five years, the
4 first of which will include the 2011-12 delivery year even though it will be for
5 only five months of that term.

6 For remaining load, Duke Energy Ohio is in the process of procuring firm
7 capacity in an amount to satisfy the requirement of: (1) Duke Energy Ohio's
8 default retail load; and (2) alternative retail electric suppliers serving switched
9 load (that choose not to self supply).

10 **Q. HOW WILL DUKE ENERGY OHIO PROCURE CAPACITY AS AN FRR**
11 **ENTITY IN PJM?**

12 A. As an FRR entity, Duke Energy Ohio will self-supply its capacity requirements
13 and, to do so, it may use its own resources, including generation, as well as
14 demand response and market purchases. The manner in which the Company self-
15 supplies capacity as an FRR entity is the same, whether during the transitional
16 period or thereafter.

17 **Q. PLEASE EXPLAIN WHAT BEING AN FRR ENTITY MEANS FOR DUKE**
18 **ENERGY OHIO AND ITS CUSTOMERS.**

19 A. As an FRR entity, Duke Energy Ohio has accepted the PJM capacity supply
20 obligations for all Duke Energy Ohio electric distribution customers and PJM will
21 not procure capacity on behalf of these customers. In light of the proposed ESP,
22 as an FRR entity, Duke Energy Ohio is able to manage capacity requirements
23 more effectively given the uncertainty around environmental compliance and

1 retirement decisions. Furthermore, as an FRR entity, the capacity requirement
2 tends to be less than PJM's RTO since PJM typically procures something greater
3 than installed reserve margin plus 1 percent. Duke Energy Ohio's capacity
4 requirement will merely include the typical 15 percent reserves.

5 In contrast, as a non-FRR entity, Duke Energy Ohio would procure
6 capacity, and the higher, required reserve margin, through PJM's RPM. In that
7 circumstance, there is no opportunity for a departure from the market price for
8 capacity, which all customers would pay.

9 **Q. WILL DUKE ENERGY OHIO'S PROPOSED ESP IMPACT ITS**
10 **TRANSITIONAL FRR PLAN OR ITS BECOMING AN FRR ENTITY IN**
11 **PJM?**

12 A. No. The Transitional FRR Plan is merely a PJM capacity compliance
13 requirement since Duke Energy Ohio was not in PJM at the time of the RPM
14 BRA relevant to the period between January 1, 2012, and May 31, 2014. Duke
15 Energy Ohio will match capacity supply to the capacity requirement defined by
16 PJM.

17 **Q. WILL CRES PROVIDERS THAT HAVE OPTED OUT OF DUKE**
18 **ENERGY OHIO'S TRANSITIONAL FRR PLAN BE IMPACTED BY**
19 **DUKE ENERGY OHIO'S ESP PROPOSAL?**

20 A. CRES providers that opted out of Duke Energy Ohio's Transitional FRR Plan will
21 not be impacted by the proposed ESP. The only term for which CRES providers
22 have opted out of the Company's Transitional FRR Plan was for the partial year
23 from January 1, 2012, through May 31, 2012. Approximately 800 MW of

1 switched load suppliers opted out of the plan for that period. The Transitional
2 FRR Plan states that all wholesale load within the Duke Energy Ohio transmission
3 boundaries that did not opt out or enter into its own independent FRR plan will
4 pay to PJM the FRR Reliability Charge, which is currently defined at a price
5 equal to the RPM price. For opt-out entities, PJM will net the amount of the load
6 against the quantity of opt-out resources, and the CRES provider would then
7 subsequently either pay or be paid the RPM price depending on the sign
8 convention of the netting. Under the terms of the proposed ESP, Duke Energy
9 Ohio will assume the capacity requirement for all retail electric distribution
10 customers, and, therefore, the capacity obligation of the CRES supplier that has
11 opted out becomes zero. As a result, the CRES supplier will simply be paid the
12 RPM price for the capacity that the opted-out CRES supplier has committed.
13 Thus, the CRES provider that opted out is ultimately kept whole to the market.

14 **Q. PLEASE EXPLAIN HOW DUKE ENERGY OHIO WILL ENSURE THAT**
15 **ITS SSO CUSTOMERS ARE NOT PAYING TWICE FOR THE SAME**
16 **CAPACITY.**

17 **A.** As stated in the previous exchange, by assuming the capacity obligation of all
18 distribution customers within the Duke Energy Ohio footprint, Duke Energy Ohio
19 assumes the resultant financial obligation for all customers, including switched
20 customers served by CRES providers. This is accomplished simply by submitting
21 to PJM a "Billing Line Item Transfer." This essentially transfers the
22 responsibility of a billing charge from one party to another. For opt-out load, the
23 CRES provider will be responsible for reconciling the credit it receives from PJM

1 for the excess capacity that it will possess in the FRR opt out netting process and,
2 as appropriate, remitting any sums due customers.

3 **Q. ARE LSEs THAT SERVE WHOLESALE LOAD IN OHIO INCLUDED IN**
4 **DUKE ENERGY OHIO'S TRANSITIONAL FRR PLAN AND ARE THEY**
5 **ADVERSELY AFFECTED BY THE PROPOSED ESP?**

6 A. For the transition period covered by the Transitional FRR Plan, wholesale LSEs
7 were provided the option to be a part of the Transitional FRR Plan or enter into
8 their own FRR plan with PJM. Nearly all wholesale LSEs elected to enter into
9 their own FRR plan with PJM and, for the first period beyond the Transitional
10 FRR Plan, all elected to be an RPM market participant. Beyond May 31, 2014,
11 no wholesale LSE will be included in a Duke Energy Ohio FRR plan, and all must
12 therefore either be an RPM market participant or an independent FRR entity in
13 PJM. For the interim period, wholesale LSEs that elected to be a part of Duke
14 Energy Ohio's Transitional FRR Plan will retain their capacity obligation with
15 PJM and the net of their capacity position will be a charge at the RPM price,
16 which will be paid to PJM and ultimately credited back to Duke Energy Ohio in
17 the PJM settlement process. That said, neither in the short term nor in the long
18 term will any wholesale LSE be affected by the proposed ESP.

III. CONCLUSION

19 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

20 A. Yes.

133 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Duke Energy Ohio, Inc. and
Duke Energy Kentucky, Inc.

Docket Nos. ER10-1562-000
ER10-2254-000

ORDER ADDRESSING RTO REALIGNMENT REQUEST

(Issued October 21, 2010)

1. On June 25, 2010, Duke Energy Ohio, Inc. (Duke Ohio) and Duke Energy Kentucky, Inc. (Duke Kentucky) (collectively, Duke) submitted a filing in Docket No. ER10-1562-000 as the first step of their proposed move from Midwest Independent Transmission System Operator, Inc. (Midwest ISO) to PJM Interconnection, L.L.C. (PJM). Duke Ohio and Duke Kentucky request authorization to depart Midwest ISO and join PJM effective January 1, 2012 (Regional Transmission Organization (RTO) Realignment), and to participate in PJM's Reliability Pricing Model auctions prior to their move.
2. On August 16, 2010, Duke submitted a filing in Docket No. ER10-2254-000 as the second step of its proposed move from Midwest ISO to PJM. In this filing, Duke submitted a Fixed Resource Requirement Integration Plan (FRR Integration Plan), which details its proposal to meet PJM resource adequacy requirements from the date of transmission system integration, January 1, 2012, up to the date of full participation in PJM's capacity market, June 1, 2014.
3. For the reasons discussed below, we authorize Duke to terminate its existing obligations to the Midwest ISO, subject to several conditions. We also accept Duke's proposed FRR Integration Plan and requested waivers, subject to conditions, as discussed below.

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I. Background

4. Three subsidiaries of Duke Energy Corporation are currently transmission owning members of Midwest ISO: Duke Ohio, Duke Kentucky, and Duke Energy Indiana, Inc. (Duke Indiana).¹ The Duke Ohio transmission system consists of approximately 403 circuit miles of 345 kV transmission lines and 724 circuit miles of 138 kV transmission lines. It interconnects with the transmission systems of American Electric Power Service Corporation (AEP), Dayton Power & Light Company (Dayton Power), East Kentucky Power Cooperative, Ohio Valley Electric Corporation, Louisville Gas and Electric Company, and Duke Indiana. (Of these, only Duke Indiana is a member of Midwest ISO.) The Duke Ohio transmission system connects to over 5,000 MW of installed commercial generation capacity, about half of which is owned by Duke Ohio. In addition, Duke Ohio co-owns 1,410 MW of capacity that is associated with jointly-owned units operated by PJM members.

5. Duke Kentucky owns three generation assets with a total capacity of 1,077 MW.² These assets are interconnected to Duke Ohio's transmission system and would, therefore, move with Duke Ohio to PJM even if Duke Kentucky did not. Duke Kentucky owns and operates a 69 kV distribution and transmission system to serve its retail load, and owns transmission facilities consisting of eighteen 138 kV "high side" connections including breakers and switches. Duke Kentucky's transmission system is not interconnected to any Midwest ISO utility other than Duke Ohio, so Duke Kentucky would have no direct interconnection to Midwest ISO if Duke Ohio moved to PJM but Duke Kentucky stayed in Midwest ISO.

A. RTO Realignment Request (Docket No. ER10-1562-000)

6. Duke Ohio and Duke Kentucky propose to withdraw operational control of their transmission facilities from Midwest ISO and integrate their transmission facilities into PJM on January 1, 2012, the date that Duke Ohio's current Ohio rate plan expires.³ The

¹ These three companies emerged following the 2005 merger between Duke Energy Corporation and Cinergy Corporation. *See Duke Energy Corp.*, 113 FERC ¶ 61,297 (2005).

² One of these units is co-owned with PJM member, Dayton Power.

³ Duke states that December 31, 2011 is the earliest date permitted for withdrawal from the Midwest ISO consistent with the notice provisions of the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator (Midwest ISO TO Agreement).

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move will trigger the need for generation and load connected to the Duke Ohio and Duke Kentucky transmission systems to realign their operations from Midwest ISO to PJM. Complete integration into the Reliability Pricing Model process cannot occur on January 1, 2012, however, because the Base Residual Auctions for the 2011-2012, 2012-2013, and 2013-2014 Delivery Years already have occurred. Duke therefore seeks to integrate the Duke Energy Zone load into PJM's Reliability Pricing Model auctions process for the 2014-2015 Delivery Year, which means that the Duke Energy Zone load needs to be committed into the May 2011 Base Residual Auction before February 1, 2011.

7. Duke also seeks authorization for all load and generation in the Duke Ohio and Duke Kentucky footprints to participate in the 2011 Base Residual Auctions for the 2014-2015 Delivery Year.

8. Duke requests that the Commission issue an order by November 1, 2010 that: (1) determines that the proposed RTO Realignment meets the standard for withdrawal from an RTO (subject to future filings); and (2) approves load and resources' participation in the combined Duke Ohio/Duke Kentucky footprint in the spring 2011 PJM Reliability Pricing Model auctions, which will result in commitments for the delivery year commencing June 1, 2014. Duke also submitted the Agreement to Implement Expansion of PJM Region for Duke Energy Ohio and Duke Energy Kentucky, executed on June 11, 2010 (Integration Agreement), which sets forth the technical implementation plan for integration into PJM. Duke states that Duke Indiana will remain a transmission owning member of Midwest ISO.

9. Duke states that it does not address the following issues in the instant filing: (1) the design for procuring capacity that can be used by load within the Duke Ohio and Duke Kentucky footprints to satisfy PJM resource adequacy requirements in the period from January 1, 2012 through May 31, 2014; (2) the calculation of Midwest ISO exit fees and any issues regarding pass-through of exit fees; and (3) the rates for transmission service for the zone that will be formed by Duke Ohio and Duke Kentucky within PJM (the Duke Energy Zone), including recovery of transmission expansion costs and any so-called hold harmless issues. Duke states that it does not address these issues at this time because: (1) it is focused on the initial approvals that are required at this time to meet the implementation schedule; and (2) additional time to consult with stakeholders and to refine proposals with respect to other issues may help to reduce controversy.

B. Duke's Proposed FRR Integration Plan (ER10-2254-000)

10. Duke Ohio and Duke Kentucky also propose an FRR Integration Plan, which they describe as the second of the series of filings required to complete the proposed RTO Realignment. The FRR Integration Plan concerns the process by which Duke Ohio and Duke Kentucky propose to satisfy their zonal capacity procurement commitments and obligations under the Reliability Assurance Agreement Among Load-Serving Entities in

Docket Nos. ER10-1562-000 and ER10-2254-000

the PJM Region (Reliability Assurance Agreement),⁴ and under Attachment DD of the PJM open access transmission tariff (OATT).

11. The FRR Integration Plan addresses Duke Ohio and Duke Kentucky's obligations to procure capacity for all load in the proposed Duke Energy Zone from the period between January 1, 2012 through May 31, 2014. Duke requests approval for the aspects of the FRR Integration Plan that vary from PJM's ordinary FRR process, specifically the Fixed Resource Requirement Alternative contemplated by Schedule 8.1 of the Reliability Assurance Agreement. As detailed below, Duke also requests waivers of six specific provisions of the Reliability Assurance Agreement.

II. Notice of Filings and Responsive Pleadings

12. Notice of Duke's June 25, 2010 filing (June 25 Filing) was published in the *Federal Register*, 75 Fed. Reg. 39,226 (2010), with interventions and protests due on or before July 26, 2010. Notices of intervention and timely motions to intervene and comments or protests, and motions to intervene out-of-time, were submitted by the entities listed in Appendix A to this Order. Duke, FirstEnergy, Midwest ISO, PJM, and Midwest ISO TOs submitted answers.

13. Notice of Duke's August 16 Filing was published in the *Federal Register*, 75 Fed. Reg. 51,990 (2010), with interventions and protests due on or before September 7, 2010. Notices of intervention and timely motions to intervene, comments and protests, and motions to intervene out-of-time, were submitted by the entities listed in Appendix B to this order. Duke, Dominion Resources, and the Ohio Consumers' Counsel submitted answers.

III. Discussion

14. As discussed in detail below, the Commission continues to find that a utility may exit an RTO when it satisfies three requirements: (1) the withdrawal satisfies the terms of the applicant's contractual obligations as they relate to RTO withdrawal; (2) the

⁴ PJM Reliability Assurance Agreement, Rate Schedule FERC No. 44. The PJM Reliability Assurance Agreement is a PJM agreement intended to ensure that adequate capacity resources will be planned and made available to provide reliable service to loads within the PJM Region, to assist other parties during emergencies, and to coordinate planning of such resources.

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replacement arrangement complies with Order No. 888⁵ and Order No. 890⁶ and the standard of review under those orders for proposed tariff provisions that differ from the *pro forma* OATT; and (3) the replacement arrangements are just, reasonable and not unduly discriminatory.

15. In its initial filing in Docket No. ER10-1562-000, Duke describes how it has satisfied or plans to satisfy the requirements for withdrawal from Midwest ISO. Duke also seeks approval to participate in PJM's Reliability Pricing Model auctions prior to its move. As the Commission has previously acknowledged, there are a number of steps involved in proceeding with an orderly withdrawal from an RTO.⁷ Accordingly, we will address and provide guidance herein on the preliminary matters presented by Duke's RTO Realignment request. We find, as detailed below, that the RTO Realignment Proposal has satisfied, or commits to satisfy, Duke's contractual arrangements regarding withdrawal from Midwest ISO, and we will accept it subject to the outcome of future proceedings. Additionally, due to the forward nature of the Reliability Pricing Model process, and consistent with our actions in *FirstEnergy*⁸ and *Duquesne*,⁹ we will grant approval for Duke to participate in PJM's May 2011 Base Residual Auction for the 2014-

⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁷ See *American Transmission Systems, Inc.*, 129 FERC ¶ 61,249 at P 29 (2009) (*FirstEnergy*), *order on reh'g*, 130 FERC ¶ 61,171 (2010); see also *Duquesne Light Co.*, 122 FERC ¶ 61,039 at P 29-30 (*Duquesne*), *order on reh'g*, 124 FERC ¶ 61,219 (2008).

⁸ *First Energy*, 129 FERC ¶ 61,249.

⁹ *Duquesne*, 122 FERC ¶ 61,039.

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2015 Delivery Year. Finally, we will accept Duke's FRR Integration Plan, subject to a compliance filing.

16. Outside of these preliminary findings, we cannot make any final determinations regarding Duke's right to withdraw from the Midwest ISO. Nor can we determine, at this time, whether, or to what extent, applicant's anticipated arrangements comply, or will comply, with the Commission's *pro forma* OATT or the standard of review applicable to deviations from the *pro forma* OATT. Similarly, we cannot reach any final determinations regarding whether Duke's proposed replacement arrangements are just, reasonable and not unduly discriminatory. Additionally, while we address below certain concerns raised by intervenors, we reserve other issues for resolution in future proceedings regarding Duke's proposed RTO Realignment. With the preliminary guidance we provide in this order, Duke should have the information it will need to decide its future plans.

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, given the filing parties' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay, we grant the unopposed late-filed interventions and accept the out-of-time motions to intervene and comments.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by Duke, FirstEnergy, Midwest ISO, PJM, Midwest ISO TOs, Dominion Resources and the Ohio Consumers' Counsel, because they have provided information that assisted us in our decision-making process.

B. Standard of Review

1. Duke's Filing

19. Duke states that the Commission has found that there are three requirements that must be met for an RTO withdrawal request to be approved. First, the withdrawal must satisfy the terms of the applicant's contractual obligations as they relate to RTO withdrawal. Second, the replacement arrangement must comply with Order No. 888 and Order No. 890 and the standard of review under those orders for proposed tariff provisions that differ from the *pro forma* OATT. Third, the replacement arrangements must be just, reasonable and not unduly discriminatory.

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2. Protests and Comments

20. Midwest ISO acknowledges that the Commission has in the past relied on the three-prong test mentioned above for evaluating RTO withdrawals. It urges the Commission, however, to take a closer look at the effect such moves have on the incumbent RTO and the Commission's RTO policy. In particular, Midwest ISO suggests either broadening the third prong of the test to expressly include review of adverse effects on the incumbent RTO or developing a separate prong for inter-RTO migrations.¹⁰ The objective, Midwest ISO argues, is to ensure that when transmission-owning utilities swap one RTO for another, the choice is made for reasons that are consistent with the public interest, and that do not undermine the Commission's functional unbundling and RTO policies.

21. Midwest ISO contends that, since there is no prior state review (at least in Ohio) of retail rate impacts, the Commission should consider whether there are any benefits to Duke's retail customers and whether those benefits, if they exist, outweigh the harm to other market participants and the incumbent RTO's energy market operations.¹¹ Midwest ISO argues that the RTO Realignment: (1) will not provide any market efficiency benefit to ratepayers because the market operations of Midwest ISO and PJM are so similar as to constitute a joint and common market; (2) will not provide any transmission-related benefits because the two RTOs are compliant RTOs and both deliver commensurate Order No. 2000¹² benefits; and (3) will not create any electrical topology-related benefits

¹⁰ While acknowledging that the Commission has applied this three-prong test to other inter-RTO withdrawal requests, Midwest ISO notes that the Commission first developed this test in the context of Louisville Gas and Electric Company's request to withdraw from Midwest ISO to operate as a stand-alone utility outside the footprint of any RTO, as opposed to an inter-RTO transfer such as the instant case. Midwest ISO July 26 Comments, Docket No. ER10-1562-000, at 12 (filed July 26, 2010) (citing *Louisville Gas & Electric Co.*, 114 FERC ¶ 61,282 (2006) (*LG&E*); *order on reh'g*, 116 FERC ¶ 61,020 (2006) (*LG&E Rehearing Order*)) (Midwest ISO July 26 Comments).

¹¹ Midwest ISO notes the Supreme Court's finding that, when a state authority cannot practicably regulate a given area, the federal authority governs. Midwest ISO July 26 Comments at 27 (citing *Federal Power Comm'n v. Louisiana Power & Light Co.*, 406 U.S. 621 (1972)).

¹² *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092

(continued...)

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to consumers because the elimination of regional through-and-out rates and the joint and common market initiative have largely removed economic barriers between the two RTOs by assuring the most efficient management of congestion.

22. The Indiana Commission argues that, at a minimum, a utility must state some benefit of its decision to switch RTOs. The Indiana Commission notes that in prior withdrawal applications, the withdrawing transmission owner explained its decision to leave.¹³ Those explanations, according to the Indiana Commission, are in sharp contrast to Duke's filing, which contains no statement of expected benefits and does not state any reason for the proposed transfer of Duke to PJM. The Indiana Commission argues that Duke's proposal is contrary to the Commission's purpose and policy of encouraging greater interconnectedness and larger market efficiencies.

23. The Indiana Commission notes that public utilities have been granted significant rights and benefits, including the right to have the opportunity to make a reasonable rate of return on their investment. In return, according to the Indiana Commission, public utilities should act in the public interest, and it states that the regulators of public utilities bear the responsibility to require utilities to make some showing that their actions are in the public interest. The Indiana Commission argues that with regard to RTOs, Congress has authorized the Commission to "make such modifications thereof as in its judgment will promote the public interest."¹⁴ Contending that transfers of utilities between RTOs with no stated purpose or benefit do not comport with this standard, the Indiana Commission recommends that the Commission apply a public interest standard to ensure that utilities demonstrate that there are net benefits to the utility's customers and to the wholesale markets generally. Midwest ISO agrees, arguing that an applicant seeking to switch RTOs should be required to demonstrate some public interest benefit accruing from the move. Specifically, Midwest ISO argues that there should be a public benefit commensurate with the derogation of Order No. 2000 objectives and the harm inflicted on the remaining members of the incumbent RTO.

(2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

¹³ Indiana Commission July 26 Comments, Docket No. ER10-1562-000, at 4 (citing *LG&E*, 114 FERC ¶ 61,282 at P 12-14; *Duquesne Light Co.*, 122 FERC ¶ 61,039, at P 10-15 (2008) *Duquesne*; and *FirstEnergy Service Co. v. PJM Interconnection*, 129 FERC ¶ 61,249 at P 17-19 (2009) (*FirstEnergy*)).

¹⁴ *Id.* at 5 (quoting 16 U.S.C. § 824a(a) (2006)).

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9

24. Midwest ISO notes that the Commission has recently reiterated its view that membership stability is an important component of the “scope and configuration” element of Order No. 2000. In 2008, Midwest ISO submitted a proposal that would have, among other things, allowed entities to participate in the Midwest ISO energy markets without having to surrender functional control of their transmission assets. According to Midwest ISO, the Commission found the proposal unjust and unreasonable due to the potential adverse impact on Midwest ISO’s ability to perform regional transmission operations and the corresponding benefits that accrue to customers.¹⁵ After noting that aspects of the proposal might encourage signatories to terminate their participation in the RTO, Midwest ISO states that the Commission concluded that departures would adversely affect Midwest ISO’s scope and configuration under Order No. 2000 and its ability to perform regional transmission obligations.¹⁶

25. The Indiana Utility Consumer Counselor argues that the cumulative effect of such RTO moves could raise increasing challenges as to the appropriateness of the scope and configuration of the two RTOs involved. It states that the Commission should look seriously into the tension between the voluntary nature of RTO membership and the need for stability and independence of these organizations. The Indiana Utility Consumer Counselor further states that it is concerned about the negative effects on consumers of a potential “race to the bottom” as transmission owners attempt to play the RTOs against one another. According to the Indiana Utility Consumer Counselor, the Commission must consider these factors, and not just the impact on the particular utility or its customers, to ensure that operations by regulated utilities are to be just, reasonable, and not unduly discriminatory or preferential.

26. The Ohio Commission asks the Commission to address the potential long-term consequences that come with frequent changing of RTOs and how those changes affect the planning process and reliability. It notes that various load-serving entities not affiliated with Duke plan the construction of generation facilities based on their RTO membership and the deliverability of generation to their load. Ambiguity in the timing of when transmission providers will choose to change RTOs, the Ohio Commission argues, creates further uncertainty. The Ohio Commission also argues that customers’ best interests are not served by allowing casual RTO migration based on a determination that one RTO may be more advantageous and/or more lucrative than another. Accordingly, the Ohio Commission asks the Commission to take immediate measures to enhance

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,139, at P 1 (2009).

¹⁶ *Id.* P 63.

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stability and predictability to mitigate RTO shopping. In the long term, it asks the Commission to initiate a comprehensive rulemaking to develop standards for RTO migration and to establish rules limiting companies' ability to change RTOs.

27. The Indiana Commission argues that only the Commission can safeguard wholesale markets' integrity against actions by transitory utility managements that could imperil reliability and efficient operations, and could result in discriminatory conduct. Allowing utility transfers that do not meet a public interest standard could compromise the RTOs' effectiveness and integrity, the Indiana Commission contends, as members would be allowed to leave with no regard for the ramifications for the wholesale markets. The Indiana Commission asserts that adverse consequences for the wholesale market will have adverse implications for retail markets, regardless of whether those retail markets are traditionally regulated like Indiana and Kentucky or include states that have undertaken efforts to promote retail competition. The Indiana Commission states that, due to the action Duke proposes, many other market participants will experience detrimental effects with no offsetting benefits.

28. Midwest ISO contends that Duke's true motivating force is economic gain for generation. It estimates that Duke's generation capacity could earn over \$350 million annually in capacity payments based on prevailing and projected Reliability Pricing Model auction prices in PJM. While Midwest ISO states that it does not disparage the profit motive, it argues that the just and reasonable standard requires the Commission to balance the corporate economic interests of a utility against the actual or potential harm to the operation of the incumbent RTO's energy and operating reserves markets.

29. Rather than allowing utilities to move from one RTO to another to take advantage of temporary market flaws, the Indiana Commission contends that the market flaws should be remedied. The Indiana Commission does not know of any market structure impediments to Duke's ability to sell into the PJM's Reliability Pricing Model auctions as members of Midwest ISO, but if such impediments exist, the Indiana Commission recommends rectifying those market flaws. Similarly, the Indiana Utility Consumer Counselor states that it regrets Duke has made a strategic business determination to change RTOs instead of continuing their full participation within Midwest ISO to resolve market issues for all.

30. The combined actions of FirstEnergy and Duke, Midwest ISO argues, suggest that destabilizing factors exist and will continue to erode the eastern border of Midwest ISO. Even without actual withdrawal, Midwest ISO points out that the possibility of a shifting seam has caused both current and potential members to express the concern that if they do join, or continue their membership, they may incur withdrawal obligations as they lose their transmission connections to Midwest ISO when neighbors withdraw. Midwest ISO therefore argues that, while the choice to join an RTO may be voluntary, "[m]ovement between RTOs should not be based on perceived economic advantage flowing to the

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applicants' generation interests, particularly when those advantages may be temporal rather than structural."¹⁷ Midwest ISO requests that the Commission expand its analysis to whether all of the elements contained in the filed arrangements meet the principles of Order No. 2000 and are just and reasonable under section 205 of the Federal Power Act (FPA). It argues that Duke has not made this showing, and thus its application should not be granted pending a demonstration that the proposed move: (1) will not degrade the scope and configuration of Midwest ISO; and (2) will produce measurable benefits to the transmission grid or wholesale markets.

3. Answers and Additional Pleadings

31. Duke opposes Midwest ISO's and the Indiana Commission's requests that the Commission apply a public interest standard to review Duke's filing. Duke states that the public interest standard is applied by statute to mergers and acquisitions under section 203 of the FPA.¹⁸ It contends that the Commission has no authority under section 203 to bar transmission owners from withdrawing from RTOs,¹⁹ so it surely also lacks authority to use the section 203 statutory standard for that purpose. Duke also disagrees with Midwest ISO's suggestion that the Commission can conduct a public interest analysis in the course of determining whether replacement arrangements are just and reasonable. Duke asserts that FPA section 205 does not provide for a public interest test, and Midwest ISO cites no precedent to support bootstrapping the standard of review under an inapplicable statutory provision, such as section 203, into another statutory provision.

32. Duke argues that, contrary to Midwest ISO's assertions, the policies of Order No. 2000 are not applicable to individual RTO withdrawal requests where the withdrawing entity is not seeking to establish, or to operate as, a separate RTO. It asserts that the orders that Midwest ISO cites to support its request for the Commission to apply Order No. 2000 relate to the formation of RTOs and to the need for RTO agreements to have a withdrawal provision that requires Commission review of withdrawals. Duke argues that once the Commission accepts an RTO agreement as consistent with the policies of Order No. 2000 (as it did with the Midwest ISO TO Agreement), the Commission then evaluates withdrawal requests against the standards contained in the Commission-approved RTO agreement. Duke states that if Midwest ISO believes that

¹⁷ Midwest ISO July 26 Comments at 21.

¹⁸ Duke August 10 Answer at 17-18 (citing 16 U.S.C. § 824b (2006)).

¹⁹ Duke August 10 Answer, Docket No. ER10-1562-000, at 17 (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 12 (D.C. Cir. 2002); *Atlantic City Elec. Co. v. FERC*, 329 F.3d 856, 859 (D.C. Cir. 2003)).

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the Midwest ISO TO Agreement is no longer just and reasonable, it can propose changes under section 206 of the FPA.²⁰ Absent such a change, Duke argues that Midwest ISO is bound by the contract it executed and is barred from collaterally attacking the withdrawal procedure that it agreed to and that the Commission approved.

33. Duke further argues that, even if the Commission applied the scope and configuration analysis of Order No. 2000 in this case (which Duke believes it should not), there are no actual scope and configuration concerns raised by its proposed withdrawal from Midwest ISO. Duke asserts that even if Duke and FirstEnergy withdraw, Midwest ISO's scope will be significantly larger than at its inception. Duke states that when the Commission found in 2001 that Midwest ISO had adequate scope and configuration, Midwest ISO had a generation capacity of about 59,000 MW and a peak load of 53,000 MW.²¹ Duke states that after the noted withdrawals, Midwest ISO would still have a generating capacity of about 128,400 MW, and that Midwest ISO's post-withdrawal peak load of about 78,828 MW would still be the second largest of any RTO. Duke argues, therefore, that there is no scope issue raised by its move to PJM.

34. According to Duke, configuration issues will continue to be addressed by the elimination of the regional through-and-out rate between Midwest ISO and PJM, as well as the Midwest ISO/PJM Joint Operating Agreement. Duke adds that its transition from Midwest ISO to PJM neither creates nor exacerbates any seams issues between the two RTOs. If anything, according to Duke, the transition reduces certain seams issues, particularly with respect to generating facilities that are owned jointly with entities in PJM. In addition, Duke claims that Duke Ohio's transmission system is, by some measures, more tightly interconnected with PJM members AEP and Dayton Power than with any Midwest ISO transmission owners.

35. Duke notes that unlike seams between other RTOs, the border between Midwest ISO and PJM never featured a geographically contiguous boundary. Duke notes that the Commission found that Midwest ISO and PJM would nonetheless have an appropriate configuration, subject to certain conditions, including the elimination of the regional through-and-out rate between the two RTOs and coordination through a Joint Operating Agreement. Duke notes that Midwest ISO states in its protest that "[t]he elimination of [regional through-and-out rates] and the joint and common market initiative have largely

²⁰ 16 U.S.C. § 824e (2006).

²¹ Duke August 10 Answer at 18-19 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 97 FERC ¶ 61,326, at 62,506 (2001)).

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removed economic barriers by assuring the most efficient management of congestion.”²² Duke states that although Midwest ISO further argues that the Joint Operating Agreement is no longer appropriately serving its purpose, this argument means (if anything) that the Joint Operating Agreement should be fixed, not that the proposed RTO realignment is unjust and unreasonable. Furthermore, Duke asserts that Midwest ISO’s request for the Commission to reform the Joint Operating Agreement in this proceeding is a collateral attack on the Commission orders approving the Joint Operating Agreement.

36. Duke argues that Midwest ISO’s estimates of the cost to consumers associated with PJM’s Reliability Pricing Model are unsubstantiated and that Midwest ISO itself notes that the estimates are neither proven nor reliable.²³ Duke adds that Midwest ISO does not actually compare the estimated costs of providing capacity to preserve reliability in PJM to analogous costs in Midwest ISO. Duke claims that Midwest ISO simply states the total amount of its cost estimate and implies that this figure is the amount of harm to be incurred by consumers, as if capacity is free in Midwest ISO, and as if every dollar paid for capacity in PJM is a consumer harm.

37. Duke also notes that, three months ago, in an effort to keep Duke Ohio and Duke Kentucky from withdrawing, Midwest ISO offered to change its Tariff²⁴ so that Duke would receive pricing exactly the same as FirstEnergy would receive, after it moves to PJM, under PJM’s Reliability Pricing Model construct. Duke states that Midwest ISO does not explain how the Reliability Pricing Model that, in May, represented a fair allocation to ratepayers in retail choice states of the value of capacity required to satisfy Midwest ISO resource adequacy requirements had, by July, transformed into new and unnecessary costs that could harm consumers.²⁵ Perhaps most fundamentally, according to Duke, Midwest ISO never addresses the basic legal question of how a rate such as the Commission-approved, market-determined Reliability Pricing Model rate could be unjust and unreasonable as applied to consumers in the Cincinnati region, but just and reasonable as applied to all of the other consumers in PJM’s vast footprint.

²² Duke August 10 Answer at 23 (citing Midwest ISO July 26 Comments at 25).

²³ Duke August 10 Answer at 7 (citing Midwest ISO July 26 Comments at n.46 (declining to introduce evidence in support of its calculations because the exact amount is not material to this proceeding)).

²⁴ Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Midwest ISO Tariff).

²⁵ Duke August 10 Answer at 8 (citing Midwest ISO July 26 Comments at 4-5, 30).

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38. Duke states that it was out of respect for Midwest ISO, which Duke Indiana has no plans to exit, that it did not include in its filing any comparison of Midwest ISO and PJM. Duke contends that the legal standard does not require such a comparison,²⁶ nor should it, lest the Commission find itself in the business of determining which RTO is “more” just and reasonable than the other.

39. In its answer, FirstEnergy states that the established law is that RTO membership is voluntary; the terms of RTO exit are defined by section 205 of the FPA and by specific rights that are described in RTO tariffs and agreements. FirstEnergy maintains that Midwest ISO points to no statutes or changes to the Midwest ISO TO Agreement that support its proposed legal novations. FirstEnergy states that Midwest ISO’s new standards are unlawful, and if implemented, they will bring about a situation where utilities might enjoy the statutory right to leave, but as a practical matter, will never be able to.

40. In response to Duke’s answer, Midwest ISO states that it does not object to Duke’s withdrawal *per se* but is instead asking the Commission to revisit its definition of what is just and reasonable where a realignment is proposed rather than a proposal to operate on a stand-alone basis, as was the case in *LG&E*. It contends that the Commission’s policy-making duty under the FPA requires a periodic reassessment of the three-prong test established in *LG&E*, if warranted by new circumstances. Where a proposed realignment is involved, Midwest ISO argues that the Commission should consider how a trend in RTO movement may negatively affect RTO borders, markets, and transmission expansion plans, and whether a particular withdrawal may be motivated by economic gain to generation as opposed to efficiencies in transmission. With that information, Midwest ISO asserts, the Commission can consider whether any claimed benefits can be achieved by other means, such as closer integration of the joint and common market, and what restrictions, remedies, or hold harmless conditions may be necessary if the totality of the proposal is deemed not to be just and reasonable.

41. While RTO membership is voluntary, Midwest ISO asserts that it is still subject to the Commission’s review to assure that bilateral agreements do not result in rates, terms or conditions of service that are unjust, unreasonable, or unduly discriminatory. In support of its argument, Midwest ISO cites a recent Commission order that, according to Midwest ISO, states that agreement among parties should not defenestrate the

²⁶ Duke August 10 Answer at 6 (citing, *e.g.*, *LG&E*, 114 FERC ¶ 61,282 at P 29; *Duquesne*, 122 FERC ¶ 61,039 at P 133; *FirstEnergy*, 129 FERC ¶ 61,249 at P 121, 136).

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Commission's obligation to review the underlying policy implications of a proposal.²⁷ Midwest ISO also asserts that the requirement of the Commission's approval is ingrained in the Midwest ISO TO Agreement under Article 5.²⁸ According to Midwest ISO, the Commission has consistently required Independent System Operator and RTO transmission owner agreements to include this requirement, which has been sustained by the courts.²⁹ Furthermore, Midwest ISO notes that the courts have agreed that the Commission's review does not implicate *Mobile-Sierra*³⁰ concerns and is consistent with a transmission owner's voluntary decision to organize an RTO.³¹

42. Midwest ISO also argues that, contrary to FirstEnergy and Duke's claim, it is not proposing that the Commission import the public interest standard from section 203 of the FPA. Instead, Midwest ISO explains that it was referring to the Commission's broader duty under the FPA to regulate, in the public interest, the business of transmitting electricity in interstate commerce and selling electric energy at wholesale. Furthermore, Midwest ISO asserts that section 205 of the FPA endows the Commission with all the necessary tools to conduct a searching review of Duke's application. Midwest ISO argues that the third prong of the test the Commission established in *LG&E*, which focuses on the just and reasonableness of the proposed transaction, does not include a standard list of items for the Commission to review. Although the Commission has focused its review under this prong on the new transmission arrangements, Midwest ISO argues that there is no sound legal reason why the Commission review should be limited in such a way in all circumstances. Thus, the Commission should now broaden its review, argues Midwest ISO, to consider what the departing member is leaving behind.

