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

DUKE ENERGY OHIO'S MOTION FOR A PROTECTIVE ORDER

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby moves this honorable Public Utilities Commission of Ohio (Commission) for a protective order, pursuant to O.A.C. Rule 4901-1-24(D), covering certain confidential information that is included as a part of its Application in the above-captioned proceeding. Specifically, the proprietary, trade-secret information that Duke Energy Ohio seeks to have protected is contained in (a) the Direct Testimony and work papers of Judah L. Rose; (b) the Direct Testimony, Attachment BDS-1, and work papers of Brian D. Savoy; and (c) the Direct Testimony, Attachments WDW-1 and WDW-2, and work papers of William Don Wathen Jr.

Duke Energy Ohio sets forth, in the attached Memorandum in Support, its reasons why confidential treatment of this information is necessary. In compliance with the governing rule, Duke Energy Ohio is filing, under seal, three unredacted copies of the confidential information.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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MEMORANDUM IN SUPPORT

Duke Energy Ohio respectfully requests that the Commission grant its Motion for a Protective Order. Duke Energy Ohio is an Ohio corporation with its principal office in Cincinnati, Ohio. Duke Energy Ohio is engaged in the business of supplying electric power to the public in the state of Ohio. Accordingly, Duke Energy Ohio is a public utility within the meaning of R. C. 4905.02 and 4905.03. As such, Duke Energy Ohio is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the state of Ohio.

Duke Energy Ohio is filing, simultaneously with this motion, its Application for authority to establish a standard service offer in the form of an electric security plan (Application). The Application contains certain information, the public disclosure of which could damage Duke Energy Ohio's competitive position and business interests. The information for which protection is sought covers projections and competitively sensitive information.

O.A.C. 4901-1-24(D) provides that the Commission or its attorney examiners may issue a protective order to assure the confidentiality of information contained in filed documents, to the extent that state or federal law prohibits the release of the information, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

The Commission, therefore, generally refers to the requirements of R.C. 1333.61 for a determination of whether specific information should be released or treated confidentially. Subsection (D) of that section defines "trade secret" as follows:

> "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, **or any business information or plans, financial information,** or listing of names, addresses, or telephone numbers, that satisfies both of the following:
>
> (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
>
> (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[1]

Thus, business information or plans and financial information are trade secrets if they derive independent economic value from not being generally known to or ascertainable by others who can obtain their own value from use of the information and they are the subject of reasonable efforts to maintain their secrecy.

The Direct Testimony and work papers of Judah L. Rose contain proprietary forecasts for years 2016 and beyond. Attachment BDS-1 and work papers of Brian D. Savoy and Attachment WDW-2 and work papers of William Don Wathen Jr. contain proprietary information that is predicated upon the information redacted from witness Rose's testimony and work papers. Forecasted information is developed and utilized by the Company for a number of purposes. If disclosed publicly, such information could impair the Company's financing efforts, as well having a negative impact on its activities in various aspects of the marketplace. Forecasts are generally not disclosed and are protected by the Commission in many types of proceedings. The Company takes steps, internally to ensure that this information is not disclosed to anyone who does not have a business need to know the material. Externally, the Company does not disclose this forecasted

[1] R.C. 1333.61(emphasis added).

information other than under the terms of appropriate protective devices, such as confidentiality agreements.

The confidential trade secret information in the Direct Testimony of Brian D. Savoy and in the Direct Testimony and Attachment WDW-1 of William Don Wathen Jr. comprises information concerning certain market positions of the Company. This information derives actual, independent economic value to the Company as a result of its not being generally known or readily ascertainable by other persons who could use it to affect the market prices and availability of commodities in the market. Public disclosure of this information could have a real effect on the financial position of Duke Energy Ohio. As with the forecast information, Duke Energy Ohio attempts to ensure that this market information remains secret, both internally and externally.

O.A.C. 4901-1-24(D) allows Duke Energy Ohio to seek leave of the Commission to file information Duke Energy Ohio considers to be proprietary trade secret information, or otherwise confidential, in a redacted and non-redacted form, under seal.[2] Duke Energy Ohio is filing the testimony, related attachments, and work papers in unredacted form, under seal, together with this Motion.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission, pursuant to O.A.C. 4901-1-24(D), grant its Motion for Protective Order by making a determination that the redacted information is confidential, proprietary, and a trade secret under R. C. 4901.16 and 1333.61.

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2 OHIO ADMIN. CODE § 4901-1-24 (Anderson 2003)

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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DUKE ENERGY OHIO EXHIBIT _______

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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APPLICATION

June 20, 2011

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TESTIMONY:

B. Keith Trent
Julia S. Janson
Judah L. Rose
Stephen G. De May
James S. Northrup
Robert J. Lee
William Don Wathen Jr.
Andrew S. Ritch
Roger A. Morin, Ph.D.
Kenneth J. Jennings
Salil Pradhan
Jeffrey R. Bailey
James E. Ziolkowski
Mark D. Wyatt
Brian D. Savoy
Christian E. Whicker
Daniel L. Jones

APPLICATION

I. Introduction

Chapter 4928 of the Ohio Revised Code (R.C.), as amended by the Ohio General Assembly through Amended Substitute Senate Bill 221 (S.B. 221), requires electric distribution utility (EDU) companies in Ohio to provide a standard service offer (SSO) "of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service," through either a market rate offer (MRO) or an electric security plan (ESP).[1] In its first application filed pursuant to S.B. 221, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) sought – and received – approval from the Public Utilities Commission of Ohio (Commission) to implement an ESP.[2] The term of that ESP expires on December 31, 2011, and the Company now seeks approval of its next SSO, which will again take the form of an ESP.[3]

Specifically, pursuant to R.C. 4928.141 and 4928.143 and O.A.C. Chapter 4901:1-35, Duke Energy Ohio respectfully requests that the Commission approve its proposed ESP.[4] The proposed ESP is a long-term approach to the provision of electric services in southwest Ohio, intended to last almost a decade. Modeling its proposal on the structure that has worked well in the gas industry, the Company proposes an ESP under which there can be both competition in the supply of energy and assurance of the availability of capacity. To accomplish this, Duke Energy Ohio proposes to provide, to

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[1] R.C. 4928.141(A).

[2] *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, *et al.*, Application (July 31, 2008).

[3] The Company also applied for approval of an MRO, but that application was rejected. *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO.

[4] Consistent with O.A.C. 4901:1-35-04, Duke Energy Ohio has provided notice of this filing via electronic or regular mail delivery to parties of record in its most recent standard service offer filing, Case No. 10-2586-EL-SSO, with such notice and this filing being made concurrently.

all customers in its territory, an adequate and reliable supply of capacity, establishing a charge for the capacity that is comparable to the traditional, formulaic, rate-of-return driven, regulated rates that are currently used to build distribution rates. As such, that capacity charge, adjusted annually, will allow for additions to the capacity base that result from environmental expenditures and other changes. The Company will sell the energy that is produced by its legacy generating assets, sharing most of the net proceeds of those sales with its customers and, thereby, lowering the universal capacity charge. An additional portion of those net proceeds will support economic development in southwestern Ohio. To serve the customers' needs for energy, Duke Energy Ohio will hold periodic auctions to obtain the lowest possible cost energy from competitive wholesale suppliers. Retail competitors will continue to be able to compete for customers on the energy portion of their service. Duke Energy Ohio believes that its proposal represents the best possible outcome for customers, investors, and the state of Ohio.

As described in this Application, and the testimony, schedules, and tariffs filed contemporaneously herewith, Duke Energy Ohio's proposed ESP is consistent with the public policy of this state and addresses a range of issues designed to provide customers with stable electric generation prices over a sustained period of time. Furthermore, the proposed ESP promotes a competitive market in Ohio while affording the Company reasonable returns and the financial viability it needs in order to make meaningful investment in Ohio.

Duke Energy Ohio submits that the Application and accompanying documents meet the requirements of R.C. 4928.141 and 4928.143 and O.A.C. Chapter 4901:1-35 and, as such, respectfully requests that the Commission approve the proposed ESP, without modification, including all accounting authority and tariff revisions needed to implement the ESP, effective January 1, 2012.

II. Overview of Application

As detailed below and in the accompanying testimony, Duke Energy Ohio's proposed ESP satisfies the applicable statutory and Commission rule requirements. To ease the Commission's review in this regard, attached hereto as Attachment A is a recitation of the applicable filing requirements, with specific references demonstrating Duke Energy Ohio's compliance with same.

Duke Energy Ohio further submits that the ESP discussed herein advances the policies of this state,[5] although such policies function only as "guidelines for the [C]omission to weigh."[6] Significantly, Duke Energy Ohio's proposed ESP, among other things, ensures the availability of adequate, reliable, and reasonably priced retail electric service; encourages diversity in electricity supplies and suppliers and time-differentiated pricing; recognizes – and supports the development of – the competitive market for retail electric service; protects at-risk populations; and, promotes Ohio's role in the global economy.

In addition to this Application, the Company's request is supported by the following witnesses. Unless otherwise noted, these individuals are employed by Duke Energy Ohio or an affiliated company:

- B. Keith Trent, Group Executive and President, Commercial Businesses, Duke Energy Corporation

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[5] R.C. 4928.02.
[6] *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2011-Ohio-1788, ¶ 62, citing *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, ¶ 39-40.

- Mr. Trent offers testimony discussing the objectives upon which the Company's proposed ESP is predicated and the overall structure of the plan. Mr. Trent also introduces the other witnesses in this proceeding.

- Julia S. Janson, President, Duke Energy Ohio and Duke Energy Kentucky, Inc.
    - Ms. Janson testifies as to the plan's provisions related to economic development. Ms. Janson also offers testimony outlining how Duke Energy Ohio's ESP advances the policies of the state.
- Judah L. Rose, Principal, ICF Consulting
    - Mr. Rose presents testimony on the forecast of retail market prices during the period of the Company's proposed ESP and will address the statutory comparison between the ESP and the expected results that would otherwise apply under R.C. 4928.142. Mr. Rose also addresses the administration of the significantly excessive earnings test to Duke Energy Ohio.
- Stephen G. De May, Senior Vice President, Investor Relations, and Treasurer, Duke Energy Corporation
    - Mr. De May testifies as to Duke Energy Ohio's overall financial objectives, credit quality, and the impact that Ohio's regulatory construct could have on investors.
- James S. Northrup, Director, Project Analysis and Special Projects
    - Mr. Northrup testifies regarding Duke Energy Ohio's energy auction, including the Master Standard Service Offer Supply Agreement.