²⁷ Midwest ISO August 25 Answer, Docket No. ER10-1562-000, at 9 (citing *ISO New England Inc.*, 132 FERC ¶ 61,122, at P 22 (2010)) (Midwest ISO August 25 Answer).

²⁸ Midwest ISO August 25 Answer at 9 (citing Article Five, Section I of the Midwest ISO TO Agreement, which states that a transmission owner's withdrawal "may become effective only if FERC approves the withdrawal.").

²⁹ Midwest ISO August 25 Answer at 10 (citing *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286 (D.C. Cir. 2006) (*Maine PUC*)).

³⁰ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

³¹ Midwest ISO August 25 Answer at 10 (citing *Maine PUC*, 454 F.3d at 285, 287).

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43. Midwest ISO states that state regulators, consumer advocates, and Midwest ISO's Independent Market Monitor share its concerns that a significant RTO realignment may be approved with no showing of the impact on consumers, for whose benefit the Commission adopted both Order No. 888 and Order No. 2000. It also highlights its Independent Market Monitor's specific concerns, which include degradation of the RTOs' configuration along the Midwest ISO's eastern border; substantial externalities to existing participants; retardation of future investment and other long-term decisions.³² Midwest ISO also draws attention to its Independent Market Monitor's statement that the benefit of higher capacity prices "would not exist absent substantial barriers preventing the import and export of capacity between PJM and Midwest ISO."³³ To not take these concerns into consideration is untenable, argues Midwest ISO.

44. Midwest ISO disagrees with Duke's narrative regarding Midwest ISO's efforts to adopt mechanisms that would allow Duke to realize benefits equivalent to those FirstEnergy enjoys in PJM's capacity market.³⁴ Midwest ISO states that it planned to achieve this result principally by facilitating Duke's ability to bid its capacity into PJM's capacity market. It argues that it has several initiatives already underway that show Midwest ISO's good faith attempts to meet the needs of its individual members. Midwest ISO notes that Duke could have chosen to stay and to participate in the stakeholder process or filed a section 206 action to challenge the justness and reasonableness of Midwest ISO's tariff, but instead chose to avoid constraining circumstances through the simple expedience of changing RTOs.

45. Midwest ISO Transmission Owners state that while they take no position on the merits of Duke's proposed RTO Realignment, they support a strong and vigorous Midwest ISO and are concerned whenever a transmission owner elects to depart from Midwest ISO. In addition, Midwest ISO Transmission Owners state that they strongly believe in the voluntary, contractual nature of RTO participation, and that the *LG&E* standard of review is adequate and appropriate. They state that they disagree with Midwest ISO's assertion that the Commission should adopt a stricter standard when a departing transmission owner proposes to join a different RTO than when it plans to function on a stand-alone basis. A stricter standard, according Midwest ISO Transmission Owners, is contrary to the Commission's policy in favor of RTO

³² Midwest ISO August 25 Answer at 11-12 (citing Potomac Economics' August 19 Comments at 3).

³³ Midwest ISO August 25 Answer at 5.

³⁴ *Id.* at 12-14.

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participation, and could serve as a deterrent to joining an RTO when withdrawing from another.

4. Commission Determination

46. We reject intervenors' requests that, in evaluating Duke's application, we change the manner in which we evaluate applications for RTO withdrawal.

47. The Commission first enunciated how it would evaluate an application to withdraw from an RTO in *LG&E*, where it applied the three-prong test mentioned above.³⁵ The Commission found in *LG&E* that the effect of the applicants' withdrawal on third parties would be fully addressed by the consumer protection provisions of Article Five of the Midwest ISO TO Agreement.³⁶ The Commission otherwise rejected parties' requests for the Commission to require any sort of cost/benefit analysis or a showing that the replacement arrangements were consistent with the policy objectives of Order No. 2000.³⁷ In *Duquesne*, the Commission followed its analysis from *LG&E* and reiterated that RTO participation is voluntary and that a withdrawing entity does not need to provide evidence demonstrating that the costs of remaining a member are greater than the benefits of withdrawing.³⁸ The Commission has further emphasized that the Midwest ISO TO Agreement expressly defines the requirements applicable to a member's withdrawal from Midwest ISO.³⁹

48. In evaluating Duke's application, we will apply the above-noted three-prong test in the same manner as reflected in our precedent.⁴⁰ We also reiterate that RTO

³⁵ The Commission employed a fourth prong in *LG&E* to address merger issues that are not at issue here.

³⁶ *LG&E*, 114 FERC ¶ 61,282 at P 28.

³⁷ *Id.* P 29-30; *LG&E Rehearing Order*, 116 FERC ¶ 61,020 at P 8-13.

³⁸ *Duquesne*, 122 FERC ¶ 61,039 at P 133 (citing *LG&E*, 114 FERC ¶ 61,282 at P 29).

³⁹ *LG&E Rehearing Order*, 116 FERC ¶ 61,020 at P 13 (citing *RTO Guidance Order*, 104 FERC ¶ 61,248 (2003)).

⁴⁰ *FirstEnergy*, 129 FERC ¶ 61,249; *Duquesne*, 122 FERC ¶ 61,039; *LG&E*, 114 FERC ¶ 61,282.

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participation is voluntary.⁴¹ In Order No. 2000, the Commission stressed that it was adopting a voluntary approach to the formation of RTOs.⁴² Subsequently, the Commission has followed this approach when evaluating requests to withdrawal from an RTO.⁴³ The Midwest ISO TO Agreement provides a contractual right for parties to withdraw from Midwest ISO,⁴⁴ and no party has challenged that contractual right. We find no evidence in the Midwest ISO TO Agreement to suggest that the transmission owners intend for RTO member departures to receive the more stringent review that commenters propose.

49. Moreover, similar to the Commission's finding in *LG&E*, we hold that Duke's fulfillment of its contractual arrangements – namely the provisions set forth in Article Five of Midwest TO Agreement – will, when completed and approved by the Commission, mitigate concerns regarding the effect Duke's withdrawal will have on third parties. We reject intervenors' arguments that the Commission should require Duke to demonstrate that the benefits of withdrawal would exceed the costs. Imposing such a requirement would negate the voluntary nature of RTO membership. We note, however, that nothing in this order should be interpreted as interfering with state regulatory authority or requirements.

C. Whether Duke's Withdrawal Proposal Has Satisfied, or Will Satisfy, Duke's Midwest ISO TO Agreement Obligations

1. Duke's Proposal

50. Duke asserts that its withdrawal from Midwest ISO is permitted, subject to the following requirements of the Midwest ISO TO Agreement: (1) written notice, under Article Five, Section I; (2) availability of continued transmission service for Duke's

⁴¹ See, e.g., *LG&E*, 114 FERC ¶ 61,282 at P 29; *LG&E Rehearing Order*, 116 FERC ¶ 61,020 at P 1. For this reason, applications to join or to depart an RTO are filed under FPA section 205. We do not evaluate them under FPA section 202(a) or under the public interest presumption associated with the Mobile-Sierra doctrine.

⁴² Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 30,995.

⁴³ See *FirstEnergy*, 129 FERC ¶ 61,249 at P 7, 114; *Duquesne*, 122 FERC ¶ 61,039 at P 133 (citing *LG&E*, 114 FERC ¶ 61,282 at P 29).

⁴⁴ Midwest ISO TO Agreement, Article Five, Section I; see *LG&E Rehearing Order*, 116 FERC ¶ 61,020 at P 13.

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existing customers, under Article Five, Section II.A; (3) payment of all financial obligations, under Article Five, Section II.B; (4) negotiated resolution, as between Duke and Midwest ISO, regarding Duke's obligation to construct new facilities, under Article Five, Section II.C; and (5) receipt of all applicable federal and state regulatory approvals, under Article Five, Section III.

51. Duke states that it has satisfied its notice of withdrawal obligations under the Midwest ISO TO Agreement by: (1) a written notice that Duke submitted to Midwest ISO on May 20, 2010, identifying a proposed withdrawal date of January 1, 2012;⁴⁵ and (2) Duke's completion of its five-year initial commitment to remain in Midwest ISO.

52. Duke asserts that it will be able to satisfy its obligations regarding the availability of continued transmission service for Duke's existing customers principally by maintaining the same approach to zonal transmission rate design that it has today.⁴⁶ Duke expects to file rates for transmission service in the Duke Energy Zone by approximately July 2011. While Duke expects that filing to closely track the existing Duke Ohio and Duke Kentucky zonal rate formula, some changes are necessary, such as rate de-coupling of the Duke Indiana and Duke Ohio/Duke Kentucky transmission facilities and changes to accommodate differences between Midwest ISO and PJM billing practices. In addition, Duke states that the Joint Operating Agreement between PJM and Midwest ISO addresses loop flows sufficiently to meet the requirement that a withdrawing transmission owner address financial transmission rights and loop flow.

53. Duke also asserts that Duke Ohio and Duke Kentucky will pay the exit fees for their respective footprints in Midwest ISO. Duke notes that, under Article Five, Section II.B, "[a]ll financial obligations incurred and payments applicable to time periods prior to

⁴⁵ See Notice of Withdrawal of Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc., dated May 20, 2010 (Duke June 25 Filing at Ex. 3).

⁴⁶ Article Five, Section II.A of the Midwest ISO TO Agreement states:

Users taking service which involves the withdrawing Owner and which involves transmission contracts executed before the Owner provided notice of its withdrawal shall continue to receive the same service for the remaining term of the contract at the same rates, terms, and conditions that would have been applicable if there were no withdrawal. The withdrawing Owner shall agree to continue providing service to such Users and shall receive no more in revenues for that service than if there had been no withdrawal by such Owner.

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the effective date of [the withdrawing Owner's] withdrawal shall be honored by the Midwest ISO and the withdrawing Owner." Duke further notes that, under Article Five, Section II.D, "[o]ther obligations between the Midwest ISO and the withdrawing Owner shall be renegotiated as between the Midwest ISO and the withdrawing Owner." Duke commits to working with Midwest ISO to confirm the appropriate fees and a plan for payment of these fees, as well as credits for Duke against future incurrence of fees under schedules 10, 16, and 17 of Midwest ISO Tariff. Duke further states that it is not seeking approval of any rate for recovery of an exit fee at this time, and thus contends that raising associated preemption issues is premature.

54. Duke states that it will satisfy its obligations under the Midwest ISO TO Agreement regarding the construction of new facilities. It notes that, under Article Five, Section II.C, "obligations relating to the construction of new facilities pursuant to an approved plan of Midwest ISO shall be renegotiated as between Midwest ISO and the withdrawing Owner."⁴⁷ Duke further notes that the Midwest ISO Tariff similarly provides that "[a] Party that withdraws from Midwest ISO shall remain responsible for all financial obligations incurred pursuant to this Attachment FF while a Member of Midwest ISO"⁴⁸ Duke states that it will enter into the contemplated discussions with Midwest ISO to address its financial obligations.

55. Duke also asserts that it will satisfy all applicable regulatory approval obligations under the Midwest ISO TO Agreement. It notes that, under Article Five, Section III, "the withdrawal by an Owner of its facilities from Midwest ISO shall be subject to applicable federal and state regulatory approvals or procedures." Duke asserts that this requirement will be satisfied by the Commission's approval of its June 25 filing. Furthermore, Duke Kentucky has made a filing with the Kentucky Public Service Commission requesting approval of the RTO Realignment as it pertains to Duke Kentucky. Duke also states that it has commenced discussion with the Ohio Commission and the Indiana Commission regarding cost recovery issues, although no regulatory approvals are required in Ohio or Indiana for the transaction.

⁴⁷ See also Midwest ISO Tariff at Attachment FF, Section III.A.2.i ("A party that withdraws from the Midwest ISO shall remain responsible for all financial obligations incurred pursuant to this Attachment FF while a Member of the Midwest ISO.").

⁴⁸ Duke June 25 Filing at 17 (citing Midwest ISO Tariff at Schedules 10, 16, and 17).

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2. Protests

56. The Ohio Commission argues that Duke's filing is vague and lacks sufficient detail to allow for Commission approval. It contends that Duke failed to identify its obligation to make Midwest ISO Transmission Expansion Plan (MTEP) payments, the ensuing obligation to PJM for Regional Transmission Expansion Plan (RTEP) payments, and exit fees to Midwest ISO. The Ohio Commission argues that the issue of cost recovery must be addressed up front prior to making a determination that the filing is just and reasonable. The Ohio Commission maintains the Commission should determine whether, when applied together, the PJM and Midwest ISO cost allocation methods yield a just and reasonable end result for Duke Ohio and Duke Kentucky in this particular situation. According to the Ohio Commission, the vague nature of Duke's filing causes it to violate the reasonable notice requirement of the FPA.⁴⁹ It therefore recommends that the Commission require Duke to revise its application to include estimated additional costs associated with Midwest ISO's exit fees, MTEP, and RTEP and to delineate how Duke proposes to recover such additional costs.

57. If the Commission chooses to move forward without requiring this information, the Ohio Commission argues that retail customers must be held harmless from any additional costs and charges associated with Duke's decision to switch RTOs. Furthermore, the Ohio Commission asks the Commission to require Duke to determine and weigh the impact of its proposed move to PJM on all of its business units, especially its local distribution company and retail customers.

58. Hamilton states that Duke has failed to demonstrate that it will continue transmission service for existing customers. Hamilton contends that the only way to make such a demonstration is by submitting the plan to ensure service is continued, along with the proposed replacement terms of service, which Duke has not done. Hamilton maintains that Duke's requests in this filing would require it and other load-serving entities to participate in an auction for an RTO market before they are likely to have become market participants in PJM and before material components of rate treatments have been determined. Hamilton asserts that if the Commission does not reject the proposal, it should state that Hamilton's service should not be terminated until a demonstration that service of equal or superior quality will be provided under the PJM tariff. Along similar lines, according to Hamilton, its ability to self-supply ancillary services must be maintained.

⁴⁹ Ohio Commission Protest at 4 (citing 16 U.S.C. § 824d (2006)).

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59. Wabash is concerned that exit fees will be borne by Duke Indiana or the Duke Indiana transmission facilities, which would adversely impact Wabash. Wabash, as a party to a transmission agreement with Duke Indiana (November 1982 Transmission Agreement),⁵⁰ maintains that it could be negatively impacted by any fees borne by Duke Indiana because all costs borne by Duke Indiana may be proportionally allocated to Wabash under the November 1982 Transmission Agreement. Wabash also wants to ensure that its interest in the Duke Indiana joint transmission system is not negatively impacted by the steps that are taken to unwind all or parts of the joint transmission system planning and operating agreement, which was originally entered into by Public Service of Indiana and Cincinnati Gas & Electric Company (now known as Duke Ohio), along with Cinergy Services, Inc. (acting as an agent on behalf of Public Service of Indiana and Cincinnati Gas & Electric Company).

60. With respect to the "hold harmless" provision, Midwest ISO urges the Commission to consider regulatory scrutiny to protect not only ultimate consumers but all other market participants. Accordingly, Midwest ISO suggests that the memorandum of understanding between the Commission and the Commodity Futures Trading Commission could provide the mechanism for coordinated review of the impact on energy markets, energy futures, and the trading of transmission rights resulting from moving generation from one market to another and dislocating a major energy trading hub.⁵¹ It contends that shifting Duke Ohio transmission facilities to PJM will disrupt established trading patterns and existing contractual agreements of other market participants that have taken positions at the Cinergy Hub. Midwest ISO also states that some delivery points within the Cinergy Hub, consisting of transmission delivery points first established on the Cinergy (now Duke) transmission system, will either shift to PJM's functional control or have to be reconfigured.⁵² The Commission may need to implement necessary remedies to address this circumstance or impose hold harmless conditions sufficient to protect the public interest, Midwest ISO states.

61. With regard to holding Indiana customers harmless, the Indiana Commission states that Duke's response to the Indiana Commission is that Indiana customers will

⁵⁰ Wabash, Public Service of Indiana, Inc. (now Duke Indiana), and Indiana Municipal Power Agency entered into the November 1982 Transmission Agreement on November 5, 1982. The agreement was subsequently amended on December 4, 1985 and on December 16, 1994.

⁵¹ See Midwest ISO July 26 Comments at 31-32.

⁵² Midwest ISO states that this possibility raises a number of questions. *Id.* at 32-34.

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incur some costs because of the interconnectedness of Duke's operations in Ohio, Indiana, and Kentucky. The Indiana Commission states that Duke offers no metrics to ensure the hold harmless result and that this unwillingness to quantify benefits and costs does not reassure the Indiana Commission that Duke can hold Indiana customers harmless from Duke's decision.

3. Answers and Additional Pleadings

62. Duke states that Duke Ohio will honor legitimate hold harmless claims that fall within the narrow confines established by the Commission in *LG&E*.⁵³ Duke argues, however, that, as the Commission held in *FirstEnergy*, issues regarding the hold harmless obligations should be deferred until new rates for the Duke Energy Zone of PJM are filed.⁵⁴ Duke states that without the new rate to compare to the old rate, it is fruitless to try and evaluate whether existing customers will receive service at the same rates, level of service, and quality of service that they would have received absent Duke's withdrawal. Between now and then, Duke states that it will continue its stakeholder outreach efforts in hopes that parties can arrive at mutual understanding without litigation.

63. In response to comments regarding the recovery or pass-through of any costs associated the RTO Realignment, including MTEP and RTEP costs and Midwest ISO exit fees, Duke argues that the Commission can and should defer addressing those issues until filings relating to them are made. Duke expects that the Commission will condition approval of the RTO Realignment on resolution of the proceedings resulting from the future filings. Nevertheless, it addresses two comments having to do with the allocation of transmission expansion costs. First, Duke agrees with the Ohio Consumers' Counsel's following statement:

In keeping with the Commission's focus on rate design and cost allocation in the PJM-[Midwest ISO] Combined Region, the Commission should determine whether, when applied together, the PJM and [Midwest ISO] cost allocation methods yield a just and reasonable end result for the Companies in this particular situation. If the Commission determines that the combined application of the PJM and [Midwest ISO] cost allocation methods results in an unjust and unreasonable

⁵³ Duke August 10 Answer at 30 (citing *LG&E*, 114 FERC ¶ 61,282 at P 44, 49-50).

⁵⁴ Duke August 10 Answer at 31 (citing *FirstEnergy*, 129 FERC ¶ 61,249 at P 50).

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result, the Commission should not require the Companies to pay any costs that are found to be unjust and unreasonable.⁵⁵

Duke believes, however, that such issues can await resolution of the Duke zonal rate filing, at which time the issues could be mooted by the outcome of the rehearing requests filed in response to *FirstEnergy*.⁵⁶

64. Second, Duke states that it is sympathetic to FirstEnergy's argument that "the cost of transmission projects in the former RTO that were approved by the RTO board after the date that the Commission approves the withdrawal should not be assigned to the customers in the departing transmission owner's zone," and conversely that "transmission owning utilities should not be assigned cost responsibility for transmission projects planned prior to their entry into the new RTO or participation in the new RTO's planning process unless there is a clear demonstration that the entering transmission owner benefits from a particular project."⁵⁷ Duke states that it will be vigilant in detecting and challenging cost allocations that are artificially accelerated in order to trap Duke Ohio and Duke Kentucky into paying unfairly for costs for expansions that were not legitimately planned for them. In general, however, Duke believes that these issues should be addressed in future proceedings.

65. Duke disputes the notion that maintenance of the Cinergy Hub in Midwest ISO is Duke Ohio's responsibility, as heir to Cinergy.⁵⁸ Duke states that a hub is defined as "[a] Commercial Pricing Node [CP Node] developed for financial and trading purposes,"⁵⁹ that such CP Nodes are not linked to any market participant and that, "CPNodes representing the Hubs are not related to any specific Asset Owner."⁶⁰ Duke claims that Midwest ISO, not Duke Ohio, is charged with "Implement[ing] and maintain[ing] the

⁵⁵ Duke August 10 Answer at 33-34 (citing Ohio Consumers' Counsel July 26 Protest, Docket No. ER10-1562-000, at 17).

⁵⁶ Duke August 10 Answer at 34.

⁵⁷ *Id.* (citing FirstEnergy July 26 Comments, Docket No. ER10-1562-000, at 3-4).

⁵⁸ Duke August 10 Answer at 28 (citing Midwest ISO July 26 Comments at 32 and Hoosier July 26 Protest, Docket No. ER10-1562-000, at 4).

⁵⁹ Duke August 10 Answer at 28 (citing Midwest ISO Tariff, Section 1.304).

⁶⁰ Duke August 10 Answer at 28 (citing Midwest ISO Network and Commercial Models Business Practices Manual, Effective March 18, 2010, Section 4.2.6 – Hubs).

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Commercial Pricing Nodes for Load and Generation Resources that comprise Hubs . . . and modify[ing] each to meet the needs of Market Participants.”⁶¹ Thus, Duke argues that Duke Ohio is not responsible for impacts that its withdrawal may have on the Cinergy Hub, or any related theoretical impacts on the liquidity and viability of Midwest ISO market.⁶² Duke adds, however, that Duke Ohio and Duke Kentucky are only withdrawing a small portion of Midwest ISO’s generation and load, suggesting that the departure of these entities should have little or no impact on the liquidity and viability of Midwest ISO’s market.

66. Regarding the hold harmless obligation under the Midwest ISO TO Agreement, FirstEnergy states that this obligation applies to existing transmission arrangements and that Duke, the departing transmission owner, is required to provide the same service for the same rates to the customers that have this arrangement or arrangements. FirstEnergy maintains that the settled rule is that withdrawing transmission owners are not obligated to hold parties harmless from all costs occasioned by a withdrawal that is contemplated under an RTO’s tariffs and agreements. FirstEnergy contends that there is no open-ended obligation to provide additional hold harmless provision to Midwest ISO or its remaining members. FirstEnergy asserts that the Commission is not at liberty to ignore this contractual limit on a departing utility’s hold harmless obligation.

67. FirstEnergy contends that transmission-owning utilities that withdraw from one RTO and realign with another should not be subject to duplicative charges as a part of the exit and entry process. To address the RTO Realignment proposal, FirstEnergy states that the Commission should adopt guidelines that ensure that transmission-owning utilities that have obtained Commission approval to withdraw from one RTO and enter another will no longer be included in the RTO transmission planning process of its former RTO at the point of Commission approval. FirstEnergy also maintains that the costs of transmission projects in the former RTO that were approved by the RTO board after the date that the Commission approved the withdrawal should not be assigned to the customers in the departing transmission owner’s zone. FirstEnergy states that transmission-owning utilities should not be assigned cost responsibility for transmission projects planned prior to their entry into their new RTO or participation in the new RTO’s planning process unless there is a clear demonstration that the entering transmission owner benefits from a particular project.

⁶¹ Duke August 10 Answer Duke August 10 Answer at 28 (citing Midwest ISO Tariff, Section 38.1.1.j).

⁶² Duke August 10 Answer at 29 (citing *LG&E*, 114 FERC ¶ 61,282 at P 49).

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68. FirstEnergy argues that these findings are necessary to provide clarity to the RTO, transmission-owning utilities, and other stakeholders. FirstEnergy also maintains that these findings will provide cost signals that promote RTO participation, enhance efficiency, are consistent with the Commission's policy of encouraging RTO membership, and ensure that that new transmission construction costs match causation and/or benefits.

69. Finally, Midwest ISO states that in its July 26 Comments, it questioned whether the Commission's review of the ancillary impacts of Duke's proposed move should be included in its analysis. In response, Duke argued, according to Midwest ISO, that "[it] is not responsible for impacts that [its] withdrawal may have on the Cinergy Hub, or any related theoretical impacts on the liquidity and viability of Midwest ISO market."⁶³ Midwest ISO notes that while it is true that it identified no specific harm, it had only meant to pose a series of unanswered questions that it argues the Commission should ask. Furthermore, Midwest ISO argues that the Commission should be asking questions similar to those that the Kentucky Commission posed to Duke Kentucky.

4. Commission Determination

70. We find that, subject to conditions, Duke has satisfied, or commits to satisfy, the requirements for withdrawal from Midwest ISO as established under the Midwest ISO TO Agreement. Withdrawal from the Midwest ISO TO Agreement requires: (1) written notice; (2) the availability of continued transmission service for Duke's existing customers; (3) payment of all financial obligations; (4) negotiated resolution, as between Duke and Midwest ISO, regarding Duke's obligations to construct new facilities; and (5) receipt of all applicable federal and state regulatory approvals. We discuss each of these requirements below.

71. First, we find that Duke has satisfied the written notice requirement applicable to its withdrawal request under Article Five, Section I of the Midwest ISO TO Agreement.⁶⁴ Duke provided the required written notice to Midwest ISO on May 20, 2010, proposing to leave Midwest ISO as of January 1, 2012.⁶⁵

⁶³ Midwest ISO August 26 Answer at 15 (citing Duke August 10 Answer at 28-29).

⁶⁴ See *supra* note 45.

⁶⁵ See Duke June 25 Filing at Ex. 3.

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72. We also find that Duke has committed to make the necessary filings to comply with the “Users Held Harmless” obligation under Article Five, Section II.A of the Midwest ISO TO Agreement. Duke plans to maintain the same approach to zonal transmission rate design in PJM that it has in Midwest ISO, and it commits to honor “hold harmless” claims.⁶⁶ As the Commission has previously found, this commitment extends to existing transmission arrangements, including grandfathered agreements.⁶⁷ Assuming that Duke finalizes these commitments and they are approved by the Commission, existing customers will be entitled to enjoy the same service and pricing to which they would have been entitled absent Duke’s withdrawal. While intervenors raise additional concerns regarding these obligations, including the manner in which these obligations will be honored, we will not prejudice these issues here or otherwise speculate on matters not before us at this time. Rather, these issues, should they arise in the context of Duke’s anticipated future submittals, should be addressed in those proceedings. Similarly, we will not rule on Hamilton’s assertion that Duke must address continued service to Hamilton and Hamilton’s ability to self-supply ancillary services. These issues will be ripe for consideration once Duke submits its proposed replacement arrangements for Commission review.⁶⁸

73. We find that Duke further commits to meet the financial obligations required of Article Five, Section II.B of the Midwest ISO TO Agreement. It has committed to a future proceeding considering its payment to Midwest ISO of an exit fee. Duke also commits to working with Midwest ISO regarding the appropriate fees and a plan for payment of these fees, and it notes that it is not seeking approval of any rate for recovery of an exit fee at this time. We find that this approach is an appropriate basis on which to proceed with Duke’s proposed withdrawal and that any specific issues or concerns relating to Duke’s exit fee need not be addressed here.⁶⁹

74. FirstEnergy requests that the Commission provide guidance regarding a transmission-owning utility’s transmission planning obligations as it transitions from its former RTO to a new RTO. The Commission declines to make a general statement regarding a withdrawing transmission-owning utility’s transmission planning and cost obligations to its former RTO and new RTO. In this instance, the Midwest ISO TO Agreement requires a withdrawing transmission owning utility to pay for “all financial

⁶⁶ See *id.* at 14.

⁶⁷ See *LG&E*, 114 FERC ¶ 61,281 at P 44-46, 49-50.

⁶⁸ See *FirstEnergy*, 129 FERC ¶ 61,249 at P 50.

⁶⁹ *LG&E*, 114 FERC ¶ 61,282 at P 52-60.

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obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal.”⁷⁰ The Commission has interpreted this provision to include transmission cost allocations made under Attachment FF of Midwest ISO Tariff.⁷¹ Thus, under the terms of the Midwest ISO TO Agreements, Duke and Midwest ISO will negotiate, as part of the exit fee, any costs of transmission projects that Duke is responsible for prior to the date of its withdrawal.

75. Similarly, with respect to the Ohio Commission’s argument that retail customers must be held harmless from any additional costs and charges associated with Duke’s decision to switch RTOs, we note that Duke does not propose in this proceeding to recover any costs associated with an exit fee. As such, the appropriate time to raise this concern would be when Duke files proposed transmission rates. In addition, we will not require that Duke file a determination of the costs and benefits of proposed RTO Realignment for all of its business units, as this is not a requirement for withdrawal under the Midwest ISO TO Agreement. With respect to Wabash’s assertion that exit fees will be borne by Duke Indiana or the Duke Indiana transmission facilities, and its statements about the harm that proportional allocation could cause, we find again that this issue is not before us since Duke does not propose to recover any costs associated with an exit fee in this proceeding.

76. Regarding Duke’s obligations to construct new facilities, Duke has committed to satisfy its obligations under Article Five, Section II.C of the Midwest ISO TO Agreement.⁷² This commitment, once carried out and approved by the Commission, will satisfy the requirements of the TO Agreement, subject to Duke and Midwest ISO formalizing a negotiated agreement and subject to the outcome of a proceeding on such a filing.

77. Finally, we agree with Duke that it will have satisfied applicable regulatory approvals pursuant to Article Five, Section III of the TO Agreement with our approval of this initial filing in Docket No. ER10-1562-000, subject to Duke meeting the conditions

⁷⁰ Midwest ISO TO Agreement at Art. Five, § II.B.

⁷¹ *Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,209 (2007), *order on reh’g and compliance filing*, 120 FERC ¶ 61,080, at P 83 (2007).

⁷² Article Five, Section II.C of the Midwest ISO TO Agreement provides that “[o]bligations relating to the construction of new facilities pursuant to an approved plan of the Midwest ISO shall be renegotiated as between the Midwest ISO and the withdrawing Owner.”

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discussed herein, the outcome of Duke's future filings with this Commission, and the outcome of the pending filing with the Kentucky Commission.

D. Whether Duke's Withdrawal Proposal Has Satisfied, or Will Satisfy, Its Midwest ISO Balancing Authority Agreement Obligations

1. Duke's Proposal

78. Duke states that Duke Ohio and Duke Indiana currently are, jointly, a Local Balancing Authority under the Midwest ISO Balancing Authority Agreement. Duke further states that after the RTO Realignment, Duke Indiana will remain in Midwest ISO and will remain a Local Balancing Authority. Duke commits to working with Midwest ISO to determine the appropriate mechanics for this Local Balancing Authority configuration.

2. Protests and Comments

79. No party filed adverse protests or comments on this topic.

3. Commission Determination

80. Since Duke Indiana will remain a Local Balancing Authority in Midwest ISO, we agree that no notice is required, and that Duke Ohio has satisfied its withdrawal obligations under Midwest ISO Balancing Authority Agreement.

E. Duke's Proposed FRR Integration Plan (Docket No. ER10-2254-000)

1. Duke's Proposal

81. On August 16, 2010, Duke filed its proposed FRR Integration Plan as the second step of its proposed move from Midwest ISO to PJM. Duke seeks approval of its FRR Integration Plan to meet PJM resource adequacy requirements from the date of transmission system integration, January 1, 2012, up to the date of full participation in PJM's capacity market, June 1, 2014.

82. Duke explains that only Duke Ohio has FRR obligations, because only it has an integrated transmission system. While Duke Kentucky owns discrete limited transmission assets, it is essentially a transmission-dependent utility of Duke Ohio, and it will therefore be subject to the requirements for wholesale loads on the Duke Ohio system. Duke states that Duke Ohio proposes to adhere to the existing Reliability Assurance Agreement provisions governing FRR plans, except in certain limited respects related primarily to the out-of-time nature of the RTO-integration context. Duke Ohio seeks approval for the limited provisions of the Duke FRR Integration Plan that depart from the FRR Alternative contemplated by Schedule 8.1 of the Reliability Assurance

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Agreement. Duke explains that Duke Ohio will obtain firm capacity from qualified capacity resources in an amount that would satisfy the criteria for a FRR Alternative Capacity Plan, under Schedule 8.1 of the Reliability Assurance Agreement and PJM's applicable rules and manuals, with respect to the entire Duke Energy Zone. It states that, after factoring in load-serving entities' decisions about whether to self-supply, Duke Ohio will procure capacity resources in an amount sufficient to satisfy the remaining requirements of: (1) Duke Ohio's default retail load; (2) alternative retail electric suppliers serving switched retail load; and (3) other wholesale loads, including Duke Kentucky.

83. Under Schedule 8.1 of the Reliability Assurance Agreement, Duke Ohio is required to fulfill the FRR capacity needs of alternative retail electric suppliers serving switched load. Duke Ohio states that it will serve such load at the Reliability Pricing Model price, as provided for in Section D.8 of Schedule 8.1, unless the alternative retail load-serving entity supplies its own capacity under an election and commitment made under Section D.9 of Schedule 8.1. Specifically, Duke states that, to be consistent with the capacity price paid by other load within the PJM region, the price paid by wholesale load under its plan will be the Final Zonal Capacity Price for the unconstrained portions of the PJM region.

84. Duke states that other wholesale load eligible to enter into its own FRR plan can choose to take supply from Duke Ohio at the Reliability Pricing Model price or can choose from among two "self-supply" options: (1) enter into a traditional FRR Integration plan, per the terms of the Reliability Assurance Agreement; or (2) with the Commission's permission, which Duke seeks here on load's behalf, enter into an out-of-time FRR Integration Plan designed to last through the approximately two-and-a-half years before load can participate in Reliability Price Model auctions, with all of the waivers and adjustments that Duke seeks in the instant filing. Under either of these options, Duke explains, the wholesale load would become directly responsible to PJM for its own resource adequacy requirement.

85. Duke notes that Schedule 8.1 of the Reliability Assurance Agreement provides a price for providing capacity to alternative retail suppliers, as mentioned above, but it does not specify the price for providing capacity to the remaining wholesale load that is eligible for, but does not select, one of the self-serve options. Duke therefore proposes to allocate the cost of serving load within its footprint equally among all loads by having all loads pay the price established by Schedule 8.1 of the Reliability Assurance Agreement for each applicable delivery year. Duke contends that this proposal is presumptively just and reasonable because the product being obtained by load will be used to satisfy the same resource adequacy requirement that is satisfied via the Reliability Price Model process.

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86. Duke Ohio also seeks several waivers. First, it requests, on behalf of itself and any independent FRR entities, that the Commission waive Section C.1 of Schedule 8.1 of the Reliability Assurance Agreement and any corresponding or related provisions to the extent that these provisions would have required Duke to submit a FRR plan prior to the relevant Base Residual Auctions. It also requests a waiver of Section C.2 of Schedule 8.1 of the Reliability Assurance Agreement regarding notice of termination to the extent that such waivers are necessary given the pre-determined termination date for the FRR plans. Third, it seeks waiver of the provisions of Section D.1 of Schedule 8.1 of the Reliability Assurance Agreement regarding updating the FRR plan one month prior to the Base Residual Auction because these auctions for the relevant years have already occurred.

87. Duke Ohio also requests waiver of Section D.2 of Schedule 8.1 of the Reliability Assurance Agreement regarding the Preliminary Peak Load Forecast used so that Duke Ohio can use a forecast that takes into account summer 2010 peaks. It further seeks waiver of the Schedule 8.1, Section E.2 limit on sale of capacity resources above the threshold quantity into auctions conducted under Attachment DD to the PJM open access transmission tariff, solely to the extent necessary to exclude from calculation of that limit capacity resources of Duke Ohio or any independent FRR entity that have already cleared in an Reliability Price Model auction conducted before the RTO Realignment.

88. Finally, Duke Ohio requests waiver of the requirements regarding summer compliance period testing of demand resources and measurement and verification of energy efficiency resources referenced in Schedule 8.1, Section E.4, solely for the partial -year period from January 1, 2012 through May 31, 2012 to permit participation of such resources in the FRR Plan of Duke Ohio or any independent FRR entity for that time period to the extent deemed appropriate by PJM. Duke Ohio also seeks waiver of the provisions of Section F.2 of Schedule 8.1 of the Reliability Assurance Agreement to the extent that it would impose an FRR capacity deficiency charge on a demand resource provider when its resources are no longer available to support the demand resource provider's capacity obligation because of the permanent departure of the load resource associated with the obligation.

2. Comments

89. The Ohio Consumers' Counsel asks the Commission to reject Duke's proposal to price capacity at the Reliability Pricing Model price for the 2011-12 period.⁷³ It claims that such a pricing proposal is unjust and unreasonable because it inappropriately uses the

⁷³ The clearing price set in May 2008 for the 2011-2012 Delivery Year is \$110/MW-day.

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price that cleared in the Base Residual Auction for the 2011-2012 Delivery Year, which is based on a 12-month period that includes the summer peak, whereas Duke's proposal is only for a five-month, non-summer period from January 1, 2012 through May 31, 2012.⁷⁴ Noting that summer peak loads are generally much higher than the rest of the year, the Ohio Consumers' Counsel argues that the price for the period from January 1, 2012 through May 31, 2012 should be lower than the annual average. Requiring Ohio customers to pay this price of capacity, the Ohio Consumers' Counsel argues, would therefore result in unjust and unreasonable prices for load within Duke's footprint.

90. Aside from the seasonal issue mentioned above, the Ohio Consumers' Counsel also contends that the proposed price for the January 1, 2012 – May 31, 2012 period is inflated because the value of annual capacity is now much lower than the price set in May 2008. It notes that the clearing price for PJM's First Incremental Auction for the 2011-2012 Delivery Year, held in June 2009, cleared at \$55/MW-day. The 2012-2013 and 2013-2014 Delivery Year Base Residual Auctions also cleared at substantially lower prices than the \$110/MW-day price, the Ohio Consumers' Counsel states.⁷⁵ The Ohio Consumers' Counsel argues that these more recent auction prices more accurately reflect the current value of capacity for the 2011-2012 period.

91. Finally, the Ohio Consumers' Counsel argues that PJM has no need for additional capacity for the 2011-2012 delivery year even when considering Duke's wholesale load joining PJM for the latter part of that delivery year.

92. Dominion argues that retail competition in Ohio could be seriously harmed if the Commission accepts Duke's proposal without additional information. Specifically, Dominion states that its subsidiary, Dominion Retail, must understand what rate will be charged to Duke Ohio's retail customers after December 31, 2011 before it can fairly judge Duke Ohio's proposal.

⁷⁴ PJM's capacity market operates on an annual basis, not a monthly or seasonal basis. Duke's transition period begins on its proposed integration into PJM on January 1, 2012 and ends on May 31, 2014, the day before Duke may participate in the 2014-2015 Base Residual Auction. Therefore, Duke's FRR Integration Plan will only be in effect for five months of the 2011-2012 Delivery Year, from January 1, 2012 through May 31, 2012.

⁷⁵ The Ohio Consumers' Counsel contends, however, that the recent FRR integration auction for 2011-2012, which cleared at \$108.89/MW-day, is less indicative of the current value of capacity. *See* Ohio Consumers' Counsel September 7 Protest, Docket No. ER10-2254-000, at 9-10.

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93. Accordingly, Dominion requests that the Commission require Duke Ohio to commit to charge its own load no less than the Reliability Pricing Model Price for the time period from January 1, 2012, the date of proposed integration of Duke into PJM, through May 31, 2014, the date of proposed full integration of resources and load into PJM. Alternatively, Dominion asks the Commission to require Duke Ohio to explain how it will maintain a level playing field for all alternative load-serving entities with respect to retail rate issues related to the implementation of the FRR Integration Plan.

94. FirstEnergy Solutions states that, while Duke's proposal is sound in many respects, additional information is needed. Specifically, FirstEnergy Solutions maintains that Duke presents two options for wholesale and retail suppliers that operate in Duke's zone: (1) buy capacity from Duke at an indexed price; or (2) self-serve from the supplier's own resources. FirstEnergy Solutions contends that Duke offers little detail as to how its process would work. It states that Duke does not explain whether it will factor its index price into the prices that it will charge its retail ratepayers who purchase energy from Duke. FirstEnergy Solutions also maintains that Duke does not explain how its proposed index price would be factored into the "price to compare" that its retail customers in Ohio will use to evaluate offers from third-party suppliers. Finally, according to FirstEnergy Solutions, Duke does not explain how it will bill its proposed index price to third-party suppliers who serve load (wholesale or retail) in Duke's Ohio footprint.

95. PSEG Companies request further explanation from Duke for its request for waiver of summer compliance testing of Demand Resources and measurement and verification of Energy Efficiency Resources for the January 1, 2012 through May 31, 2012 period.

96. The PSEG Companies further ask about Duke's requested waiver of a FRR Capacity Deficiency Charge imposed on Demand Resource Providers in circumstances where "its resources are no longer available to support the Demand Resource Provider's capacity obligation because of the permanent departure of the load resource associated with the obligation" They note that Duke's request does not specify whether the waiver would apply only during the transition period or whether it would be a permanent waiver for all demand resource providers in the Duke Ohio and Duke Kentucky zones. The PSEG Companies ask the Commission to require Duke to clarify the scope of its request and to further explain how applying the existing FRR rules to its FRR Integration Plan would not be just and/or reasonable under the circumstances.

97. FirstEnergy Solutions states that the Commission should ask Duke to clarify that third party suppliers can self-supply for the entire period described in Duke's pleading, or for single Delivery Year blocks (including the partial Delivery Year that runs from January 1, 2012 through May 31, 2012) that are within the 29-month period covered by Duke's FRR Integration Plan. This option, according to FirstEnergy Solutions, is consistent with analogous portions of the ATSI Utilities FRR Plan – where third-party

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suppliers had the option to opt-out of one or both of the Delivery Years covered by that auction. American Municipal similarly asks if load serving entities will be allowed to satisfy a portion of their capacity obligations with their own resources and the remaining with resources acquired from Duke Ohio through the Duke FRR Integration Plan.

98. American Municipal also asks for further information on several issues. It asks the Commission to require Duke to inform load serving entities of their transition period capacity obligations by a date certain and when affected resources will be notified of their deliverability status. It further seeks assurances that existing resources Midwest ISO has deemed "deliverable" to its load in the Duke Energy Zone will be deemed "deliverable" in PJM following the RTO Realignment. American Municipal also argues that Duke should be required to address the allocation of nonperformance penalties in a future filing. It further seeks more information about the proposed agreement that opt-out entities will have to enter into with Duke Ohio reflecting the commitments and obligations of the opt-out provision.⁷⁶

99. Buckeye states that, as recognized in the Capacity Portability Service Agreement, it already has a Commission-approved plan to satisfy its capacity requirements in the Duke Energy Zone for the 2011-2012 and 2012-2013 Delivery Years.⁷⁷ As a result of the Capacity Portability Service Agreement, Buckeye states that it expects to be excused from inclusion in Duke's FRR Integration Plan for those delivery years. According to Buckeye, based on discussion between PJM and Duke, Duke agrees with Buckeye's characterization of Buckeye's position for the 2011-2012 and 2012-2013 Delivery Years.⁷⁸ As for the final delivery year to be covered by Duke's FRR Integration Plan, Buckeye states that the options posed in the Duke FRR Integration Plan are reasonable and acceptable to Buckeye.

100. Wabash states that Duke's FRR Integration Plan filing does not address exit fees or any specifics regarding the Transmission Agreement and the separation of Duke Ohio and Duke Kentucky facilities from the Duke Indiana facilities. To the extent these are addressed in this filing, Wabash states that it would protest to the extent that such factors would negatively shift costs to, and fees from, the Duke Indiana joint transmission

⁷⁶ Duke Filing at n. 25.

⁷⁷ *Midwest Indep. Transmission Sys. Operator*, Docket No. ER09-1074-000 (June 17, 2009) (unpublished letter order).

⁷⁸ Buckeye September 7 Comments, Docket No. ER10-2254-000, at 9 (citing Duke August 16 Filing at 12 n. 17).

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system or cause other negative impact on the facilities served by the Transmission Agreement.

101. Indiana Municipal argues that it should be held harmless for all costs that may result from the creation of a seam between its existing network load in the Village of Blanchester, Ohio (Blanchester) and the Midwest ISO-area fleet of generating resources on which Indiana Municipal relies to serve that load's full requirements. Indiana Municipal explains that it provides full requirements power supply service under a long-term contract to Blanchester, and that Duke Ohio owns the transmission facilities to which Blanchester is directly interconnected. Thus, if Duke Ohio integrates into PJM, those facilities would be placed under PJM's operational control and access to those facilities would be offered only through PJM's tariff. Indiana Municipal argues that Duke Ohio and Duke Kentucky must provide protections such that Indiana Municipal is held harmless for any consequences in PJM capacity markets related to Duke Ohio and Duke Kentucky's proposal to change the existing service to Indiana Municipal's Blanchester load.

3. Answers

102. Duke argues that concerns about using the Reliability Pricing Model price are misplaced because this price is a market-determined price reviewed by the PJM Market Monitor prior to filing and required by tariff.⁷⁹ With respect to the seasonality argument about the Reliability Pricing Model price, Duke asserts that the price paid for capacity is the same for every day of the entire year, notwithstanding the possible fluctuations in capacity prices in secondary markets. Further, Duke explains that the need for capacity exists in both PJM and the Midwest ISO; however, the only real difference is that the level of price transparency provided by Reliability Pricing Model does not exist in the Midwest ISO.

103. Responding to the Ohio Consumers' Counsel's argument that the PJM Reliability Pricing Model price should be lower after Duke Ohio's entry into PJM when compared to the PJM Incremental Auction, Duke argues that the savings have already been factored into Duke Ohio's proposal; it chose to charge the Final Zonal Capacity Price, a weighed average blending the price from the Base Residual Auction with the prices obtained in the Incremental Auctions, rather than the clearing price from the Base Residual Auction. Duke explains that PJM has been able to secure some portion of the capacity requirement for the 2011-2012 period at lower costs through the Incremental Auctions.

⁷⁹ Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region, Rate Schedule FERC No. 44, Schedule 8.1, Section D.8.

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104. Duke notes that it has not asked the Commission to require Duke Ohio to “charge itself” the Reliability Pricing Model Rate because that would be premature in light of the fact that Duke Ohio has not initiated a ratemaking proceeding to set retail electric generation rates for the FRR Integration Plan period. With respect to the contentions of Dominion Resources and FirstEnergy Solutions, Duke notes that these comments also are premature, particularly given the fact that alternative retail suppliers can choose to self-supply if they do not want to pay Duke Ohio the Reliability Pricing Model price.

105. Duke states that all loads will have the option to self-supply and that alternative retail suppliers have the option to “opt-out” with the Reliability Assurance Agreement specifically providing that such elections may be made on a delivery year basis. Further, Duke maintains that other wholesale load may self-supply by entering into their own FRR Integration plans either by entering into a traditional plan, per the terms of the Reliability Assurance Agreement, or by entering into an out-of-time Plan designed to see them through the 29-month transition period.

106. With respect to the billing of the proposed index price to third-party suppliers who serve load in Ohio, Duke clarifies that it will serve such load at the Reliability Pricing Model price unless the alternative retail load serving entity supplies its own capacity pursuant to an election and commitment, as provided for in Schedule 8.1 of the Reliability Assurance Agreement. Duke maintains that such sales will be made under its market-based rate tariff with PJM acting as the billing agent for Duke for sales of capacity to such alternative retail suppliers.

107. Regarding summer compliance testing of demand resources and measurement of energy efficiency resources for the partial year, Duke states that it is not clear how PJM could test these demand resources since they will still be in Midwest ISO. It proposes for PJM to use its reasonable judgment in determining which resources can satisfy reliability requirements. Duke maintains that PJM is in the process of comparing its testing measures to that of Midwest ISO to ensure that participation by these resources in the FRR Integration Plan will not cause PJM to fail to satisfy its reliability requirements.

108. With respect to the requested waiver of Section F.2 of Schedule 8.1 of the Reliability Assurance Agreement, Duke states that no parties have expressed interest in that particular waiver request. As a result, Duke proposes to withdraw this waiver request.

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109. Duke references a discussion of capacity portability in the Duquesne withdrawal proceeding,⁸⁰ explaining that the Commission could use this process to provide Indiana Municipal (or other similarly situated entities) with comfort on the topic of use of Midwest ISO capacity resources for reliability purposes in PJM. With respect to Indiana Municipal's Blanchester load, Duke recommends that the Commission direct the Midwest ISO and PJM "to support reasonable arrangements to permit" any load with capacity under contract or owner for reliability purposes as of the date that Duke gave notice of its intent to withdraw from the Midwest ISO, May 20, 2010, to utilize capacity in satisfying its reliability obligations in PJM after Duke joins PJM. Duke believes that this option will be particularly helpful to entities such as Indiana Municipal because it does not believe that the Midwest ISO TO Agreement will be found, when the time comes, to hold them harmless with respect to resource adequacy requirements.

110. Both Dominion Resources and the Ohio Consumers' Counsel disagree with Duke's argument that concerns about the impact of Duke's proposal on Duke Energy Ohio retail ratepayers are fundamentally state issues rather than issues for this Commission. The Ohio Consumers' Counsel argues that Duke has raised a wholesale pricing issue in this proceeding, and thus it disagrees with Duke's assertion that issues involving the ultimate retail impact of Duke's proposal are state issues. Dominion Resources argues that Duke fails to provide adequate and reasonable assurances that competitive retail service providers in Ohio will not be "price squeezed" if the Commission accepts Duke's FRR Integration Plan. It contends that Duke has the ability to price squeeze alternative retail providers because Duke will know the price that alternative retail providers will pay for capacity before Duke files its retail rates with the Ohio Commission. While Dominion Resources acknowledges that the Commission cannot set retail rates, it states that the Supreme Court, in *FPC v. Conway Corp.*,⁸¹ held that the Commission may and should take into consideration whether wholesale prices may be discriminatory or anticompetitive with regard to wholesale customers that compete at retail when it establishes wholesale rates.⁸² Accordingly, Dominion Resources argues that, rather than wait for the Ohio Commission to establish Duke's rates for retail electric generation, the Commission should act now and establish the principle that Duke will charge itself and its affiliate the same Reliability Pricing Model rate as it will charge other competitive retail service providers in Duke's service area.

⁸⁰ See *Duquesne*, 122 FERC ¶ 61,039 at P 93.

⁸¹ *FPC v. Conway Corp.*, 426 U.S. 271 (1976) (*Conway*).

⁸² Dominion Resources October 7 Answer at 2-3 (citing *Conway*, 426 U.S. 271).

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111. Dominion Resources also argues that Duke has failed to provide sufficient information regarding the Reliability Pricing Model price it will charge alternative retail providers. Dominion Resources notes that the western portion of PJM has cleared at different prices in different years,⁸³ and argues that Duke has failed to specify whether one of these prices or some other prices will be charged for capacity. Thus, Dominion Resources requests that the Commission direct Duke to specify the Reliability Pricing Model rate to be charged to competitive retail service providers that do not self-supply.

4. Commission Determination

112. We accept Duke's proposed FRR Integration Plan, subject to a compliance filing, as explained below. As a general proposition, we agree that the use of the FRR Integration Plan proposed by Duke provides an appropriate basis for the Duke Energy Zone to be integrated into PJM's capacity markets. Under this plan, Duke Ohio will acquire sufficient capacity to meet its reliability requirements. We agree that this FRR Integration Plan is generally consistent with our authorizations granted in the cases of ATSI's realignment and Duquesne's recent re-integration into PJM's capacity markets.⁸⁴

113. We grant Duke's requested waivers of Sections C.1, C.2, and D.1 of Schedule 8.1 of the Reliability Assurance Agreement. We will further accept, subject to a compliance filing to be filed within 30 days of the date of this order, Duke's requested waivers of Sections D.2, E.2, and E.4 of the same agreement. With respect to the waiver of Section E.4, which involves summer compliance period testing of Demand Resources and measurement and verification of Energy Efficiency Resources, Duke explains that PJM is in the process of comparing its testing measures to that of Midwest ISO to ensure that participation by these resources in the FRR Integration Plan will not cause PJM to fail to satisfy its reliability requirements. We will require Duke to consult further with PJM on this issue and to include in its compliance filing either a complete description of how PJM plans to make this determination or a timeline detailing when it will know how PJM plans to make this determination. We further condition our acceptance of Duke's waivers of Sections D.2 and E.2 on Duke providing in its compliance filing a more thorough explanation of the need for these particular waivers. Duke has withdrawn its request for waiver of Section F.2, as explained in its answer.

⁸³ *Id.* at 4 (listing clearing prices for the western portion of PJM for three different delivery year Base Residual Auctions).

⁸⁴ See *FirstEnergy*, 129 FERC ¶ 61,249; *Duquesne Light Co.*, 126 FERC ¶ 61,074 at P 37 (2009) (approving a settlement agreement that, among other things, withdrew Duquesne's request to leave PJM and join Midwest ISO, and set forth Duquesne's out-of-time Fixed Resource Requirement (FRR) Plan).

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114. We accept Duke's proposal to use the Final Zonal Capacity Price to price capacity for wholesale loads. The Reliability Assurance Agreement requires Duke Ohio to sell capacity to alternative retail suppliers at the Reliability Pricing Model price if such resources do not self-supply.⁸⁵ While we found reasonable FirstEnergy's proposal to hold separate integration auctions to procure capacity for the load in its footprint,⁸⁶ Duke's filing, in this respect, more closely follows the Reliability Assurance Agreement by pricing the capacity at the Reliability Pricing Model price. Nevertheless, we note that FirstEnergy's integration auctions cleared within a few dollars of the Reliability Pricing Model price for the respective years in question.⁸⁷

115. We reject the Ohio Consumers' Counsel's argument that Duke's proposal inappropriately uses the price that cleared in the Base Residual Auction for the 2011-2012 delivery year – a 12-month period that includes the summer peak – to price capacity for a five-month, non-summer period of the FRR Integration Plan, from January 1, 2012 through May 31, 2012. We reiterate that the price for capacity is the same for every day of the year in PJM. As Duke notes in its answer, if a load switches to an alternative provider under the Reliability Pricing Model in the middle of the delivery year, the new alternative provider would still pay the full capacity price for each month of the remainder of the delivery year, even if, as here, it was not providing capacity to that load during the summer peak period. Load serving entities must supply the same quantity of capacity to meet reliability requirements every day of the year, and they pay the same price for capacity every day of the year that they serve load.

116. We also reject the Ohio Consumers' Counsel's argument that the proposed price for the January 1, 2012 – May 31, 2012 period is inflated because the value of annual capacity is now much lower than the price set in May 2008. The Ohio Consumers' Counsel states, among other things, that the clearing price for PJM's First Incremental Auction for the 2011-2012 Delivery Year, held in June 2009, was much lower than the Base Residual Auction clearing price for the same delivery year. We emphasize here that Duke proposes to price capacity for wholesale load not at the Base Residual Auction clearing price but at the Final Zonal Capacity Price, which reflects a weighted average of

⁸⁵ Reliability Assurance Agreement, Rate Schedule FERC No. 44, Schedule 8.1, Section D.8 (“[T]he applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff . . .”).

⁸⁶ *FirstEnergy*, 129 FERC ¶ 61,249 at P 78.

⁸⁷ Duke Answer at n.24.

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the price from the Base Residual Auction with prices obtained in the Incremental Auctions. Thus, to the extent that PJM secured some portion of the capacity requirement at lower costs through the Incremental Auctions, the Final Zonal Capacity Price will reflect these savings.

117. We find Dominion's and the Ohio Consumers' Counsel's concerns regarding the rate that Duke Ohio will propose to charge its retail customers, and FirstEnergy Solution's requests for more information in the calculation of Duke Ohio's retail rates to be beyond the scope of this proceeding. Duke Ohio has not yet initiated a ratemaking proceeding to set retail electric generation rates for the time period of the FRR Integration Plan. Dominion Resources' cite to *Conway* is therefore inapplicable. In *Conway*, the Commission was setting a wholesale rate from which a price squeeze resulted. Here, we are not setting a wholesale rate, and Ohio has not yet set a retail rate; therefore, it is premature for us to consider whether there may be a discriminatory effect between Commission- and state-jurisdictional rates. Furthermore, we note that alternative retail suppliers, such as Dominion Resources, have the option to self-supply if they do not want to pay the Reliability Pricing Model price to Duke Ohio.

118. FirstEnergy Solutions seeks clarification about whether Duke proposes to allow an entity to opt-out or self-supply a portion of its capacity obligations, if it so chooses, while having the right to procure the remainder of its obligations in the Duke proposal. American Municipal similarly asks if load serving entities will be allowed to satisfy a portion of their capacity obligations with their own resources and the remaining portion with resources acquired from Duke Ohio through the Duke FRR Integration Plan. Duke notes that the Reliability Assurance Agreement specifically provides that alternative retail suppliers have an option, on a delivery year basis, to procure their own supply.⁸⁸ We accept Duke's proposal, put forth in its answer, to further allow alternative retail suppliers such as FirstEnergy Solutions to opt-out for partial loads in a particular delivery year to promote flexibility for these resources.⁸⁹ We agree that these entities in Duke's zone should have this flexibility, consistent with our finding in *FirstEnergy*⁹⁰ and with incremental auction rights applicable under PJM's Manuals.⁹¹ Other wholesale loads may self-supply by entering into their own FRR Integration Plans, as outlined in Duke's

⁸⁸ Duke Answer at 14, citing Reliability Assurance Agreement, Schedule 8.1, Section D.9.

⁸⁹ Duke September 22 Answer at 14-15.

⁹⁰ FirstEnergy, 129 FERC ¶ 61,249 at P 85.

⁹¹ See PJM Manual 18.

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proposal. Duke clarifies that it did not intend to constrain the ability of independent FRR entities to make alternative waiver requests on their own behalf.

119. American Municipal raised a number of questions and asked for assurances on certain issues from Duke.⁹² Based on the information posted on PJM's website pertaining to the September 17, 2010 stakeholder meeting, Duke answered some of the questions raised by American Municipal. For example, Duke explained that load serving entities serving wholesale load will be notified of their wholesale area capacity obligation by January 31, 2011.⁹³ To complete the record, we will require Duke to file responses to address American Municipal's concerns in the above-ordered compliance filing. Specifically, we will require Duke to: confirm the date by which wholesale load will be notified of their wholesale area obligations; clarify the deliverability status of existing resources that Midwest ISO has deemed "deliverable" and the date by which resources will be notified of their deliverability statuses; address the allocation of nonperformance penalties; and provide more information about the proposed agreement that opt-out entities will have to enter into with Duke Ohio reflecting the commitments and obligations of the opt-out provision.

120. Finally, as stated above, we will not address in this order any protests or comments concerning the payment of exit fees.

F. Remaining Issues

1. Duke's Proposal

121. In addition to the approvals requested by Duke in its filing, Duke states that its integration into PJM will also require: (1) approval of Duke's FRR Plan to meet PJM's resource adequacy requirements from the date of transmission system integration through the date of full participation in the Reliability Pricing Model (June 1, 2014);⁹⁴ (2) a revised market power analysis to support a "change of status" filing within 60 days of the integration date, as required by 18 C.F.R. § 35.42(a); (3) PJM zonal transmission rates for the Duke footprint, and any other revisions to the PJM open access transmission tariff

⁹² See *supra* P 96.

⁹³ See <http://pjm.com/~media/committees-groups/stakeholder-meetings/duke/20100917/20100917-meeting-presentation.ashx> at 30.

⁹⁴ Duke filed its proposed FRR Integration Plan on August 16, 2010 in Docket No. ER10-2254-000.

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that may be necessary to effectuate integration into PJM;⁹⁵ (4) the execution of certain required PJM agreements, including the PJM Reliability Assurance Agreement, the PJM Transmission Operator Agreement, and the PJM Operating Agreement; (5) execution or modification of various network integration transmission service agreements and/or point-to-point transmission service agreements among PJM and the appropriate transmission customers in the Duke footprints; (6) execution of new generator and load agreements among PJM, Duke, and third-party generators and loads; and (7) a filing regarding payment to Midwest ISO of an exit fee. Duke further states that filings also will be made to address transition of generator and load interconnection queues, and grandfathered agreements.

122. Duke states that, under Schedule 3.2.5 of the Integration Agreement, Duke and PJM commit to conducting a stakeholder process for the purpose of identifying and educating customers required to execute new or modified transmission and interconnection service agreements for the period beginning January 1, 2012. Duke states that customers taking transmission from that point forward, other than customers with grandfathered transmission agreements, will be required to do so under the PJM OATT.⁹⁶ Duke adds that customers in the queue for Midwest ISO transmission or interconnection service will be transitioned to the PJM queue. Duke states that each customer's position in the PJM queue will be based on the time stamp upon its initial request to Midwest ISO.

123. Duke also states that, under Schedule 3.2.5 of the Integration Agreement, Duke will conduct stakeholder meetings for the purpose of educating stakeholders regarding changes in registration and compliance with the Reliability Standards. Duke asserts that registered entities in the Duke Ohio and Duke Kentucky footprints will continue to be bound by Northern American Electric Reliability Corporation's Reliability Standards and will continue to operate within the ReliabilityFirst region. However, Duke notes that there will be modest changes associated with PJM becoming the Transmission Operator for the transmission facilities in the Duke footprints.

⁹⁵ Duke asserts that these rates are expected to largely mirror rates established through the current Midwest ISO Attachment O transmission rate formula (a two-tiered voltage differentiated rate), with changes made only to the extent necessary to accommodate PJM billing practices and to reflect the de-coupling of Duke Indiana.

⁹⁶ Duke states that it will work with customers that have grandfathered transmission agreements that are listed in Attachment P to the Midwest ISO Tariff to modify or replace these customers' arrangements with comparable service in PJM.

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2. Protests and Comments

124. Hamilton and the Ohio Commission argue that Duke's application is insufficient and should be rejected. Hamilton contends that Duke's proposal lacks fundamental information and is structured such that this initial approval would be tantamount to achieving overall approval. In particular, Hamilton states that Duke has not demonstrated that it has satisfied its contractual requirements for withdrawal from Midwest ISO. Hamilton requests that the Commission reject the filing until Duke can demonstrate that it has fulfilled the Commission's requirements for withdrawal (as distinct from promising to fulfill the requirements) and a complete proposal is submitted for consideration. The Ohio Commission argues that Duke's application does not include information regarding the extent of fees and costs, and thus violates the reasonable notice requirements of the FPA and should be considered void due to vagueness.

125. Similarly, should the Commission grant the initial approvals that Duke has requested, American Municipal states that such approvals should in no way pre-determine the outcome of any issues related to the RTO Realignment that will be the subject of future filings by Duke. Furthermore, American Municipal maintains that future filings should provide a comprehensive and detailed plan to implement any proposal described in the filing, thereby ensuring that affected parties will be able to fully evaluate the impact of Duke's proposal.

126. If the Commission does not reject Duke's filing, Hamilton requests that the Commission take certain steps to protect consumers. For instance, Hamilton argues even though Duke has not submitted a replacement rate proposal, the Commission should provide guidance in this order finding that Duke's wholesale customers should not bear the costs related to Duke's withdrawal from Midwest ISO. According to the Ohio Commission, for the Commission to approve Duke's application as just and reasonable, Duke's retail customers must be held harmless from any additional costs and charges associated with the realignment.

127. The Ohio Consumers' Counsel argues that Duke Ohio and Duke Kentucky's shareholders should be required to pay for all costs resulting from the proposed RTO move. Ohio Consumers' Counsel argues that, consistent with the FPA, the Duke Ohio and Duke Kentucky shareholders should pay for the costs of PJM transmission projects approved to be part of PJM's Regional Transmission Expansion Plan prior to the Applicants proposed entry into PJM on January 1, 2010 (Legacy RTEP costs); Midwest ISO exit fees; and PJM Implementation Agreement costs.

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128. In support, Ohio Consumers' Counsel asserts that, as stated in Order No. 2000, the goal of RTO formation was "to ensure that electricity consumers pay the lowest price possible."⁹⁷ Ohio Consumers' Counsel states that Duke has not demonstrated any benefit to consumers from the proposed RTO Realignment, and that there is evidence available showing that it may increase costs for consumers because of the higher cost of capacity in PJM.⁹⁸ Ohio Consumers' Counsel states that the Commission has held that "principles of fairness in ratemaking support the concept that those who are responsible for the incurrence of costs be the ones who bear those cost burdens."⁹⁹ Ohio Consumers' Counsel stresses that the RTO Realignment is a business decision made by Duke without a meaningful opportunity for its customers to provide input. Therefore, Duke's shareholders should be responsible for the costs that Duke will incur because of the proposed RTO Realignment.

129. Ohio Consumers' Counsel also argues that requiring shareholders to pay the costs is consistent with the Commission's statement that "transmission owners that seek to change RTOs should be prepared to assume the costs attributable to their decisions."¹⁰⁰ Ohio Consumers' Counsel contends that allowing Duke to pass through all of the costs to consumers creates an incentive to RTO members to withdraw, which jeopardizes the configuration and survival of existing RTOs. Ohio Consumers' Counsel states that Duke Kentucky committed to not pass Midwest ISO exit fees or overlapping transmission expansion costs on to Kentucky retail consumers.¹⁰¹ Ohio Consumers' Counsel contends that it would be discriminatory and unjust and unreasonable for the Commission to not extend the same protection to Ohio consumers.

130. If the Commission does not decide whether shareholders should be required to bear the costs of the proposed RTO Realignment, then Ohio Consumers' Counsel argues that the Commission should expressly state that it is not preempting the Ohio Commission from making a determination as to the recovery of these costs in the retail rates of Duke's operative companies. Ohio Consumers' Counsel claims that there is ambiguity as to whether the filed rate doctrine bars the Ohio Commission's authority to

⁹⁷ Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 30,994.

⁹⁸ Ohio Consumers' Counsel July 26 Protest at 6.

⁹⁹ *Id.* at 5 (citing *System Energy Resources, Inc.*, 41 FERC ¶ 61,238, at 61,616 (1987)).

¹⁰⁰ *FirstEnergy*, 129 FERC ¶ 61,249, at P 113.

¹⁰¹ *Id.* P 8.

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review the rates that result from the RTO Realignment. According to Ohio Consumers' Counsel, there is precedent to suggest that a state commission should have the authority to determine the prudence of RTO Realignment decisions; however, to remove any ambiguity, the Commission should explicitly state that in its order.

131. In addition, Ohio Consumers' Counsel states that the Commission should determine whether Schedule 12 of PJM's OATT, which addresses the assignment of cost responsibility for transmission system expansions and upgrades under the PJM Regional Transmission Expansion Plan, is reasonably applied to Duke's particular situation. Ohio Consumers' Counsel contends that the Commission has focused on rate design and cost allocation issues in the PJM-Midwest ISO combined region, and should consider whether the two RTO's cost allocation rules are reasonable as applied to Duke. Ohio Consumers' Counsel requests that the Commission not require Duke to pay any costs that are found to be unjust and unreasonable under these circumstances.

3. Answer

132. Duke agrees with the Ohio Commission's and the Ohio Consumers' Counsel's suggestion that the Commission reserve judgment on any prudence determination of the proposed RTO switch, especially since Duke has not requested any such determination. In addition, Duke argues that addressing the Ohio Commission's and Ohio Consumers' Counsel's concerns regarding recovery from retail ratepayers of costs related to the proposed RTO switch would be premature. Duke states that neither Duke Ohio nor Duke Kentucky has made any rate filing with respect to transmission expansion costs, exit fees, or integration costs. According to Duke, these issues should be addressed only after Duke Ohio and Duke Kentucky make subsequent filings related to those costs. Duke argues that if the Commission declines to defer resolution of these issues, it should reject them. It states that there is ample Commission precedent finding that federal Commission authority preempts a state's prudence review of RTO rates and charges, particularly wholesale transmission service and capacity issues.¹⁰²

¹⁰² Duke August 10 Answer at 31-32.

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4. Commission Determination

133. We reject Hamilton's and the Ohio Commission's arguments that Duke's application is insufficient or unacceptably vague. As discussed above, and as the Commission recognized in *FirstEnergy*, "there are a number of steps involved in proceeding with an orderly withdrawal from an RTO" and there is a "legitimate need and basis for [a withdrawing RTO member] to pursue its RTO membership interests on an orderly, phased-in sequence."¹⁰³ In its filing, Duke explains that it is seeking these initial approvals to meet the implementation timeline, and that it did not address other issues because additional time to consult with stakeholders and refine proposals may help reduce controversy.¹⁰⁴ We find that Duke's initial filing in Docket No. ER10-1562-000 provides sufficient information for the Commission to make an initial determination that Duke commits to satisfy those obligations. We stress, however, that this is an initial determination, and that any final approval will depend on the outcome of future proceedings.

134. Furthermore, we agree with American Municipal that we should not prejudge the issues that will be the subject of future filings, and that we should consider each future filing on its own merits. Thus, at this time, we decline to provide guidance as to whether Duke may recover any RTO Realignment costs from its wholesale or retail customers. The Commission will address these issues as they arise in Duke's anticipated future filings. Similarly, Duke explains that it did not address issues regarding potential preemption of state rates with respect to exit fee costs and transmission costs because it wishes to hold further discussions with the affected state commissions. Again, the Commission will consider this issue when it arises in Duke's anticipated future filings.

The Commission orders:

(A) Duke's RTO Realignment proposal, as submitted in Docket No. ER10-1562-000, is hereby conditionally accepted as discussed in the body of this order, subject to the submission of certain future filings discussed herein.

¹⁰³ *FirstEnergy*, 129 FERC ¶ 61,249 at P 29 (citing *Duquesne*, 122 FERC ¶ 61,039 at P 29).

¹⁰⁴ Duke June 25 Filing at 4.

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(B) Duke's FRR Integration Plan, as submitted in Docket No. ER10-2254-000, is hereby accepted, subject to the submission of a compliance filing within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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Appendix A

List of Intervenor In Docket No. ER10-1562-000

American Electric Power Service Corporation (AEP)**
 American Municipal Power, Inc. (American Municipal)*
 Buckeye Power, Inc. (Buckeye)*
 City of Hamilton, Ohio (Hamilton)*
 Coalition of Midwest Transmission Customers
 Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.
 Dayton Power and Light Company (Dayton Power)**
 Dominion Resources Services, Inc. (Dominion Resources)
 Dynegy Power Marketing, Inc.**
 East Kentucky Power Cooperative, Inc.**
 EnerNOC, Inc.**
 Exelon Corporation**
 FirstEnergy Affiliates^{105*}
 Hoosier Energy Rural Electric Cooperative (Hoosier)*
 Indiana Municipal Power Agency (Indiana Municipal)*
 Indiana Office of Utility Consumer Counselor (Indiana Utility Consumer Counselor)*
 Indiana Utility Regulatory Commission (Indiana Commission)*
 IPA Central, LLC
 Kentucky Public Service Commission (Kentucky Commission)
 MidAmerican Energy Company
 Midwest ISO Transmission Owners¹⁰⁶

¹⁰⁵ FirstEnergy Service Company filed on behalf of certain of its public utility affiliates, including: FirstEnergy Solutions Corp.; American Transmission Systems, Incorporated; the Cleveland Electric Illuminating Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Ohio Edison Company; Pennsylvania Electric Company; and the Toledo Edison Company (collectively, FirstEnergy).

¹⁰⁶ The Midwest ISO Transmission Owners, for the purposes of this filing, include: Ameren Services Company; American Transmission Company LLC; City Water, Light & Power; Dairyland Power Cooperative; Great River Energy; Indianapolis Power & Light Company; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern

(continued...)

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Midwest Independent Transmission System Operator, Inc. (Midwest ISO)*
Monitoring Analytics, LLC**
NextEra Energy Generators
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)*
Ohio Energy Group
PJM Interconnection, LLC (PJM)
Potomac Economics, Ltd. (Potomac Economics)***
PSEG Companies**
Public Service Commission of Maryland**
Public Utilities Commission of Ohio (Ohio Commission)*
RRI Energy, Inc.
Wabash Valley Power Association (Wabash)*
Wisconsin Electric Power Company

* Protests and/or Comments

** Motion to intervene out-of-time

*** Comments and Motion to intervene out-of-time

Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and
Wolverine Power Supply Cooperative, Inc.

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Appendix B

List of Intervenor **In Docket No. ER10-2254-000**

Allegheny Energy Companies
American Electric Power Service Corporation (AEP)
American Municipal Power, Inc. (American Municipal)*
Buckeye Power, Inc. (Buckeye)*
City of Hamilton, Ohio
Dayton Power and Light Company (Dayton Power)
Dominion Resources Services, Inc. (Dominion Resources)*
East Kentucky Power Cooperative, Inc.
Exelon Corporation
FirstEnergy Solutions Corporation (FirstEnergy Solutions)*
Hoosier Energy Rural Electric Cooperative, Inc.
Industrial Energy Users-Ohio**
Indiana Municipal Power Agency (Indiana Municipal)*
Indiana Utility Regulatory Commission**
IPA Central, LLC**
Maryland Public Service Commission**
Midwest Independent Transmission System Operator, Inc. (Midwest ISO)
Monitoring Analytics LLC
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)*
PJM Interconnection, LLC (PJM)
PSEG Power Companies¹⁰⁷*
Public Utilities Commission of Ohio
RRI Energy, Inc.**
Shell Energy North America, LP
Wabash Valley Power Association (Wabash)*

* Protests and/or Comments

** Motion to intervene out of time

¹⁰⁷ PSEG Companies includes Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

Document Content(s)

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	
Standard Service Offer Pursuant to Section)	
4928.143, Revised Code, in the Form of	)	Case No. 11-3549-EL-SSO
an Electric Security Plan, Accounting)	
Modifications and Tariffs for Generation)	
Service.)	

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3550-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)	

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3551-EL-UNC
Corporate Separation Plan.)	

DIRECT TESTIMONY OF

SALIL PRADHAN

ON BEHALF OF

DUKE ENERGY OHIO, INC.

June 20, 2011

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Attachment:

SP-1: Summary of Legacy Generating Assets

I. INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Salil Pradhan, and my business address is 139 East Fourth Street,
3 Cincinnati, Ohio 45202.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Duke Energy Business Services LLC (DEBS) as Vice
6 President, Portfolio Risk Management for Midwest Commercial Generation
7 (MCG). DEBS provides administrative and various other services to Duke Energy
8 Ohio, Inc., (Duke Energy Ohio or the Company) and other affiliated companies of
9 Duke Energy Corporation (Duke Energy).