- Robert J. Lee, Principal, CRA International, Inc., d/b/a Charles River Associates
    - Mr. Lee will present testimony on the energy auction to be administered under the ESP, including, but not limited to, the auction design, parameters, and the selection of winning bids.
- William Don Wathen Jr., General Manager, Rates, Ohio and Kentucky
    - Mr. Wathen presents testimony on the riders proposed under Company's ESP, as well as those that will remain unchanged by this Application. Mr. Wathen also discusses provisions for testing the ESP and transitional conditions should the plan be terminated, as well as governmental aggregation.
- Andrew S. Ritch, Director of Renewable Strategy and Compliance
    - Mr. Ritch will provide testimony regarding Duke Energy Ohio's procurement policies and procedures relevant to the state's alternative energy requirements.
- Roger A. Morin, Ph.D., Principal, Utility Research International
    - Dr. Morin will offer testimony on the reasonable rate of return that is incorporated in the Company's retail capacity rider, Rider RC.
- Kenneth J. Jennings, Director, Market and RTO Services
    - Mr. Jennings discusses the Company's realignment to PJM Interconnection, L.C.C., (PJM) including the plans under which it will procure capacity. Mr. Jennings also discusses the effect of the proposed ESP on competitive retail electric service providers that have

opted out of the Company's transitional Fixed Resource Requirement Plan. Finally, Mr. Jennings describes why customers will not pay twice for capacity under the proposed ESP.

- Salil Pradhan, Vice President, Portfolio Risk Management, Midwest Commercial Generation, Commercial Businesses
    - Mr. Pradhan offers testimony on the Company's proposal to share the net profits from energy and ancillary services sales from the Company's legacy generating assets with customers and how the commodities portfolio relevant to these assets is intended to be managed during the term of the ESP.
- Jeffrey R. Bailey, Director, Rate Design & Analysis, Rates & Regulatory Accounting
    - Mr. Bailey also presents testimony on rate design under the Company's proposed ESP.
- James E. Ziolkowski, Rates Manager
    - Mr. Ziolkowski offers testimony regarding rate design and, more specifically, the retail rates to be charged under the ESP. He also addresses the tariff revisions relevant to the ESP.
- Mark D. Wyatt, Vice President, SmartGrid & Energy Systems
    - Mr. Wyatt offers testimony regarding Duke Energy Ohio's existing infrastructure modernization plan.
- Brian D. Savoy, Managing Director of Corporate Financial Planning and Analysis

- Mr. Savoy, through his testimony, provides the financial projections required in connection with the ESP proposal.

- Christian E. Whicker, Regulatory Compliance Manager, Ethics & Compliance
  - Mr. Whicker offers testimony on the Company's proposal to amend its Second Amended Corporate Separation Plan.
- Daniel L. Jones, Senior Account Manager, Customer Choice
  - Mr. Jones offers testimony regarding the Company's operational support plan and the proposed revisions to its Certified Supplier Tariff.

III. Description of the Proposed Electric Security Plan

A. Introduction

Pursuant to R.C. 4928.143(B)(1), an ESP "shall include provisions relating to the supply and pricing of electric generation service… ." Further, where the term of the ESP is longer than three years, the ESP may also contain provisions for testing the plan pursuant to R.C. 4928.143(E) and for transitioning to the alternate SSO structure (*i.e.*, an MRO) in the event the ESP is terminated by the Commission. The other elements that may also be included in an ESP are detailed in R.C. 4928.143(B)(2). In this regard, it is notable that the ESP may include provisions relating to limitations on customer shopping, bypassability, distribution service, economic development, and job retention.

As directed by the General Assembly, the Commission has promulgated rules that provide further specificity regarding the statutory criteria and the substance and filing of an ESP.[7] In the following parts of this section, Duke Energy Ohio addresses the statutory

[7] O.A.C. 4901:1-35-03(C).

requirements for the ESP and, where appropriate, includes a discussion of Commission rule requirements applicable to each such statutory requirement.

B. Provisions Relating to the Supply and Pricing of Electric Generation Service – R.C. 4928.143(B)(1)

1. Generation Service Supply and Pricing

As noted above, R.C. 4928.143(B)(1) mandates that an ESP include provisions relating to the supply and pricing of generation service. In this regard, the legislature did not impose *any* limitations on how the generation service must be supplied or priced; nor did the legislature require that an EDU price capacity and energy as a bundled product. Rather, the legislature deferred to EDUs, subject to Commission approval, with respect to the structure and methodology pursuant to which generation service would be supplied and priced under an ESP. Significantly, the mandatory provisions of R.C. 4928.143(B)(1) have not been interpreted by either the Commission or the Ohio Supreme Court in a manner that yields a contrary result.

Here, Duke Energy Ohio proposes to supply generation service through a bifurcated structure, with capacity supplied by the Company to all customers and energy procured via competitive auctions to serve the needs of those customers who choose to purchase energy from the Company. In doing so, the Company achieves the appropriate balance between customers' expectation and desire for price stability and certainty and Duke Energy Ohio's need to recover its costs of maintaining its generating fleet to serve customers, all while facilitating a functioning, competitive market in Ohio.

a. Capacity

It is undeniable that the wholesale capacity market is both unpredictable and volatile. And this characterization is not likely to change in the foreseeable future. As detailed in the Direct Testimony of Duke Energy Ohio witness Judah L. Rose, wholesale capacity prices are expected to increase dramatically over the next decade, in large part because of increasing environmental regulation of aging base load coal plants. Indeed, the potential for higher wholesale capacity prices was confirmed in the base residual auction conducted by PJM on May 3, 2011, which yielded prices of $126 per megawatt-day (MW-day) for the 2014/2015 delivery year. For sake of comparison, the capacity prices in the PJM base residual auction for the 2013/2014 delivery year were $28 per MW-day – almost $100 per MW-day less. This astonishing disparity, over a single year, provides one indication of the volatile nature of the wholesale capacity market. And where an SSO is predicated upon pricing derived from this wholesale capacity market, customers are exposed to unpredictable pricing at the retail level. This unpredictability is compounded by what have been ESPs of short duration – three years or less – that do not provide prolonged certainty in the supply or pricing of generation service.

It is also undeniable that customers recognize, and have concern about, the volatile and dynamic nature of the wholesale capacity market. In Duke Energy Ohio's recent application for approval of an MRO, customers vehemently opposed an accelerated path to full market pricing, although it would have enabled all SSO customers to benefit from lower market prices. Rather, intervenors from all of the Company's customer classes rejected the notion of being subject to full market pricing by mid-2014 and, instead, urged a slower transition to market pricing in order to guard against unexpected price surges.[8]

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[8] *See, e.g., In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting*

As detailed in the Direct Testimony of Duke Energy Ohio witness B. Keith Trent, the Company is proposing to insulate all customers from the vagaries of the wholesale capacity market by providing them with an adequate and stable supply of capacity over a nine year, five month period.[9] Importantly, the majority of the capacity will be supplied from the Company's existing legacy generating assets, thus assuring customers that an adequate supply of capacity – obtained other than from the market – will be available to them. As necessary, the Company will acquire additional capacity to meet minimum reserve requirements.

In exchange for effectively dedicating its generating assets to provide capacity for Ohio customers, Duke Energy Ohio proposes to recover its embedded cost of supply. More specifically, Duke Energy Ohio proposes an objective, transparent, and easily confirmed formulaic rate that enables it to recover from all customers in its territory, through a non-bypassable charge, its costs of supplying capacity and a reasonable rate of return, as is allowed by Ohio law.[10] As detailed by Duke Energy Ohio witness Trent, this pricing proposal serves two critical objectives: affording customers price stability and certainty and ensuring the Company's ongoing financial integrity. Duke Energy Ohio witness Judah Rose discusses, among other things, the forecast of retail market prices during the ESP period. Duke Energy Ohio witness Stephen G. De May addresses, among other things, the impact that the proposed ESP could have on the Company's financial integrity. Further, Duke Energy Ohio's ESP importantly positions the Company to invest

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Modifications, and Tariffs for Generation Service, Case No. 10-2586-EL-SSO, Briefs of Ohio Partners for Affordable Energy, Ohio Manufacturers' Association, and The Kroger Company.

[9] The first year of the proposed ESP will extend from January 1, 2012, through May 31, 2013, consistent with the PJM planning year that runs from June 1 to May 31. For ease of reference, the term of this ESP will be referred to as ten years, although the actual term is nine years and five months.

[10] *See In re Application of Columbus Southern Power Co.*, 128 Ohio St. 3d 402, 2011-Ohio-958, ¶26.

in its legacy generating assets as necessary to maintain their cost effectiveness and continued ability to serve customers in Ohio.

In Section III.C.2.a., below, Duke Energy Ohio discusses the methodology for calculating and adjusting the capacity costs, as discussed here.

As a complement to the non-bypassable capacity charge, the Company proposes a mechanism pursuant to which it will share the net profits from energy and ancillary services sales from the legacy generating assets for which the capacity charge applies. Although S.B. 221 does not mandate *any* profit sharing in respect of off-system sales,[11] Duke Energy Ohio submits that such provision is appropriate given a non-bypassable charge for capacity. That is, if all customers are to pay a capacity charge based upon the Company's cost of rendering that service, the assets from which the charge is derived can fairly be characterized as dedicated to all customers. And sharing the net profits from the energy and ancillary services sales associated with those assets is the logical consequence of asset dedication. The practical result of this non-bypassable profit sharing mechanism is a reduction in the capacity charge paid by all customers. Thus, should the market prices for energy increase over the term of this plan, the net profits to be shared with all customers should increase concomitantly. As a result, the non-bypassable capacity charge would be reduced further.

As discussed by Duke Energy Ohio witness Trent, the Company proposes in this ESP to share in the net profits from the sales of energy and ancillary services associated with its economic, legacy generation, allocating to customers 80 percent of these net profits. In order to align the interests of customers and the Company in maximizing the

[11] *In re Application of Columbus Southern Power Co.*, Slip Opinion No. 2011-Ohio-1788, ¶51.

net profits, Duke Energy Ohio will retain 20 percent of the net profits. From these allocations, Duke Energy Ohio further proposes that 5 percent of each allocation (that is, 5 percent of the customers' allocation and 5 percent of the Company's allocation) be directed to an important economic development offering intended to attract, retain, and expand businesses in its service territory in southwest Ohio. Consequently, after percentages are directed to furthering the state's focus on job creation and retention, customers will receive 76 percent of the net profits associated with the Company's generating assets.

Duke Energy Ohio details the methodology for managing the commodities associated with its legacy generating assets and the methodology supporting its profit sharing mechanism in Section III.C.2.b., below.

b. Energy

Because the energy from the legacy generating assets will be sold into the market and a portion of the net profits returned to customers, that energy will not be available to serve the Company's SSO load. Rather, Duke Energy Ohio proposes to conduct competitive auctions to acquire all of the energy supply needed for its SSO load for the duration of its ESP. Customers, therefore, will pay market-based prices for energy – whether a given customer is served through the SSO or through a competitive supplier – and the competitive market in Ohio will be sustained.

Duke Energy Ohio witnesses James S. Northrup and Robert J. Lee detail the competitive bidding process (CBP) plan that the Company proposes. As there is no express requirement in R.C. 4928.143 for procuring any aspect of generation service via auctions, Duke Energy Ohio's CBP plan has been guided by the statutory and

Commission rule requirements applicable to a CBP plan under an MRO, and by the structure of similar auctions approved by the Commission for other electric utilities. In this regard, Duke Energy Ohio has developed a CBP plan that will be familiar to both the Commission and prospective auction participants.

More specifically, Duke Energy Ohio proposes descending-price clock auctions, with the first auction to be conducted no later than December 1, 2011, for delivery on January 1, 2012. In 2012, and for the remainder of the proposed ESP term, the Company will conduct two auctions per year. Most of the auctions will include a variety of product offerings, so as to attract as many prospective and diverse bidders as possible, thereby ensuring a robust, competitive process. The exceptions to this approach will occur in the years during which the Commission is reviewing the ESP. The Company believes that it is critical that all contracts be set to terminate at the end of the fourth and eighth years, so that there will not be existing obligations that prevent the termination of the ESP, in the event that the Commission makes such a determination. The proposed Bidding Process Timeline is attached hereto as Exhibit B.

A staggered auction format serves to smooth out potentially volatile market prices for energy, provides for longer-term price stability, and encourages efficient pricing of products. Thus, the Bidding Process Timeline incorporates a staggered format, with minor exceptions. As discussed by Duke Energy Ohio witness Lee, because the Commission has the ability to order termination of the proposed ESP, it is commercially fair and reasonable to develop an auction schedule that contemplates that eventuality. Consequently, Duke Energy Ohio has incorporated transition periods into the auction schedule, thereby protecting against executed supply contracts subsequently being declared null and void by the Commission.

To ensure an open, fair, and transparent process, Duke Energy Ohio's CBP plan incorporates provisions for the equal and non-discriminatory exchange of information and application of bidding requirements. In fact, the Company's CBP plan provides that all prospective bidders will be subject to the same pre-bid requirements and all successful bidders must adhere to, and assume, the same contractual commitments. These requirements are set forth in Attachments C, D, E, and G to this Application.

The auction product will be an hourly, load-following, full-requirements tranche of the Company's SSO load for energy, where a tranche is equal to 1.00 percent of Duke Energy Ohio's total SSO load obligation for energy (*i.e.*, its non-shopping retail load) or a slice of system of the Company's hourly SSO load for energy. The products incorporated into the CBP plan include unbundled energy, ancillary services, and market-based firm transmission services. A comprehensive description of the products can be found in the Company's draft Master Standard Service Offer Supply Agreement, a copy of which is attached hereto as Attachment F.

All bidders will have access to the same information, as the CBP plan incorporates bidder information and training sessions, an active Informational Website, and mock auctions that will be held prior to the time of the first auction. The CBP plan also includes appropriate confidentiality provisions, thus placing all prospective bidders on equal footing. Further, the rules pursuant to which bidding will occur and bids will be evaluated are expressly set forth in this public filing, thus ensuring that no one prospective bidder is competitively advantaged or disadvantaged vis-à-vis any other prospective bidder.

An independent auction manager, CRA International, Inc., d/b/a Charles River Associates (CRA), has been retained to actively design, administer, and oversee at least the first CBP. As confirmed by Duke Energy Ohio witness Lee, CRA has substantial experience in designing and implementing competitive bids for generation service.

The CBP plan also contemplates Commission review, through the production of a post-auction report and retention of a separate consultant. Further, the CBP plan is predicated upon an auction format that is familiar, accepted, and capable of verification through hindsight review.

In Section III.C.2.c., below, Duke Energy Ohio discusses the methodology for converting competitive, wholesale energy prices from the auctions into retail rates, as well as the terms of the rider through which costs related to energy procurement will be recovered.

2. Parameters for Testing

Duke Energy Ohio proposes a ten-year term for its ESP that exceeds the traditional three-year term. Consequently, the plan will be subject to a Commission review, under R.C. 4928.143(E), in 2015 and again in 2019. Duke Energy Ohio is statutorily permitted to include in its ESP provisions applicable to these subsequent reviews and, consistent therewith, proposes the following parameters.

The first issue to be decided by the Commission in the review required under R.C. 4928.143(E) is whether the ESP "continues to be more favorable in the aggregate and during the remaining term" of the ESP as compared to the expected results under the

MRO provisions. In ascertaining the expected results under R.C. 4928.142, consideration must be given to Duke Energy Ohio's ownership of generation. Because Duke Energy Ohio owned generating assets as of July 31, 2008, it is subject to a blending requirement under the MRO provisions, and, as the Commission has previously opined, R.C. 4928.142(D) contemplates a default blending schedule of 10 percent market bid price in year one, not more than 20 percent in year two, not more than 30 percent in year three, not more than 40 percent in year four, not more than 50 percent in year five, and 100 percent in year six.[12]

As of the fourth year of the ESP, when the Commission would first review the ESP, the Company will not have filed an MRO. Consequently, this blending criterion is applicable when comparing Duke Energy Ohio's ESP and the expected results under R.C. 4928.142. Accordingly, for purposes of establishing the expected results under R.C. 4928.142, Duke Energy Ohio proposes, with respect to the year-four test, that the MRO pricing be based upon the following percentages, for each relevant year of the comparison:

	MRO Blending Percentages	
Year of ESP	**Market**	**Most Recent ESP**
4	10%	90%
5	20%	80%
6	30%	70%
7	40%	60%
8	50%	50%
9+	100%	0%

[12] *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer*, Case No. 10-2586-EL-SSO, Opinion and Order, at page 15 (February 23, 2011).

The "most recent ESP" as referenced above is comprised of the retail rates for Rider RC, as offset by Rider PSM, and Rider RE[13] as of May 31, 2015, and the "market" reflects the projected market prices for capacity and energy at the time of the comparison.

Duke Energy Ohio proposes that, at the time such price comparison is made, the forecasted prices resulting from the MRO blending percentages identified above be compared to the Company's projected Rider RC rates at that time, as off-set by Rider PSM, and the projected Rider RE rates for the period between June 1, 2015, and May 31, 2021.

A price comparison is but one aspect of the "in the aggregate" test. Pursuant to statute, consideration must also be given to all other terms and conditions of the ESP. This requirement is applicable whether the "in the aggregate" test is being employed prior to the plan's approval or during the year-four or year-eight review.[14] Thus, during the quadrennial reviews, the same terms and conditions that are considered for purposes of approving this Application must be factored into the determination of whether the ESP remains more favorable than an MRO. Those terms and conditions are detailed in Section III.D., below.

The same analysis as discussed above should be conducted in year eight of the ESP, revised only to adjust the blending percentages. Again, as no MRO will have been filed by the eighth year of the Company's ESP, the blending percentages for that eighth year must be 10 percent market/90 percent most recent ESP. The percentages applicable to the ninth year would necessarily be 20 percent market/80 percent most recent ESP.

[13] See Section III.C.2., below, for a description of Riders RC, PSM, and RE.
[14] R.C. 4928.143(C)(standard of review encompasses "pricing and all other terms and conditions"); See also, R.C. 4928.143(E)(standard of review encompasses "pricing and all other terms and conditions).

For purposes of this second, prospective test, the "most recent ESP" would be comprised of the retail rates for Rider RC, as offset by Rider PSM, and Rider RE as of May 31, 2019.

R.C. 4928.143(E) also requires the Commission to determine, in year four and every fourth year thereafter, whether the prospective effect of the Company's proposed ESP is substantially likely to lead to significantly excessive earnings. Pursuant to this statutory requirement, the Commission must ascertain the substantial likelihood of Duke Energy Ohio significantly over-earning from June 1, 2015, through the conclusion of the ESP on May 31, 2021. Again, a similar test will be conducted for the period of June 1, 2019, through May 31, 2021. In administering this test, Duke Energy Ohio recommends the following methodology.

For purposes of calculation, Duke Energy Ohio will use calendar year projections. At the time of the first test, the Company will provide a projection of earnings from its electric operations for each year through 2021. Importantly, it will be assumed, only for the purpose of this test, that the proposed ESP expires on December 31, 2021, and not May 31, 2021. The financial statements supporting this calculation will include an income statement and balance sheet for Duke Energy Ohio's electric operations. To calculate the projected return on equity, net income will be adjusted, if applicable, as follows:

- Eliminate all depreciation and amortization expense and impairment charges related to the purchase accounting recorded pursuant to the Duke Energy/Cinergy Corp. merger and post-merger impacts to retained earnings;

- Eliminate all impacts of refunds to customers pursuant to R.C. 4928.143(E);
- Eliminate all impacts of mark-to-market accounting;
- Eliminate all impacts of material, non-recurring gains or losses, including but not limited to, the sale or disposition of assets; and
- Eliminate all impacts of parent, affiliated, or subsidiary companies and, to the extent reasonably feasible and prudently justified in the opinion of Duke Energy Ohio, eliminate the impacts of its natural gas distribution business.

The Adjusted Net Income will be divided by Common Equity to determine the resulting return on equity (ROE). The following adjustments will be made to common equity:

- Eliminate the acquisition premium recorded to equity pursuant to the Duke Energy/Cinergy Corp. merger; and
- Eliminate the cumulative effect of the net income adjustments.

If the projected annual return on ending common equity for the relevant years, as adjusted pursuant to the above, is 50 percent higher than the ROE used for calculating Rider RC, there is a substantial likelihood that the Company will have significantly excessive earnings.[15] However, the Commission's reviews in year four and year eight do not obligate the Company to refund any monies to customers as a result of a prospective earnings test. Rather, should the Commission determine that the Company's ESP is no

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[15] *See In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order at pages 20, 24-25 (January 11, 2011).

longer better, in the aggregate, than the expected results under R.C. 4928.142 or that there is a substantial likelihood that Duke Energy Ohio will, prospectively, have significantly excessive earnings under the ESP, only then can the Commission decide whether to terminate the plan. If the Commission proceeds with terminating the ESP, Duke Energy Ohio recommends that it do so consistent with the conditions described in Section III.B.3, below.

The Company also proposes that the reviews contemplated for years four and eight of the ESP include consideration of the rate of return applicable to Rider RC. More specifically, as Rider RC is largely predicated upon costs to serve and a rate of return, it is reasonable to ascertain, during the year-four and year-eight reviews, whether any adjustment to the rate of the ROE is appropriate. Notably, the ROE may change due to several factors, such as general economic conditions and changes in risk profiles. Thus, as described by Duke Energy Ohio witness William Don Wathen Jr., the Company suggests that it, Commission Staff, and intervenors have the opportunity to submit testimony regarding changes to the ROE used to calculate Rider RC. In the event no testimony is filed within thirty days after the Company initiates the year-four and year-eight reviews, the then-current, approved ROE will persist until a subsequent review or plan expiration. If testimony is filed, all parties to the proceeding should be given due process, including the opportunity to submit rebuttal testimony and a hearing.

Duke Energy Ohio recommends that the administration of the first test under R.C. 4928.143(E) be completed by September 1, 2015, to enable an orderly transition to an MRO should the Commission determine that the Company's ESP is not the more favorable SSO structure. As such, Duke Energy Ohio proposes to initiate a filing no later than January 1, 2015, for purposes of the year-four test required under R.C. 4928.143(E), and it will similarly initiate a filing no later than January 1, 2019, in respect of the year-eight review.