10 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**
11 **EXPERIENCE.**

12 A. I am a graduate of the University of Chicago with an MBA in finance and
13 strategy. I have a Masters Degree in Chemical Engineering from University of
14 Cincinnati and a Bachelor's degree in Chemical Engineering from University of
15 Mumbai. I am a Chartered Financial Analyst and also a graduate of the Center for
16 Creative Leadership Developing Strategic Leadership Program. I serve on the
17 Board of Directors of the Cincinnati Better Business Bureau. I have been in the
18 energy industry since 2001. Prior to joining Duke Energy in 2004, I was Manager
19 of Fundamental Analysis at American Electric Power in Columbus, Ohio. I also
20 managed the Fundamental Analysis Group with Coal Trading, Inc., of Enron
21 Corp., in Houston. I joined Cinergy Corp. (Cinergy) as a Director of Emissions
22 Portfolio Management. Following the merger of Duke Energy and Cinergy, I was

SALIL PRADHAN DIRECT

1 promoted in 2006 and became Vice President of Commodity Risk Management,
2 with responsibility for all of the commodities portfolio management, including
3 power, capacity, natural gas, coal, emission allowances (EAs), renewable energy
4 credits (RECs), and Financial Transmission Rights (FTRs). I am currently in the
5 same position.

6 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS VICE PRESIDENT,**
7 **PORTFOLIO RISK MANAGEMENT FOR MCG.**

8 A. I am responsible for managing Duke Energy Ohio's portfolio positions of coal,
9 EAs, purchased power, RECs, and FTRs. I am also responsible for ensuring that
10 the Company maintains adequate capacity reserves, sufficient to meet reliability
11 requirements required by the Midwest Independent System Operator, Inc.,
12 (Midwest ISO) and, in the future, PJM Interconnection, L.L.C. (PJM).

13 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC**
14 **UTILITIES COMMISSION OF OHIO?**

15 A. I have submitted pre-filed testimony to the Public Utilities Commission of Ohio
16 (Commission) on several prior occasions, and I have testified before the
17 Commission as part of Duke Energy Ohio's 2009 Fuel and Purchased Power
18 (Rider FPP) audit in Case No. 09-974-EL-FAC.

19 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
20 **PROCEEDING?**

21 A. The purpose of my testimony is to detail how Duke Energy Ohio will manage the
22 energy and underlying commodities for its Legacy Generating Assets under the
23 proposed ESP. As discussed in the Direct Testimony of William Don Wathen Jr.,

1 the Company is proposing a sharing mechanism with respect to the net margins
2 for energy and ancillary services from its Legacy Generating Assets and I provide
3 testimony on how those commodities will be managed for the benefit of
4 customers.

II. DISCUSSION

5 **Q. PLEASE IDENTIFY THE LEGACY GENERATING ASSETS TO WHICH**
6 **YOU REFER IN YOUR PRIOR ANSWER.**

7 A. The Company currently has an ownership share in six coal-fired generating
8 stations: Beckjord (units 1-6), Conesville (unit 4), Killen (unit 2), Miami Fort
9 (units 7 and 8), Stuart (units 1-4), and Zimmer (unit 1). The Company is
10 responsible for the operation of the Beckjord, Miami Fort, and Zimmer stations.

11 In addition, the Company owns, either in whole or in part, other
12 generation facilities. Other generation facilities include Beckjord CTs (units 1, 2,
13 3, 4), Dicks Creek CTs (units 1, 3, 4, 5), Killen CT, Miami Fort CTs (units 3, 4, 5,
14 6), and Stuart Diesels. The Company is responsible for the operation of the
15 Beckjord, Dicks Creek and Miami Fort CTs. As generation is retired or added,
16 the Company's portfolio of generating assets will change.

17 For the remainder of my testimony, I will refer to all of these assets
18 collectively as the Legacy Generating Assets. Attachment SP-1 includes a list of
19 the units, the Company's ownership share, and the capacity associated with that
20 ownership share.

1 **Q. WHAT IS THE TOTAL INSTALLED CAPACITY (MW) AND ENERGY**
2 **OUTPUT (MWh) OF THE LEGACY GENERATING ASSETS?**

3 A. The total installed capacity of the Legacy Generating Assets is 3,964 MW.
4 Attachment SP-1 provides the details by asset. The energy generated from the
5 generating assets varies over the years due to market prices of energy and
6 underlying commodities, maintenance outages, and forced outages. But the
7 average energy generation for the last two years is approximately 19 million
8 MWh.

9 **Q. PLEASE DESCRIBE DUKE ENERGY OHIO'S PROPOSAL WITH**
10 **RESPECT TO THE ENERGY AND UNDERLYING COMMODITIES**
11 **ASSOCIATED WITH ITS LEGACY GENERATING ASSETS.**

12 A. Again, Mr. Wathen discusses the Company's proposed profit sharing mechanism
13 in greater detail, including the process for adjusting that mechanism. Briefly,
14 however, the Company is proposing to share with customers, in the form of an
15 energy credit, the net profits from the sale of energy and ancillary services
16 associated with its Legacy Generating Assets, for the term of the electric security
17 plan (ESP). Under this sharing mechanism, the Company will manage the
18 economic generation or energy and underlying commodities from the Legacy
19 Generating Assets, for the benefit of its customers.

20 **Q. PLEASE EXPLAIN THE CONCEPT OF ECONOMIC GENERATION**
21 **FROM THE LEGACY GENERATING ASSETS.**

22 A. The Legacy Generating Assets include the coal generation assets and other
23 generation facilities owned by the Company. In PJM, generation is priced

1 pursuant to a market system that establishes the locational marginal price (LMP)
2 for energy, congestion, and losses that is paid to each generator. Where the
3 variable costs (fuel, EAs, and variable operating and maintenance (VOM)) of the
4 generating asset are equal to or less than the LMP, those MWhs of generation
5 from the Legacy Generating Assets are deemed economic, and are committed and
6 dispatched into PJM's market.

7 **Q. HOW ARE THE NET PROFITS THAT WILL FORM THE BASIS FOR**
8 **THE ENERGY CREDIT UNDER THE PROFIT SHARING MECHANISM**
9 **DETERMINED?**

10 A. The net energy profits associated with the economic generation or energy from
11 the Legacy Generating Assets will be calculated by subtracting the costs of fuel,
12 EAs, FTR, any PJM generation charges/offsets and VOM from the sum of
13 revenues of energy and the net ancillary services.

14 As explained by other witnesses in this proceeding, these net energy
15 profits are then shared between customers and Duke Energy Ohio under the profit
16 sharing mechanism, with a percentage allocated to funding an economic
17 development initiative.

18 **Q. PLEASE DEFINE THE ANCILLARY SERVICES THAT ALSO WILL BE**
19 **INCORPORATED INTO THE PROFIT SHARING MECHANISM.**

20 A. PJM ancillary services products for which the Company could be compensated
21 include regulation, spinning reserves, day-ahead scheduling reserves, reactive
22 power, and black start. Duke Energy Ohio will manage the ancillary services at
23 the point of realization with PJM.

1 **Q. HOW DOES DUKE ENERGY OHIO INTEND, UNDER THE ESP, TO**
2 **MANAGE THE ENERGY AND UNDERLYING COMMODITIES FROM**
3 **THE LEGACY GENERATING ASSETS?**

4 A. From a perspective of managing the energy and underlying commodities, Legacy
5 Generating Assets are broadly divided into the coal generation assets and the
6 other generation assets.

7 For the other generation assets, the Company does not intend to manage
8 the commodities on a forward look. Rather, the Company plans to offer the
9 energy and gas, respectively, in the Day-Ahead and Next-Day markets. Oil will
10 be managed on an as-required basis by pricing it primarily on a real time index.
11 This approach is consistent with how the other generation assets are managed
12 under the current ESP that ends on December 31, 2011.

13 For the coal generation assets, the Company considered three approaches
14 to manage the energy and underlying commodities. These include:

- 15 1. Offering the energy in the Day-Ahead market;
16 2. Active Management on a forward look; and,
17 3. Fixed Forward Margins.

18 The Company proposes to manage the commodities for the coal
19 generation assets using active management to benefit the customers, as I further
20 explain below.

1 **Q. PLEASE BRIEFLY DESCRIBE THE OPTION OF OFFERING THE**
2 **ENERGY IN DAY-AHEAD MARKETS.**

3 A. The Company considered offering the energy in the Day-Ahead market via selling
4 the energy into the Day-Ahead markets. Under this approach, the coal and EAs
5 would be procured in a predetermined percents staggered over two years. The
6 Company does not believe this to be optimal for the customers as they will be
7 exposed to the risk of the movement in market price of energy from time of the
8 load auction to the Day-Ahead price. The customers will also be exposed to the
9 time mismatch in the prices of the coal/EAs versus energy (Day-Ahead), since
10 coal/EAs will be priced staggered over the prior two years.

11 **Q. PLEASE BRIEFLY DESCRIBE THE OPTION OF ACTIVELY**
12 **MANAGING THE COMMODITIES FOR THE COAL GENERATION**
13 **ASSETS.**

14 A. Active management is a forward hedging strategy to optimize the energy spread
15 from the coal assets without speculating on the future price of energy and
16 underlying commodities. As part of this strategy, Duke Energy Ohio will sell
17 economic generation on a forward basis, and correspondingly plan to buy coal
18 and EAs. The Company proposes to align the initiation of active management of
19 energy from the economic generation to commence within five business days of
20 the Commission approval of the corresponding load auction. For each time
21 period of auction, the percent of the portfolio that is managed will match with the
22 percent of load auctioned. The Company believes that this approach will
23 minimize the risk of price exposure for customers by attempting to match the

1 timing of the price of the energy component of the energy credit with the cost of
2 the energy component of the customer's auctioned load.

3 Implementing active management for each future time period means the
4 Company will sell all the economic generation on a forward look. It will attempt
5 to buy the coal and EAs corresponding to this economic generation. This process
6 is known as managing the commodities to a flat economic position. Over time, as
7 forward market prices for energy change relative to prices of coal or EAs, then
8 generation becomes more or less economic. The Company will capture
9 incremental value associated with these relative movements in forward energy
10 spread (price of energy less sum of prices of coal, EAs, and other VOM costs). In
11 order to demonstrate how active management functions, I provide an example
12 below using hypothetical numbers.

13 Assume that in October 2011, the Company will initiate the active
14 management of the economic generation position for July 2014. Further assume
15 that 200 MWh of generation is economic at \$48/MWh, corresponding to 100 units
16 of coal at \$40/MWh, 1 ton of EAs at \$5/MWh and VOM costs of \$1/MWh. The
17 Company will sell the generation in the forward market, and buy the coal and EAs
18 required to flatten the position. The Company will, therefore, expect to lock a
19 forward looking margin of \$400 (\$2/MWh margin for 200 MWh); \$48/MWh less
20 sum of \$40/MWh, \$5/MWh and \$1/MWh yields the \$2/MWh margin.

21 Now assume that in October 2012 for July 2014, energy and EA prices
22 remain unchanged, but the price of coal increases to \$45/MWh. Then, the 200
23 MWh of generation is no longer economic. Now the Company will buy back the

1 sold generation of 200 MWh at \$48/MWh, sell the 100 units of coal at \$45/MWh,
2 and sell the 1 ton of EAs at \$5/MWh. Since the prices of energy and EAs are
3 unchanged, no gain or loss will be realized for these commodities. However, the
4 price of coal moved up and will result in gains of \$500 (100 units times
5 \$5/MWh). This will allow the Company to capture an incremental value of \$100
6 over the \$400 it had expected at the point of initiation of active management. The
7 Company will continue to actively manage this economic generation position all
8 the way to realization through July 2014.

9 **Q. PLEASE EXPLAIN THE FIXED FORWARD MARGINS APPROACH**
10 **FOR THE COAL GENERATION ASSETS.**

11 A. The Company also considered using fixed forward energy margins for sharing the
12 energy credit with the customers. Under this methodology, the Company would
13 fix a credit for energy based upon fixed forward margin for energy for each
14 auction period. For each auction period, margins will be fixed for the percent of
15 energy volume corresponding to the percent of load auctioned, and that
16 determination has to be made no sooner than five business days after each
17 wholesale energy auction for the standard service offer (SSO) load.

18 To illustrate this proposal using hypothetical numbers, assume that a
19 wholesale energy auction for the SSO load cleared at \$55 per MWh for 35 percent
20 of the load for the calendar year 2013. Also assume the market price for energy
21 for 2013 at the same time is \$48/MWh (\$55/MWh less congestion, shape, risk
22 premiums, margins, etc.). Within five business days after the auction results are
23 approved by the Commission, the Company initially will work with the

1 Commission to determine the value of the energy credit for 35 percent of the
2 volume of economic generation for the same period associated with the auction.
3 Hypothetically, if the Company could sell its economic energy at \$48 per MWh
4 and the underlying costs of its coal, EAs, and VOM were \$38 per MWh, then a
5 \$10 per MWh margin would be fixed for 35 percent of the volume of economic
6 generation for the same period associated with the auction.

7 **Q. WHY DOES DUKE ENERGY OHIO RECOMMEND ACTIVELY**
8 **MANAGING THE ENERGY AND UNDERLYING COMMODITIES?**

9 A. Any approach other than active management would suggest that the Company
10 take a view or have a bias with respect to future coal, EAs, or energy prices. For
11 example, if a forward energy position required the purchase of a certain amount of
12 coal and that coal was not purchased, there must have been a belief that coal
13 prices would be lower in the future. Acting solely on the basis of a subjective
14 opinion of forward commodity prices exposes customers receiving the energy
15 credit to a view established by the Company, which may not be in the best
16 interests of customers. In summary, active management will eliminate the need
17 for taking a view on commodity prices, and will provide an opportunity to capture
18 incremental value as market prices for coal, EAs, and energy change over time.
19 Active management also minimizes the price risk for the customers between the
20 energy component of the energy credit and the market price of energy in the load
21 auction.

22 As compared to the other options considered, the Company believes that
23 actively managing the portfolio over a longer period is preferred to offering the

1 energy in the Day-Ahead market as active management minimizes the customers'
2 exposure to a mismatch of prices. Further, the fixed forward margins option
3 invites additional risks and administrative undertakings for the Company that
4 would require a different distribution of the allocations under the profit sharing
5 mechanism.

6 **Q. IS THE PROPOSAL TO USE ACTIVE MANAGEMENT A NEW**
7 **METHODOLOGY FOR DUKE ENERGY OHIO?**

8 A. No. The Company has historically managed its generation portfolio and load
9 profile using active management. And the Commission has annually reviewed the
10 active management methodology, finding that it functions to allow the Company
11 to take advantage of market fluctuations, thereby creating value.¹

III. CONCLUSION

12 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

13 A. Yes.

¹ *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify its Fuel and Economy Purchased Power Component of its Market-Based Standard Service Offer*, Case No. 05-725-EL-UNC, Opinion and Order at page 15 (November 20, 2007).

Summary of Duke Energy Ohio Legacy Generation		
Station	Ownership	MW (April-May/ Oct-Nov)
Beckjord 1	100.00%	94
Beckjord 2	100.00%	94
Beckjord 3	100.00%	128
Beckjord 4	100.00%	150
Beckjord 5	100.00%	238
Beckjord 6	37.50%	158
Beckjord CT 1	100.00%	53
Beckjord CT 2	100.00%	53
Beckjord CT 3	100.00%	53
Beckjord CT 4	100.00%	53
Conesville 4	40.00%	312
Dick's Creek CT 1	100.00%	101
Dick's Creek CT 3	100.00%	15
Dick's Creek CT 4	100.00%	18
Dick's Creek CT 5	100.00%	18
Killen 2	33.00%	198
Killen CT	33.00%	7
Miami Fort 7	64.00%	326
Miami Fort 8	64.00%	326
Miami Fort CT 3	100.00%	15
Miami Fort CT 4	100.00%	15
Miami Fort CT 5	100.00%	15
Miami Fort CT 6	100.00%	15
Stuart 1	39.00%	225
Stuart 2	39.00%	225
Stuart 3	39.00%	225
Stuart 4	39.00%	225
Stuart Diesel	39.00%	4
Zimmer 1	46.50 %	605

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	
Standard Service Offer Pursuant to Section)	
4928.143, Revised Code, in the Form of	)	Case No. 11-3549-EL-SSO
an Electric Security Plan, Accounting)	
Modifications and Tariffs for Generation)	
Service.)	
In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3550-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)	
In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3551-EL-UNC
Corporate Separation Plan.)	

DIRECT TESTIMONY OF

JEFFREY R. BAILEY

ON BEHALF OF

DUKE ENERGY OHIO, INC.

June 20, 2011

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Attachments:

JRB-1: Rate Development Process

JRB-2: Estimated Rate Impacts

I. INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Jeffrey R. Bailey, and my business address is 1000 East Main Street,
3 Plainfield, Indiana 46168.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Duke Energy Business Services LLC (DEBS) as Director, Rate
6 Design and Analysis. DEBS provides various administrative and other services to
7 Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and other affiliated
8 companies of Duke Energy Corporation (Duke Energy).

9 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATION AND**
10 **PROFESSIONAL EXPERIENCE.**

11 A. I received Bachelor of Science degrees in Industrial Management and Engineering
12 from Purdue University, West Lafayette, Indiana. I also received from Purdue
13 University a Master of Science degree, majoring in Industrial Engineering.

14 I was employed by Duke Energy Indiana, Inc., (then known as PSI Energy,
15 Inc.) in July of 1990 as Supervisor, Rate Engineering. I was subsequently
16 promoted to Manager, Rate Engineering, in 1991. I have held several positions in
17 the Rate, Pricing, and Market Planning areas for Duke Energy Indiana and its
18 affiliates (Cinergy Services, Inc., which later merged into DEBS) following the
19 Cinergy Corp. / PSI Energy, Inc. / The Cincinnati Gas and Electric Company
20 transaction in 1994. In 1997, I accepted the position of Manager, Sales Analysis.
21 In 2000, I joined the Financial Operations Department where I held the positions

1 of Manager, Financial Projects, and Manager, Finance. I returned to the Rate
2 Department in mid-2002. Following the merger of Cinergy Corp. with Duke
3 Energy, I assumed my current position in the fall of 2006.

4 Before joining Duke Energy Indiana in July of 1990, I was employed by
5 the Indiana Utility Regulatory Commission (Indiana Commission). I began my
6 employment there in 1983 as a Staff Engineer. I was promoted through several
7 positions of increasing responsibility at the Indiana Commission, the last of which
8 was Assistant Chief Engineer. My primary responsibility as Assistant Chief
9 Engineer for the Indiana Commission was the supervision of the gas and electric
10 sections that investigated rate and regulatory matters pending before the Indiana
11 Commission.

12 **Q. PLEASE DESCRIBE YOUR DUTIES AS DIRECTOR OF RATE DESIGN**
13 **AND ANALYSIS.**

14 A. As Director, Rate Design and Analysis, my primary responsibility is the
15 development of Duke Energy's rates and charges, including those rates and
16 charges as may be contained in tariffs, agreements, or contracts for electric
17 service.

18 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC**
19 **UTILITIES COMMISSION OF OHIO?**

20 A. Yes, I have presented testimony to the Public Utilities Commission of Ohio
21 (Commission) and several other state regulatory commissions where Duke Energy
22 affiliates serve customers.

1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS
2 PROCEEDING?

3 A. The purpose of my testimony in this proceeding is to: (i) describe how the
4 Company's proposal for a cost-based capacity revenue requirement will be
5 converted to retail rates; and (ii) illustrate the resulting estimated impacts of the
6 proposed rate design, by rate schedule.

7 Q. WHAT ARE THE EXHIBITS FOR WHICH YOU ARE RESPONSIBLE?

8 A. I am sponsoring all or part of the following exhibits:

- 9 • Attachment JRB-1, Rate Development Process; and
10 • Attachment JRB-2, Estimated Rate Impacts.

II. DISCUSSION OF RETAIL RATE CONVERSION PROCESS

11 Q. HOW WILL THE RESULTS OF THE COMPANY'S COST OF SERVICE
12 FOR CAPACITY BE CONVERTED INTO RETAIL RATES?

13 A. The derivation of the Company's capacity related revenue requirement can be
14 found in the testimony of Duke Energy Ohio witness William Don Wathen Jr.
15 This revenue requirement is then allocated to the respective rate classes based on
16 its contribution to the average of the 12 monthly coincident peaks.

17 Forecasted billing determinants for 2012 were used in the development of
18 the rates. The percentage of revenue derived from the demand and energy
19 components within each rate class was then used to assign the allocated class
20 revenue responsibility to their respective demand and energy components.

1 The results are contained in the Retail Capacity Rider (Rider RC) and the
2 Profit Sharing Mechanism Rider (Rider PSM), as discussed in the testimony of
3 Duke Energy Ohio witness James E. Ziolkowski.

4 **Q. WHY DID THE COMPANY USE THE 12 CP METHOD TO ALLOCATE**
5 **THE CAPACITY REVENUE REQUIREMENT?**

6 A. The Company has historically used the 12 CP method for the allocation of
7 generation-related costs. Furthermore, the 12 CP was the basis upon which the
8 Company's generation rates were originally allocated during the market
9 development rate plan, or unbundling case, filed in 1999 under Case No. 99-1658-
10 EL-ETP.

11 **Q. HOW ARE THE RATE STRUCTURES AFFECTED BY THIS METHOD**
12 **OF ALLOCATION?**

13 A. The methodology I described above is considered a "fixed cost recovery" method,
14 which generally ensures that the core cost structure is maintained. In other words,
15 the amount of fixed cost recovery from each applicable charge is computed as a
16 percent relative to the total class, based on current rates. Any cost differential
17 from current to proposed rates is then allocated based on these same percentages.
18 In this way, customers within each class are not advantaged or disadvantaged
19 relative to issues such as load factor.

20 Additionally, those seasonal or time of use components that exist in the
21 current structure are maintained, allowing customers to continue to take full
22 advantage of these characteristics.

1 **Q. PLEASE DESCRIBE EXHIBIT JRB-1.**

2 A. Exhibit JRB-1 incorporates all of the items previously discussed to effectuate the
3 rate development process. With the exception of Rate RTP,¹ all of the Company's
4 rate schedules are included in this analysis. The rates contained in this Exhibit are
5 used to compute the impacts to the various customer classes.

6 **Q. WHAT ARE THE COMPANY'S FUTURE PLANS RELATED TO TIME-**
7 **DIFFERENTIATED PRICING?**

8 A. The Company remains committed to time-differentiated pricing and continues to
9 pursue various initiatives through the collaborative process. Currently, the
10 Company has approval for a new residential rate, Rate TD-AM, and a Peak Time
11 Rebate (PTR) applicable to residential rates. Duke Energy Ohio is currently
12 seeking approval of a revised PTR rider, which narrows the peak period events to
13 5 hours (*i.e.*, 2-7pm). Duke Energy Ohio has also proposed various modifications,
14 in order to better understand the variables that drive customer acceptance of these
15 rates and has received approval of Rate TD-LITE and also TD-CPP_LITE, a
16 critical peak pricing rate. And, of course, the Company's real time pricing
17 program (RTP) is available for customers who can take advantage of that level of
18 price transparency.

¹ Rate RTP has not been estimated due to the hourly structure of the rate.

III. IMPACTS TO CUSTOMERS

1 **Q. PLEASE DESCRIBE EXHIBIT JRB-2.**

2 A. Exhibit JRB-2 details the estimated rate impacts to the major customer classes
3 (RS, DS, DP, DM, and TS) necessary to recover the generation-related revenue
4 requirement proposed in the proceeding.

IV. CONCLUSION

5 **Q. WERE EXHIBITS JRB-1 AND JRB-2 PREPARED BY YOU OR UNDER**
6 **YOUR SUPERVISION?**

7 A. Yes.

8 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

9 A. Yes.

DUKE ENERGY OHIO
Allocation of Capacity Costs

Line No.	Description	12 CP (a)	Percent of Total 12 CP Demand (b)	Allocation of Fixed Generation Revenue Requirement (c)	Allocation of PSM Credit (d)	Net Capacity Revenue Requirement (e)
<i>Average of 12 CP Demand by Rate Schedule:</i>						
1	Residential (RS, TD, ORH)	1,582,951	46.76%	\$264,821,457	(\$67,472,866)	\$197,348,591
2	Electric Space Heating (EH)	13,736	0.41%	2,297,979	(585,493)	1,712,486
3	Secondary Distribution - Small (DM)	87,168	2.57%	14,582,862	(3,715,513)	10,867,349
4	Unmetered Small Fixed Load (GSFL, ADPL)	4,746	0.14%	793,987	(202,297)	591,690
5	Secondary Distribution (DS)	978,791	28.91%	163,747,872	(41,720,706)	122,027,166
6	Primary Distribution (DP)	311,768	9.21%	52,157,556	(13,289,028)	38,868,528
7	Transmission Voltage (TS)	390,191	11.53%	65,277,415	(16,631,788)	48,645,627
8	Lighting	15,900	0.47%	2,660,007	(677,733)	1,982,274
9	Total	3,385,251	100.00%	\$566,339,136	(\$144,295,425)	\$422,043,710

Notes: (a) Average of 12 Coincident Monthly Peaks based on load research data for 2010.

DUKE ENERGY OHIO
2012 Capacity Rates - Retail Capacity Rider

Line No.	Description	2012			2012			Rates (\$/kWh; kW; kVA)
		kWh; kW; kVA	Base Generation Revenue	% of Rate Group	Fixed Generation Revenue Requirement	Allocated Generation Revenue		
1	Rate RS, Residential Service							
2	Summer, First 1000 kWh	1,817,099,832	\$76,945,092	27.516%	\$264,821,457	\$72,869,324	\$0.040102	
3	Summer, Additional kWh	936,108,126	\$52,670,124	18.835%		\$49,880,197	\$0.053285	
4	Winter, First 1000 kWh	3,187,489,838	\$134,974,257	48.268%		\$127,824,694	\$0.040102	
5	Winter, Additional kWh	1,145,637,349	\$11,192,877	4.003%		\$10,599,992	\$0.009252	
6	Rate ORH, Optional Residential Service							
7	Summer, First 1000 kWh	728,227	\$28,110	0.010%		\$26,621	\$0.036556	
8	Summer, Additional kWh	895,048	\$43,367	0.016%		\$41,070	\$0.045886	
9	Summer, kWh greater than 150 times demand	244,990	\$11,870	0.004%		\$11,241	\$0.045885	
10	Winter, First 1000 kWh	1,623,082	\$62,649	0.022%		\$59,330	\$0.036554	
11	Winter, Additional kWh	2,626,587	\$38,477	0.014%		\$36,439	\$0.013873	
	Winter, kWh greater than 150 times demand	1,023,423	\$5,139	0.002%		\$4,867	\$0.004755	
12	Rate TD, Optional Time-of-Day Rate							
13	Summer, On-Peak kWh	40,788	\$4,194	0.001%		\$3,972	\$0.097378	
14	Summer, Off-Peak kWh	101,916	\$575	0.000%		\$545	\$0.005343	
15	Winter, On-Peak kWh	57,950	\$4,548	0.002%		\$4,307	\$0.074324	
	Winter, Off-Peak kWh	188,142	\$1,063	0.000%		\$1,007	\$0.005351	
16	Rate CUR, (Rev. Class 01, 02, 04, 16 & 18 only)							
17	Summer, First 1000 kWh	19,963,145	\$889,099	0.318%		\$842,004	\$0.042178	
18	Summer, Additional kWh	8,530,416	\$503,414	0.180%		\$476,748	\$0.055888	
19	Winter, First 1000 kWh	46,366,316	\$2,065,017	0.738%		\$1,955,633	\$0.042178	
	Winter, Additional kWh	18,176,774	\$193,728	0.069%		\$183,466	\$0.010093	
20	Rate DS, Secondary Distribution Voltage				\$163,747,872			
21	First 1000 kW (\$ per kW)	19,796,503	\$170,517,176	58.704%		\$96,126,237	\$4.855718	
22	Additional kW (\$ per kW)	1,116,309	\$7,606,309	2.619%		\$4,287,931	\$3.841167	
23	Billing Demand Times 300	5,267,490,696	\$103,674,752	35.692%		\$58,444,927	\$0.011095	
24	Additional kWh	1,455,790,393	\$8,672,143	2.986%		\$4,888,777	\$0.003358	
25	Rate GS-FL, Optional Unmetered				\$793,987			
26	kWh Greater Than or Equal to 540 Hours	30,320,485	\$2,069,889	98.035%		\$778,385	\$0.025672	
27	kWh Less Than 540 Hours	62,015	\$4,912	0.233%		\$1,847	\$0.029786	
28	Rate SFL-ADPL, Optional Unmetered							
	All kWh	535,810	\$36,578	1.732%		\$13,755	\$0.025672	

DUKE ENERGY OHIO
2012 Capacity Rates - Retail Capacity Rider (cont.)

Line No.	Description	2012			2012			Rates (\$/kWh; kW; kVA)
		kWh; kW; kVA	Base Generation Revenue	% of Rate Group	Fixed Generation Revenue Requirement	Allocated Generation Revenue		
1	Rate EH, Optional Electric Space Heating							
2	All kWh	86,543,565	\$2,174,234	100.000%	\$2,297,979	\$2,297,979		\$0.026553
3	Rate DM, Secondary Dist. Service, Small							
4	Summer, First 2800 kWh	170,200,668	\$11,421,486	41.597%	\$14,582,862	\$6,066,006		\$0.035640
5	Summer, Next 3200 kWh	34,118,740	\$272,575	0.993%		\$144,766		\$0.004243
6	Summer, Additional kWh	7,145,527	-\$16,613	-0.061%		-\$8,823		-\$0.001235
7	Winter, First 2800 kWh	304,877,239	\$15,511,849	56.494%		\$8,238,417		\$0.027022
8	Winter, Next 3200 kWh	36,273,309	\$289,751	1.055%		\$153,888		\$0.004242
9	Winter, Additional kWh	7,822,643	-\$21,450	-0.078%		-\$11,392		-\$0.001456
10	Rate DP, Service at Primary Dist.Voltage							
11	First 1000 kW (\$ per kW)	2,382,401	\$18,531,268	25.394%	\$52,157,556	\$13,245,014		\$5.559523
12	Additional kW (\$ per kW)	2,914,505	\$17,883,692	24.507%		\$12,782,166		\$4.385708
13	Billing Demand Times 300	1,502,847,469	\$30,136,600	41.298%		\$21,539,794		\$0.014333
14	Additional kWh	850,807,016	\$6,422,742	8.801%		\$4,590,582		\$0.005396
15	Rate TS, Service at Transmission Voltage							
16	First 50,000 kVA (\$ per kVA)	4,400,833	\$41,498,535	50.574%	\$65,277,415	\$33,013,242		\$7.501589
17	Additional kVA (\$ per kVA)	1,922,708	\$13,069,803	15.928%		\$10,397,393		\$5.407680
18	Billing Demand Times 300	1,812,324,514	\$18,192,113	22.171%		\$14,472,333		\$0.007986
19	Additional kWh	1,527,278,893	\$9,295,019	11.328%		\$7,394,447		\$0.004842
20	Rate TL, Traffic Lighting Service							
21	All kWh	3,192,189	\$29,004	2.081%	\$2,660,007	\$55,349		\$0.017339
22	Rate SL, Street Lighting Service							
23	Rate OL, Outdoor Lighting Service	41,743,673	\$788,454	56.565%		\$1,504,639		\$0.036045
24	Rate NSU, Street Lighting	21,512,921	\$406,336	29.151%		\$775,427		\$0.036045
25	Rate NSP, Private Outdoor Lighting	1,093,169	\$20,648	1.481%		\$39,403		\$0.036045
26	Rate SE, Street Lighting Service	1,360,791	\$25,703	1.844%		\$49,049		\$0.036045
	All kWh	5,764,110	\$108,873	7.811%		\$207,766		\$0.036045

DUKE ENERGY OHIO
2012 Capacity Rates - Retail Capacity Rider (cont.)

Line No.	Description	2012			2012			Rates (\$/kWh; kW; kVA)
		kWh; kW; kVA	Base Generation Revenue	% of Rate Group	Fixed Generation Revenue Requirement	Allocated Generation Revenue		
	Rate SC, Street Lighting							
1	Energy Only - All kWh	21,608,323	\$2,766	0.198%		\$5,278	\$0.000244	
2	Units - All kWh	316,965	\$5,987	0.430%		\$11,425	\$0.036045	
	Rate UOLS, Unmetered Outdoor Lighting							
3	All kWh	10,940,320	\$6,116	0.439%		\$11,671	\$0.001067	
4	Totals	20,388,875,403	\$758,270,849		\$566,339,135	\$566,339,135		

DUKE ENERGY OHIO
2012 Capacity Rates - Profit Sharing Mechanism Rider

Line No.	Description	2012				2012		Rates (\$/kWh; kW; kVA)
		kWh; kW; kVA	Base Generation Revenue	% of Rate Group	Profit Sharing Mechanism Credit	Allocated Generation Revenue		
1	Rate RS, Residential Service							
2	Summer, First 1000 kWh	1,817,099,832	\$76,945,092	27.516%	\$67,472,866	\$18,566,102	\$0.010217	
3	Summer, Additional kWh	936,108,126	\$52,670,124	18.835%		\$12,708,788	\$0.013576	
4	Winter, First 1000 kWh	3,187,489,838	\$134,974,257	48.268%		\$32,567,974	\$0.010217	
5	Winter, Additional kWh	1,145,637,349	\$11,192,877	4.003%		\$2,700,732	\$0.002357	
6	Rate ORH, Optional Residential Service							
7	Summer, First 1000 kWh	728,227	\$28,110	0.010%		\$6,783	\$0.009314	
8	Summer, Additional kWh	895,048	\$43,367	0.016%		\$10,464	\$0.011691	
9	Summer, kWh greater than 150 times dema	244,990	\$11,870	0.004%		\$2,864	\$0.011691	
10	Winter, First 1000 kWh	1,623,082	\$62,649	0.022%		\$15,117	\$0.009314	
11	Winter, Additional kWh	2,626,587	\$38,477	0.014%		\$9,284	\$0.003535	
	Winter, kWh greater than 150 times deman	1,023,423	\$5,139	0.002%		\$1,240	\$0.001212	
12	Rate TD, Optional Time-of-Day Rate							
13	Summer, On-Peak kWh	40,788	\$4,194	0.001%		\$1,012	\$0.024811	
14	Summer, Off-Peak kWh	101,916	\$575	0.000%		\$139	\$0.001361	
15	Winter, On-Peak kWh	57,950	\$4,548	0.002%		\$1,097	\$0.018937	
	Winter, Off-Peak kWh	188,142	\$1,063	0.000%		\$256	\$0.001363	
16	Rate CUR, (Rev. Class 01, 02, 04, 16 & 18 only)							
17	Summer, First 1000 kWh	19,963,145	\$889,099	0.318%		\$214,531	\$0.010746	
18	Summer, Additional kWh	8,530,416	\$503,414	0.180%		\$121,469	\$0.014240	
19	Winter, First 1000 kWh	46,366,316	\$2,065,017	0.738%		\$498,269	\$0.010746	
	Winter, Additional kWh	18,176,774	\$193,728	0.069%		\$46,745	\$0.002572	
20	Rate DS, Secondary Distribution Voltage							
21	First 1000 kW (\$ per kW)	19,796,503	\$170,517,176	58.704%	\$41,720,706	\$24,491,644	\$1.237170	
22	Additional kW (\$ per kW)	1,116,309	\$7,606,309	2.619%		\$1,092,506	\$0.978677	
23	Billing Demand Times 300	5,267,490,696	\$103,674,752	35.692%		\$14,890,964	\$0.002827	
24	Additional kWh	1,455,790,393	\$8,672,143	2.986%		\$1,245,593	\$0.000856	
25	Rate GS-FL, Optional Unmetered							
26	kWh Greater Than or Equal to 540 Hours	30,320,485	\$2,069,889	98.035%	\$202,297	\$198,322	\$0.006541	
27	kWh Less Than 540 Hours	62,015	\$4,912	0.233%		\$471	\$0.007589	
28	Rate SFL-ADPL, Optional Unmetered							
	All kWh	535,810	\$36,578	1.732%		\$3,505	\$0.006541	

DUKE ENERGY OHIO
2012 Capacity Rates - Profit Sharing Mechanism Rider (cont.)

Line No.	Description	2012			2012			Rates (\$/kWh; kW; kVA)
		kWh; kW; kVA	Base Generation Revenue	% of Rate Group	Fixed Generation Revenue Requirement	Allocated Generation Revenue		
1	Rate EH, Optional Electric Space Heating							
2	All kWh	86,543,565	\$2,174,234	100.000%	\$585,493	\$585,493	\$0.006765	
3	Rate DM, Secondary Dist. Service, Small							
4	Summer, First 2800 kWh	170,200,668	\$11,421,486	41.597%	\$3,715,513	\$1,545,535	\$0.009081	
5	Summer, Next 3200 kWh	34,118,740	\$272,575	0.993%		\$36,884	\$0.001081	
6	Summer, Additional kWh	7,145,527	-\$16,613	-0.061%		-\$2,248	-\$0.000315	
7	Winter, First 2800 kWh	304,877,239	\$15,511,849	56.494%		\$2,099,036	\$0.006885	
8	Winter, Next 3200 kWh	36,273,309	\$289,751	1.055%		\$39,209	\$0.001081	
9	Winter, Additional kWh	7,822,643	-\$21,450	-0.078%		-\$2,903	-\$0.000371	
10	Rate DP, Service at Primary Dist.Voltage							
11	First 1000 kW (\$ per kW)	2,382,401	\$18,531,268	25.394%	\$13,289,028	\$3,374,647	\$1.416490	
12	Additional kW (\$ per kW)	2,914,505	\$17,883,692	24.507%		\$3,256,720	\$1.117418	
13	Billing Demand Times 300	1,502,847,469	\$30,136,600	41.298%		\$5,488,043	\$0.003652	
14	Additional kWh	850,807,016	\$6,422,742	8.801%		\$1,169,617	\$0.001375	
15	Rate TS, Service at Transmission Voltage							
16	First 50,000 kVA (\$ per kVA)	4,400,833	\$41,498,535	50.574%	\$16,631,788	\$8,411,320	\$1.911302	
17	Additional kVA (\$ per kVA)	1,922,708	\$13,069,803	15.928%		\$2,649,113	\$1.377803	
18	Billing Demand Times 300	1,812,324,514	\$18,192,113	22.171%		\$3,687,352	\$0.002035	
19	Additional kWh	1,527,278,893	\$9,295,019	11.328%		\$1,884,003	\$0.001234	
20	Rate TL, Traffic Lighting Service							
21	All kWh	3,192,189	\$29,004	2.081%	\$677,733	\$14,102	\$0.004418	
22	Rate SL, Street Lighting Service							
23	Rate OL, Outdoor Lighting Service	41,743,673	\$788,454	56.565%		\$383,361	\$0.009184	
24	Rate NSU, Street Lighting	21,512,921	\$406,336	29.151%		\$197,568	\$0.009184	
25	Rate NSP, Private Outdoor Lighting	1,093,169	\$20,648	1.481%		\$10,039	\$0.009184	
26	Rate SE, Street Lighting Service	1,360,791	\$25,703	1.844%		\$12,497	\$0.009184	
	All kWh	5,764,110	\$108,873	7.811%		\$52,936	\$0.009184	

DUKE ENERGY OHIO
2012 Capacity Rates - Profit Sharing Mechanism Rider (cont.)

Line No.	Description	2012			2012		
		kWh; kW; kVA	Base Generation Revenue	% of Rate Group	Fixed Generation Revenue Requirement	Allocated Generation Revenue	Rates (\$/kWh; kW; kVA)
	Rate SC, Street Lighting						
1	Energy Only - All kWh	21,608,323	\$2,766	0.198%		\$1,345	\$0.000062
2	Units - All kWh	316,965	\$5,987	0.430%		\$2,911	\$0.009184
	Rate UOLS, Unmetered Outdoor Lighting						
3	All kWh	10,940,320	\$6,116	0.439%		\$2,974	\$0.000272
4	Totals	20,388,875,403	\$758,270,849		\$144,295,425	\$144,295,425	

DUKE ENERGY OHIO
2012 Capacity Rates - Retail Energy Rider Net of Profit Sharing Mechanism Rider

Line No.	Description	2012				2012	
		kWh; kW; kVA	Base Generation Revenue	% of Rate Group	Profit Sharing Mechanism Credit	Allocated Generation Revenue	Rates (\$/kWh; kW; kVA)
1	Rate RS, Residential Service				\$197,348,591		
2	Summer, First 1000 kWh	1,817,099,832	\$76,945,092	27.516%		\$54,303,222	\$0.029885
3	Summer, Additional kWh	936,108,126	\$52,670,124	18.835%		\$37,171,408	\$0.039708
4	Winter, First 1000 kWh	3,187,489,838	\$134,974,257	48.268%		\$95,256,720	\$0.029885
5	Winter, Additional kWh	1,145,637,349	\$11,192,877	4.003%		\$7,899,260	\$0.006895
6	Rate ORH, Optional Residential Service						
7	Summer, First 1000 kWh	728,227	\$28,110	0.010%		\$19,838	\$0.027242
8	Summer, Additional kWh	895,048	\$43,367	0.016%		\$30,606	\$0.034195
9	Summer, kWh greater than 150 times demand	244,990	\$11,870	0.004%		\$8,377	\$0.034194
10	Winter, First 1000 kWh	1,623,082	\$62,649	0.022%		\$44,214	\$0.027241
11	Winter, Additional kWh	2,626,587	\$38,477	0.014%		\$27,155	\$0.010338
	Winter, kWh greater than 150 times demand	1,023,423	\$5,139	0.002%		\$3,627	\$0.003544
12	Rate TD, Optional Time-of-Day Rate						
13	Summer, On-Peak kWh	40,788	\$4,194	0.001%		\$2,960	\$0.072567
14	Summer, Off-Peak kWh	101,916	\$575	0.000%		\$406	\$0.003982
15	Winter, On-Peak kWh	57,950	\$4,548	0.002%		\$3,210	\$0.055387
	Winter, Off-Peak kWh	188,142	\$1,063	0.000%		\$750	\$0.003987
16	Rate CUR, (Rev. Class 01, 02, 04, 16 & 18 only)						
17	Summer, First 1000 kWh	19,963,145	\$889,099	0.318%		\$627,473	\$0.031432
18	Summer, Additional kWh	8,530,416	\$503,414	0.180%		\$355,279	\$0.041649
19	Winter, First 1000 kWh	46,366,316	\$2,065,017	0.738%		\$1,457,365	\$0.031432
	Winter, Additional kWh	18,176,774	\$193,728	0.069%		\$136,722	\$0.007522
20	Rate DS, Secondary Distribution Voltage				\$122,027,166		
21	First 1000 kW (\$ per kW)	19,796,503	\$170,517,176	58.704%		\$71,634,594	\$3.618548
22	Additional kW (\$ per kW)	1,116,309	\$7,606,309	2.619%		\$3,195,425	\$2.862491
23	Billing Demand Times 300	5,267,490,696	\$103,874,752	35.692%		\$43,553,963	\$0.008268
24	Additional kWh	1,455,790,393	\$8,672,143	2.986%		\$3,643,184	\$0.002503
25	Rate GS-FL, Optional Unmetered				\$591,690		
26	kWh Greater Than or Equal to 540 Hours	30,320,485	\$2,069,889	98.035%		\$580,063	\$0.019131
27	kWh Less Than 540 Hours	62,015	\$4,912	0.233%		\$1,377	\$0.022197
28	Rate SFL-ADPL, Optional Unmetered						
	All kWh	535,810	\$36,578	1.732%		\$10,251	\$0.019131

DUKE ENERGY OHIO
2012 Capacity Rates - Retail Energy Rider Net of Profit Sharing Mechanism Rider (cont.)

Line No.	Description	2012			2012			Rates (\$/kWh; kW; kVA)
		kWh; kW; kVA	Base Generation Revenue	% of Rate Group	Fixed Generation Revenue Requirement	Allocated Generation Revenue		
1	Rate EH, Optional Electric Space Heating							
2	All kWh	86,543,565	\$2,174,234	100.000%	\$1,712,486	\$1,712,486	\$0.019788	
3	Rate DM, Secondary Dist. Service, Small							
4	Summer, First 2800 kWh	170,200,668	\$11,421,486	41.597%	\$10,867,349	\$4,520,471	\$0.026560	
5	Summer, Next 3200 kWh	34,118,740	\$272,575	0.993%		\$107,882	\$0.003162	
6	Summer, Additional kWh	7,145,527	-\$16,613	-0.061%		-\$6,575	-\$0.000920	
7	Winter, First 2800 kWh	304,877,239	\$15,511,849	56.494%		\$6,139,382	\$0.020137	
8	Winter, Next 3200 kWh	36,273,309	\$289,751	1.055%		\$114,680	\$0.003162	
9	Winter, Additional kWh	7,822,643	-\$21,450	-0.078%		-\$8,490	-\$0.001085	
10	Rate DP, Service at Primary Dist.Voltage							
11	First 1000 kW (\$ per kW)	2,382,401	\$18,531,268	25.394%	\$38,868,528	\$9,870,366	\$4.143033	
12	Additional kW (\$ per kW)	2,914,505	\$17,883,692	24.507%		\$9,525,446	\$3.268290	
13	Billing Demand Times 300	1,502,847,469	\$30,136,600	41.298%		\$16,051,750	\$0.010681	
14	Additional kWh	850,807,016	\$6,422,742	8.801%		\$3,420,965	\$0.004021	
15	Rate TS, Service at Transmission Voltage							
16	First 50,000 KVA (\$ per KVA)	4,400,833	\$41,498,535	50.574%	\$48,645,627	\$24,601,922	\$5.590287	
17	Additional KVA (\$ per KVA)	1,922,708	\$13,069,803	15.928%		\$7,748,280	\$4.029878	
18	Billing Demand Times 300	1,812,324,514	\$18,192,113	22.171%		\$10,784,982	\$0.005951	
19	Additional kWh	1,527,278,893	\$9,295,019	11.328%		\$5,510,443	\$0.003608	
20	Rate TL, Traffic Lighting Service							
21	All kWh	3,192,189	\$29,004	2.081%	\$1,982,274	\$41,247	\$0.012921	
22	Rate SL, Street Lighting Service							
23	Rate OL, Outdoor Lighting Service	41,743,673	\$788,454	56.565%		\$1,121,277	\$0.026861	
24	Rate NSU, Street Lighting	21,512,921	\$406,336	29.151%		\$577,859	\$0.026861	
25	Rate NSP, Private Outdoor Lighting	1,093,169	\$20,648	1.481%		\$29,364	\$0.026861	
26	Rate SE, Street Lighting Service	1,360,791	\$25,703	1.844%		\$36,552	\$0.026861	
	All kWh	5,764,110	\$108,873	7.811%		\$154,830	\$0.026861	

DUKE ENERGY OHIO
2012 Capacity Rates - Retail Energy Rider Net of Profit Sharing Mechanism Rider (cont.)

Line No.	Description	2012			2012			Rates (\$/kWh; kW; kVA)
		kWh; kW; kVA	Base Generation Revenue	% of Rate Group	Fixed Generation Revenue Requirement	Allocated Generation Revenue		
Rate SC, Street Lighting								
1	Energy Only - All kWh	21,608,323	\$2,766	0.198%		\$3,933	\$0.000182	
2	Units - All kWh	316,965	\$5,987	0.430%		\$8,514	\$0.026861	
Rate UOLS, Unmetered Outdoor Lighting								
3	All kWh	10,940,320	\$6,116	0.439%		\$8,697	\$0.000795	
4	Totals	20,388,875,403	\$758,270,849		\$422,043,710	\$422,043,710		

DUKE ENERGY OHIO
TYPICAL BILL IMPACTS - GENERATION-RELATED
RATE DS

LINE NO.	RATE CODE	LEVEL of DEMAND	LEVEL of USE	Dec-11 NON-SHOP	RETAIL		2012 NON-SHOP	2012 CHANGE	2012 % CHANGE	NON-SHOPPERS - TOTAL GENERATION											
					Cap / PSM NON-BYPASSABLE	RETAIL ENERGY				2013 NON-SHOP	2014 NON-SHOP	2015 NON-SHOP	2016 NON-SHOP	2017 NON-SHOP	2018 NON-SHOP	2019 NON-SHOP	2020 NON-SHOP	2021 NON-SHOP			
1	DS	30	6,000	(\$)																	
1	DS	30	6,000	\$658	\$158	\$355	\$513	-\$145	-22%	\$483	\$524	\$555	\$582	\$622	\$798	\$829	\$958	\$886			
2		30	9,000	\$823	\$183	\$532	\$715	-\$108	-13%	\$690	\$749	\$798	\$833	\$894	\$1,153	\$1,196	\$1,237	\$1,277			
3		30	12,000	\$944	\$190	\$709	\$900	-\$44	-5%	\$886	\$963	\$1,031	\$1,071	\$1,153	\$1,494	\$1,548	\$1,601	\$1,650			
4		50	10,000	\$1,097	\$264	\$591	\$855	-\$242	-22%	\$804	\$874	\$925	\$969	\$1,037	\$1,330	\$1,381	\$1,430	\$1,477			
5		50	15,000	\$1,372	\$305	\$687	\$1,191	-\$180	-13%	\$1,150	\$1,249	\$1,331	\$1,388	\$1,489	\$1,922	\$1,993	\$2,062	\$2,128			
6		50	20,000	\$1,573	\$317	\$887	\$1,499	-\$173	-5%	\$1,477	\$1,605	\$1,716	\$1,786	\$1,921	\$2,490	\$2,590	\$2,668	\$2,750			
7		75	15,000	\$1,846	\$395	\$887	\$1,282	-\$353	-22%	\$1,207	\$1,311	\$1,387	\$1,454	\$1,555	\$1,996	\$2,071	\$2,144	\$2,215			
8		75	20,000	\$1,920	\$437	\$1,182	\$1,619	-\$301	-16%	\$1,552	\$1,696	\$1,793	\$1,873	\$2,008	\$2,587	\$2,683	\$2,777	\$2,866			
9		75	30,000	\$2,359	\$476	\$1,773	\$2,249	-\$110	-5%	\$2,215	\$2,407	\$2,577	\$2,678	\$2,882	\$3,735	\$3,869	\$4,002	\$4,125			
10		100	20,000	\$2,193	\$527	\$1,182	\$1,709	-\$484	-22%	\$1,809	\$1,747	\$1,850	\$1,939	\$2,073	\$2,661	\$2,762	\$2,859	\$2,954			
11		100	30,000	\$2,743	\$610	\$1,773	\$2,383	-\$360	-13%	\$2,299	\$2,498	\$2,661	\$2,776	\$2,979	\$3,844	\$3,966	\$4,124	\$4,255			
12		100	40,000	\$3,145	\$635	\$2,364	\$2,999	-\$146	-5%	\$2,953	\$3,209	\$3,436	\$3,571	\$3,843	\$4,960	\$5,159	\$5,336	\$5,500			
13		300	60,000	\$6,590	\$1,582	\$3,546	\$5,128	-\$1,453	-22%	\$4,827	\$5,242	\$5,542	\$5,816	\$6,220	\$7,983	\$8,285	\$8,577	\$8,862			
14		300	90,000	\$8,229	\$1,830	\$5,319	\$7,149	-\$1,081	-13%	\$6,898	\$7,494	\$7,983	\$8,328	\$8,937	\$11,531	\$11,957	\$12,372	\$12,765			
15		300	120,000	\$9,436	\$1,905	\$7,082	\$8,997	-\$439	-5%	\$8,860	\$9,628	\$10,308	\$10,714	\$11,529	\$14,939	\$15,478	\$16,009	\$16,500			
16		500	100,000	\$10,957	\$2,536	\$5,910	\$8,548	-\$2,421	-22%	\$8,044	\$8,737	\$9,250	\$9,694	\$10,367	\$13,304	\$13,909	\$14,296	\$14,770			
17		500	200,000	\$15,726	\$3,175	\$11,620	\$14,995	-\$732	-5%	\$14,767	\$16,046	\$17,179	\$17,857	\$19,214	\$24,869	\$25,766	\$26,681	\$27,501			
18		500	300,000	\$19,747	\$3,425	\$17,730	\$21,155	\$1,408	7%	\$21,308	\$23,159	\$24,928	\$25,809	\$27,853	\$36,257	\$37,533	\$38,804	\$39,951			
NOTES: GENERATION IS COMPRISED OF BASE GEN, FPP, AAC, SRT, AND CD.																					

NOTES: GENERATION IS COMPRISED OF BASE GEN, FPP, AAC, SRT, AND CD.

Rate Table (\$ per kWh)

Generation First 1000 kW	\$8,613,500	Total Gen First 1000 kW	\$10,938,700
Generation Additional kW	\$6,813,800	Total Gen Additional kW	\$8,676,000
Generation First 300 kWh/kW	\$0,018,882	Total Gen First 300 kWh/kW	\$0,054,977
Generation Additional kWh	\$0,005,957	Total Gen Additional kWh	\$0,040,208
Rider AAC First 1000 kW	\$1,546,800		
Rider AAC Additional kW	\$1,223,600		
Rider AAC First 300 kWh/kW	\$0,003,286		
Rider AAC Additional kWh	\$0,459,400		
Rider SRA-CD First 1000 kW	\$0,363,400		
Rider SRA-CD Additional kW	\$0,001,175		
Rider SRA-CD First 300 kWh/kW	\$0,000,978		
Rider SRA-CD Additional kWh	\$0,318,000		
Rider SRT First 1000 kW	\$0,275,200		
Rider SRT Additional kW	\$0,000,964		
Rider SRT First 300 kWh/kW	\$0,000,189		
Rider SRT Additional kWh	\$0,028,800		
Rider FPP			
PROPOSED			
Rider RC and Rider PSM First 1000 kW	\$3,618,548		
Rider RC and Rider PSM Additional kW	\$2,862,491		
Rider RC and Rider PSM First 300 kWh/kW	\$0,008,268		
Rider RC and Rider PSM Additional kWh	\$0,002,503		
Rider RE, All kWh	\$0,069,100		

DUKE ENERGY OHIO
TYPICAL BILL IMPACTS - GENERATION-RELATED
RATE DP

LINE NO.	RATE CODE	LEVEL of DEMAND	LEVEL of USE	Dec-11 NON-SHOP	RETAIL CAP / PSM NON-BYPASSABLE		\$0.069100 RETAIL ENERGY	2012 NON-SHOP	2012 CHANGE	2012 % CHANGE	NON-SHOPPERS - TOTAL GENERATION									
					2013 NON-SHOP	2014 NON-SHOP					2015 NON-SHOP	2016 NON-SHOP	2017 NON-SHOP	2018 NON-SHOP	2019 NON-SHOP	2020 NON-SHOP	2021 NON-SHOP			
			(KW)	(KWH)																
1	DP	100	14,400	\$1,811	\$568	\$651	\$1,419	\$-392	-22%	\$1,277	\$1,386	\$1,451	\$1,533	\$1,629	\$2,070	\$2,152	\$2,230	\$2,310		
2		100	28,800	\$2,822	\$722	\$1,702	\$2,424	\$-198	-8%	\$2,283	\$2,491	\$2,640	\$2,785	\$2,959	\$3,601	\$3,545	\$3,683	\$4,217		
3		100	43,200	\$3,248	\$788	\$2,553	\$3,341	\$93	3%	\$3,254	\$3,535	\$3,775	\$3,932	\$4,224	\$5,481	\$5,856	\$6,039	\$6,039		
4		200	28,800	\$3,622	\$1,136	\$1,702	\$2,838	\$-784	-22%	\$2,554	\$2,773	\$2,901	\$3,067	\$3,259	\$4,139	\$4,304	\$4,461	\$4,620		
5		200	57,600	\$5,243	\$1,444	\$3,404	\$4,848	\$-395	-8%	\$4,587	\$4,982	\$5,281	\$5,529	\$5,917	\$7,603	\$7,889	\$8,166	\$8,435		
6		200	86,400	\$6,497	\$1,576	\$5,106	\$6,682	\$185	3%	\$6,508	\$7,071	\$7,550	\$7,883	\$8,448	\$10,923	\$11,321	\$11,712	\$12,079		
7		300	43,200	\$5,433	\$1,704	\$2,553	\$4,257	\$-1,178	-22%	\$3,831	\$4,159	\$4,352	\$4,600	\$4,888	\$6,209	\$6,457	\$6,691	\$6,930		
8		300	86,400	\$7,695	\$2,166	\$5,108	\$7,272	\$-593	-8%	\$6,880	\$7,473	\$7,921	\$8,284	\$8,878	\$11,404	\$11,834	\$12,250	\$12,652		
9		300	129,600	\$9,745	\$2,383	\$7,659	\$10,023	\$-278	-3%	\$9,762	\$10,606	\$11,325	\$11,795	\$12,673	\$16,384	\$16,882	\$17,568	\$18,118		
10		500	72,000	\$9,055	\$2,641	\$4,255	\$7,098	\$-1,959	-22%	\$6,388	\$6,932	\$7,253	\$7,667	\$8,146	\$10,348	\$10,761	\$11,162	\$11,550		
11		500	144,000	\$13,109	\$3,610	\$8,510	\$12,120	\$-989	-9%	\$11,468	\$12,454	\$13,202	\$13,823	\$14,793	\$19,006	\$19,723	\$20,416	\$21,087		
12		500	216,000	\$16,242	\$3,939	\$12,766	\$16,705	\$-1,335	-8%	\$16,270	\$17,677	\$18,875	\$19,658	\$21,121	\$27,307	\$28,303	\$29,280	\$30,197		
13		800	115,200	\$14,488	\$4,545	\$6,808	\$11,353	\$-1,135	-11%	\$10,217	\$11,091	\$11,604	\$12,268	\$13,034	\$16,557	\$17,218	\$17,842	\$18,480		
14		800	230,400	\$20,974	\$5,775	\$13,617	\$19,392	\$-1,582	-7%	\$18,346	\$19,927	\$21,123	\$22,116	\$23,686	\$30,410	\$31,557	\$32,686	\$33,739		
15		800	345,600	\$25,987	\$6,302	\$20,425	\$26,727	\$-1,582	-6%	\$26,032	\$28,283	\$30,200	\$31,452	\$33,783	\$43,681	\$45,285	\$46,849	\$48,315		
16		1000	144,000	\$18,110	\$5,681	\$17,021	\$24,240	\$-1,377	-7%	\$12,771	\$13,864	\$14,505	\$15,334	\$16,283	\$20,686	\$21,322	\$22,003	\$22,700		
17		1000	288,000	\$25,217	\$7,219	\$25,531	\$33,409	\$-1,377	-5%	\$22,933	\$24,909	\$26,404	\$27,646	\$29,586	\$38,013	\$39,446	\$40,832	\$42,174		
18		1000	432,000	\$32,484	\$9,678	\$33,409	\$43,409	\$-1,377	-4%	\$32,540	\$35,354	\$37,750	\$39,315	\$42,242	\$54,613	\$56,608	\$58,561	\$60,393		
19		1500	216,000	\$28,219	\$8,084	\$25,531	\$35,923	\$-2,269	-8%	\$18,882	\$20,499	\$21,483	\$22,682	\$24,123	\$30,687	\$31,904	\$33,056	\$34,226		
20		1500	432,000	\$36,279	\$10,391	\$25,531	\$40,825	\$-2,357	-6%	\$34,123	\$37,065	\$39,331	\$41,149	\$44,052	\$56,683	\$58,789	\$60,850	\$62,836		
21		1500	648,000	\$47,679	\$11,380	\$28,297	\$49,677	\$-1,987	-4%	\$48,535	\$52,734	\$56,349	\$59,853	\$63,046	\$81,563	\$84,529	\$87,443	\$90,165		
22		3000	432,000	\$50,145	\$15,294	\$25,531	\$40,825	\$-820	-19%	\$37,212	\$40,402	\$42,415	\$44,727	\$47,812	\$60,860	\$63,048	\$65,316	\$67,601		
23		3000	864,000	\$74,485	\$19,908	\$51,062	\$70,970	\$-3,485	-5%	\$67,868	\$73,535	\$78,111	\$81,860	\$87,480	\$112,512	\$118,818	\$120,803	\$124,822		
24		3000	1,296,000	\$93,285	\$21,895	\$76,594	\$98,478	\$-5,213	-6%	\$96,518	\$104,872	\$112,148	\$116,668	\$125,458	\$162,413	\$168,298	\$174,089	\$179,479		

NOTES: GENERATION IS COMPRISED OF BASE GEN, FPP, AAC, SRT, AND CD.

Rate Table (\$ per kWh)

Generation First 1000 kW	\$7,778400
Generation Additional kW	\$8,138100
Generation First 300 kWh/kW	\$0,020053
Generation Additional kWh	\$0,007549
Rider AAC First 1000 kW	\$1,397000
Rider AAC Additional kW	\$1,102000
Rider AAC First 300 kWh/kW	\$0,004455
Rider AAC Additional kWh	\$0,003572
Rider SRA-CD First 1000 kW	\$0,414800
Rider SRA-CD Additional kW	\$0,001323
Rider SRT First 1000 kW	\$0,001081
Rider SRT Additional kW	\$0,413500
Rider SRT First 300 kWh/kW	\$0,000985
Rider SRT Additional kWh	\$0,000375
Rider FPP	\$0,023800

PROPOSED

Rider RC and Rider PSM First 1000 kW	\$4,143033
Rider RC and Rider PSM Additional kW	\$3,288290
Rider RC and Rider PSM First 300 kWh/kW	\$0,010681
Rider RC and Rider PSM Additional kWh	\$0,004021
Rider RE, All kWh	\$0,059100

Riders ROPSM Net % Change From 2012
Rider RE \$/kWh

\$	0,0638	\$	0,0694	\$	0,0759	\$	0,0777	\$	0,0846	\$	0,1152	\$	0,1189	\$	0,1221
	-37,00%		-31,93%		-37,08%		-27,03%		-27,59%		-18,45%		-9,91%		-2,81%

Total Gen First 1000 kW	\$10,003800
Total Gen Additional kW	\$7,910800
Total Gen First 300 kWh/kW	\$0,059286
Total Gen Additional kWh	\$0,042357

DUKE ENERGY OHIO
TYPICAL BILL IMPACTS - GENERATION-RELATED
RATE TS

NON-SHOPPERS - TOTAL GENERATION									
LINE NO.	RATE CODE	LEVEL of DEMAND (KVA)	LEVEL of USE (KWH)	Dec-11 NON-SHOP	RETAIL CAP / PSM NON-BYPASSABLE	RETAIL ENERGY	2012 NON-SHOP	2012 CHANGE	% CHANGE
1	TS	1000	200,000	\$20,753	\$6,780	\$11,820	\$18,800	-\$2,153	-10%
2		1000	400,000	\$28,185	\$7,736	\$23,640	\$31,376	\$2,211	8%
3		2500	500,000	\$51,863	\$15,951	\$29,550	\$46,501	-\$5,362	-10%
4		5000	1,000,000	\$72,913	\$19,341	\$59,100	\$78,441	\$5,528	8%
5		5000	2,000,000	\$103,766	\$33,802	\$59,100	\$93,002	-\$10,763	-10%
6		5000	2,000,000	\$145,827	\$38,682	\$118,200	\$156,882	\$11,055	8%
7		10000	2,000,000	\$207,531	\$67,805	\$118,200	\$186,005	-\$21,526	-10%
8		10000	4,000,000	\$291,653	\$77,364	\$236,400	\$313,764	\$22,111	8%
9		10000	6,000,000	\$372,355	\$94,580	\$354,600	\$439,180	\$66,825	18%
10		20000	4,000,000	\$415,082	\$135,809	\$256,400	\$372,009	-\$43,053	-10%
11		20000	8,000,000	\$593,306	\$194,727	\$472,800	\$627,827	-\$44,221	-8%
12		20000	12,000,000	\$744,710	\$269,159	\$709,200	\$978,359	\$133,649	18%
13		40000	16,000,000	\$1,166,612	\$308,454	\$945,600	\$1,255,054	\$88,442	8%
14		40000	24,000,000	\$1,498,420	\$338,319	\$1,148,400	\$1,756,719	\$287,299	18%
15		80000	32,000,000	\$2,235,868	\$572,097	\$1,891,200	\$2,483,297	\$227,429	10%
16		80000	48,000,000	\$2,881,476	\$629,825	\$2,836,800	\$3,466,625	\$565,141	20%
17		160000	64,000,000	\$4,309,476	\$1,098,173	\$3,782,400	\$4,848,573	\$539,097	13%
18		200000	100,000,000	\$6,153,300	\$1,386,371	\$5,910,000	\$7,285,371	\$1,142,071	19%

NOTES: GENERATION IS COMPRISED OF BASE GEN, FPP, AAC, SRT, AND CD.

Rider RE \$/KWh
Riders RCP/PSM Net % Change From 2012
\$ 0.0638 \$ 0.0684 \$ 0.0759 \$ 0.0777 \$ 0.1115 \$ 0.1152 \$ 0.1189 \$ 0.1221
-37.00% -31.93% -37.06% -27.03% -27.59% -18.45% -13.14% -8.91% -2.81%

Rate Table (\$ per kWh)

Generation First 50,000 KVA	\$9,429,700
Generation Additional KVA	\$6,797,600
Generation First 300 kWh/KVA	\$0,010,038
Generation Additional kWh	\$0,006,068
Rider AAC First 50,000 KVA	\$1,893,900
Rider AAC Additional KVA	\$1,220,900
Rider AAC First 300 kWh/KVA	\$0,002,909
Rider AAC Additional kWh	\$0,003,310
Rider SRA-CD First 50,000 KVA	\$0,503,000
Rider SRA-CD Additional KVA	\$0,362,000
Rider SRA-CD First 300 kWh/KVA	\$0,000,684
Rider SRA-CD Additional kWh	\$0,000,963
Rider SRT First 50,000 KVA	\$0,372,900
Rider SRT Additional KVA	\$0,000,180
Rider SRT First 300 kWh/KVA	\$0,000,190
Rider SRT Additional kWh	\$0,029,800
Rider FPP	

Total Gen First 50,000 KVA \$11,969,900
Total Gen Additional KVA \$6,797,600
Total Gen First 300 kWh/KVA \$0,043,771
Total Gen Additional kWh \$0,040,351

PROPOSED

Rider RC and Rider PSM First 50,000 KVA	\$6,590,287
Rider RC and Rider PSM Additional KVA	\$4,029,978
Rider RC and Rider PSM First 300 kWh/KVA	\$0,005,951
Rider RC and Rider PSM Additional kWh	\$0,005,908

Rider RE, All kWh

\$0,059,100

DUKE ENERGY OHIO
TYPICAL BILL IMPACTS - GENERATION-RELATED
RATE DM

NON-SHOPPERS - TOTAL GENERATION																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																					
LINE NO.	RATE CODE	LEVEL of DEMAND	LEVEL of USE (KWH)	Dec-11 NON-SHOP (\$)	RETAIL CAP / PSM		\$0.059106 RETAIL ENERGY	2012 NON-SHOP	2012 CHANGE	2012 % CHANGE	2013-2021 NON-SHOP																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																										
					NON-BYPASSABLE	NON-SHOP					2013 NON-SHOP	2014 NON-SHOP	2015 NON-SHOP	2016 NON-SHOP	2017 NON-SHOP	2018 NON-SHOP	2019 NON-SHOP	2020 NON-SHOP	2021 NON-SHOP																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
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Rate Table (\$ per kWh)

Generation Summer First 2800 kWh	\$0.067106	Total Gen Summer First 2800 kWh	\$0.113813
Generation Summer Next 3200 kWh	\$0.007899	Total Gen Summer Next 3200 kWh	\$0.043067
Generation Summer Additional kWh	\$0.002325	Total Gen Summer Additional kWh	\$0.000543
Generation Winter First 2800 kWh	\$0.058779	Total Gen Winter First 2800 kWh	\$0.094220
Generation Winter Next 3200 kWh	\$0.007899	Total Gen Winter Next 3200 kWh	\$0.043071
Generation Winter Additional kWh	\$0.002742	Total Gen Winter Additional kWh	\$0.000039
Rider AAC Summer First 2800 kWh	\$0.011832		
Rider AAC Summer Next 3200 kWh	\$0.003020		
Rider AAC Summer Additional kWh	\$0.001316		
Rider AAC Winter First 2800 kWh	\$0.008381		
Rider AAC Winter Next 3200 kWh	\$0.003024		
Rider AAC Winter Additional kWh	\$0.001249		
Rider SRA-CD Summer First 2800 kWh	\$0.003514		
Rider SRA-CD Summer Next 3200 kWh	\$0.000897		
Rider SRA-CD Summer Additional kWh	\$0.000381		
Rider SRA-CD Winter First 2800 kWh	\$0.002789		
Rider SRA-CD Winter Next 3200 kWh	\$0.000898		
Rider SRA-CD Winter Additional kWh	\$0.000371		
Rider SRT Summer First 2800 kWh	\$0.001361		
Rider SRT Summer Next 3200 kWh	\$0.001361		
Rider SRT Summer Additional kWh	\$0.001361		
Rider SRT Winter First 2800 kWh	\$0.001361		
Rider SRT Winter Next 3200 kWh	\$0.001361		
Rider SRT Winter Additional kWh	\$0.001361		
Rider FPP	\$0.026800		
PROPOSED			
Rider RC and Rider PSM Summer First 1000 kWh	\$0.028590		
Rider RC and Rider PSM Summer Next 3200 kWh	\$0.003162		
Rider RC and Rider PSM Summer Additional kWh	\$0.000620		
Rider RC and Rider PSM Winter First 1000 kWh	\$0.002137		
Rider RC and Rider PSM Winter Next 3200 kWh	\$0.003162		
Rider RC and Rider PSM Winter Additional kWh	\$0.001065		
Rider RE, All kWh	\$0.059100		

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	
Standard Service Offer Pursuant to Section)	
4928.143, Revised Code, in the Form of	)	Case No. 11-3549-EL-SSO
an Electric Security Plan, Accounting)	
Modifications and Tariffs for Generation)	
Service.)	
In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3550-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)	
In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3551-EL-UNC
Corporate Separation Plan.)	

VOLUME III

TESTIMONY

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio for Authority to Establish a)
Standard Service Offer Pursuant to Section)
4928.143, Revised Code, in the Form of) Case No. 11-3549-EL-SSO
an Electric Security Plan, Accounting)
Modifications and Tariffs for Generation)
Service.)

In the Matter of the Application of Duke)
Energy Ohio for Authority to Amend its) Case No. 11-3550-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)

In the Matter of the Application of Duke)
Energy Ohio for Authority to Amend its) Case No. 11-3551-EL-UNC
Corporate Separation Plan.)

DIRECT TESTIMONY OF

JAMES E. ZIOLKOWSKI

ON BEHALF OF

DUKE ENERGY OHIO, INC.

June 20, 2011

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B. BASE RATES AND SERVICE REGULATIONS	18
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Attachments:

- JEZ-1: Proposed Duke Energy Ohio electric tariff at January 1, 2012 (Clean)**
- JEZ-2: Proposed Duke Energy Ohio electric tariff at January 1, 2012 (Redlined)**
- JEZ-3: Proposed Duke Energy Ohio retail supplier tariff at January 1, 2012 (Clean)**
- JEZ-4: Proposed Duke Energy Ohio retail supplier tariff at January 1, 2012 (Redlined)**
- JEZ-5: Work papers supporting the calculation of Rider DR, Distribution Reliability**
- JEZ-6: Work papers supporting the calculation of Rider AERR, Alternative Energy
Recovery Rider**

I. INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is James E. Ziolkowski, and my business address is 139 East Fourth
3 Street, Cincinnati, Ohio 45202.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by the Duke Energy Business Services LLC (DEBS) as Rates
6 Manager. DEBS provides various administrative and other services to Duke
7 Energy Ohio, Inc., (Duke Energy Ohio or the Company) and other affiliated
8 companies of Duke Energy Corporation (Duke Energy).

9 **Q. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL**
10 **EXPERIENCE.**

11 A. I received a Bachelor of Science degree in Mechanical Engineering from the U.S.
12 Naval Academy in 1979 and a Master of Business Administration degree from
13 Miami University in 1988. I am also a licensed Professional Engineer in the state
14 of Ohio.

15 After graduating from the Naval Academy, I attended the Naval Nuclear
16 Power School and other follow-on schools. I served as a nuclear-trained officer
17 on various ships in the U.S. Navy through 1986. From 1988 through 1990, I
18 worked for Mobil Oil Corporation as a Marine Marketing Representative in the
19 New York City area.

20 I joined The Cincinnati Gas & Electric Company (CG&E) in 1990 as a
21 Product Applications Engineer, in which capacity I designed and managed some
22 of CG&E's demand side management programs, including Energy Audits and

1 Interruptible Rates. From 1996 until 1998, I was an Account Engineer and
2 worked with large customers to resolve various service-related issues, particularly
3 in the areas of billing, metering, and demand management. In 1998, I joined
4 Cinergy Services, Inc.'s, Rate Department, where I focused on rate design and
5 tariff administration. I was significantly involved with the initial unbundling and
6 design of CG&E's retail electric rates. I was appointed to my current position in
7 January 2008.

8 **Q. PLEASE DESCRIBE YOUR DUTIES AS RATES MANAGER.**

9 A. As Rates Manager, I am responsible for rate design, tariff administration, billing,
10 and revenue reporting issues in Ohio and Kentucky. I also prepare filings to
11 modify charges and terms in retail tariffs of Duke Energy Ohio and Duke Energy
12 Kentucky, Inc., (Duke Energy Kentucky) and develop rates for new services.
13 During major rate cases, I help with the design of the new base rates. I assisted in
14 the development of the retail electric tariffs in the Company's Case No. 03-93-
15 EL-ATA, which established the Company's market-based standard service offer.
16 Additionally, I frequently work with customer contact and billing personnel of
17 Duke Energy Ohio and Duke Energy Kentucky to answer rate-related questions
18 and to apply the retail tariffs to specific situations. Occasionally, I meet with
19 customers and Company representatives to explain rates or provide rate training.
20 I also prepare reports that are required by regulatory authorities.