3. Conditions for Transitioning Plans upon Termination

If the Commission decides to terminate the Company's ESP, it necessarily will have concluded that the ESP is not more favorable than the expected results under R.C. 4928.142. In that instance, the Company must transition from its ESP to the more advantageous alternative of the MRO.[16] To ease in this transition, Duke Energy Ohio recommends the following conditions.

Duke Energy Ohio proposes that the transition to the MRO occur effective June 1, 2016, in the event the transition occurs as a result of the review during year four, or effective June 1, 2020, in the event it results from the review during year eight. Because all of the energy supply for the 2015/2016 PJM planning year[17] will have been procured via auctions completed by September 2015 and because the initial years of the MRO will involve blending, commercial fairness dictates that the Commission not set aside contracts for energy supply for the period ending May 31, 2016. Rather, Duke Energy Ohio recommends conducting auctions no later than March 1, 2016 (or March 1, 2020, for a year-eight transition), for the 10 percent of its load that must be procured via competitive auctions, for delivery beginning June 1, 2016 (or June 1, 2020, for a year-eight transition). Subsequent auctions will necessarily incorporate the increasing percentages contemplated under R.C. 4928.142(D).

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[16] R.C. 4928.143(E).
[17] The 2015/2016 PJM planning year coincides with year four of the proposed ESP.

To ease such a transition, Duke Energy Ohio proposes that its auction manager for the ESP energy auctions serve as the auction manager for, at a minimum, the first three auctions under the MRO. This will enable an orderly and cost-effective process, as only informational websites and bidding documents would need to be updated. Furthermore, the Company recommends that the transition from the ESP to an MRO not be overly complicated by the submission of a comprehensive application for approval of an MRO.

The Commission's approval of the proposed ESP, described in this filing, will necessarily include approval of the Company's CBP plan, which has been guided by the requirements of R.C. 4928.142 and related Commission rules. Thus, another comprehensive review of the CBP plan and related bid documents would seem inefficient, unnecessary, and unduly burdensome. This conclusion is further supported by the fact that the Commission will have decided, in the context of either the year-four or year-eight review, that it was the prospective effect of the ESP, and not how pricing was determined, that caused the Commission to order termination. Thus, the Company recommends that bid documents, revised to reflect the blending period and any changes to the product offerings, as well as any proposed tariff revisions, be submitted for Commission approval. This will reduce the administrative burden and expense associated with the imposed migration to the MRO.

The Company further observes that it is premature to identify here every condition that is appropriate for an orderly transition of SSO plans, particularly where that transition could occur several years from now. As such, Duke Energy Ohio expressly reserves the right to propose additional conditions, through comments, testimony, or briefs, should its ESP be terminated.

C. Additional Provisions Relating to the Structure of the ESP - R.C. 4928.143(B)(2)

As the Ohio Supreme Court has found, an ESP may make provision for the categories listed in R.C. 4928.143(B)(2)(b). Such optional provisions do not replace the Company's obligation to include provisions for how generation service will be supplied and priced for the duration of the ESP, pursuant to R.C. 4928.143(B)(1). The Company details below those additional provisions of its ESP that are statutorily permitted under R.C. 4928.143(B)(2)(b), lending further support for the methods of supply and pricing, and cost recovery, as proposed herein.

1. Automatic Recovery of Costs – R.C. 4928.143(B)(2)(a) and O.A.C. 4901:1-35-03(C)(9)(a)

Pursuant to R.C. 4928.143(B)(2)(a), an ESP may make provision for the automatic recovery of prudently incurred costs of fuel, purchased power, emission allowances, and federally mandated taxes. In seeking such recovery, the Commission requires the EDU to provide a summary and detailed description of each such cost and, where applicable, the procurement policies and practices relevant to and benefits associated with said costs. As discussed in this Section, Duke Energy Ohio is proposing recovery of costs to comply with Ohio's alternative energy mandates and to true-up expiring riders.

a. Rider AER-R (Alternative Energy Resource Requirement)

Ohio law mandates that Duke Energy Ohio provide a portion of the electricity supply under its SSO from alternative energy resources (AER).[18] Thus, pricing of

[18] R.C. 4928.64.

generation, as authorized under R.C. 4928.143(B)(1), must incorporate the state's alternative energy requirements.

Currently, Duke Energy Ohio's costs to comply with the AER requirements are recovered through Rider PTC-FPP. But under its proposed ESP, the Company will recover costs specific to AER compliance via Rider AER-R (alternative energy resource requirement), thereby enabling a discreet review of the costs associated with this statutory mandate. As explained by Duke Energy Ohio witness Wathen, Rider AER-R will be filed quarterly, with true-up provisions included in each such filing. Duke Energy Ohio witness Andrew S. Ritch discusses the procurement practices and policies applicable to the AER requirements and potential benefits associated with same. The costs to comply with the AER requirements are bypassable.[19] Consistent therewith, Duke Energy Ohio proposes that Rider AER-R be avoidable by customers who purchase energy from a competitive provider.

b. Rider RECON (Fuel and Purchased Power Reconciliation)

Rider RECON is intended to true up Duke Energy Ohio's current Rider PTC-FPP (fuel and purchased power) and Rider PTC-SRT (system reliability tracker), both of which will expire upon the effective date of the ESP, as proposed in the Company's Application. It is virtually impossible to determine whether either of those riders will have a zero balance as of December 31, 2011. The purpose of Rider RECON, therefore, is to recover the collective balance of any over- or under-recovery in both of these riders. The anticipated duration of Rider RECON is short – Duke Energy Ohio should be able to resolve any over- or under-recoveries within six months after implementation of the new

[19] R.C. 4928.64(E).

ESP. And once that resolution occurs, Rider RECON will expire. As discussed in the Direct Testimony of Mr. Wathen, Rider RECON is proposed as a bypassable rider.

2. Terms, Conditions, and Charges Related to Retail Shopping and Bypassability – R.C. 4928.143(B)(2)(d) and O.A.C. 4901:1-35-03(C)(9)(c)(i), (ii), and (iii)

R.C. 4928.143(B)(2)(d) expressly authorizes an electric utility to include, in its ESP, "[t]erms, conditions, or charges relating to limitations on customer shopping for retail electric generation service [and] bypassability...as would have the effect of stabilizing or providing certainty regarding retail electric service." The Commission, in promulgating rules to enable application of this provision, further noted that an ESP may include components that would have the effect of promoting customer shopping.[20] Significantly, the Commission further authorized terms and conditions related to unavoidable charges.[21] Such statutory provisions and Commission rules, therefore, authorize the riders identified herein.

Prior to discussing the detail specific to the riders proposed in this part, Duke Energy Ohio summarizes the relevant factors, common to these riders, that will achieve stability or certainty with regard to retail electric service, while promoting customer choice. As discussed in the Direct Testimony of Duke Energy Ohio witnesses Trent and Kenneth J. Jennings, there are two capacity pricing alternatives in PJM – the Reliability Pricing Model and the Full Resource Requirements (FRR) option. Under the former, capacity prices are determined through three-year, forward-looking auctions; whereas, under the FRR alternative, options exist for the supply and pricing of capacity.

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[20] O.A.C. 4901:1-35-03(C)(9)(c)(i).
[21] Id.

Significantly, the FRR option, as elected by Duke Energy Ohio, enables a state-determined rate for capacity.

Here, Duke Energy Ohio proposes to limit the scope of retail competition to energy and to provide all customers in its service territory with capacity, as authorized under R.C. 4928.143(B)(2)(d) and O.A.C. 4901:1-35-03(C)(9)(c)(i). Decoupling capacity and energy, and charging customers a cost-based price for capacity, as has successfully been done in the gas industry in Ohio, undeniably stabilizes prices, without even considering any other component of the Company's plan. This price stability is further enhanced by the profit sharing mechanism proposed by the Company, which will have the practical effect of reducing the capacity charge for all customers. Thus, for almost a decade, customers will be afforded price certainty and stability under Duke Energy Ohio's proposed ESP. Furthermore, competition is preserved via the wholesale auctions proposed for securing all of the requisite energy supply and the suggested uncollectible rider, which will extend to the accounts receivable of competitive retail electric service (CRES) providers. Thus, the Company's proposed riders, as detailed below, undeniably fall within the parameters of R.C. 4928.143(B)(2)(d) and relevant Commission rules.

a. Capacity (Rider RC)

Duke Energy Ohio proposes to recover the costs necessary to provide capacity to all customers in its territory, plus a reasonable rate of return, on a non-bypassable basis. This capacity charge will be derived from verifiable and public information, detailing the Company's cost to operate its legacy generating fleet and provide customers with a reliable supply of capacity. As more thoroughly described in the Direct Testimony of Mr. Wathen, the Company has established a revenue requirement for the first year of its proposed ESP, based upon its annual fixed cost of production, using a formulaic rate. The information relied upon to develop this initial revenue requirement is that which is published in the Company's FERC Form 1 report for the year ending 2010. The annual revenue requirement is then divided by total retail sales to arrive at an average cost of capacity, with further revision to allocate that average cost among the Company's rate classes. The capacity costs, plus a reasonable rate of return as established by Duke Energy Ohio witness Roger A. Morin, Ph.D.,[22] are recovered through the Company's proposed retail capacity rider, Rider RC. Mr. Wathen also discusses the Company's proposal for adjusting Rider RC to account for changes that result from matters such as, for example, environmental expenditures.

As an FRR entity, Duke Energy Ohio must self-supply all of the capacity in its footprint and has various options available to it for that purpose. These options include the use of the Company's own resources, as well as demand response and market purchases. To the extent Duke Energy Ohio supplies the required capacity, for the term of this ESP, using non-owned resources, such costs would also be included in the formulaic rate for capacity, although such costs would not earn a rate of return. Rather, a rate of return is relevant only in respect of physical generating assets that are, or may be, owned by the Company.

Given the non-conventional term of the proposed ESP, consideration will likely have to be given, during the next ten years, to meeting customers' changing demands

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[22] *See In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order at pages 20, 21 (January 11, 2011) (Commission determined that an ROE between 10 and 11 percent was reasonable).

with supply options that are not purely market driven. Thus, in order to enable price stability and certainty, the Company envisions more permanent solutions to address anticipated changes in capacity supply and demand. In this regard, the ESP, as structured, enables new investment in Ohio, thus mitigating the risk of procuring needed capacity from the market, providing increased certainty as to available supply, and advancing the state's interest in job growth.

b. Profit Sharing Mechanism (Rider PSM)

As discussed below, the Company will obtain energy for its customers' needs through auction. Thus, the energy and ancillary services associated with the generating assets from which the capacity rate is derived will be available for sale in the market. Because all customers will be paying the retail capacity rate under Rider RC, all customers should benefit from any net profits associated with such sales. Consequently, through Rider PSM (profit sharing mechanism), Duke Energy Ohio proposes a sharing mechanism, with all customers receiving 80 percent of the profits (less a small portion that will be directed toward economic development) from the energy and ancillary services sales from the legacy generating assets, net of the variable costs of operating the assets for the production of energy and ancillary services, such as operation and maintenance costs, fuel, and similar items. The Company will receive the remaining 20 percent of the net profits (less a small portion that will be directed toward economic development), thereby preserving the necessary incentive on the part of Duke Energy Ohio to maximize profits.