21 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC**
22 **UTILITIES COMMISSION OF OHIO?**

23 A. Yes. Most recently, I provided testimony before the Public Utilities Commission of

1 Ohio (Commission) in support of Duke Energy Ohio's application for approval of a
2 Market Rate Offer (MRO), filed under Case Number 10-2586-EL-SSO.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
4 **PROCEEDING?**

5 A. The purpose of my testimony in this proceeding is to: (i) describe changes to Duke
6 Energy Ohio's electric retail tariff, (ii) discuss changes to the Company's electric
7 supplier tariff, and (iii) address and support the design and calculation of certain new
8 riders and associated tariff sheets that are part of this filing.

9 **Q. WHAT ARE THE ATTACHMENTS AND SCHEDULES FOR WHICH**
10 **YOU ARE RESPONSIBLE?**

11 A. I am sponsoring all or part of the following items:

- 12 • Attachment JEZ-1 – Proposed Duke Energy Ohio electric tariff at January
13 1, 2012.
- 14 • Attachment JEZ-2 – Proposed Duke Energy Ohio electric tariff at January
15 1, 2012, marked to show changes from the current tariff.
- 16 • Attachment JEZ-3 – Proposed Duke Energy Ohio retail supplier tariff at
17 January 1, 2012.
- 18 • Attachment JEZ-4 – Proposed Duke Energy Ohio retail supplier tariff at
19 January 1, 2012, marked to show changes from the current tariff.
- 20 • Attachment JEZ-5 – Work papers supporting the calculation of Rider DR,
21 Distribution Reliability
- 22 • Attachment JEZ-6 – Work papers supporting the calculation of Rider
23 AERR, Alternative Energy Recovery Rider
24

II. RATE DESIGN: MAJOR DISTRIBUTION RETAIL
ELECTRIC RATE SCHEDULES AND SSO RIDERS

25 **Q. PLEASE DESCRIBE ATTACHMENT JEZ-1.**

26 A. Attachment JEZ-1 contains Duke Energy Ohio's proposed retail electric tariff at

1 January 1, 2012. This attachment contains the entire proposed retail electric
2 tariff. The values for the charges are the expected values at the time of the filing.
3 The charges for Riders RECON and UE-GEN are initially set at zero.

4 **Q. PLEASE DESCRIBE ATTACHMENT JEZ-2.**

5 A. Attachment JEZ-2 contains those pages of Duke Energy Ohio's proposed retail
6 electric tariff at January 1, 2012, on which changes have been made. Each change
7 is marked to show how it differs from the tariff that is in effect on the date the
8 Application is filed.

9 **Q. PLEASE DESCRIBE ATTACHMENT JEZ-3.**

10 A. Attachment JEZ-3 contains Duke Energy Ohio's entire proposed electric supplier
11 tariff at January 1, 2012.

12 **Q. PLEASE DESCRIBE ATTACHMENT JEZ-4.**

13 A. Attachment JEZ-4 contains those pages of Duke Energy Ohio's proposed electric
14 supplier tariff at January 1, 2012, on which changes have been made. Each
15 change is marked to show how it differs from the tariff that is in effect on the date
16 the Application is filed. Some of the marked changes are addressed in my
17 testimony and directly relate to the changes proposed to be made in the retail
18 electric tariff; other changes are addressed in the Direct Testimony of Duke
19 Energy Ohio witness Daniel L. Jones.

20 **Q. WHAT ARE THE COMPANY'S MAJOR RETAIL ELECTRIC RATE**
21 **SCHEDULES?**

22 A. The Company's major electric rate schedules are Rate RS (Residential Service),
23 Rate DM (Secondary Distribution Service – Small), Rate DS (Service At

1 Secondary Distribution Voltage), Rate DP (Service At Primary Distribution
2 Voltage), and Rate TS (Service At Transmission Voltage). The Company's tariff
3 also contains other rates and riders pertaining to lighting, electric heating and
4 time-of-use pricing.

5 **Q. WILL THE EXISTING BASE GENERATION RATES IN EACH OF THE**
6 **BASE RATE SCHEDULES BE ELIMINATED?**

7 A. Yes. Upon implementation of the Company's proposed electric security plan
8 (ESP), all generation-related charges will be recovered through various riders
9 such as Rider RC, Rider RE, and other riders.

10 **Q. PLEASE DESCRIBE RIDER RC (RETAIL CAPACITY).**

11 A. Rider RC is a non-bypassable rider that is designed to recover all of the costs
12 incurred by Duke Energy Ohio with regard to supplying the capacity necessary
13 for the provision of electric generation service, together with a reasonable return
14 on the assets used to supply such capacity.

15 The rate attached to Rider RC is calculated on the basis of historical costs
16 and historical customer load information incurred in the provision of capacity,
17 including a rate of return. Thus, the rate is a formula rate that will be updated and
18 adjusted, through an annual Commission proceeding. Duke Energy Ohio witness
19 Jeffrey R. Bailey discusses the design of Rider RC in more detail in his testimony.

20 **Q. IS RIDER RC BYPASSABLE?**

21 A. No. As Rider RC recovers the costs associated with providing a stable and
22 reliable supply of capacity to all customers, it is non-bypassable.

23 **Q. PLEASE DESCRIBE RIDER PSM (PROFIT-SHARING MECHANISM).**

1 A. Rider PSM is a credit mechanism, included as a means to share with ratepayers
2 the net profits received through sale of energy produced by Duke Energy Ohio's
3 legacy generating assets as well as ancillary services. As more fully described by
4 Duke Energy Ohio witness William Don Wathen Jr., the cost of Company's
5 legacy generating assets forms the basis for Rider RC, which therefore provides
6 capacity for all customers. The energy and ancillary services associated with the
7 operation of such assets will be sold in the market, with Duke Energy Ohio and all
8 of its customers sharing the net profits.

9 **Q. IS RIDER PSM BYPASSABLE?**

10 A. No. As the cost of the capacity is non-bypassable, the credit that allows for the
11 sharing of the resultant energy and ancillary services, is also non-bypassable, thus
12 sharing the net profits proportionately with all customers, whether they purchase
13 their energy and ancillary services from Duke Energy Ohio or from a competitive
14 retail electric service (CRES) provider.

15 **Q. PLEASE DESCRIBE RIDER RE (RETAIL ENERGY).**

16 A. Rider RE is designed to collect the costs of procuring the energy to serve
17 generation customers. As explained by Duke Energy Ohio witnesses Robert J.
18 Lee and James S. Northrup, the Company will conduct a series of wholesale
19 auctions, in order to obtain the necessary energy and related services. The
20 ultimate cost of such energy and related services, as determined through the
21 auctions, will be converted into retail rates, as detailed by Duke Energy Ohio
22 witness Bailey, and passed through to non-shopping customers, through Rider
23 RE. In addition, the costs associated with conducting the auctions for standard

1 service offer (SSO) load, defaulting suppliers, and reconciliation will be collected
2 via Rider RE.

3 **Q. IS RIDER RE BYPASSABLE?**

4 A. Yes. As Rider RE recovers the cost of energy services, which services may also
5 be obtained through CRES suppliers, it is fully bypassable.

6 **Q. PLEASE DESCRIBE RIDER RECON.**

7 A. The purpose of the proposed Rider RECON (Fuel and Reserve Capacity
8 Reconciliation Rider) is to true-up the costs and revenue for certain riders being
9 eliminated or zeroed out in the Company's proposal. It is highly unlikely that the
10 current Rider PTC-FPP will have a \$0 balance of over- or under-recovery on
11 December 31, 2011, when the ESP proposed in the Application would become
12 effective. The same holds true for the current Rider SRA-SRT. For these riders,
13 the Company is proposing to either collect or refund the collective balance of any
14 over- or under-recovery.

15 The Company will make an application to establish the Rider RECON
16 rates no later than April 1, 2012. Because the amount to be recovered from or
17 refund to customers is expected to be relatively small, the duration of Rider
18 RECON should be short. The Company expects to eliminate any over- or under-
19 recoveries associated with Riders FPP and SRT within two quarters.

20 **Q. IS RIDER RECON BYPASSABLE?**

21 A. Yes. Principally because Rider PTC-FPP is currently bypassable and involves a
22 significantly greater amount of money than Rider SRA-SRT and because Rider
23 SRA-SRT is conditionally bypassable, Rider RECON will be fully bypassable for

1 shopping customers.

2 **Q. WHAT IS THE PURPOSE OF RIDER UE-GEN?**

3 A. Rider UE-GEN will recover the cost of bad debt associated with the Company's
4 SSO service and that of CRES providers. The Company's current Rider UE-ED
5 (Uncollectible Expense – Electric Distribution Rider) recovers bad debt expenses
6 associated with electric distribution service. Rider UE-GEN will collect
7 generation-related bad debt. The structure of Rider UE-GEN allows the Company
8 to implement a program that currently exists for its gas business where it
9 purchases accounts receivable for all gas suppliers operating in its territory, at no
10 discount, with payment made to the CRES providers for their accounts receivable
11 on the twentieth day of the month following the month during which the billing
12 occurs. The uncollectible costs of such purchases would be recoverable through
13 Rider UE-GEN.

14 **Q. IS RIDER UE-GEN BYPASSABLE?**

15 A. No. As Rider UE-GEN recovers the cost of purchasing accounts receivable from
16 CRES providers as well as the cost uncollectible expenses associated with the
17 Company's own accounts receivable related to its SSO load, it is not bypassable.

18 **Q. DOES THE COMPANY PROPOSE ANY OTHER NEW RIDERS?**

19 A. Yes. The Company proposes two additional new riders: Rider AER-R
20 (Alternative Energy Resource Rider) and Rider DR (Distribution Reliability).

21 **Q. PLEASE DESCRIBE RIDER AER-R.**

22 A. Rider AER-R will recover the Company's cost of complying with Ohio's alternative
23 energy requirements. CRES providers serving switched load are responsible for

1 obtaining the RECs for the load they serve. Rider AER-R will recover the costs of
2 the RECs associated with Duke Energy Ohio's SSO load. It will be adjusted
3 quarterly, including true-ups, and will be avoidable. Attachment JEZ-6, page 1,
4 shows the estimated Rider AERR rates for each year through 2021. The cost of the
5 RECs were provided by Duke Energy's Midwest Commercial Generation group.

6 **Q. PLEASE DESCRIBE RIDER DR.**

7 A. Rider DR (Distribution Reliability) is a non-bypassable rider being established to
8 recover incremental investment and return for distribution-related reliability
9 investment that is not recovered elsewhere. The incremental revenue requirement to
10 be recovered through Rider DR is calculated as the difference between the current
11 distribution revenue requirement and the revenue requirement approved in Case No.
12 08-709-EL-AIR, *et al.*, adjusting for changes in load growth since that case. Rider
13 DR will be adjusted annually.

14 Rider DR is intended to balance the needs of the Company to maintain its
15 financial stability and its commitment to shareholders with the needs of its
16 customers to minimize costs while receiving safe, reliable, and efficient service. The
17 objective is timely recovery of a return of and on incremental investment in electric
18 distribution plant and recovery of incremental electric distribution expenses net of
19 any benefits and net of any revenue growth derived from growth in the number of
20 distribution consumers served. A significant benefit of Rider DR is that it serves to
21 decouple kilowatt-hour sales from overall distribution revenue. In his recent
22 Concurring Opinion in Case No. 09-1947-EL-POR, *et al.*, Chairman Snitchler stated
23 that he will be "most reluctant to approve any future proposals which include the

1 collection of lost distribution revenues resulting from the statutory mandates for
2 energy efficiency savings and peak demand reduction.” Because Rider DR will
3 decouple sales from distribution revenues, the Company will have no need to request
4 lost distribution revenue recovery in future energy efficiency filings. Rider DR will
5 be charged on a “per bill” basis to all customers.

6 **Q. PLEASE DESCRIBE ATTACHMENT JEZ-5.**

7 A. Attachment JEZ-5 shows the calculation of Rider DR and estimates the Rider DR
8 rates through the term of the proposed ESP. The base period for the calculation of
9 Rider DR is the test year approved in the Company’s last distribution base rate case,
10 08-709-EL-AIR, *et al.* Page 1 shows the revenue requirement for each year and the
11 difference from the base revenue requirement. It also shows the impacts of load and
12 customer growth on the revenues. Page 2 shows the incremental Operation
13 & Maintenance (O&M) revenue by year versus the base year. Page 3 shows the
14 incremental rate base by year versus the base year. This page also shows the
15 calculation of the return on the rate base to be included in the Rider DR revenue
16 requirement calculation. Finally, page 5 shows the calculation of the estimated
17 Rider DR rates by year through the end of the proposed ESP period.

18 The methodology employed to calculate the rates implicitly decouples
19 revenues from increases in the number of customers. This occurs because Rider DR
20 rates reflect the difference in the revenue requirement per bill for the current year
21 minus the revenue requirement per bill for the base period. To the extent that the
22 number of bills changes from the base period in a given year, the Rider DR rate
23 changes accordingly, independent of that year’s revenue requirement.

1 **Q. WHAT IS THE SOURCE OF DATA FOR CALCULATING RIDER DR?**

2 A. The base year information, as shown in Attachment JEZ-5, is from the most
3 recent rate case, as I described earlier. The 2010 numbers are from the
4 Company's FERC Form 1. For subsequent years, the 2010 actual numbers were
5 escalated each year by three percent.

6 **Q. WHAT TYPES OF COSTS WILL BE INCLUDED IN RIDER DR?**

7 A. Rider DR will be limited to only those plant and O&M accounts that are specifically
8 distribution or distribution-related, including investments associated with the
9 SmartGrid project. Energy efficiency program costs will be excluded from Rider
10 DR. All of the information will be auditable and much of the information will be
11 readily available in the Company's Form 1 filed with the Federal Energy Regulatory
12 Commission and the Commission .

13 For incremental net plant, Rider DR will be based on the year-end electric
14 distribution plant original cost, net of accumulated depreciation, and will not include
15 any construction work in progress. Electric distribution plant original cost and
16 accumulated depreciation is provided in the Form 1. Net plant will also include
17 Duke Energy Ohio's electric share of hardware and software development and
18 communication equipment costs included in plant accounts other than electric
19 distribution plant accounts. The adjustments to be included in the calculation of
20 electric distribution rate base are for accumulated deferred income taxes (ADITs)
21 associated with electric distribution plant (Account 282), 3% and 4% Investment
22 Tax Credit (ITC) on electric distribution plant, ADIT on uncollectible accounts, and
23 the balance of Regulatory Assets – Meters. Although detailed information on ADITs

1 and ITC is not publicly available, it is readily available from the Company and will
2 be included in the proposed annual filings.

3 Incremental O&M expense would be limited to direct electric distribution
4 expenses, FERC Accounts 580 through 598, and distribution-related A&G accounts,
5 FERC Accounts 901 through 910 (except Account 904, which is predominantly
6 costs associated with uncollectible expense being collected in other riders). The
7 eligible direct distribution O&M expenses include such costs as vegetation
8 management and meter expenses. The distribution-related A&G accounts include
9 such costs as call center and billing expenses.

10 Finally, the Company proposes to include depreciation expense on electric
11 distribution plant (also available in the Form 1), property taxes on electric
12 distribution plant, and allocated IT costs. Property taxes are not reported in the
13 Form 1 on a distribution-only basis but the information is estimable and will be
14 included in the annual filings.

15 The return on the incremental electric distribution rate base will be the
16 overall pre-tax weighted-average cost of capital established in Case No. 08-709-EL-
17 AIR, *et al.*

18 **Q. HOW DOES DUKE ENERGY OHIO PROPOSE TO ADJUST RIDER DR?**

19 A. The Company proposes that a filing be made each year on or before June 1st to
20 update the revenue requirement for Rider DR. The Commission would have the
21 opportunity to establish a formal review process and new rates would be updated
22 upon a Commission order approving the rates for implementation by January 1st of
23 the following year.

1 In addition, Duke Energy Ohio commits that, beginning in 2013, it will file
2 a status report by August 1 of each year, that discusses significant distribution
3 investments that the Company plans to make during the following calendar year.
4 Duke Energy Ohio will include in these status reports the expected costs, a summary
5 of expected customer benefits for SmartGrid, and incremental rate impacts from
6 Rider DR. Absent any Commission ruling to the contrary by October 1 each year,
7 the Company requests that such expenditures be presumed to be prudent such that, if
8 any stakeholder seeks to assert in a subsequent Rider DR proceeding or a subsequent
9 general rate proceeding that such expenditures were imprudent, then that stakeholder
10 shall bear the burden of proof the expenditures were imprudent and should be
11 disallowed.

12 **Q. IS THE COMPANY PROPOSING TO CONTINUE ITS SMARTGRID**
13 **RIDER FOR ELECTRIC IF THE COMMISSION APPROVES RIDER DR**
14 **IN THIS PROCEEDING?**

15 A. The rider for collecting electric SmartGrid costs is Rider DR-IM (distribution
16 reliability – infrastructure maintenance). The current rates for Rider DR-IM were
17 established to begin recovering costs associated with SmartGrid investment and
18 other costs through the end of 2009. That rider was established on the basis of
19 annual recovery; consequently, recovery of the costs currently being recovered in
20 Rider DR-IM will continue through March 2012. At that time, Rider DR-IM will
21 expire if the Commission approves Rider DR.

22 **Q. IS DUKE ENERGY OHIO OFFERING ANY TIME-DIFFERENTIATED**
23 **PRICING OPTIONS?**

1 A. Yes. For residential customers, the Company will continue to offer Rate TD
2 (Optional Time of Day Rate), Rate TD-AM (Time of Day Rate for Residential
3 Service with Advanced Metering), Rider PTR (Peak Time Rebate – Residential Pilot
4 Program), Rate TD-CPP_LITE (Residential Critical Peak Pricing), and Rate TD-
5 LITE (Optional Time of Day Rate For Residential Service with Advanced
6 Metering). Rate TD-AM, Rider PTR, Rate TD-CPP_LITE, and Rate TD-LITE were
7 developed in conjunction with the SmartGrid Collaborative that meets each month in
8 Columbus.

9 For non-residential customers, Rider LM (Load Management Rider) and
10 Rate RTP (Real Time Pricing Program) will continue to be available. As discussed
11 below, Rider LM will be modified to eliminate certain barriers. The Company's
12 PowerShare program will also continue.

13 **Q. PLEASE DESCRIBE RATES TD, TD-AM, TD-CPP, TD-LITE, AND RIDER**
14 **PTR IN MORE DETAIL.**

15 A. Rate TD-AM, Rate TD-CPP_LITE, Rate TD-LITE, and Rider PTR were developed
16 as part of a collaborative effort between the Company, the Office of the Ohio
17 Consumers' Counsel, Ohio Partners for Affordable Energy, and Commission Staff
18 to allow residential customers to begin taking advantage of the increased data
19 available from their advanced ("Smart") meters. These rates were all filed as pilots
20 to allow the Company to learn more about customer acceptance and response to
21 price signals. The Company is also learning how best to educate customers and
22 interact with them.

23 Rate TD is the simplest of the residential time-differentiated rates. It

1 contains summer and winter on- and off-peak rates. Rate TD-AM has summer and
2 winter seasons, but the seasons contain on-peak, shoulder, and off-peak prices. Rate
3 TD-CPP_LITE has summer and winter seasons with on-peak, critical peak,
4 shoulder, and off-peak prices. Finally, Rate TD-LITE has only on-peak and off-
5 peak rates, but the year was split into three seasons (summer, winter, spring/fall).

6 Rider PTR (Peak Time Rebate) applies to any residential customer with
7 smart metering. Rider PTR provides credits to participating customers who reduce
8 usage during critical peak events.

9 As discussed by Mr. Bailey, Rider RC prices will be developed for each of
10 these time-differentiated base rates.

11 **Q. PLEASE DESCRIBE THE NON-RESIDENTIAL TIME-DIFFERENTIATED**
12 **PRICING OPTIONS IN MORE DETAIL.**

13 **A.** Rider LM (Load Management Rider) is an optional rider that applies to customers
14 taking service under one of the three demand rates: Rate DS, Rate DP, or Rate TS.
15 Rider LM allows customers to reduce billing demands by shifting some load from
16 on-peak to off-peak periods. Lowering billed demands reduces the distribution,
17 transmission, and generation-related charges for customers on these demand rates.
18 Rider LM is currently available to only non-shoppers and shoppers who began
19 participating in Rider LM prior to October 1999. Because Rider RC (Retail
20 Capacity) will be non-bypassable, the Company proposes to re-open Rider LM to all
21 retail customers served under Rates DS, DP, and TS. Duke Energy Ohio believe this
22 will benefit customers because shopping customers taking service under DS, DP, or
23 TS will be able to continue managing their demands to minimize distribution and

1 transmission charges as well as Rider RC charges.

2 The Company intends to continue Rate RTP, Real Time Pricing Program.
3 Under Rate RTP, charges for hourly usage above or below the Customer Base Line
4 (CBL) will be based on the day-ahead LMP published by the applicable RTO at the
5 Company's delivery point. The baseline portion of the monthly bill will be billed
6 using current practices, except that the generation charges will reflect the SSO riders.

7 Duke Energy Ohio will continue its PowerShare program for non-residential
8 customers. The PLM Program is voluntary and offers customers the opportunity to
9 reduce their electric costs by managing their electric usage during peak load periods.
10 Customers may elect to participate in a PLM service option by either choosing to:
11 (a) reduce demand to a specified amount; (b) reduce energy usage below their
12 baseline; or, (c) sell the output of any customer-owned self generation to Company.
13 The details of the PowerShare program are discussed in Rider PLM, Sheet No. 87.1
14 of the Company's tariff.

15 **Q. DOES THE COMPANY'S PROPOSED ESP ENHANCE THE**
16 **OPPORTUNITY FOR MORE DYNAMIC PRICING OFFERS?**

17 A. The Company believes the collaborative process has been successful at developing
18 some innovative pricing structures to take advantage of the emerging distribution
19 technology, particularly for metering. Admittedly, it is a challenge to educate
20 customers about the benefits of such novel programs and that is a factor in the
21 relatively low participation levels seen in the programs thus far.

22 The most significant barrier for customer participation in these programs is
23 the condition that customers not switch to alternative suppliers. The Company's

1 current avoidable SSO price is significantly higher than the market prices being
2 offered to our customers. Those customers sophisticated enough to consider offers
3 for dynamic pricing are most likely sophisticated enough to have already recognized
4 the benefit of switching. All of the dynamic pricing proposals are designed on a
5 revenue-neutral basis, meaning on average the revenue from the group of these
6 customers is the same whether they are taking service under dynamic pricing or not.
7 Current offers from CRES providers are 20 percent to 30 percent below Duke
8 Energy Ohio's SSO price. A sophisticated customer quickly recognizes that there
9 will be a greater benefit from just switching than taking dynamic pricing offers.

10 Under the Company's proposed ESP, there will be no difference, on average,
11 between the Company's market-based price-to-compare and CRES offers. This
12 "market to market" comparison of the price-to-compare to CRES offers means that
13 customers can make meaningful impacts on their bills by utilizing dynamic pricing
14 offers from the Company and, potentially, from CRES providers. Once the non-
15 market based bias is removed, load shifting will be a meaningful way for customers
16 to manage consumption and cost for their energy.

III. OTHER TARIFF CHANGES

A. RIDERS TO BE TERMINATED

17 **Q. WHY DOES THE COMPANY PROPOSE TO ELIMINATE RIDER SC?**

18 **A.** Rider SC (Shopping Credit Rider) is a credit that applies to non-residential
19 customers that take service from a CRES provider and agree to remain shopping
20 through December 31, 2011. If those customers return to the Company's ESP-
21 SSO rate before December 31, 2011, they are subject to a 15 percent premium on

1 their generation-related charges. Rider SC will no longer apply after December
2 31, 2011.

3 **Q. WHY DOES THE COMPANY PROPOSE TO EVENTUALLY**
4 **ELIMINATE RIDER DR-IM?**

5 A. Rider DR-IM (Infrastructure Modernization Rider) is a distribution-related rider
6 that recovers costs associated with SmartGrid. The Company proposes to recover
7 those costs through Rider DR, Distribution Reliability as part of the annual
8 distribution revenue requirement calculation. By merging SmartGrid costs into
9 Rider DR, the benefits from SmartGrid, such as reduced expenses over time, will
10 flow to customers in a more timely manner. Rider DR-IM will remain in effect
11 until such time as the SmartGrid costs and benefits are recovered through Rider
12 DR.

13 **Q. DOES THE COMPANY PROPOSE TO ELIMINATE ANY OTHER**
14 **RIDERS?**

15 A. Yes. The Company proposes to eliminate Rider PTC-FPP (Fuel and Purchased
16 Power Rider), Rider PTC-AAC (Annually Adjusted Component Rider), Rider
17 SRA-CD (Capacity Dedication Rider), and Rider SRA-SRT (System Reliability
18 Tracker). These riders will no longer be needed under the proposed ESP.

B. BASE RATES AND SERVICE REGULATIONS

19 **Q. WHAT CHANGES IS DUKE ENERGY OHIO PROPOSING TO ITS**
20 **BASE RATE TARIFF SHEETS?**

21 A. As I previously mentioned, the base generation charges that appear on each of the
22 base rate tariff sheets (such as Rate RS or Rate DS) will be eliminated.

1 Generation-related cost recovery will be accomplished through the generation
2 riders such as Rider RE and Rider RC. The rates for these riders will be reflected
3 on new tariffs sheets. Base distribution rates are not affected by this SSO filing.
4 No other major changes are anticipated, except that the list of applicable riders
5 that appears on each tariff sheet will reflect the riders in effect when the proposed
6 ESP goes into effect.

7 **Q. ARE THERE ANY PROPOSED CHANGES TO THE COMPANY'S**
8 **ELECTRIC SERVICE REGULATIONS?**

9 A. Yes. The Company modified Section III – Customer Choice Enrollment and
10 Participation Guidelines, Sheet No. 22.7. Specifically, references to the ESP and
11 the Rider SRA-SRT waiver program were eliminated because these items no
12 longer apply under the proposed ESP.

13 The Company's Certified Supplier tariff, P.U.C.O. 20, also requires
14 amendment, in order to correctly refer to issues addressed in the proposed ESP.
15 In addition, the Company is proposing substantial revisions of such tariff, as is
16 discussed in detail in the testimony of Duke Energy Ohio witness Jones.

17 **Q. ARE PROPOSED REVISED TARIFF PAGES BEING FILED AT THIS**
18 **TIME?**

19 A. Yes. For completeness, clean copies of the entirety of both tariffs are being filed,
20 including those sheets that are not affected by the SSO.

21 **Q. DOES THE COMPANY PROPOSE TO CANCEL ANY OTHER TARIFF**
22 **SCHEDULES?**

23 A. The Company is eliminating Rider RTC, Regulatory Transition Charge, Sheet No.

1 84, because all RTC charges terminated after December 31, 2010, pursuant to the
2 Order in the Company's Electric Transition Plan (Case No. 99-1658-EL-ETP).

3 **Q. WHAT EXISTING RIDERS ARE NOT AFFECTED BY THE ESP**
4 **FILING?**

5 A. The following riders will not be affected by this filing because they are
6 distribution-related or mandated by the state: Rider OET (Ohio Excise Tax), Rider
7 USR (Universal Service Fund Rider), Rider EER (Energy Efficiency Revolving
8 Loan Program Rider), Rider DR-ECF (Economic Competitiveness Fund Rider),
9 Rider DR-SAW (Energy Efficiency Cost Recovery Rider), Rider DR-SAWR
10 (Energy Efficiency Recovery Rate), and Rider DRI (Distribution Reliability
11 Investment Rider –terminated on December 31, 2010, with true-up in second
12 quarter 2011. Rider DRI appears as cancelled and withdrawn in Attachments
13 JEZ-1 and JEZ-2). All other riders not specifically mentioned in this testimony
14 continue as they have in the past.

15 **Q. WILL DUKE ENERGY OHIO BE ABLE TO BILL THE RATES**
16 **DESCRIBED IN YOUR TESTIMONY?**

17 A. Yes. The proposed riders, are structured such that they can easily be added and
18 billed through the Company's billing system.

19 **Q. WHICH OF THE RIDERS WILL APPEAR AS SEPARATE LINE ITEMS**
20 **ON RETAIL BILLS?**

21 A. The Company proposes to show each of the bypassable riders as separate line
22 items on customer bills. For example, Rider RE charges and will each be
23 displayed separately on bills. This will add clarity and transparency, and will help

1 customers to calculate their price to compare numbers. Subject to the
2 Commission's approval, the bypassable SSO riders will appear in the generation
3 section of each customer bill.

IV. CONCLUSION

4 Q. HOW DOES THE COMPANY PROPOSE THAT ITS TARIFFS,
5 INCLUDING THE PREVIOUSLY DISCUSSED RATES AND CHARGES,
6 BE IMPLEMENTED?

7 A. Duke Energy Ohio proposes that the revised tariffs, including the rates and
8 charges complying with the Commission's Order in this case, be effective January
9 1, 2012, for all customers.

10 Q. WERE THE ATTACHMENTS DISCUSSED ABOVE PREPARED BY YOU
11 OR UNDER YOUR SUPERVISION?

12 A. Yes.

13 Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?

14 A. Yes.

**SCHEDULE OF RATES, CLASSIFICATIONS
RULES AND REGULATIONS
FOR
RETAIL ELECTRIC SERVICE
OF
DUKE ENERGY OHIO**

**P.U.C.O. NO. 19
This Tariff cancels and supersedes P.U.C.O. No. 17**

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 19
Sheet No. 01
Page 1 of 1

TABLE OF CONTENTS

<u>Tariff Sheet No. Series</u>	<u>Description</u>	<u>Summary of Applicability*</u>
-	Title Page	
01	Table of Contents	
10	Index to Tariff Schedules and Communities Services	Complete list of available tariffs by Sheet No. and municipalities and counties served.
20	Service Regulations	Set of rules and regulations of the Company for providing electric service as approved by the Public Utilities Commission of Ohio.
30	Residential Service	Tariffs available to residential customers unless the customer is provided three phase service.
40	Distribution Voltage Service	Tariffs available, principally, to non-residential customers receiving service at 34,500 volts or lower; available to residential customers who request either three phase service or a second point of service.
50	Transmission Voltage Service	Tariffs available, principally, to non-residential customers receiving service at 69,000 volts or higher.
60	Lighting Service	Tariffs available for lighting of areas of a public or private nature.
70-80	Riders	Riders necessary to determine total amount of monthly bill to customers.
90	Miscellaneous	Miscellaneous periodic charges not reflected in standard service tariffs.

* To determine applicability, available tariff and Company's Service Regulations and other rules and regulations should be reviewed and discussed with the Company.

Filed pursuant to an Order dated _____ in Case No. _____ before the Public Utilities Commission of Ohio.

Issued:

Effective:

Issued by Julie Janson, President

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 19
Sheet No. 10.48
Cancels and Supersedes
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ELECTRIC SERVICE REGULATIONS

SECTION I - SERVICE AGREEMENTS

1. Application for Service.

When a customer desires electric service, application shall be made to the Company, specifying the date service is desired and the place where service is to be furnished. An oral application may be accepted by the Company, although a written application or agreement may be required at the option of the Company at the time of application or at any later time.

When a customer requests to be enrolled in the Customer Choice program he or she shall do so in accordance with the guidelines established in Section III, Customer Choice Enrollment and Participation Guidelines.

2. Customer's Right to Cancel or Suspend Service.

A customer may terminate electric service by giving the Company reasonable notice, but not less than three (3) business days prior to termination. The Company will accept such notice as a cancellation of service, except as may be provided in a signed service agreement, rate schedules, or elsewhere in these ELECTRIC SERVICE REGULATIONS.

3. Company's Right to Refuse or to Disconnect Service

The Company, in addition to all other legal remedies, may terminate the service agreement and refuse or discontinue service to an applicant, consumer or customer, for any of the following reasons:

- (a) Upon the request of the customer for temporary disconnection of service for maintenance or other reasons. A residential customer residing in a single family home should contact the Company approximately four (4) hours in advance of the time of requested disconnection. All other residential and non-residential customers shall contact the Company at least three (3) business days in advance of date of the requested disconnections. Note: If any rewiring or change in electric service is being done during the disconnection period, other Company requirements must be met before electric service will be reconnected;
- (b) When the customer has moved from the premises, neglected to request disconnection of service, and an investigation by the Company indicates that service is no longer required;
- (c) When continued service would jeopardize the life or property of the customer, the Company, or the public, service may be disconnected without notice to the customer;
- (d) When supplying electricity to any consumer or customer creates a dangerous condition on the consumer's or customer's premises or where, because of conditions beyond the consumer's or customer's premises, termination of the supply of electricity is reasonably necessary. Service will not be restored until such dangerous condition or conditions have been corrected;

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- (e) When providing service is in conflict or incompatible with any laws, regulations or orders of the Public Utilities Commission of Ohio, the State of Ohio or any political subdivision thereof, or of the Federal Government or any of its agencies;
- (f) When a customer or applicant refuses to provide reasonable access to the premises or ignores repeated requests for access pursuant to Rule 4901:1-18-02 (G) of the Ohio Administrative Code.
- (g) When in the sole opinion of the Company, the customer's equipment interferes with the electric service provided to other customers;
- (h) For any violation of or refusal to comply with these ELECTRIC SERVICE REGULATIONS as filed with the Public Utilities Commission of Ohio;
- (i) For any violation of or refusal to comply with the requirements as outlined in the Company's publications relating to electric service as set forth in Section II, Paragraph 9, Service Voltages and Regulations;
- (j) For any violation of or refusal to comply with requirements contained in special agreements or contracts between the customer and the Company;
- (k) Nonpayment of bills when due, for non-residential customers only, pursuant to Rule 4901:1-10-17 of the Ohio Administrative Code.

For the disconnection of service to residential customers for nonpayment of bills, the Company will follow the procedures as set forth in Section VII Paragraph 1, Disconnection for Nonpayment: Residential Customers, of these ELECTRIC SERVICE REGULATIONS; and

- (l) In the event the consumer or customer resorts to theft or any fraudulent representation or practice in the obtaining of electric supplied, or is the beneficiary of any such fraudulent representation or practice, or the meter, metering equipment or other property used to supply the service has been damaged or tampered with by the consumer or customer, his servants or agents.

Service will not be restored until the consumer or customer has given satisfactory assurance that such fraudulent or damaging practice will be discontinued, and has paid to the Company an amount estimated by the Company to be reasonable compensation for service fraudulently obtained and not paid for and for any damage to property of the Company including any cost to repair the damage.

Failure of the Company to exercise any of its rights for the above reasons does not affect its right to resort thereafter to any such remedies for the same or any future default or breach by the customer. Refusal of or disconnection of service is not an exclusive remedy. The Company may exercise any other appropriate remedy provided by law including civil suit and/or criminal prosecution.

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4. Change of Address of the Customer

When the customer's address changes, the customer must give notice thereof to the Company prior to the date of change. The customer is responsible for all service supplied to the vacated premises until such notice has been received and the Company has had reasonable time, but not less than three (3) business days, to discontinue service.

If the customer moves to an address at which the customer requires electric service for any purpose specified in the service agreement, and at which address the Company has such service available under the same rate schedule, the notice is considered as the customer's request that the Company transfer such service to the new address. If the Company does not have such service available at the new address, the old service agreement is considered cancelled. If the Company does have service available at the new address to which a different rate schedule applies, a new service agreement, including the applicable rate schedule, is offered to the customer. The Company shall transfer service within a reasonable time after receipt of notice.

5. Successors and Assigns

The benefits and obligations of the application for service shall inure to and be binding upon the successors and assigns, survivors and executors or administrators, as the case may be, of the original parties thereto, for the full term thereof, to the extent permitted by applicable law, provided that no assignment hereof shall be made by the customer without first obtaining the Company's written consent.

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SECTION II - SUPPLYING AND TAKING OF SERVICE

1. Supplying of Service

Service is supplied under and pursuant to these ELECTRIC SERVICE REGULATIONS and any modifications or additions thereto lawfully made and approved by the Public Utilities Commission of Ohio.

The services supplied under these Service Regulations are governed by applicable provisions of the Ohio Revised Code (ORC) and the Ohio Administrative Code (OAC). No provision of these Service Regulations shall be read to contradict any provision of either the ORC or the OAC except pursuant to a waiver granted by the Public Utilities Commission of Ohio.

Notwithstanding any provisions of Title XLIX of the Revised Code to the contrary and irrespective of the voltage level at which service is taken, any customer that receives non-competitive retail service from the Company shall be considered a retail electric distribution service customer.

Service is supplied under a given rate schedule at such points of delivery as are adjacent to the Company's facilities which are adequate and suitable, as to capacity and voltage, for the service desired; otherwise, special agreements between the customer and the Company may be required. Should the electric power requirements of the customer change, as to capacity or use, the Company may require that the service be supplied from a different facility if the original facility is or becomes inadequate and unsuitable for the service desired. If special agreements between the customer and the Company are required, electric service will not be supplied until the agreements are executed by the customer and the Company.