As discussed by Duke Energy Ohio witness Wathen, the rates applicable under Rider PSM have been projected for the first quarter of 2012, using forecasted market prices. This projection is necessary to enable an immediate implementation of Rider PSM upon approval of the Application. To mitigate any disparities between projected and actual costs, Duke Energy Ohio proposes quarterly filings to true up Rider PSM.

Rider PSM is proposed as a non-bypassable rider and its practical effect will thus be a reduction in Rider RC. In this regard, the allocation of the credits under Rider PSM will be consistent with the allocation under Rider RC.

The commodities to which the profit sharing mechanism applies include energy and ancillary services sales from the economic legacy generation. Historically, Duke Energy Ohio has managed such commodities pursuant to active management, which is a form of portfolio management. As discussed by Duke Energy Ohio witness Salil Pradhan, the primary objective of active management is to conduct daily assessments of the portfolio and, where appropriate in order to mitigate exposure or make use of opportunity, to engage in transactions in the forward power market. The Company's use of active management has been recognized by the Commission as a benefit to SSO customers.[23] Consequently, Duke Energy Ohio proposes to continue its use of active management to maximize the credits available under Rider PSM.

As further discussed below, of the 80 percent of the net profits reserved for customers, 5 percent of said profits will be used, together with 5 percent of the Company's 20 percent share of the profits of energy sales, to fund Advance Southwest Ohio, an organization that will support economic development, retention, and expansion in targeted regional clusters in Duke Energy Ohio's service territory. This economic

[23] *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).

development tool will be funded annually, for the duration of the Company's ESP. The details of this proposal are discussed below in Subpart 4.

c. Energy – Rider RE

As noted above, the Company proposes to narrow the products subject to competitive bid to energy and related products. In doing so, Duke Energy Ohio enables a rigorous bidding process. Indeed, market prices for capacity will not be summarily incorporated into bids and the costs passed through to customers. Rather, competitive suppliers will be competing only on the commodity itself: energy and related products. Customers should benefit from the most competitive price that the market will bear for this commodity.

Duke Energy Ohio submits that limiting auctions to energy will not adversely affect competition or result in new barriers to competition. On the contrary, under its proposal, Duke Energy Ohio will seek to procure energy to serve all of its SSO load from competitive wholesale suppliers over a ten-year period. Participation in the energy auctions is not dependent on owning generation and thus all prospective participants will be on a level playing field. The energy auction provides a level of certainty for all market participants that has not otherwise existed since deregulation was initiated more than ten years ago.

Duke Energy Ohio witness Jeffrey R. Bailey discusses how the wholesale energy prices will be converted into retail rates under the Company's proposed ESP.

d. Uncollectible Generation Expense – Rider UE-GEN

Unlike any other EDU in the state, Duke Energy Ohio currently purchases the accounts receivable of those CRES providers enrolled in its purchase of accounts receivable program. These accounts are purchased at a discount and CRES providers promptly receive the discounted payment from Duke Energy Ohio. This arrangement undeniably assists in the development of a competitive retail market. However, the Company seeks here to improve upon this arrangement by enlarging its scope while ensuring that the Company is not financially harmed.

Specifically, the Company proposes to purchase accounts receivable from CRES providers at no discount. Duke Energy Ohio will remit payment to CRES providers on the twentieth day following the month in which the billing occurs. In exchange for purchasing the accounts receivable from CRES providers, Duke Energy Ohio proposes a non-bypassable rider, Rider UE-GEN, to recover the bad debt expense associated with its SSO load, as well as the CRES providers' accounts receivable.

3. Distribution Service – R.C. 4928.143(B)(2)(h) and O.AC. 4901:1-35(C)(9)(g)(i)-(v)

R.C. 4928.143(B)(2)(h) authorizes Duke Energy Ohio to include, in its proposed ESP, provisions regarding single-issue ratemaking, revenue decoupling, and distribution infrastructure and modernization. This statutory provision is complemented by O.A.C. 4901:1-35(C)(9)(g), which sets forth additional criteria. Consistent therewith, Duke Energy Ohio proposes a distribution reliability rider, Rider DR, to recover incremental investment. The proposed rider also incorporates a revenue decoupling mechanism, thereby reducing any disincentive Duke Energy Ohio may have to promote energy efficiency programs. Duke Energy Ohio witnesses Wathen and James E. Ziolkowski detail Rider DR, and Duke Energy Ohio witness Mark D. Wyatt discusses the Company's existing infrastructure modernization program, the rider for which will be incorporated into proposed Rider DR.

4. Economic Development and Job Retention – R.C. 4928.143(B)(2)(i) and O.A.C. 4901:1-35(C)(9)(h)

As discussed in the Direct Testimony of Duke Energy Ohio witness Julia S. Janson, Duke Energy Ohio is proposing to create a new vehicle for advancing economic development in its service territory. This vehicle – Advance Southwest Ohio – will not replace the Company's current commitment to economic development under Rider ECF. Rather, after approval of the proposed ESP, opportunities for reasonable arrangements will continue to be available under Rider ECF, with Advance Southwest Ohio further supporting qualifying projects and thereby attracting, retaining, and developing operations in southwest Ohio.

The purpose of Advance Southwest Ohio will be to increase southwest Ohio's business strength by financially supporting economic development, retention, and expansion in targeted southwest Ohio regional clusters. Support for economic development will consist of direct funding of economic development initiatives and the creation of new, sustainable business and business-related jobs in Duke Energy Ohio's service territory. There will be three core initiatives to the Advance Southwest Ohio fund: Product Development, Product Marketing, and Project Closure. Product Development grants will be available for the redevelopment of Duke Energy Ohio-served existing buildings, public sector speculative building development, infrastructure improvements (including gas and electric), moving greenfield and brownfield sites closer to readiness for development, and business park developments. Product marketing grants will focus on prospect development; including, but not limited to, site consultant meetings, marketing to and meeting directly with prospects, relationship-building with targeted prospects in targeted regional clusters, and exposure through traditional and non-traditional advertising and public relations. Project Closure grants will be available to achieve economic agreements for relocation, expansion, or retention of companies in southwest Ohio.

Advance Southwest Ohio will support business competitiveness by strengthening the competitive position of existing business within Duke Energy Ohio's service territory through financial assistance to increase productivity, efficiency, and reliability, or that reduce environmental impacts.

The funds available under Advance Southwest Ohio will be administered through a formal grant process, with grant criteria and applications publicly available. The grant applications will be reviewed by the Company. With regard to grants made out of the funds supplied from the customers' portion of the proceeds, the grants will be reviewed and recommended by Duke Energy Ohio and submitted to Commission Staff. Thereafter, Commission Staff will have two weeks within which to review the proposal and to issue an authorization or rejection, under the signature of the Chairman of the Commission. Grants made out of the funds supplied from the Company's portion of the proceeds will be approved solely at the discretion of Duke Energy Ohio.

Once the Commission has approved the Company's ESP, as proposed, Duke Energy Ohio will promptly initiate the activities of Advance Southwest Ohio, with all costs to be reimbursed from the funds allocated to Advance Southwest Ohio.

D. In the Aggregate Comparison – R.C. 4928.143(C)(1)

Duke Energy Ohio has the burden of proving that its proposed ESP, including its pricing and all terms and conditions, is "more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code."[24] As the statutory language dictates, the inquiry concerns the entire ten-year term of the ESP and is not a year-by-year comparison. Further, because Duke Energy Ohio owned generating facilities as of July 31, 2008, the pricing of generation service under the proposed ESP cannot be compared to projected market prices. Rather, the appropriate comparison is the blended price that would otherwise apply under R.C. 4928.142. For purposes of determining the expected results under R.C. 4928.142, Duke Energy Ohio employed the blending percentages previously identified by the Commission in its Opinion and Order in Case No. 10-2586-EL-SSO as reflecting the default blending period.

Through his testimony, Duke Energy Ohio witness Rose confirms that the pricing of the ESP is, in the aggregate, more favorable than the results that would otherwise apply under R.C. 4928.142. More specifically, Mr. Rose testifies that the pricing under the ESP is, on average, 8 percent lower than the expected results under the MRO. Furthermore, the proposed ESP affords customers a $927 million net present value benefit as compared to the expected results under R.C. 4928.142, as testified to by Duke Energy Ohio witness Wathen.

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[24] R.C. 4928.143(C)(1).

The inquiry, however, extends to all of the terms and conditions of the proposed ESP[25] and, as the following confirms, Duke Energy Ohio has made provision for benefits in this ESP that would not be available under the MRO structure.

First, Duke Energy Ohio's proposed ESP provides customers with price stability and certainty over a substantial period of time. Significantly, customers can now contemplate longer-term decisions, whether in respect of investment, execution of business plans, or alternate suppliers. In particular, non-residential customers will benefit from knowing that system by which their electricity prices are determined will not be unknown, subject to revision after few years, or at risk of unexpected price surges.

Duke Energy Ohio's commitment not to seek to transfer its generating assets for the term of the ESP provides security for customers, who will, through the ESP, have a reliable and adequate supply of capacity – in Ohio – to serve them. This commitment again benefits customers in that they are protected from unpredictable and uncertain pricing.

The ESP enables a focus on economic development that could not exist under the MRO. Thus, consideration must be given to the benefits derived from creating and funding economic development tools via Advance Southwest Ohio, contrasting with the absence of similar programs and dollars for economic development that would be available under the MRO structure.

The proposed ESP facilitates a fully functioning competitive market in Ohio. Under the Company's plan, there is no restriction on the amount of energy that would be procured via an auction format. Thus, auction participants are not disadvantaged because

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[25] *In re Application of Columbus Southern Power Co.*, 128 Ohio St. 3d 402, 2011-Ohio-958 at ¶27.

they may not own generation. In addition, the competitive markets are benefitted by the proposed changes relating to CRES providers' accounts receivable. And unlike the statutory requirements for an MRO, a CBP plan under an ESP enables greater opportunity for Commission involvement.

Further, the Company's proposed revision to its Rider LM (load management) expands the scope of customers eligible for cost reductions by modifying their load shape.

Finally, with the long term plan proposed by Duke Energy Ohio, the Commission will have the ability, as mandated by statute, to confirm that the ESP is, and will continue to be, the more preferred SSO.

Duke Energy Ohio's proposed ESP – with its pricing and all terms and conditions – is better, in the aggregate, than the expected results under R.C. 4928.142.

IV. Rate Structure and Impacts

A. Pro Forma Financial Projections - O.A.C. 4901:1-35-03(C)(2)

As set forth in O.A.C. 4901:1-35-03(C)(2), Duke Energy Ohio must provide financial projections of the "effect of the ESP's implementation upon the electric utility for the duration of the ESP."[26] The Company must also provide sufficient information to enable an understanding of the assumptions used and methodology employed in deriving the pro forma financial projections.

Duke Energy Ohio witness Brian D. Savoy testifies as to the financial projections, which are set forth as attachments to his testimony.

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[26] O.A.C. 4901:1-35-03(C)(2).

B. Rate Impacts – O.A.C. 4901:1-35-03(C)(3)

Duke Energy Ohio's Application must include "projected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals."[27] Duke Energy Ohio witness Bailey provides a summary of the rate impacts by rate class and describes how the projected prices were derived.

C. Tariffs

As detailed in the testimony of Company witness Ziolkowski, Duke Energy Ohio proposes to implement new riders under its ESP. Consistent therewith, certain riders currently in effect under its existing ESP will terminate while other riders will remain unchanged by the proposed ESP. Below is a summary description of the riders proposed in this ESP.

Proposed Riders	
Rider RC – Retail Capacity	Cost of service for capacity as of 2010; non-bypassable.
Rider RE – Retail Energy	Rider for energy, as derived from competitive auction; bypassable.
Rider PSM – Profit Sharing	Credit for net profits from energy and ancillary services sales; non-bypassable.
Rider AER-R – Alternative Energy Recovery Rider	Recovery of costs associated with alternative energy resource requirements; transfer REC costs from Rider PTC-FPP to Rider AER; bypassable
Rider RECON – Reconciliation Rider for over-/under-recovery of eliminated ESP-era riders	True up remaining balances of over-/under-recovery for Rider SRA-SRT and Rider PTC-FPP not included in generation rate.
Rider UE-GEN – Uncollectible Expense Rider for Generation	Recover cost of uncollectible generation expense for all customers; non-bypassable.
Rider DR – Distribution Reliability	Recovery of incremental costs for distribution-related investment; non-bypassable.

[27] O.A.C. 4901:1-35-03(C)(3).

For a full list of the tariffs that are being proposed in this ESP Application, see attachments to the Direct Testimony of Mr. Ziolkowski. The revisions to Tariff Sheet 19 (retail electric service) necessitated by the ESP are further reflected in Mr. Ziolkowski's testimony. As he also explains, certain sheets within Tariff 20, relating to certified suppliers, require amendment as a result of the proposed ESP and Mr. Ziolkowski discusses those amendments in his testimony.

V. Other Filing Requirements

A. Corporate Separation - O.A.C. 4901:1-35-03(C)(4) and 4901:1-35-03(F)

O.A.C. 4901:1-35-03(C)(4) imposes upon the Company an obligation to describe its current corporate separation plan. Such description must include "the current status of the...plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its...plan, and a timeline of any anticipated revisions or amendments."[28] Additionally, O.A.C. 4901:1-35-03(F) requires Duke Energy Ohio to demonstrate how its corporate separation plan is consistent with state policy.

Duke Energy Ohio witness Christian E. Whicker discusses the Company's current corporate separation plan, which was approved April 5, 2011, under Case No. 09-495-EL-UNC.[29] Mr. Whicker further provides a brief overview of the Company's prior corporate separation plans and the dockets in which they were approved. Duke Energy Ohio has neither sought nor obtained any waivers of its current corporate separation plan. Further, Mr. Whicker discusses the Company's proposed revision of its corporate separation plan, as well as future plans for revision.

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[28] O.A.C. 4901:1-35-03(C)(4).

[29] *In the Matter of the Application of Duke Energy Ohio for Approval of the Second Amended Corporate Separation Plan*, Case No. 09-495-EL-UNC, Opinion and Order (April 5, 2011).

B. Operational Support Plan – O.A.C. 4901:1-35-03(C)(5)

O.A.C. 4901:1-35-03(C)(5) requires the Company to state whether its operational support plan has been implemented and whether any problems exist with regard to such implementation. As explained by Duke Energy Ohio witness Daniel L. Jones, Duke Energy Ohio's Operational Support Plan was most recently approved in Case No. 08-920-EL-SSO, *et al.*, and has been implemented. Duke Energy Ohio is not aware of any outstanding problems with regard to that implementation.

C. Governmental Aggregation - O.A.C. 4901:1-35-03(C)(6) and (7)

Pursuant to O.A.C. 4901:1-35-03(C)(6), the Company's Application must include a description of how it proposes "to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code." Further, the Company must, pursuant to O.A.C. 4901:1-35-03(C)(7), include in its ESP a "description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed" in the ESP.

As supported by the testimony of Company witness Wathen, Duke Energy Ohio's ESP will not impede the formation of large-scale governmental aggregation. The provisions of R.C. 4928.20(I) are not implicated here as Duke Energy Ohio is not seeking a deferral, under R.C. 4928.144, in respect of its ESP. Similarly, Duke Energy Ohio is not seeking Commission approval of a separate charge for standby service and, consequently, the provisions of R.C. 4928.20(J) are not a consideration for Commission review. Admittedly, Duke Energy Ohio's proposed ESP does include non-bypassable charges. However, those charges will not adversely affect governmental aggregation. Rather, the Company's proposal should function to ease the process of evaluating competitive offers and ensure a vigorous environment in which CRES providers engage. Furthermore, a non-bypassable crediting mechanism removes from customers the dilemma of not switching suppliers in order to continue receiving the credit versus exercising the right to switch suppliers.

D. Advancement of State Policy - O.A.C. 4901:1-35-03(C)(8)

Pursuant to O.A.C. 4901:1-35-03(C)(8), the Company must describe how its proposed ESP advances the policies of the State as set forth in R.C. 4928.02. Significantly, these policies function only as guidelines, for the Commission to weigh in reviewing the Company's Application. As described in further detail in the direct testimony of Company witness Janson, the proposed ESP effectuates state policies. Specifically, Ms. Janson reviews each enumerated state policy and explains how the proposal set forth in this Application advances the goals of the state of Ohio.

E. Proposed Notice of Publication

Consistent with O.A.C. 4901:1-35-04(B), Duke Energy Ohio attaches hereto as Attachment I its proposed notice of publication regarding the filing of this Application.

F. Direct Testimony - O.A.C. 4901:1-35-03(A)

The Commission has required, through O.A.C. 4901:1-35-03(A), that the applicant for an ESP include a complete set of testimony, along with all schedules. Duke Energy Ohio incorporates herein the direct testimony of its witnesses, as identified in Section II, above.

G. Work Papers – O.A.C. 4901:1-35-03(G)

The Commission has required, under O.A.C. 4901:1-35-03(G), that each ESP application include a complete set of work papers. Attached hereto as Attachment J are the work papers of Duke Energy Ohio witnesses Rose. The work papers of Duke Energy Ohio witnesses Wathen and Savoy are included as Attachment WDW-2. The work papers of Duke Energy Ohio witness Ziolkowski are included as Attachments JEZ-5 and JEZ-6.

VI. Waivers

Duke Energy Ohio submits that its Application, as supported by the testimony, schedules, and tariffs, complies with R.C. 4928.141 and 4928.143 and the relevant administrative rule, O.A.C. 4901:1-35-03.[30] However, Duke Energy Ohio respectfully seeks any waivers of the provisions of O.A.C. 4901:35-03 necessary to support the findings requested herein.

VII. Procedural Schedule

Duke Energy Ohio respectfully reserves to the Commission full discretion to identify a schedule consistent with its desired case management. However, it recommends a technical conference within one week of the filing of this Application to enable discussion of the Application and documents filed in support thereof.

VIII. Conclusion

Duke Energy Ohio respectfully requests that the Commission approve the proposed electric security plan, together with necessary accounting and tariff modifications described herein, as well as further modifications to P.U.C.O. Tariff 20 and the Company's corporate separation plan.

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[30] See Attachment A to this Application, which identifies the various filing requirements and the manner through which Duke Energy Ohio has complied with same.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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

VOLUME I

APPLICATION

DUKE ENERGY OHIO EXHIBIT _______

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

APPLICATION

June 20, 2011

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TESTIMONY:

B. Keith Trent
Julia S. Janson
Judah L. Rose
Stephen G. De May
James S. Northrup
Robert J. Lee
William Don Wathen Jr.
Andrew S. Ritch
Roger A. Morin, Ph.D.
Kenneth J. Jennings
Salil Pradhan
Jeffrey R. Bailey
James E. Ziolkowski
Mark D. Wyatt
Brian D. Savoy
Christian E. Whicker
Daniel L. Jones

APPLICATION

I. Introduction

Chapter 4928 of the Ohio Revised Code (R.C.), as amended by the Ohio General Assembly through Amended Substitute Senate Bill 221 (S.B. 221), requires electric distribution utility (EDU) companies in Ohio to provide a standard service offer (SSO) "of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service," through either a market rate offer (MRO) or an electric security plan (ESP).[1] In its first application filed pursuant to S.B. 221, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) sought – and received – approval from the Public Utilities Commission of Ohio (Commission) to implement an ESP.[2] The term of that ESP expires on December 31, 2011, and the Company now seeks approval of its next SSO, which will again take the form of an ESP.[3]

Specifically, pursuant to R.C. 4928.141 and 4928.143 and O.A.C. Chapter 4901:1-35, Duke Energy Ohio respectfully requests that the Commission approve its proposed ESP.[4] The proposed ESP is a long-term approach to the provision of electric services in southwest Ohio, intended to last almost a decade. Modeling its proposal on the structure that has worked well in the gas industry, the Company proposes an ESP under which there can be both competition in the supply of energy and assurance of the availability of capacity. To accomplish this, Duke Energy Ohio proposes to provide, to

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[1] R.C. 4928.141(A).

[2] *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, *et al.*, Application (July 31, 2008).

[3] The Company also applied for approval of an MRO, but that application was rejected. *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO.

[4] Consistent with O.A.C. 4901:1-35-04, Duke Energy Ohio has provided notice of this filing via electronic or regular mail delivery to parties of record in its most recent standard service offer filing, Case No. 10-2586-EL-SSO, with such notice and this filing being made concurrently.

all customers in its territory, an adequate and reliable supply of capacity, establishing a charge for the capacity that is comparable to the traditional, formulaic, rate-of-return driven, regulated rates that are currently used to build distribution rates. As such, that capacity charge, adjusted annually, will allow for additions to the capacity base that result from environmental expenditures and other changes. The Company will sell the energy that is produced by its legacy generating assets, sharing most of the net proceeds of those sales with its customers and, thereby, lowering the universal capacity charge. An additional portion of those net proceeds will support economic development in southwestern Ohio. To serve the customers' needs for energy, Duke Energy Ohio will hold periodic auctions to obtain the lowest possible cost energy from competitive wholesale suppliers. Retail competitors will continue to be able to compete for customers on the energy portion of their service. Duke Energy Ohio believes that its proposal represents the best possible outcome for customers, investors, and the state of Ohio.