Service will not be supplied to any premises if at the time of application for service applicant is indebted to Company for service previously supplied at the same or other premises for like services until payment of such indebtedness shall have been made. Unpaid balances of previously rendered final bills may be transferred and included on the initial or subsequent bill for a like service account. Such transferred final bills, if unpaid will be part of the past due balance of the transferee account and subject to the Company's collection and disconnection procedures which are governed by Chapters 4901:1-10 and 4901:1-18 of the Ohio Administrative Code. The transfer of bills is limited to like service, i.e., residential to residential, commercial to commercial, gas to gas, electric to electric, and combination to combination. The unpaid balances for electric and gas service in a combination account shall remain separate. The transfer of unpaid balances from a combination account to a transferee combination account is limited to like service, i.e., electric to electric and gas to gas. Any transfer of gas, electric or combination accounts shall not affect the residential customer's right to elect and maintain an extended payment plan for gas, electric or combination service under Rule 4901:1-18-10 of the Ohio Administrative Code.

The availability of service under this tariff, P.U.C.O. Electric No. 19, to customers who have elected to relieve the Company of its obligation to provide generation service under the Company's regulated Standard Offer Rate shall be subject to the rules, regulations and Orders of the Public Utilities Commission of Ohio.

Commercial service will not be supplied or continued to any premises if at the time of application for commercial service, applicant or customer is merely acting on behalf of or is a business representative of a

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present or former commercial customer who is indebted to the Company for commercial service previously supplied at the same or other premises until payment of such indebtedness shall have been made. Commercial service will not be supplied where the applicant or customer is a person, or partnership which person or whose general partner is a present or former customer who is indebted to the Company for commercial service previously supplied at the same or other premises until payment of such indebtedness shall have been made.

2. Information Relative to Service

Information relative to the service that will be supplied at a given location must be obtained from the Company. This information should be requested at least 30 days in advance of the time of construction of the project to allow the necessary time required to determine the exact engineering details for the individual customer installation. Such information will be confirmed in writing, if requested by the customer. The customer's service terminals are to be located at a point readily accessible to the Company's facilities, such point to be determined by the Company.

In any instance where the Company determines that a prospective customer must sign a construction, maintenance, special equipment agreement, or any other written agreement in order to provide for the ongoing and overall service of the customer's electric requirements, all such agreements must be fully executed and received by the Company prior to the energizing of the customer's system. The providing of energy on a temporary basis has no effect on the above requirements relating to permanent service.

3. Continuity of Service

The Company will make reasonable provisions to supply satisfactory and continuous electric service, but does not guarantee a constant or uninterrupted supply of electricity and shall not be liable for any damage or claim of damage attributable to any interruption or reversal of service caused by accident or casualty, extraordinary action of the elements, action of any governmental authority, litigation, deficiency of supply, or by any cause which the Company could not have reasonably foreseen and made provision against.

4. Suspension of Service for Repairs and Changes

When necessary to make repairs to or change in the Company's plant, generating equipment, transmission or distribution systems, or other property, the Company may, without incurring any liability therefor, suspend service for such periods as may be reasonably necessary and in such manner as not to inconvenience the customer unnecessarily.

5. Use of Service

Service is supplied directly to the customer through the meter and is to be used by the customer only for the purposes specified in and in accordance with the provisions of the applicable rate schedule and these regulations and any service agreement.

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The customer will not build lines across or under a street, alley, lane, court or avenue or other public space in order to obtain service for adjacent property through one meter, even though such adjacent property be owned by customer, without the prior written approval of the Company.

In case of unauthorized sale, extension or other disposition of service, the Company may discontinue the supplying of service to the customer until such unauthorized act is discontinued and full payment is made for all service supplied or used, billed on proper classification and rate schedule, and reimbursement in full made to the Company for all extra expenses incurred, including expenses for clerical work, testing and inspections. Failure of the Company to exercise its right to discontinue the supplying of service in the above situations does not affect its right to resort thereafter to such remedy for the same or any future default or breach by the customer. For residential customers engaging in such practices, discontinuation of supply is governed by the provisions of OAC, Chapter 4901:1-18.

No other electric light or power service shall, except under a contract for auxiliary or supplementary service, be used by the customer on the same installation in conjunction with the Company's service, either by means of a "throwover" switch or any other connection.

No emergency power supply of an "on premises" or similar basis shall be connected to the customer's wiring installation, either by means of a "throwover" switch or any other means, without advance notification and written approval from the Company and without provisions to prevent feedback into the Company's equipment which could be a safety hazard to the Company's personnel.

All cogeneration and/or small power production customers shall, in addition to the requirements contained in these ELECTRIC SERVICE REGULATIONS, the latest edition of the National Electrical Code and the latest edition of the Company's "Information & Requirements for Electric Service," be required to meet the requirements contained in the Company's "Guideline Technical Requirements for Parallel Operation of Customer Generation." A separate written contract is required between the owners of all such facilities and the Company.

6. Customer's Responsibility

The Customer assumes all responsibility on the customer's side of the point of delivery (the end of the Company's service drop or where the Company's wires are joined to the customer's wires or apparatus) for the service supplied or taken, as well as for the electrical installation and maintenance, appliances, and apparatus used in conjunction therewith, and will save the Company harmless from and against all claims for injury or damage to persons or property occasioned by or in any way resulting from such service or the use thereof on the customer's side of the point of delivery.

7. Right-of-Way

The customer, without reimbursement, will make or procure conveyance to the Company of right-of-way satisfactory to it across the property owned or controlled by the customer for the Company's lines or extensions thereof necessary or incidental to the supplying of service to the customer, or customers beyond the customer's property when such rights are limited to installations along dedicated streets and

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roads in the form of Grant or instrument customarily used by the Company for these facilities.

8. Access to Premises

The properly authorized agents of the Company shall at all reasonable hours have the right and privilege to enter the premises of customers for the purpose of reading meters, testing or determining the compliance of the customer's installation with the Company's requirements and of examining, repairing, replacing or removing the meters or for removing or disconnecting any or all of the Company's equipment, or other Company property, and for all other purposes incidental to the supplying of service, and for such purpose the customer authorizes and requests his landlord, if any, to permit such access to the premises. Reasonable hours of access are the daylight hours except for emergencies, where requested by the customer, or with the customer's consent and except for disconnection for nonpayment of bills, which hours of access are subject to the provisions under Section VII Paragraph 1, Disconnection for Nonpayment: Residential Customers, of these ELECTRIC SERVICE REGULATIONS.

Upon request, the Company's authorized agent will display his/her identification badge or Company pass and state the reasons for requiring access.

If, after the Company has made reasonable efforts to obtain access to the premises for the purposes described above, the customer fails to grant the Company access, the customer denying access shall be deemed in violation of these ELECTRIC SERVICE REGULATIONS pursuant to Section I Paragraph 3 herein, Company's Right to Refuse or to Disconnect Service. In the case of residential customers, the Company may disconnect service when the customer, through their action or inaction, prevents Company personnel from reading the meter for twelve or more consecutive months. In the case of a non-residential customer, the Company shall give the customer not less than five days written notice before service is disconnected.

If judicial redress against the customer or landlord is necessary to secure access to the premises for the purposes described above, the Company may collect from the customer or the landlord a charge covering the Company's expenses in securing access, including but not limited to court costs and attorney's fees. This charge may be added to any account of the customer or the landlord and shall be due with the current charges on that account.

9. Service Voltages and Regulations

The Company will provide service at the nominal voltage levels as stated in the latest revision of the Company's booklet entitled "Information & Requirements for Electric Service," copies of which are available at the Company's offices. Those nominal voltage levels and service configurations are shown below.

- A. The following service voltages, 600 volts or less, are supplied by the Company:
 - 1. Single-phase, 3-wire, 120/240 volts AC at 60 Hz.
 - 2. Three-phase, 4-wire, 208Y/120 volts AC at 60 Hz.
 - 3. Three-phase, 4-wire, 480Y/277 volts AC at 60 Hz.

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- B. The following service voltages, over 600 volts, are supplied by the Company.
1. Three-phase, 4-wire, 4160Y/2400 volts AC at 60Hz.
 2. Three-phase, 4-wire, 12470Y/7200 volts AC at 60 Hz.
 3. Three-phase, 4-wire, 34500Y/19920 volts AC at 60 Hz.
 4. Three-phase, 3-wire, 69000 volts AC at 60 Hz.
 5. Three-phase, 3-wire, 138000 volts AC at 60 Hz.
- C. The following voltages are available for limited use: (for availability, contact the Company)
1. Single-phase, 3-wire, 120/208 volts AC at 60 Hz.
 2. Three-phase, 4-wire, 240/120 volt AC at 60 Hz
 3. Three-phase, 3-wire, 33000 volts AC at 60 Hz.
- D. These voltages are nominal and may vary depending on operating conditions:
- Three-phase, 4-wire services are supplied with a grounded neutral.
 - Three-phase, 3-wire services are supplied without a neutral.

For all service supplied at nominal voltage levels of 34.5 kV three phase four-wire (3P 4-wire) and lower, except for 34.5 kV three phase three-wire (3P 3-wire), the Company shall design and operate its system as provided for in the current version of the American National Standard ANSI C84.1-1995(R2001), approved by American National Standards Institute, Inc. The limits noted for utilization voltage levels do not apply to momentary voltage excursions that may result from such causes as switching operations, motor starting currents, etc.

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SECTION III - CUSTOMER CHOICE ENROLLMENT AND PARTICIPATION GUIDELINES

1. Selection of Certified Supplier

In order to obtain Competitive Retail Electric Service from a Certified Supplier, a customer must enter into an agreement with a Certified Supplier who meets the requirements for participation in this Customer Choice Program pursuant to the Certified Supplier Service Rules, Regulations, and Rates, specified in Duke Energy Ohio P.U.C.O. Electric No. 20. Enrollment of customers is done through a Direct Access Service Request (DASR), which may be submitted only by Certified Suppliers. DASRs will be effective on the next regularly scheduled meter read date provided that it is received by the Company at least twelve (12) calendar days before the next regularly scheduled meter read date. Enrollments will be processed on a "first in" priority basis based on the received date, using contract date as the tiebreaker. Should the contract date also be the same, the enrollments will be processed on a first in priority basis, based on the order in which the Company received the DASRs. An account may only be served by one Certified Supplier at a time.

Customers may contact the Company at any time to report that they have been switched without giving consent. To decrease the probability of this occurring, the Company requires that Certified Suppliers obtain, and maintain in their files, customer authorizations as dictated by Commission rules. These authorizations must be made available to the Company, upon request, within three (3) business days.

PIPP customers are not individually eligible to select a Certified Supplier.

2. Pre-Enrollment Customer Information List

- a) Upon request, the Company will electronically provide to any Certified Supplier or Certified Broker/Aggregator the most recent End-use Customer information list. The Certified Supplier or Certified Broker/Aggregator will pay the Company \$150.00 for providing the list to the supplier or broker/aggregator.
- b) The End-use Customer information list will be updated quarterly. Once the list has been updated, a Certified Supplier or Certified Broker/Aggregator may not use an End-use Customer information list from a prior quarter to contact End-use Customers, but Certified Suppliers and Certified Broker/Aggregators shall not be required to purchase subsequent lists.
- c) The Company will provide each End-use Customer the option to have all the End-use Customer's information listed in the section below removed from the End-use Customer information list. At the same time, the Company will also provide each End-use Customer the option to have all End-use Customer's information listed below reinstated on the End-use Customer information list. Each End-use Customer will be provided written notice of his or her options on a quarterly basis.
- d) The following information will be provided on the End-use Customer information list for each End-use Customer that has not requested that its information be removed from this list:
 - (a) End-use Customer name
 - (b) Service address
 - (c) Service city

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- (d) Service state and zip code
 - (e) Mailing address
 - (f) Mailing city
 - (g) Mailing state and zip code
 - (h) Rate schedule under which service is rendered, including class and sub-class (if applicable)
 - (i) Rider (if applicable)
 - (j) Load profile reference category
 - (k) Meter type (will provide information that is readily available)
 - (l) Interval Meter data indicator (will provide information that is readily available)
 - (m) Budget bill/PIPP indicator
 - (n) Meter Read Cycle
 - (o) Most recent twelve months of historical consumption data (actual energy usage plus demand, if available)
 - (p) Meter number
 - (q) Customer classification
 - (r) Special rate indicator
- e) The Company will provide the End-use Customer information list on either a compact disc or a designated website. The information will be prepared and distributed in a uniform and useable format that allows for data sorting. End-use Customers participating in the PIPP program will be served exclusively through the PIPP program administered by the Ohio Department of Development.

3. Customer Choice Participation Requirements

Direct Access Service Requests (DASRs)

- a) Enrollment of individual Customers, including individual Customers participating in an aggregation or governmental aggregation program, is done through a DASR for each service account, which may be submitted only by Certified Suppliers.
- b) Certified Suppliers may begin to submit enrollment DASRs on November 20, 2000.
- c) Enrollment DASRs received November 20, 2000 through December 23, 2000 will be effective on the Customer's January Meter Read Date. Starting December 24, 2000, enrollment DASRs will be effective on the next Meter Read Date provided that it is received by the Company at least twelve (12) calendar days before the next Meter Read Date.
- d) Enrollment DASRs will be effective according to the following schedule:

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- i) If an enrollment DASR is received twelve (12) or more days prior to the next regularly scheduled Meter Read Date and no other enrollment DASR is currently pending, the enrollment DASR will be effective on the next regularly scheduled Meter Read Date.
 - ii) If an enrollment DASR is received less than twelve (12) days prior to the next regularly scheduled Meter Read Date and no other enrollment DASR is currently pending, the enrollment DASR will be effective on the second regularly scheduled Meter Read Date after the enrollment DASR is received.
 - iii) If an enrollment DASR is currently pending, and another enrollment DASR is received, the first enrollment DASR will be effective and the second enrollment DASR will be rejected. There cannot be two pending enrollment DASRs for the same account at the same time.
- e) The Company will process all valid DASRs within one (1) business day and send the Customer confirmation within two (2) business days. The Company will electronically advise the Certified Supplier of acceptance. Notice of rejection of the DASR to the Certified Supplier shall also be sent in one business day, if possible, but in no event later than four (4) calendar days, and include the reasons for the rejection.
- f) The Company shall provide a rescission period as provided by the Commission's rules. If the Customer rescinds, the Company shall send a drop notice to the Certified Supplier. In the event of Customer rescission, the previous Certified Supplier will continue to serve the Customer under the same terms and conditions.
- g) Enrollments will be processed on a "first in" priority basis based on the received date, using contract date as the tiebreaker. If the contract date is the same, enrollments will be processed "first in" based on when the enrollment was electronically received by the Company.
- h) To participate in the Customer Choice Program, an Customer must have an active electric service account with the Company. After the electric service account is active, a Certified Supplier may submit a DASR as described herein.
- i) If an enrollment DASR for an Customer's active electric service account is submitted for Company Consolidated and Rate Ready or Bill Ready Billing and the Certified Supplier is participating in the Company's Purchase of Accounts Receivable (PAR) Program, the Company will reject the DASR if the Company's account with the Customer has an arrears of 30 days or more totaling \$50.00 or more.
- j) If an enrollment DASR for an Customer's active electric service account is submitted for Company Consolidated and Bill Ready Billing and the account is currently involved in the Company's summary billing program, the DASR will be rejected until the Company's information system has the capability to accept such DASRs, which will occur by July 1, 2002. Prior to July

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- 1, 2002, in order for an enrollment DASR to be accepted for a summary billing account, the Certified Supplier must submit the DASR with a billing option for either Certified Supplier billing or Company Consolidated and Rate Ready Billing.
- k) If an enrollment DASR for an Customer's active electric service account is submitted for Company Consolidated and Bill Ready Billing and the account is currently involved in the Company's adjusted due date program, the DASR will be rejected until the Company's information system has the capability to accept such DASRs, which will occur by November 1, 2002. Prior to November 1, 2002, in order for an enrollment DASR to be accepted for an account with an adjusted due date, the Certified Supplier must submit the DASR with a billing option for either Certified Supplier billing or Company Consolidated and Rate Ready Billing.
 - l) The Certified Supplier must submit a TSA Designation Agreement executed by an eligible TSA prior to an enrollment DASR being accepted.
 - m) For Consolidated Rate-Ready Company Billing, the Certified Supplier's rates must be in production before a DASR will be accepted.
 - n) A separate DASR must be submitted for each service account.
 - o) If a Certified Supplier has reached its participation limit as described in Section VI - Credit Requirements, additional enrollment DASRs from the Certified Supplier will be rejected and returned to the Certified Supplier until the Company approves additional credit enhancements.
 - p) The Certified Supplier will be responsible for paying any Charge for a successfully processed enrollment DASR, except that the Company shall waive the switching fee for the first 20% of residential Customers that switch to a Certified Supplier during the Market Development Period.

Interval meters are required for customers who choose a Certified Supplier and have a maximum peak demand equal to or greater than 100 kW for the most recent twelve (12) month period. Interval meters are also required for those customers that have an interruptible load contract with their Certified Supplier. The Company may also require interval metering, at Company expense, for other customers based on a review of the customer's rate schedule, billing history and class load profile information. The enrollment DASR for these customers will not be approved until a customer-signed interval meter request work order has been executed and submitted approving the interval meter installation.

Customers are responsible for the incremental costs of the interval meters and the incremental costs associated with the installation of required interval metering. While the Company will install the meter, the Certified Supplier, on behalf of the customer, or the customer, must arrange for the installation of the communication link (analog telephone line, hard wired or cellular). The Company will be allowed access to the meter location for meter interrogation and maintenance. The interval metering equipment will be maintained and owned by the Company. The charges for the installation of the interval metering equipment are specified on tariff Sheet No. 96 "Meter Service Charges." These charges may be paid over a period not to exceed twenty-four (24) months.

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Upon the successful processing of an enrollment and/or drop DASR, the Company will notify the customers in writing with the name and phone number of the Certified Supplier, the previous Certified Supplier (if applicable), the effective service change date, the Company's toll-free telephone number, and the right to rescind (if applicable).

4. Switching Rules

An enrollment DASR must be received by the Company at least twelve (12) calendar days before the effective date, which will be the customer's next regularly scheduled meter reading date, to enroll with or switch to a new Certified Supplier. Enrollment DASRs will be effective according to the following schedule:

- (a) If an enrollment DASR is received twelve (12) or more days prior to the next regularly scheduled meter read date and no other enrollment DASR is currently pending, the enrollment DASR will be effective on the next regularly scheduled meter read date.
- (b) If an enrollment DASR is received less than twelve (12) days prior to the next regularly scheduled meter read date and no other enrollment DASR is currently pending, the enrollment DASR will be effective on the second regularly scheduled meter read date after the enrollment DASR is received.
- (c) If an enrollment DASR is currently pending, and another enrollment DASR is received, the first enrollment DASR will be effective and the second enrollment DASR will be rejected. There cannot be two pending enrollment DASRs for the same account at the same time.
- (d) If an enrollment DASR for an active electric service account is submitted for Company Consolidated billing, as described in Section 10 herein, and the Certified Supplier is participating in the Company's Purchase of Accounts Receivable (PAR) Program, the DASR will be rejected if the Company's account with the customer has an arrears of 30 days or more totaling \$50.00 or more.

For the purpose of switching rules, customers are divided into three categories; residential, Non-mercantile, and Mercantile. Residential customers are customers who use electricity for residential purposes. Non-mercantile customers are defined as customers who use electricity for nonresidential purposes, consume less than 700,000 kWh of electricity per year and are not part of a national account involving multiple facilities in one or more states. Mercantile customers are customers who use electricity for nonresidential purposes, consume greater than or equal to 700,000 kWh of electricity per year or are part of a national account involving multiple facilities in one or more states.

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Residential and Non-mercantile customers, pursuant to Commission rules, have the right to rescind an enrollment. Any residential or Non-mercantile enrollment, either with a Certified Supplier or with the Company, may be rescinded by contacting the Company within seven days from the postmark date on the notice advising of the enrollment. When the Company receives notice of a rescission, the impending enrollment will be cancelled and the residential or Non-mercantile customer will remain with their current supplier.

Customer Return to SSO Service

- (a) An End-use Customer's return to SSO service may be a result of Customer choice, Certified Supplier default, termination of a Certified Supplier contract, opt out or termination of a governmental aggregation program, or Certified Supplier withdrawal.
- (b) A Customer may contact the Company to return to the Company's SSO. The return to the SSO shall be conducted under the same terms and conditions applicable to an enrollment with a Certified Supplier. Thus, the Company will provide a rescission period consistent with the Commission's rules. Provided the Customer has observed the applicable notification requirements and the Company has effectuated the request to return to the SSO twelve (12) calendar days prior to the next regularly scheduled Meter Read Date, the Customer will be returned to the SSO on the next regularly scheduled Meter Read Date.
- (c) Residential End-use Customers
 - i) Residential End-use Customers are not subject to a minimum stay.
 - ii) If a Residential End-use Customer's Certified Supplier defaults or the Residential End-use Customer opts out of a governmental aggregation program, the Residential End-use Customer will return to the Company's SSO and may switch to another Certified Supplier at any time. A Residential End-use Customer opting out of a governmental aggregation program must contact and inform the Company of the "opt out".
 - iii) The Residential End-use Customer will be mailed a letter the day following the successful processing of a DASR returning the Residential End-use Customer to the Company.
- (d) Non-mercantile End-use Customers
 - i) Non-mercantile End-use Customers are not subject to a minimum stay.

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- ii) If a Non-mercantile Customer returns to the Company, the Non-mercantile Customer is placed on the SSO. The Non-mercantile End-use Customer will be mailed a letter the day following the successful processing of a DASR returning the Non-mercantile End-use Customer to the Company.

(e) Mercantile End-use Customers

- i) Mercantile End-use Customers are not subject to a minimum stay.
- ii) If a Mercantile Customer returns to the Company, the Mercantile Customer is placed on the SSO. The Mercantile End-use Customer will be mailed a letter the day following the successful processing of a DASR returning the Mercantile End-use Customer to the Company.

5. Certified Supplier Defaults

If a Certified Supplier defaults, the Company will notify the customers of the default. However, service to the affected customers will not be interrupted due to the default. The customers involved will return to the Company's Standard Offer Rate on their next regular scheduled meter read date, unless there is sufficient time to choose an alternative supplier.

6. Certified Supplier Drops Customer

If the Certified Supplier decides to discontinue service to a customer, the Certified Supplier will notify the customer in accordance with Commission rules and submit a Drop DASR to the Company at least twelve (12) calendar days in advance of the requested drop date, which will be the next regular scheduled meter read date. The Company will notify the customer when a Drop DASR is received.

8. Requests for Customer Specific Usage Information

- a) Certified Suppliers may request historical Interval Meter data through a DASR after receiving the appropriate End-use Customer authorization. The Interval Meter data will be transferred in a standardized electronic transaction. The Certified Supplier will be responsible for the incremental costs incurred to prepare and send such data. The charges for these services are listed in this tariff.
- b) Generic End-use Customer information will be readily available on a designated web site.

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- c) For End-use Customer specific information and to decrease the possibility of End-use Customer "slamming", the Certified Suppliers must obtain, and maintain in their files, End-use Customer authorizations, as dictated by Commission rules, which authorize the release of the End-use Customer's historical usage data. These authorizations must be made available to the Company, upon request, within three business days and must be retained by the Certified Supplier for a period not less than two calendar years after the calendar year in which received or such longer period as may be required by law or Commission rules.
- d) Specific End-use Customer information will include twelve months of historical data (if available) including monthly kWh usage, Meter Read Dates, and associated monthly maximum demand history, if applicable.

This information will be provided to the customer or the Certified Supplier, acting as the customer's authorized agent, free of charge.

If the customer requests monthly interval metering data, the customer will be required to pay the charge specified on the tariff Sheet No. 95 "Meter Data Charges." Charges to Certified Suppliers for interval data are specified in P.U.C.O. Electric No. 20.

9. Customer Aggregation

Customers may be aggregated for purposes of negotiating the purchase of Competitive Retail Electric Services from a Certified Supplier. Customer aggregation is not restricted by the class of customer within an aggregated group. Accordingly, any customer may be represented by an aggregator. However, an aggregator is not a customer, but rather an agent for aggregated customers. Each aggregated customer will be treated as an individual customer of the Company for billing purposes under their otherwise applicable rate schedules. Combination of meter registrations of aggregated customers will not be permitted. No charge of a tariff service will be affected by a customer's aggregation status, and aggregation of load cannot be used for qualification under a tariff.

10. Bill Payment Option

A Certified Supplier must notify the Company which billing option is being chosen for its customers: (1) Company Consolidated billing or (2) separate billing by the Company and the Certified Supplier. When the Company Consolidated billing option is selected, the customer will receive one bill from the Company, which will include both the Company's and the Certified Supplier's charges stated separately. The customer is responsible for payment in full to the Company for both the Company and Certified Supplier charges when the Company performs consolidated billing. The billing option must be identified at the time the enrollment DSR is submitted to the Company. Regardless of the billing option selected by the Certified Supplier, the customer may still choose to have budget billing for bills rendered by the Company.

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If a change DSR for a customer's electric service account actively enrolled with a Certified Supplier is submitted to change the billing option from separate billing by the Company and the Certified Supplier to Company Consolidated billing and the Certified Supplier is participating in the Company's Purchase of Accounts Receivable (PAR) Program, the Company will reject the change DSR if the Company's account with the customer has an arrears of 30 days or more totaling \$50.00 or more.

For customers who have a maximum annual peak demand greater than or equal to 100 kW for the most recent twelve (12) month period, the required interval metering will be used to support the Certified Suppliers' billing options. If a customer has a maximum annual peak demand less than 100 kW and the Company must install special metering to support a Certified Supplier's billing option, the customer will be responsible for the incremental costs of upgrading the present meter plus all costs associated with the installation of that metering equipment. The charges for an interval meter will be at the tariffed rate, which may be paid over a period not to exceed twenty-four (24) months.

If the Company is providing the consolidated bill option for the Certified Supplier, the Company will remit payments received for Certified Supplier charges to the Certified Supplier.

All billed charges are grouped into categories and a payment priority is established for each. If a partial payment is received, the Company will apply the following payment priorities classification. Payments will be applied first to prior gas and electric Regulated Utility Charges, second to current gas and electric Regulated Utility Charges, third to prior electric Certified Supplier charges and gas supplier charges (if applicable), fourth to current electric Certified Supplier charges and gas supplier charges (if applicable), and then on a pro-rata basis for non-regulated products and services. When the priority classification is equal, payments will be applied to the oldest receivables first.

If the dual bill option is chosen, the customer will receive separate bills from the Company and the Certified Supplier for their respective charges. The Company and Certified Supplier shall be individually responsible for the collection of their respective charges.

Regardless of the bill option chosen by the Certified Supplier, customers who fail to pay in full their Regulated Utility Charges to the Company will be subject to the Company's late payment charge policy as it applies to those Regulated Utility Charges. The customer will also be subject to the rules and regulations governing the credit, collection and disconnection procedures in accordance with Sections 4901:1-17 and 4901:1-18 of the Ohio Administrative Code.

Disconnection of Service

- a) The Company may disconnect service to an End-use Customer for non-payment of Regulated Utility Charges only in accordance with Chapters 4901:1-10 and 4901:1-18 of the Ohio Administrative Code, except in the situation where the Company is purchasing the Certified Supplier's receivables under the PAR program.

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- b) Pursuant to Chapters 4901:1-10 and 4901:1-18 of the Ohio Administrative Code, the Company is not permitted to disconnect service to the End-use Customer for nonpayment of Certified Supplier charges, except in the situation where the Company is purchasing the Certified Supplier's receivables under the PAR program. Nor are Certified Suppliers permitted to physically disconnect electric service for nonpayment of the Certified Supplier charges.
- c) If the Company disconnects service to an End-use Customer, the End-use Customer's Certified Supplier will be notified within five business days of processing the disconnect order, if the End-use customer's service has not been restored by such date.
- d) If the Company restores the End-use Customer's service under the same account number within the five-business day period, no notification to that End-use Customer's Certified Supplier will be given.

The Certified Supplier is ultimately responsible for the collection of any unpaid charges for services provided by them, as well as for developing their own credit and collection policies. However, in the course of following its collection procedures for Regulated Utility Charges, the Company may inform customers of such arrearages.

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SECTION IV - CUSTOMER'S AND COMPANY'S INSTALLATIONS

1. Nature and Use of Installation

All electric service entrance wiring and equipment furnished and installed by the customer for the purpose of connecting the premises with the Company's service, shall be suitable for the purposes thereof and shall be installed, owned and maintained by the customer at all times in conformity with the National Electrical Code, any other codes and regulations in effect in the area served and the standards contained in the latest revision of the Company's booklet entitled "Information & Requirements for Electric Service," copies of which are available at the Company's offices.

2. Installation of Meters

Electricity will be measured by a meter or meters to be owned and installed by the Company in the customer's meter base at a location approved by the Company. The Company will install upon the customer's premises one meter or one unified set of meters for each standard service connection. Meters for new single-family residences are to be located outside the residence.

3. Installation and Maintenance

Except as otherwise provided in these ELECTRIC SERVICE REGULATIONS, in service agreements or rate schedules, the Company will install and maintain its lines and equipment on its side of the point of delivery, but shall not be required to install or maintain any lines or equipment, except Company owned meters and metering equipment, on the customer's side of the point of delivery without cost to the customer. Only the Company's agents are authorized to connect the Company's service to the customer's service.

All meters and equipment furnished by and at the expense of the Company, which may at any time be on said premises, shall, unless otherwise expressly provided herein, be and remain the property of the Company, and the customer shall protect such property from loss or damage. No one except an agent of the Company shall be permitted to remove or handle same.

Subject to the rules, conditions and riders covering the installation of service connections and extensions, the Company will make one standard service connection to the customer's installation. If three phase service is required and an additional connection is necessary, both will be considered as one service connection.

The rates for each class of service provided for in the rate schedules contemplate the furnishing of service to one location or premises through one standard service connection. Where the customer is receiving service through more than one standard metering installation, the Company will calculate and render a separate bill for service furnished through each metering installation. If the Company elects to provide more than one standard service connection, the Company may, at its option, combine these connections and calculate and render one bill.

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When a customer or private party requests the Company to relocate the Company's facilities or a customer's service entrance wiring, such requesting party shall pay all expenses related to such relocation.

When the Company relocates its facilities or a customer's service entrance wiring at the request of a governmental entity (or Administrating Agency) and if the relocation was related to a project financed through transportation improvement district funding, joint economic development district funding, tax increment funding, or similar quasi-public funding, then the governmental entity (or Administrating Agency) shall pay for the cost of relocating Company's facilities in direct proportion to the contributions received from the other funding sources.

The Company shall not be required to construct general distribution lines underground unless the cost of such special construction for general distribution lines and/or the cost of any change of existing overhead general distribution lines to underground which is required or specified by a municipality or other public authority (to the extent that such cost exceeds the cost of construction of the Company's standard facilities) shall be paid for by that municipality or public authority.

4. Special Power Apparatus

In the case of hoists, elevators, welding machines or other installations, where the use of electricity is intermittent or subject to violent fluctuations, the Company reserves the right to use the input rating or the metered instantaneous demand of such equipment under maximum operating conditions for billing purposes, or to require the customer to provide at his own expense, suitable equipment to reasonably limit such intermittence or fluctuation that may affect the service provided to other customers.

5. Changes in Installations

As the Company's service drops, transformers, meters and other facilities used in supplying service to the customer have limited capacity, the customer should give notice to the Company, and obtain the Company's consent, before making any material changes or increases in the customer's installation. After receipt of such notice, the Company will give its written approval of the proposed change or increase, or it will inform the customer of the prerequisites to receipt of service for such change or increase. Any change affecting an estimated billing demand shall be reviewed by the Company's representative and shall become effective from the succeeding meter reading.

The customer shall be solely responsible for all damages sustained by the Company or any person due to the customer's failure to give reasonable advance notice to the Company of such change in the customer's installation.

6. Special Customer Services

The Company may furnish customers special customer services as identified in this section. No

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SECTION IV - CUSTOMER'S AND COMPANY'S INSTALLATIONS (Contd.)

such special customer service shall be provided except where the Company has informed the customer that such service is available from and may be obtained from other suppliers. A customer's decision to receive or not receive special customer services from the Company will not influence the delivery of competitive or non-competitive retail electric service to that customer by the Company. Such special customer services shall be provided at a rate negotiated with the customer, but in no case at less than the Company's fully allocated cost. Such special customer services shall only be provided when their provision does not unduly interfere with the Company's ability to supply electric service under the Schedule of Rates, Classifications, Rules and Regulations for Retail Electric Service. Such special customer services may include, but are not limited to: design, construction and maintenance of customer-owned substations; resolving power quality problems on customer equipment; providing training programs for construction, operation, and maintenance of electric facilities; performing customer equipment maintenance, repair, or installation; providing service entrance cable repair; providing restorative temporary underground service; providing upgrades or increases to an existing service connection at customer request; performing outage or voltage problem assessment; disconnecting a customer-owned transformer at customer request; loosening and refastening customer-owned equipment; determining the location of underground cables on customer premises; disconnecting or reconnecting an underground pedestal at customer request; covering up lines for protection at customer request; making a generator available to customer during construction to avoid outage; providing pole-hold for customer to perform some activity; opening a transformer at customer request for customer to install an underground elbow; providing a "service saver" device to provide temporary service during an outage; resetting a customer-owned reclosure device; providing phase rotation of customer equipment at customer request; conducting an evaluation at customer request to ensure that customer equipment meets standards; upgrading the customer to three-phase service; and providing energy consumption analysis services, tools and reports.

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SECTION V - METERING

1. Meter Tests

The Company, for the mutual protection of the customer and the Company, will make periodic tests of the meter used in measuring electricity furnished to the customer, and will test a meter upon the written request of a customer. The Company owned meter will be tested and, if found inaccurate, restored to an accurate condition or a new meter will be substituted. Any meter tested and found to be registering not more than two percent (2%) fast or slow will be considered to be correct and accurate.

If a test of any meter is made at the request of a customer, with the result that such meter is found to be correct and accurate as defined above, the Company may charge the customer the expense of such test. However, for the first such meter test the Company will not charge the customer. If, during the subsequent thirty-sixth month period, the customer requests that a meter test be conducted and the meter is found to be within the tolerances described above, the customer will be billed for the expense of such meter test as specified on Sheet No. 96, Meter Service Charges.

2. Basis for Bill Adjustment

The Company will refund to the customer any overcharges if the meter is found to be registering more than two percent (2%) fast and the customer may be billed and will pay the undercharges if the meter is found to be registering more than two percent (2%) slow.

When a period of meter inaccuracy is discernible upon a review of the account history, or if a meter is found to register partially, or not at all, for any period, the overcharge or undercharge may be computed on the basis of a customer's metered consumption prior and/or subsequent to such period in accordance with the rates in effect during the period.

When a period of meter inaccuracy is unknown the overcharge will be determined on the basis of the meter test for the period since the customer's "on" date, the installation date of the inaccurate meter, or for residential customers a period of 365 days prior to the date the inaccuracy is corrected, whichever is less. However, the 365 day restriction for residential customers shall not apply in cases of meter tampering or theft of utility service, or where a physical act of a customer or its agent causes inaccurate or no recording of the electric meter reading, or inaccurate or no measurement of the electricity rendered.

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SECTION VI - BILLING AND PAYMENT

1. Billing Periods - Time and Place for Payment of Bills

Bills ordinarily are rendered at monthly intervals. Non-receipt of bills by the customer does not release or diminish the obligation of the customer with respect to payment thereof.

The word "month" as it pertains to the supply of service shall mean the period of approximately thirty (30) days between meter readings, as fixed and made by the Company. Meters are ordinarily read monthly, however, meters may be read more or less frequently in such instances as, when special readings are required, at the customer's request, or when the Company has been unable to obtain readings. If the Company has been unable to obtain a meter reading for a period of twelve (12) consecutive months, the Company may, at its option, refuse or disconnect service to the premises in accordance with Section 1 Paragraph 3, Company's Right to Refuse or Disconnect Service, of these ELECTRIC SERVICE REGULATIONS. The Company shall have the right to establish billing districts for the purpose of reading meters and rendering bills to customers at various dates. A change or revision of any rate schedule shall be applicable to all bills on which the final monthly meter reading was taken on or after the effective date of such change or revision, except as otherwise ordered by the Public Utilities Commission of Ohio.

Where the Company is unable to obtain a meter reading, estimated bills, so identified, will be rendered for an estimated amount to permit normal monthly payment, such payments to be credited to the next bill rendered.

When the Company is requested by the customer to terminate service, or when the Company discovers a customer has terminated service by moving from the premises served, or when the Company disconnects service due to nonpayment of the account or for other reasons, the Company will render a final bill addressed to the customer's forwarding address, if known, or to the last known address, for the entire balance of the account, including a bill calculation from the last read date, pursuant to Rule 4901:1-10-05 (1) of the Ohio Administrative Code, with special meter readings taken for combination gas and electric and gas only accounts and identified estimated meter readings being used for non-heating electric only accounts. Unpaid balances of previously rendered final bills may be transferred to the new account and included on initial or subsequent bills.

When the customer begins use of service, an initial bill is normally rendered for the period from the initial date of service to the first regular meter reading date for the billing district in which the premises is located, this period normally being less than one month, except that the bill is suspended if the period is less than eight (8) days.