As described in this Application, and the testimony, schedules, and tariffs filed contemporaneously herewith, Duke Energy Ohio's proposed ESP is consistent with the public policy of this state and addresses a range of issues designed to provide customers with stable electric generation prices over a sustained period of time. Furthermore, the proposed ESP promotes a competitive market in Ohio while affording the Company reasonable returns and the financial viability it needs in order to make meaningful investment in Ohio.

Duke Energy Ohio submits that the Application and accompanying documents meet the requirements of R.C. 4928.141 and 4928.143 and O.A.C. Chapter 4901:1-35 and, as such, respectfully requests that the Commission approve the proposed ESP, without modification, including all accounting authority and tariff revisions needed to implement the ESP, effective January 1, 2012.

II. Overview of Application

As detailed below and in the accompanying testimony, Duke Energy Ohio's proposed ESP satisfies the applicable statutory and Commission rule requirements. To ease the Commission's review in this regard, attached hereto as Attachment A is a recitation of the applicable filing requirements, with specific references demonstrating Duke Energy Ohio's compliance with same.

Duke Energy Ohio further submits that the ESP discussed herein advances the policies of this state,[5] although such policies function only as "guidelines for the [C]omission to weigh."[6] Significantly, Duke Energy Ohio's proposed ESP, among other things, ensures the availability of adequate, reliable, and reasonably priced retail electric service; encourages diversity in electricity supplies and suppliers and time-differentiated pricing; recognizes – and supports the development of – the competitive market for retail electric service; protects at-risk populations; and, promotes Ohio's role in the global economy.

In addition to this Application, the Company's request is supported by the following witnesses. Unless otherwise noted, these individuals are employed by Duke Energy Ohio or an affiliated company:

- B. Keith Trent, Group Executive and President, Commercial Businesses, Duke Energy Corporation

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[5] R.C. 4928.02.
[6] *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2011-Ohio-1788, ¶ 62, citing *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, ¶ 39-40.

- Mr. Trent offers testimony discussing the objectives upon which the Company's proposed ESP is predicated and the overall structure of the plan. Mr. Trent also introduces the other witnesses in this proceeding.

- Julia S. Janson, President, Duke Energy Ohio and Duke Energy Kentucky, Inc.
  - Ms. Janson testifies as to the plan's provisions related to economic development. Ms. Janson also offers testimony outlining how Duke Energy Ohio's ESP advances the policies of the state.
- Judah L. Rose, Principal, ICF Consulting
  - Mr. Rose presents testimony on the forecast of retail market prices during the period of the Company's proposed ESP and will address the statutory comparison between the ESP and the expected results that would otherwise apply under R.C. 4928.142. Mr. Rose also addresses the administration of the significantly excessive earnings test to Duke Energy Ohio.
- Stephen G. De May, Senior Vice President, Investor Relations, and Treasurer, Duke Energy Corporation
  - Mr. De May testifies as to Duke Energy Ohio's overall financial objectives, credit quality, and the impact that Ohio's regulatory construct could have on investors.
- James S. Northrup, Director, Project Analysis and Special Projects
  - Mr. Northrup testifies regarding Duke Energy Ohio's energy auction, including the Master Standard Service Offer Supply Agreement.

- Robert J. Lee, Principal, CRA International, Inc., d/b/a Charles River Associates
    - Mr. Lee will present testimony on the energy auction to be administered under the ESP, including, but not limited to, the auction design, parameters, and the selection of winning bids.
- William Don Wathen Jr., General Manager, Rates, Ohio and Kentucky
    - Mr. Wathen presents testimony on the riders proposed under Company's ESP, as well as those that will remain unchanged by this Application. Mr. Wathen also discusses provisions for testing the ESP and transitional conditions should the plan be terminated, as well as governmental aggregation.
- Andrew S. Ritch, Director of Renewable Strategy and Compliance
    - Mr. Ritch will provide testimony regarding Duke Energy Ohio's procurement policies and procedures relevant to the state's alternative energy requirements.
- Roger A. Morin, Ph.D., Principal, Utility Research International
    - Dr. Morin will offer testimony on the reasonable rate of return that is incorporated in the Company's retail capacity rider, Rider RC.
- Kenneth J. Jennings, Director, Market and RTO Services
    - Mr. Jennings discusses the Company's realignment to PJM Interconnection, L.C.C., (PJM) including the plans under which it will procure capacity. Mr. Jennings also discusses the effect of the proposed ESP on competitive retail electric service providers that have

opted out of the Company's transitional Fixed Resource Requirement Plan. Finally, Mr. Jennings describes why customers will not pay twice for capacity under the proposed ESP.

- Salil Pradhan, Vice President, Portfolio Risk Management, Midwest Commercial Generation, Commercial Businesses
    - Mr. Pradhan offers testimony on the Company's proposal to share the net profits from energy and ancillary services sales from the Company's legacy generating assets with customers and how the commodities portfolio relevant to these assets is intended to be managed during the term of the ESP.
- Jeffrey R. Bailey, Director, Rate Design & Analysis, Rates & Regulatory Accounting
    - Mr. Bailey also presents testimony on rate design under the Company's proposed ESP.
- James E. Ziolkowski, Rates Manager
    - Mr. Ziolkowski offers testimony regarding rate design and, more specifically, the retail rates to be charged under the ESP. He also addresses the tariff revisions relevant to the ESP.
- Mark D. Wyatt, Vice President, SmartGrid & Energy Systems
    - Mr. Wyatt offers testimony regarding Duke Energy Ohio's existing infrastructure modernization plan.
- Brian D. Savoy, Managing Director of Corporate Financial Planning and Analysis

- Mr. Savoy, through his testimony, provides the financial projections required in connection with the ESP proposal.

- Christian E. Whicker, Regulatory Compliance Manager, Ethics & Compliance
  - Mr. Whicker offers testimony on the Company's proposal to amend its Second Amended Corporate Separation Plan.

- Daniel L. Jones, Senior Account Manager, Customer Choice
  - Mr. Jones offers testimony regarding the Company's operational support plan and the proposed revisions to its Certified Supplier Tariff.

III. Description of the Proposed Electric Security Plan

A. Introduction

Pursuant to R.C. 4928.143(B)(1), an ESP "shall include provisions relating to the supply and pricing of electric generation service… ." Further, where the term of the ESP is longer than three years, the ESP may also contain provisions for testing the plan pursuant to R.C. 4928.143(E) and for transitioning to the alternate SSO structure (*i.e.,* an MRO) in the event the ESP is terminated by the Commission. The other elements that may also be included in an ESP are detailed in R.C. 4928.143(B)(2). In this regard, it is notable that the ESP may include provisions relating to limitations on customer shopping, bypassability, distribution service, economic development, and job retention.

As directed by the General Assembly, the Commission has promulgated rules that provide further specificity regarding the statutory criteria and the substance and filing of an ESP.[7] In the following parts of this section, Duke Energy Ohio addresses the statutory

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[7] O.A.C. 4901:1-35-03(C).

requirements for the ESP and, where appropriate, includes a discussion of Commission rule requirements applicable to each such statutory requirement.

B. Provisions Relating to the Supply and Pricing of Electric Generation Service – R.C. 4928.143(B)(1)

1. Generation Service Supply and Pricing

As noted above, R.C. 4928.143(B)(1) mandates that an ESP include provisions relating to the supply and pricing of generation service. In this regard, the legislature did not impose *any* limitations on how the generation service must be supplied or priced; nor did the legislature require that an EDU price capacity and energy as a bundled product. Rather, the legislature deferred to EDUs, subject to Commission approval, with respect to the structure and methodology pursuant to which generation service would be supplied and priced under an ESP. Significantly, the mandatory provisions of R.C. 4928.143(B)(1) have not been interpreted by either the Commission or the Ohio Supreme Court in a manner that yields a contrary result.

Here, Duke Energy Ohio proposes to supply generation service through a bifurcated structure, with capacity supplied by the Company to all customers and energy procured via competitive auctions to serve the needs of those customers who choose to purchase energy from the Company. In doing so, the Company achieves the appropriate balance between customers' expectation and desire for price stability and certainty and Duke Energy Ohio's need to recover its costs of maintaining its generating fleet to serve customers, all while facilitating a functioning, competitive market in Ohio.

a. Capacity

It is undeniable that the wholesale capacity market is both unpredictable and volatile. And this characterization is not likely to change in the foreseeable future. As detailed in the Direct Testimony of Duke Energy Ohio witness Judah L. Rose, wholesale capacity prices are expected to increase dramatically over the next decade, in large part because of increasing environmental regulation of aging base load coal plants. Indeed, the potential for higher wholesale capacity prices was confirmed in the base residual auction conducted by PJM on May 3, 2011, which yielded prices of $126 per megawatt-day (MW-day) for the 2014/2015 delivery year. For sake of comparison, the capacity prices in the PJM base residual auction for the 2013/2014 delivery year were $28 per MW-day – almost $100 per MW-day less. This astonishing disparity, over a single year, provides one indication of the volatile nature of the wholesale capacity market. And where an SSO is predicated upon pricing derived from this wholesale capacity market, customers are exposed to unpredictable pricing at the retail level. This unpredictability is compounded by what have been ESPs of short duration – three years or less – that do not provide prolonged certainty in the supply or pricing of generation service.

It is also undeniable that customers recognize, and have concern about, the volatile and dynamic nature of the wholesale capacity market. In Duke Energy Ohio's recent application for approval of an MRO, customers vehemently opposed an accelerated path to full market pricing, although it would have enabled all SSO customers to benefit from lower market prices. Rather, intervenors from all of the Company's customer classes rejected the notion of being subject to full market pricing by mid-2014 and, instead, urged a slower transition to market pricing in order to guard against unexpected price surges.[8]

[8] *See, e.g., In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting*

As detailed in the Direct Testimony of Duke Energy Ohio witness B. Keith Trent, the Company is proposing to insulate all customers from the vagaries of the wholesale capacity market by providing them with an adequate and stable supply of capacity over a nine year, five month period.[9] Importantly, the majority of the capacity will be supplied from the Company's existing legacy generating assets, thus assuring customers that an adequate supply of capacity – obtained other than from the market – will be available to them. As necessary, the Company will acquire additional capacity to meet minimum reserve requirements.

In exchange for effectively dedicating its generating assets to provide capacity for Ohio customers, Duke Energy Ohio proposes to recover its embedded cost of supply. More specifically, Duke Energy Ohio proposes an objective, transparent, and easily confirmed formulaic rate that enables it to recover from all customers in its territory, through a non-bypassable charge, its costs of supplying capacity and a reasonable rate of return, as is allowed by Ohio law.[10] As detailed by Duke Energy Ohio witness Trent, this pricing proposal serves two critical objectives: affording customers price stability and certainty and ensuring the Company's ongoing financial integrity. Duke Energy Ohio witness Judah Rose discusses, among other things, the forecast of retail market prices during the ESP period. Duke Energy Ohio witness Stephen G. De May addresses, among other things, the impact that the proposed ESP could have on the Company's financial integrity. Further, Duke Energy Ohio's ESP importantly positions the Company to invest

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Modifications, and Tariffs for Generation Service, Case No. 10-2586-EL-SSO, Briefs of Ohio Partners for Affordable Energy, Ohio Manufacturers' Association, and The Kroger Company.