All of the Company's rate schedules are established on a monthly basis which would include monthly billing periods in accordance with the Company's meter reading schedule. A normal meter reading period consists of the number of days between scheduled reads, that is, between twenty-seven (27) and thirty-five (35) days, plus or minus three (3) working days. Where billing amounts reflects a period of more than one (1) month, those amounts shall be prorated based on the normal scheduled meter reading dates and divided into increments of one (1) month or less. If the increments represents less than one (1) month, the appropriate billing components will be billed as a prorated portion of the period defined by the normal scheduled meter reading dates.

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SECTION VI - BILLING AND PAYMENT (Cont'd)

Bills are due on the date indicated thereon as being the last day for payment of the net amount, and the due date shall not be less than twenty-one (21) days after the mailing of the bill. Bills are payable only at the Company's offices or authorized agencies for collection. If a partial payment is made, the amount will be applied to items of indebtedness in the same order as they have accrued, starting with regulated charges followed by non-regulated charges, pursuant to Rule 4901:1-10-33 (H) of the Ohio Administrative Code.

2. Selection of Rate Schedule

When a prospective customer makes application for service, the Company will, upon request, assist in the selection of the Rate Schedule most favorable to customer for the service requested. The selection will be based on the prospective customer's statement as to the class of service desired, the amount and manner of use, and any other pertinent information.

A customer being billed under one of two or more optional rate schedules applicable to the customer's class of service may elect to be billed on any other applicable rate schedule by notifying the Company in writing, and the Company will bill the customer under such elected schedule from and after the date of the next meter reading. However, a customer having made such a change of rate schedule may not make another such change within the next twelve months, or as otherwise provided elsewhere in the applicable rate schedules.

3. Temporary Discontinuance of Service

If any residential customer notifies the Company in writing to discontinue service, the Company will make no minimum charge for any full meter reading period during the period of discontinuance; provided however, that the Company may charge and collect a fee in accordance with paragraph B of Sheet No. 92 prior to reconnecting a service which was discontinued at the customer's request within the preceding twelve months.

4. Availability of Budget Billing

The Company has available to its customers a "Budget Billing Plan" which minimizes billing amount fluctuations over a twelve month period. The Company may exercise discretion, as permitted by Rule 4901:1-18-4 (C) of the Ohio Administrative Code, to restrict the availability of such a plan to customers who:

- (a) Have no arrearages (other than amounts already incorporated in a previously agreed upon extended payment plan); and
- (b) Are not in default on a previously agreed upon extended payment plan.

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SECTION VI - BILLING AND PAYMENT (Cont'd)

5. Bill Adjustment

Overcharges will be refunded to the customer for the entire period of inaccurate billing if that period is discernible. If the period of inaccurate billing is not discernible, the shortest period encompassing the elapsed time since the customer's "on" date, the installation date of the inaccurate meter, or 365 days will form the basis for determining the refund amount.

Undercharges may be billed and the customer shall pay the charges for the entire period of inaccurate billing when that period is discernible, except undercharges billed to residential customers shall be limited to a maximum of 365 days prior to the date the billing is corrected. There will be no maximum limit of time for cases involving tampering or theft of utility service, or where a physical act of a customer or its agent causes inaccurate or no recording of the meter reading, or inaccurate or no measurement of the electricity rendered.

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SECTION VII - CREDIT AND DEPOSIT PROVISIONS

1. Disconnection for Nonpayment: Residential Customers

The Company will comply with the provisions of the disconnection rules set forth in Chapters 4901:1-10 and 4901:1-18 O.A.C. (Ohio Administrative Code) as amended.

2. Disconnection for Nonpayment: Non-Residential Customers

An account will be considered delinquent and be subject to the Company's disconnection procedures for non-payment if the Company's charges in any bill remains unpaid after the due date.

The Company will mail or otherwise give notice of impending disconnection for nonpayment to the customer prior to disconnection.

The Company may charge a landlord \$2.50 per notice in situations where a master metered apartment building is subject to disconnection and the Company is required to put a notice on each apartment unit. This provision is subject to 4901:1-18-07 of the Ohio Administrative Code.

3. Reconnection of Service

Reconnection of service that has been disconnected for nonpayment shall be made pursuant to the following provisions:

- (a) Upon payment or proof of payment, including any reconnection charge, for service that was previously disconnected, reinstatement of service shall be made by the close of the following regular Company working day.
- (b) If service is disconnected and the customer wishes to guarantee the reinstatement of service the same day on which payment is rendered, the customer must make payment in the Company's business office, or provide proof of payment, and notify the Company before 12:30 p.m. that reinstatement of service is requested the same day. If the Company is notified after 12:30 p.m. of a customer's desire for same day reinstatement of service, the after hour charges specified in PUCO Electric Sheet No. 92 will apply.
- (c) If a Company employee, whose original purpose was to disconnect the service, has provided the customer a means to avoid disconnection, service which otherwise would have been disconnected shall remain intact, and no reconnection charge shall be assessed. However, a collection charge of fifteen dollars (\$15.00) may be assessed.

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SECTION VII - CREDIT AND DEPOSIT PROVISIONS (Cont'd)

- d) *If a guarantor is required in order to re-establish service, the guarantor must sign an acknowledgment of willingness to accept the responsibility for payment of the customer's entire past due billed amount (up to 60 days for residential customers) owed the Company in case of the customer's default.*

4. Charge for Reconnection of Service

The Company may charge and collect in advance the dollar amount specified on Tariff Sheet No. 92, Charge for Reconnection of Service for reconnecting a customer's service after service is disconnected because of nonpayment of the bill when due or when service is discontinued because of unauthorized or fraudulent use, tampering with Company equipment, or denial of access to premises as set out in Section II Paragraph 8, Access to Premises.

5. Residential Tenant Rights

The Company will comply with the provisions of the disconnection rules set forth in Chapters 4901:1-10 and 4901:1-18 O.A.C. as amended.

6. Deposit Provision

The Company may require a Security Deposit of any customer, residential or non-residential, in addition to the requirement of payment for prior indebtedness, as set forth in Section II, 1. Supplying of Service, in compliance with the provisions of Section 4933.17 of the Ohio Revised Code and the rules set forth in Chapters 4901:1-10 and 4901:1-17 as amended. The Security Deposit may be requested prior to the rendering of utility service or at a later time.

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SECTION VIII - APPLICATION OF SERVICE REGULATIONS

1. Application of ELECTRIC SERVICE REGULATIONS and Rate Schedules

All service agreements as presently in effect or that may be entered into in the future are made expressly subject to these ELECTRIC SERVICE REGULATIONS and any modifications or amendments thereto, and subject to all applicable existing rate schedules and any modifications, substitutions or amendments thereto.

2. Agents Cannot Modify Agreement

No agent has the right to amend, modify or alter the application, rates, terms, conditions, rules or regulations as filed with the Public Utilities Commission of Ohio, or to make any representation not contained in the Company's schedules, supplements thereto and revisions thereof, lawfully filed with said Commission.

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DUKE ENERGY OHIO
SERVICE REGULATIONS
SUPPLEMENT A
RULES AND REGULATIONS
GOVERNING THE ESTABLISHMENT OF
CREDIT FOR RESIDENTIAL UTILITY SERVICE

Rule 4901:1-17 of the Ohio Administrative Code as
Adopted by The Public Utilities Commission of Ohio
in Case No. 03-888-AU-ORD

- 4901:1-17-01 DEFINITIONS**
- 4901:1-17-02 WRITTEN CREDIT PROCEDURES REQUIRED**
- 4901:1-17-03 ESTABLISHMENT OF CREDIT**
- 4901:1-17-03 APPENDIX: GUARANTOR AGREEMENT**
- 4901:1-17-04 DEPOSIT TO REESTABLISH CREDITWORTHINESS**
- 4901:1-17-05 DEPOSIT ADMINISTRATION PROVISIONS**
- 4901:1-17-06 REFUND OF DEPOSIT AND RELEASE OF GUARANTOR**
- 4901:1-17-07 RECORD OF DEPOSIT**
- 4901:1-17-08 APPLICANT AND/OR CUSTOMER RIGHTS**
- 4901:1-17-09 WAIVER REQUESTS**

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4901:1-17-01 Definitions.

As used in this chapter:

- (A) "Commercial mobile radio service (CMRS)" includes and is specifically limited to mobile telephone, mobile cellular telephone, paging, personal communication services, and specialized mobile radio service providers when serving as a common carrier in Ohio, consistent with rule 4901:1-6-01 of the Administrative Code. Fixed wireless is not considered as CMRS, consistent with rule 4901:1-6-01 of the Administrative Code.
- (B) "Regulated service" means a service offering regulated by the commission.
- (C) "Utility" or "public utility" means all persons, firms, or corporations engaged in the business of providing natural gas, telecommunications (excluding commercial mobile radio service), water or sewage disposal service to consumers as defined in division (G) of section 4929.01 of the Revised Code and divisions (A)(2), (A)(8) and (A)(14) of section 4905.03 of the Revised Code, respectively. Rules for the establishment of credit for electric distribution utilities are included in Chapter 4901:1-10 of the Administrative Code.

4901:1-17-02 Written credit procedures required.

Each public utility shall establish written credit procedures consistent with these rules that allow an applicant for residential service to establish, or an existing residential customer to reestablish, credit with the utility. The procedures should be equitable and administered in a nondiscriminatory manner. The utility, without regard to race, color, religion, gender, national origin, age, handicap, or disability, shall base its credit procedures upon the credit risk of the individual as determined by the utility without regard to the collective credit reputation of the area in which the residential applicant or customer lives.

4901:1-17-03 Establishment of credit.

- (A) Each utility may require an applicant for residential service to satisfactorily establish financial responsibility. If the applicant has previously been a customer of that utility, the utility may require the residential applicant to establish financial responsibility pursuant to paragraph (C) of rule 4901:1-17-04 of the Administrative Code. An applicant's financial responsibility will be deemed established if the applicant meets one of the following criteria:
 - (1) The applicant is the owner of the premises to be served or of other real estate within the territory served by the utility and has demonstrated financial responsibility.
 - (2) The applicant demonstrates that he/she is a satisfactory credit risk by means that may be quickly and inexpensively checked by the utility. In determining whether the applicant is a financially responsible person, the public utility may request from the applicant and shall consider information including, but not limited to, the following: name of employer, place of employment, position held, length of service, letters of reference, and names of credit cards possessed by the applicant.

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- (3) The applicant demonstrates that he/she has had the same class and a similar type of utility service within a period of twenty-four consecutive months preceding the date of application, unless utility records indicate that the applicant's service was disconnected for nonpayment during the last twelve consecutive months of service, or the applicant had received two consecutive bills with past due balances during that twelve-month period and provided further that the financial responsibility of the applicant is not otherwise impaired.

When an applicant requests a copy of his/her payment history to satisfy paragraph (A)(3) of this rule, each utility shall provide a customer, at his/her request, written information reflecting the customer's payment history. The utility shall provide this information within five business days of this request.

- (4) The applicant makes a cash deposit to secure payment of bills for the utility's service as prescribed in rule 4901:1-17-05 of the Administrative Code.
- (5) The applicant furnishes a creditworthy guarantor to secure payment of bills in an amount sufficient for a sixty-day supply for the service requested. If a third party agrees to be a guarantor for a utility customer, he or she shall meet the criteria as defined in paragraph (A) of this rule or otherwise be creditworthy.
- (a) Telecommunications service providers shall further comply with the provisions set forth in rule 4901:1-5-14 of the Administrative Code.
 - (b) For all utilities, including telecommunications service providers, the guarantor shall sign a written guarantor agreement that shall include, at a minimum, the information shown in the appendix to this rule. The company shall provide the guarantor with a copy of the signed agreement and shall keep the original on file during the term of the guaranty.
 - (c) For all utilities, including telecommunications providers, the company shall send all disconnection notifications for the guaranteed customer also to the guarantor, unless the guarantor affirmatively waives that right.
 - (d) For all utilities, including telecommunication providers, the company shall send a notice to the guarantor when the guaranteed customer requests a transfer of service to a new location. The transfer of service notice shall display all of the following information:
 - (i) The name of the guaranteed customer.
 - (ii) The address of the current guaranteed customer service location.
 - (iii) A statement that the transfer of service to the new location may affect the guarantor's liability.
 - (iv) A statement that, if the guarantor does not want to continue the guaranty at the new service location, the guarantor must provide thirty days' written notice to the company to end the guaranty.
- (B) The establishment of credit under the provisions of these rules, or the reestablishment of credit under the provisions of rule 4901:1-17-04 of the Administrative Code, shall not relieve the applicant or customer from compliance with the regulations of the utility

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regarding advance payments and payment of bills by the due date, and shall not modify any regulations of the utility as to the discontinuance of service for nonpayment.

- (C) Upon default by a customer who has furnished a guarantor as provided in paragraph (A)(5) of this rule, the utility may pursue collection actions against the defaulting customer and the guarantor in the appropriate court, or if the guarantor is a customer of the same utility, that utility may transfer the defaulting customer's bill to the guarantor's. The defaulted amount transferred to the guarantor's bill shall not be greater than the amount billed to the customer for sixty days of service or two monthly bills. After thirty days from the transfer, the utility may make the guarantor subject to disconnection procedures, if the amount transferred still remains unpaid.
- (D) An applicant who owes an unpaid bill for previous residential service, whether the bill is owed as a result of service provided to that applicant or is owed under a guarantor agreement, shall not have satisfactorily established or reestablished his/her financial responsibility as long as the bill remains unpaid.

Rule 4901:1-17-03-Appendix: Guarantor Agreement

Guarantor Agreement

I, (name of guarantor), agree to be the guarantor for the (utility type) service provided by (name of utility company) for (customer's name) at the service address of (location).

As the guarantor for (customer's name), I agree to be obligated for charges for the (type of utility) services provided to the guaranteed customer, (customer's name), through the date of termination of the guaranty.

I understand that the company will send a notice to me when the customer requests to transfer service to a new location.

I understand that the company will also send to me all disconnection notifications sent to (name of customer), unless I affirmatively waive that right.

If (customer's name) defaults on the account, I will be held legally responsible for and agree to pay the defaulted amount. As guarantor, I understand that the defaulted amount may be transferred to my account and that my service may be subject to disconnection, if the transferred amount remains unpaid for thirty days. I understand that this amount will not be more than the amount of the bill for sixty days of service.

I understand that I may terminate this guarantor agreement upon thirty days' written notice to (name of company). I also understand that, if I terminate this guarantor agreement, (customer's name) may be required to reestablish creditworthiness when I terminate the guaranty.

I understand that the company shall annually review the account history of each customer who has provided a guarantor. Once (customer's name) satisfies the requirements for the release of a guarantor, as stated in Rule 4901:1-17-06, of the Ohio Administrative Code, (name of company) shall, within thirty days, notify me in writing that I am released from all further responsibility for the account.

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I agree to be a guarantor for (customer's name).

(signature of guarantor)

I waive the right to receive all disconnection notices regarding (customer's name) guaranteed service.

(signature of guarantor)

4901:1-17-04 Deposit to reestablish creditworthiness.

- (A) A utility may require a customer to make a deposit or an additional deposit on an account, as set forth in this rule and pursuant to rules 4901:1-17-03 and 4901:1-17-05 of the Administrative Code, to reestablish creditworthiness for tariffed service based on the customer's credit history on that account with that company. After considering the totality of the circumstances, the utility may require a customer whose service has been disconnected to pay a deposit, the delinquent bill, and the reconnection charges prior to restoring service.
- (B) A utility may require a deposit if the customer account meets one of the following criteria:
 - (1) The customer has not made full payment or payment arrangements by the due date for two consecutive bills during the preceding twelve months.
 - (2) The customer has been issued a disconnection notice for nonpayment on two or more occasions during the preceding twelve months.
- (C) A utility may require a deposit if the applicant for service was a customer of that utility, during the preceding twelve months, and had service disconnected for nonpayment, a fraudulent practice, tampering, or unauthorized reconnection.

4901:1-17-05 Deposit administration provisions.

- (A) No public utility, as defined in this chapter, except telecommunications providers, shall require a cash deposit to establish or reestablish credit in an amount in excess of one-twelfth of the estimated charge for regulated service(s) provided by that distribution utility for the ensuing twelve months, plus thirty per cent of the monthly estimated charge. No telecommunications provider shall require a cash deposit to establish or reestablish credit in an amount in excess of that prescribed in rule 4901:1-5-13 of the Administrative Code. Each utility, upon request, shall furnish a copy of these rules to the applicant/customer from whom a deposit is required. If a copy of the rule is provided to a customer/applicant, the utility shall also provide the name, address, website address, and telephone number of the public utilities commission of Ohio.
- (B) Upon receiving a cash deposit, the utility shall furnish to the applicant/customer a receipt that displays all of the following information:

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- (1) The name of the applicant/customer.
 - (2) The address of the premises to be served.
 - (3) The billing address for the service.
 - (4) The amount of the deposit and a statement that the rate of interest to be paid on the deposit will be not less than three per cent per annum if the deposit is held for one hundred eighty days or longer.
- (C) Each utility shall accrue interest at a rate of at least three per cent per annum per deposit held for one hundred eighty days or longer. Interest shall be paid to the customer when the deposit is refunded or deducted from the customer's final bill. A utility shall not be required to pay interest on a deposit it holds for less than one hundred eighty days. No utility shall be required to pay additional interest on a deposit after discontinuance of service, if the utility has made a reasonable effort to refund the deposit. A utility shall dispose of any unclaimed deposit, plus accrued interest, in conformity with Chapter 169. of the Revised Code.

4901:1-17-06 Refund of deposit and release of guarantor.

- (A) After discontinuing service, the utility shall promptly apply the customer's deposit, including any accrued interest, to the final bill. The utility shall promptly refund to the customer any deposit, plus any accrued interest, remaining. A transfer of service from one customer location to another within the service area of the utility does not prompt a refund of the deposit or a release of the guarantor.
- (B) The utility shall review each account holding a deposit or a guarantor agreement every twelve months and promptly refund the deposit, plus any accrued interest, or release the guarantor, if the account meets the following criteria:
- (1) The customer has paid his/her bills for service for twelve consecutive months without having had service disconnected for nonpayment.
 - (2) The customer has not had more than two occasions on which his/her bill was not paid by the due date.
 - (3) The customer is not then delinquent in the payment of his/her bills.
- (C) The utility shall promptly return the deposit, plus any accrued interest, upon the customer's request at any time the customer's credit has been otherwise established or reestablished, in accordance with this chapter of the Administrative Code.
- (D) Once the customer satisfies the requirements for release of the guarantor, pursuant to paragraph (B) of this rule, the utility shall notify the guarantor in writing, within thirty days, that the guarantor is released from all further responsibility for the account.

4901:1-17-07 Record of deposit.

Until the deposit is refunded or otherwise disposed of in accordance with applicable law, each utility holding a cash deposit shall maintain a record that displays all of the following information:

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- (A) The name and current or last known billing address of each depositor.
- (B) The amount and date of the deposit.
- (C) Each transaction concerning the deposit.

4901:1-17-08 Applicant and/or customer rights.

- (A) Each public utility that requires a cash deposit shall notify the applicant/customer of all options available to establish credit as listed in paragraph (A) of rule 4901:1-17-03 of the Administrative Code.
- (B) If a public utility requires a cash deposit to establish or reestablish service and the customer expresses dissatisfaction with the utility's decision, the company shall inform the customer of the following:
 - (1) The reason(s) for its decision.
 - (2) How to contest the utility's decision and show creditworthiness.
 - (3) The right to have the utility's decision reviewed by an appropriate utility supervisor.
 - (4) The right to have the utility's decision reviewed by the commission staff, and provide the applicant/customer the local or toll-free numbers and/or TDD/TTY numbers, address, and the website address of the commission as stated below:

The public utilities commission of Ohio (PUCO) toll-free at 1-800-686-7826 or 1-614-466-3292, or for TDD/TTY toll-free at 1-800-686-1570 or 1-614-466-8180, from 8:00 a.m. to 5:00 p.m. weekdays, or the PUCO website at www.PUCO.ohio.gov.
- (C) Each public utility, upon request, shall provide in writing to the applicant/customer the information required by paragraph (B) of this rule.

4901:1-17-09 Waiver requests.

The public utilities commission of Ohio may waive any rule or any part of a rule contained in this chapter of the Administrative Code for good cause upon its own motion or upon application by a company.

The application for a waiver shall include the specific rule(s) requested to be waived. If the request is to waive only a part or parts of a rule, then the application should identify the appropriate paragraphs, sections, or subsections to be waived. The waiver request shall provide sufficient explanation by rule, including advantages and possible disadvantages, to allow the commission to thoroughly evaluate the waiver request.

**DUKE ENERGY OHIO
SERVICE REGULATIONS**

SUPPLEMENT B

**RULES, REGULATIONS AND PRACTICES
GOVERNING THE DISCONNECTION OF
GAS, NATURAL GAS, OR ELECTRIC
SERVICE TO RESIDENTIAL CUSTOMERS**

**Rule 4901:1-18 of the Ohio Administrative Code as
Adopted by The Public Utilities Commission of Ohio
in Case No. 03-888-AU-ORD**

4901:1-18-01	DEFINITIONS
4901:1-18-02	GENERAL PROVISIONS
4901:1-18-03	DELINQUENT BILLS
4901:1-18-04	EXTENDED PAYMENT PLANS AND RESPONSIBILITIES
4901:1-18-05	DISCONNECTION PROCEDURES FOR NATURAL GAS AND ELECTRIC COMPANIES.
4901:1-18-06	RECONNECTION OF SERVICE
4901:1-18-07	LANDLORD-TENANT PROVISIONS.
4901:1-18-07	APPENDICES & FORMS
4901:1-18-08	WAIVER REQUESTS
4901:1-18-09	RESIDENTIAL NATURAL GAS BILLS
4901:1-18-10	COMBINATION UTILITY COMPANIES
4901:1-18-11	INSUFFICIENT REASONS FOR REFUSING OR DISCONNECTING SERVICE
4901:1-18-12	RESTRICTIVE LANGUAGE PROHIBITION

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4901:1-18-01 Definitions.

- (A) "Collection charge" means a tariffed charge assessed to a residential customer by a company for dispatching an employee or agent to a residence who is authorized to accept payment for utility service.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Company" means a natural gas company as defined in division (G) of section 4929.01 of the Revised Code or an electric distribution utility as defined in division (A)(6) of section 4928.01 of the Revised Code.
- (D) "Consumer" means any person who is the ultimate user of electric or gas service.
- (E) "Customer" means any person who enters into a contractual agreement with the company to receive residential electric or gas service.
- (F) "Default" means the failure to make the required payment on an extended payment plan by the due date.
- (G) "Extended payment plan" means an agreement between the customer and the company that requires the customer to make payments over a set period of time to the company on unpaid amounts owed to the company.
- (H) "Household income" has the meaning attributed to it by the Ohio department of development, office of community services, in the administration of the home energy assistance program.
- (I) "Primary source of heat" means the energy that is the heat source for the central heating system of the residence or, if the residence is not centrally heated, the energy that makes up the bulk of the energy used for space heating.
- (J) "Secondary source of heat" means the energy that is the heat source for space heating other than that provided by the central heating system of the residence or, if the residence is not centrally heated, the energy that does not make up the bulk of the energy used for space heating or, if the residence is centrally heated using some other form of energy, the energy required to operate equipment needed for the proper functioning of the central heating system.

4901:1-18-02 General provisions.

Natural gas or electric companies under the jurisdiction of the commission may disconnect service to residential customers only for the following reasons:

- (A) For any violation of or refusal to comply with a contract and/or the general service rules and regulations on file with the commission that apply to the customer's service.
- (B) When a consumer uses electricity or gas in a manner detrimental to the service to other consumers.
- (C) When providing service is in conflict or incompatible with any order of the commission, court of law, laws of the state of Ohio or any political subdivision thereof, or of the federal government or any of its agencies.
- (D) When the customer has moved from the customer location.

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- (E) When supplying electricity or gas creates a safety hazard to consumers or their premises, the public, or to the company's personnel or facilities or where, because of conditions beyond the consumer's premises, disconnection of the supply of electricity or gas is reasonably necessary. The company shall not restore service until the hazardous condition(s) has been corrected.
- (F) When a customer, consumer, or his/her agent:
 - (1) Prevents utility company personnel from reading the meter for a year or more, unless the company suspects tampering or other fraudulent activities.
 - (2) After notice and a reasonable period of time under the circumstances, continues to prevent company personnel from calibrating, maintaining, or replacing the company's meter, metering equipment, or other company property used to supply service.
 - (3) Resorts to any fraudulent practice to obtain electric or gas service, is the beneficiary of the fraudulent practice, or damages the company's meter, metering equipment or other property used to supply the service. Under the circumstances stated in this paragraph the company need not restore service until the consumer or customer has completed each of the following:
 - (a) Given assurance that the fraudulent or damaging practice has been discontinued.
 - (b) Paid to the company an amount estimated by the company to be reasonable compensation for unauthorized usage obtained and not paid for at the time of disconnection.
 - (c) Paid for any damage to property of the company including any cost to repair the damage.
 - (d) All other fees and charges authorized by tariff resulting from the fraudulent practice or tampering.
- (G) For repairs, provided that notice to consumers is given prior to scheduled maintenance interruptions in excess of six hours.
- (H) Upon the request of the customer.
- (I) For nonpayment, including nonpayment of security deposits applied to delinquent bills as a condition for continued service, only after the provisions and procedures set forth in the rules in this chapter have been complied with by the natural gas or electric company.

4901:1-18-03 Delinquent bills.

- (A) Individually metered residential service accounts will be considered delinquent and subject to the company's disconnection procedures for nonpayment if the account meets one of the following criteria:
 - (1) The customer has not made full payment or arrangements for payment by the due date, for any given bill containing a previous balance for regulated services provided by the distribution utility.
 - (2) The customer is in default on an extended payment plan.

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- (3) The customer fails to make the initial payment on an extended payment plan.
- (B) The minimum payment necessary in order to avoid the disconnection procedures shall not be greater than the delinquent amount, i.e., that portion of the bill that represents a previous balance for regulated services provided by the distribution utility.

4901:1-18-04 Extended payment plans and responsibilities.

- (A) Upon contact by a customer whose account is delinquent or who desires to avoid a delinquency, the company shall inform the customer that it will make extensions or other extended payment plans appropriate for both the customer and the company. The company may require the customer to demonstrate an inability to pay. If the customer proposes payment terms, the company may exercise discretion in the acceptance of the payment terms based upon the account balance, the length of time that the balance has been outstanding, the customer's recent payment history, the reasons why payment has not been made, and any other relevant factors concerning the circumstances of the customer, including health, age, and family circumstances. If the customer fails to propose payment terms acceptable to the company, the company shall then advise the customer of the availability of one of the extended payment plans as set forth in paragraphs (A)(1) and (A)(2) of this rule and of the availability of the extended payment plan set forth in paragraph (B) of this rule for a customer whose income qualifies him/her for such a plan. A customer who is in default on an extended payment plan other than one set forth in paragraphs (A)(1), (A)(2), or (B) of this rule is eligible for an extended payment plan as set forth in paragraphs (A)(1), (A)(2), and (B) of this rule provided he/she meets the qualifications for those plans. A customer who is in default on one of the extended payment plans set forth in paragraph (A)(1) or (A)(2) of this rule is eligible for the extended payment plan set forth in paragraph (B) of this rule provided he/she meets the qualifications for that plan.

If a customer informs the company of a medical problem, the company shall inform the customer of the medical certification program as provided in paragraph (C) of rule 4901:1-18-05 of the Administrative Code.

Each company shall offer the customer at least one of the following extended payment plans:

- (1) A plan that requires six equal monthly payments on the arrearages in addition to full payment of current bills.
- (2) A plan that requires payment of one-third of the balance due each month (arrearages plus current bill). This plan shall be offered during the winter heating season as required by paragraph (B)(3) of rule 4901:1-18-05 of the Administrative Code.
- (B) No company shall disconnect the service of any residential customer for nonpayment or refuse to reconnect, because of an arrearage, the service of a residential customer who has requested to transfer his/her service from one address to another as long as that customer meets each of the following qualifications:
 - (1) The customer has a household income for the past three months, which if annualized, would equal one hundred fifty per cent of the federal poverty level or less or, if the household income for the past three months annualized is more than one hundred fifty per cent of the federal poverty level, the customer has a household income for the past twelve months equal to one hundred fifty per cent of the federal poverty level or less.

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- (2) For usage during any billing period all or part of which is within the winter period as defined by paragraph (B) of rule 4901:1-18-05 of the Administrative Code, the customer pays at least one of the following amounts:
 - (a) Ten per cent of his/her monthly household income to the jurisdictional company that provides the customer with his/her primary source of heat and pays at least five per cent of his/her monthly household income to the jurisdictional company that provides the customer a secondary source of heat.
 - (b) Fifteen per cent of his/her monthly household income to the jurisdictional company that provides both primary and secondary source of heat.
 - (c) Fifteen per cent of his/her monthly household income to the jurisdictional electric company that provides the totality of energy used for heating purposes to his/her residence.
 - (d) Ten per cent of his/her monthly household income to the jurisdictional company that provides the primary source of heat when a non-jurisdictional utility company or other person provides the secondary source of heat.
 - (e) Five per cent of his/her monthly household income to the jurisdictional company that provides the secondary source of heat when a non-jurisdictional utility company or other person provides the primary source of heat.
 - (3) For usage during any billing period, no part of which is within the winter period as defined by paragraph (B) of rule 4901:1-18-05 of the Administrative Code, the customer pays that percentage of his/her income required by paragraph (B)(2) of this rule or the current bill for actual non winter usage, whichever is greater.
 - (4) The customer applies for all public energy assistance for which he/she is eligible.
 - (5) The customer applies for all weatherization programs for which he/she is eligible.
 - (6) The customer provides proof to the jurisdictional company or the Ohio department of development, whichever is appropriate, no less often than once in every twelve months that he/she meets the household income requirements of paragraph (B)(1) of this rule. For customers determined to have zero income under paragraph (B)(1) of this rule, the jurisdictional company may require the customer to verify the household income no more than once every ninety days.
 - (7) The customer signs a waiver permitting the affected jurisdictional company to receive information from any public agency or private agency providing income or energy assistance and from any employer whether public or private.
- (C) For purposes of paragraphs (B)(1) and (B)(2) of this rule, any money provided to the jurisdictional company from the regular home energy assistance program (HEAP), or similar program, on behalf of the customer as energy assistance shall not be considered as household income or counted as part of the monies paid by the customer to meet the percentage of income requirement. Any money provided to the jurisdictional company on an irregular or on an emergency basis by a public or private agency for the purpose of paying utility bills shall not be considered as household income. These monies shall first be applied to the customer's current monthly payment obligation as determined in accordance with paragraph (B)(2) of this rule, with any money in excess of the amount necessary to satisfy the current monthly payment obligation being applied to either the

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amount the customer is in default on an extended payment plan or, if no such default exists, then to the customer's arrearages.

- (D) The company shall provide an optional uniform payment plan (budget plan) on an annual basis for any customer who is not in default on a previously agreed upon extended payment plan. Arrearages need not be included in the optional uniform payment plan (budget plan).
- (E) A customer's failure to make any payment provided for under paragraph (A) or (B) of this rule shall entitle the company to disconnect service in accordance with the procedures set forth in rule 4901:1-18-05 of the Administrative Code.
- (F) The company shall furnish upon the request of the customer entering into an extended payment plan a written, typed, printed, or computer-generated copy of the plan and, if the extended payment plan was arranged by a company employee, the name of that employee.

4901:1-18-05 Disconnection procedures for natural gas and electric companies.

- (A) If a residential customer is delinquent in paying for regulated services provided by the distribution utility, the company may, after proper and reasonable notice of pending disconnection of service (not less than fourteen days), disconnect the customer's service during normal company business hours in compliance with all of the following conditions:
 - (1) No disconnections for nonpayment shall be made after twelve-thirty p.m. on the day preceding a day on which all services necessary for the customer to arrange and the company to perform reconnection are not regularly performed.
 - (2) On the day of disconnection of service, the company shall provide the customer with personal notice. If the customer is not at home, the company shall provide personal notice to an adult consumer. If neither the customer nor an adult consumer is at home, the company shall attach written notice to the premises in a conspicuous location prior to disconnecting service.
 - (3) Third-party or guarantor notification.
 - (a) Each company shall permit a residential customer to designate a third party to receive notice of the pending disconnection of the customer's service or of any other credit notices sent to the customer. If the customer has a guarantor, the guarantor shall receive notice of the pending disconnection of the guaranteed customer's service or of any other credit notices sent to the guaranteed customer, except where the guarantor has affirmatively waived the right to receive notices pursuant to rule 4901:1-17-03 of the Administrative Code. The company shall notify the third party or the guarantor at least fourteen days prior to disconnecting the customer's service.
 - (b) The company shall inform the third party that his/her receipt of such notices does not constitute acceptance of any liability by the third party for payment for service provided to the customer unless the third party has also agreed, in writing, to be a guarantor for the customer.
 - (c) In compliance with division (E) of section 4933.12 and division (D) of section 4933.121 of the Revised Code, if the company plans to disconnect the residential utility service of a customer for the nonpayment of his/her bill, and that customer resides in a county in which the department of job and family

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services has provided the company with a written request for prior notification of residential service disconnection, then the company shall provide the appropriate county department of job and family services with a listing of those customers whose service will be disconnected for nonpayment at least twenty-four hours before the action is taken.

- (d) Upon the request of a property owner or the agent of a property owner, each company shall provide the property owner or the agent of a property owner with at least three-days advance notice when service to his/her property is to be disconnected either at the request of a residential customer who is a tenant or for nonpayment.
- (4) Employees or agents who disconnect service at the premises may or may not, at the discretion of the company, be authorized to make extended payment arrangements. Company employees or agents who disconnect service shall be authorized to complete one of the following:
 - (a) Accept payment in lieu of disconnection.
 - (b) Dispatch an employee to the premises to accept payment.
 - (c) Make available to the customer another means to avoid disconnection.
- (5) The following information shall be either clearly displayed on the disconnection notice or included in documents accompanying the disconnection notice:
 - (a) The delinquent billing account number, the total amount required to prevent disconnection of the regulated services provided by the distribution utility and any security deposit owed at the time of the notice.
 - (b) The earliest date when disconnection may occur.
 - (c) The local or toll-free number and address of the company's office for customers to contact about their account.
 - (d) A statement that the commission staff is available to render assistance with unresolved complaints, the current address, local or toll-free number and the TDD/TTY number of the commission's public interest center, and the commission's website.
 - (e) A statement that the customer's failure to pay the amount required at the company's office or to one of its authorized agents by the date specified in the notice may result in a security deposit and a charge for reconnection being required. The statement shall also include the amount of the security deposit and the reconnection charge.
 - (f) If applicable, a statement that the failure to pay charges for non-tariffed and/or non-regulated products or services may result in the loss of those products and/or services.
 - (g) An explanation of the payment plans and options available to a customer whose account is delinquent, as provided in this rule and rule 4901:1-18-04 of the Administrative Code, and, when applicable, rule 4901:1-18-10 of the Administrative Code.

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- (h) If disconnection of service is to occur, as a result of nonpayment, a statement that a medical certification program and forms are available from the company.
 - (i) A statement that a listing of the company's authorized payment agents is available by calling the company's toll-free customer service number.
- (B) The company shall not disconnect service to residential customers for nonpayment during the period of November first through April fifteenth unless, in addition to the other requirements of this rule, the company completes each of the following:
 - (1) Makes contact with the customer or other adult consumer at the premises ten days prior to disconnection of service by personal contact, telephone, or hand-delivered written notice.
 - (2) Informs the customer or adult consumer that sources of federal, state, and local government aid for payment of utility bills and for home weatherization are available at the time the company delivers the notice required in paragraph (B)(1) of this rule, and provides sufficient information to allow the customer to further pursue available assistance.
 - (3) Informs the customer of the right to enter into a payment plan as set forth in paragraph (A)(2) of rule 4901:1-18-04 of the Administrative Code, unless the customer qualifies for the payment plan set forth in paragraph (B) of rule 4901:1-18-04 of the Administrative Code, in which event the company shall inform the customer of the availability of both plans. The company may require reasonable verification of the customer's household income, including but not necessarily limited to verification by the local agency providing governmental aid in paying utility bills. If the customer does not respond to the notice described in paragraph (B)(1) of this rule, or refuses to accept a payment plan or fails to make the initial payment on a payment plan referenced in this paragraph, the company may disconnect service after the ten-day notice expires.
- (C) Medical Certification
 - (1) The company shall not disconnect service for nonpayment if the disconnection of service would be especially dangerous to health. The health condition must be certified in accordance with this rule.
 - (2) When the disconnection of service would make operation of necessary medical or life-supporting equipment impossible or impractical, the company shall not disconnect service for nonpayment, if the customer establishes an inability to pay the amount due in full and enters into and makes payments in accordance with an extended payment plan. The necessary medical or life-supporting equipment must be certified in accordance with this rule.
 - (3) The electric distribution company shall give notice of availability of medical certification to its residential customers by means of bill inserts or special notices at the beginning of the winter heating period and at the beginning of the summer cooling period. The natural gas company shall give notice of the availability of medical certification to its residential customers by means of bill inserts or special notices at the beginning of the winter heating period.
 - (4) The company shall provide application forms for health care professionals or local board of health physicians for certification upon request of any residential consumer.