[9] The first year of the proposed ESP will extend from January 1, 2012, through May 31, 2013, consistent with the PJM planning year that runs from June 1 to May 31. For ease of reference, the term of this ESP will be referred to as ten years, although the actual term is nine years and five months.

[10] *See In re Application of Columbus Southern Power Co.*, 128 Ohio St. 3d 402, 2011-Ohio-958, ¶26.

in its legacy generating assets as necessary to maintain their cost effectiveness and continued ability to serve customers in Ohio.

In Section III.C.2.a., below, Duke Energy Ohio discusses the methodology for calculating and adjusting the capacity costs, as discussed here.

As a complement to the non-bypassable capacity charge, the Company proposes a mechanism pursuant to which it will share the net profits from energy and ancillary services sales from the legacy generating assets for which the capacity charge applies. Although S.B. 221 does not mandate *any* profit sharing in respect of off-system sales,[11] Duke Energy Ohio submits that such provision is appropriate given a non-bypassable charge for capacity. That is, if all customers are to pay a capacity charge based upon the Company's cost of rendering that service, the assets from which the charge is derived can fairly be characterized as dedicated to all customers. And sharing the net profits from the energy and ancillary services sales associated with those assets is the logical consequence of asset dedication. The practical result of this non-bypassable profit sharing mechanism is a reduction in the capacity charge paid by all customers. Thus, should the market prices for energy increase over the term of this plan, the net profits to be shared with all customers should increase concomitantly. As a result, the non-bypassable capacity charge would be reduced further.

As discussed by Duke Energy Ohio witness Trent, the Company proposes in this ESP to share in the net profits from the sales of energy and ancillary services associated with its economic, legacy generation, allocating to customers 80 percent of these net profits. In order to align the interests of customers and the Company in maximizing the

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[11] *In re Application of Columbus Southern Power Co.*, Slip Opinion No. 2011-Ohio-1788, ¶51.

net profits, Duke Energy Ohio will retain 20 percent of the net profits. From these allocations, Duke Energy Ohio further proposes that 5 percent of each allocation (that is, 5 percent of the customers' allocation and 5 percent of the Company's allocation) be directed to an important economic development offering intended to attract, retain, and expand businesses in its service territory in southwest Ohio. Consequently, after percentages are directed to furthering the state's focus on job creation and retention, customers will receive 76 percent of the net profits associated with the Company's generating assets.

Duke Energy Ohio details the methodology for managing the commodities associated with its legacy generating assets and the methodology supporting its profit sharing mechanism in Section III.C.2.b., below.

b. Energy

Because the energy from the legacy generating assets will be sold into the market and a portion of the net profits returned to customers, that energy will not be available to serve the Company's SSO load. Rather, Duke Energy Ohio proposes to conduct competitive auctions to acquire all of the energy supply needed for its SSO load for the duration of its ESP. Customers, therefore, will pay market-based prices for energy – whether a given customer is served through the SSO or through a competitive supplier – and the competitive market in Ohio will be sustained.

Duke Energy Ohio witnesses James S. Northrup and Robert J. Lee detail the competitive bidding process (CBP) plan that the Company proposes. As there is no express requirement in R.C. 4928.143 for procuring any aspect of generation service via auctions, Duke Energy Ohio's CBP plan has been guided by the statutory and

Commission rule requirements applicable to a CBP plan under an MRO, and by the structure of similar auctions approved by the Commission for other electric utilities. In this regard, Duke Energy Ohio has developed a CBP plan that will be familiar to both the Commission and prospective auction participants.

More specifically, Duke Energy Ohio proposes descending-price clock auctions, with the first auction to be conducted no later than December 1, 2011, for delivery on January 1, 2012. In 2012, and for the remainder of the proposed ESP term, the Company will conduct two auctions per year. Most of the auctions will include a variety of product offerings, so as to attract as many prospective and diverse bidders as possible, thereby ensuring a robust, competitive process. The exceptions to this approach will occur in the years during which the Commission is reviewing the ESP. The Company believes that it is critical that all contracts be set to terminate at the end of the fourth and eighth years, so that there will not be existing obligations that prevent the termination of the ESP, in the event that the Commission makes such a determination. The proposed Bidding Process Timeline is attached hereto as Exhibit B.

A staggered auction format serves to smooth out potentially volatile market prices for energy, provides for longer-term price stability, and encourages efficient pricing of products. Thus, the Bidding Process Timeline incorporates a staggered format, with minor exceptions. As discussed by Duke Energy Ohio witness Lee, because the Commission has the ability to order termination of the proposed ESP, it is commercially fair and reasonable to develop an auction schedule that contemplates that eventuality. Consequently, Duke Energy Ohio has incorporated transition periods into the auction schedule, thereby protecting against executed supply contracts subsequently being declared null and void by the Commission.

To ensure an open, fair, and transparent process, Duke Energy Ohio's CBP plan incorporates provisions for the equal and non-discriminatory exchange of information and application of bidding requirements. In fact, the Company's CBP plan provides that all prospective bidders will be subject to the same pre-bid requirements and all successful bidders must adhere to, and assume, the same contractual commitments. These requirements are set forth in Attachments C, D, E, and G to this Application.

The auction product will be an hourly, load-following, full-requirements tranche of the Company's SSO load for energy, where a tranche is equal to 1.00 percent of Duke Energy Ohio's total SSO load obligation for energy (*i.e.*, its non-shopping retail load) or a slice of system of the Company's hourly SSO load for energy. The products incorporated into the CBP plan include unbundled energy, ancillary services, and market-based firm transmission services. A comprehensive description of the products can be found in the Company's draft Master Standard Service Offer Supply Agreement, a copy of which is attached hereto as Attachment F.

All bidders will have access to the same information, as the CBP plan incorporates bidder information and training sessions, an active Informational Website, and mock auctions that will be held prior to the time of the first auction. The CBP plan also includes appropriate confidentiality provisions, thus placing all prospective bidders on equal footing. Further, the rules pursuant to which bidding will occur and bids will be evaluated are expressly set forth in this public filing, thus ensuring that no one prospective bidder is competitively advantaged or disadvantaged vis-à-vis any other prospective bidder.

An independent auction manager, CRA International, Inc., d/b/a Charles River Associates (CRA), has been retained to actively design, administer, and oversee at least the first CBP. As confirmed by Duke Energy Ohio witness Lee, CRA has substantial experience in designing and implementing competitive bids for generation service.

The CBP plan also contemplates Commission review, through the production of a post-auction report and retention of a separate consultant. Further, the CBP plan is predicated upon an auction format that is familiar, accepted, and capable of verification through hindsight review.

In Section III.C.2.c., below, Duke Energy Ohio discusses the methodology for converting competitive, wholesale energy prices from the auctions into retail rates, as well as the terms of the rider through which costs related to energy procurement will be recovered.

2. Parameters for Testing

Duke Energy Ohio proposes a ten-year term for its ESP that exceeds the traditional three-year term. Consequently, the plan will be subject to a Commission review, under R.C. 4928.143(E), in 2015 and again in 2019. Duke Energy Ohio is statutorily permitted to include in its ESP provisions applicable to these subsequent reviews and, consistent therewith, proposes the following parameters.

The first issue to be decided by the Commission in the review required under R.C. 4928.143(E) is whether the ESP "continues to be more favorable in the aggregate and during the remaining term" of the ESP as compared to the expected results under the

MRO provisions. In ascertaining the expected results under R.C. 4928.142, consideration must be given to Duke Energy Ohio's ownership of generation. Because Duke Energy Ohio owned generating assets as of July 31, 2008, it is subject to a blending requirement under the MRO provisions, and, as the Commission has previously opined, R.C. 4928.142(D) contemplates a default blending schedule of 10 percent market bid price in year one, not more than 20 percent in year two, not more than 30 percent in year three, not more than 40 percent in year four, not more than 50 percent in year five, and 100 percent in year six.[12]

As of the fourth year of the ESP, when the Commission would first review the ESP, the Company will not have filed an MRO. Consequently, this blending criterion is applicable when comparing Duke Energy Ohio's ESP and the expected results under R.C. 4928.142. Accordingly, for purposes of establishing the expected results under R.C. 4928.142, Duke Energy Ohio proposes, with respect to the year-four test, that the MRO pricing be based upon the following percentages, for each relevant year of the comparison:

	MRO Blending Percentages	
Year of ESP	**Market**	**Most Recent ESP**
4	10%	90%
5	20%	80%
6	30%	70%
7	40%	60%
8	50%	50%
9+	100%	0%

[12] *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer*, Case No. 10-2586-EL-SSO, Opinion and Order, at page 15 (February 23, 2011).

The "most recent ESP" as referenced above is comprised of the retail rates for Rider RC, as offset by Rider PSM, and Rider RE[13] as of May 31, 2015, and the "market" reflects the projected market prices for capacity and energy at the time of the comparison.

Duke Energy Ohio proposes that, at the time such price comparison is made, the forecasted prices resulting from the MRO blending percentages identified above be compared to the Company's projected Rider RC rates at that time, as off-set by Rider PSM, and the projected Rider RE rates for the period between June 1, 2015, and May 31, 2021.

A price comparison is but one aspect of the "in the aggregate" test. Pursuant to statute, consideration must also be given to all other terms and conditions of the ESP. This requirement is applicable whether the "in the aggregate" test is being employed prior to the plan's approval or during the year-four or year-eight review.[14] Thus, during the quadrennial reviews, the same terms and conditions that are considered for purposes of approving this Application must be factored into the determination of whether the ESP remains more favorable than an MRO. Those terms and conditions are detailed in Section III.D., below.

The same analysis as discussed above should be conducted in year eight of the ESP, revised only to adjust the blending percentages. Again, as no MRO will have been filed by the eighth year of the Company's ESP, the blending percentages for that eighth year must be 10 percent market/90 percent most recent ESP. The percentages applicable to the ninth year would necessarily be 20 percent market/80 percent most recent ESP.

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[13] See Section III.C.2., below, for a description of Riders RC, PSM, and RE.

[14] R.C. 4928.143(C)(standard of review encompasses "pricing and all other terms and conditions"); See also, R.C. 4928.143(E)(standard of review encompasses "pricing and all other terms and conditions).

For purposes of this second, prospective test, the "most recent ESP" would be comprised of the retail rates for Rider RC, as offset by Rider PSM, and Rider RE as of May 31, 2019.

R.C. 4928.143(E) also requires the Commission to determine, in year four and every fourth year thereafter, whether the prospective effect of the Company's proposed ESP is substantially likely to lead to significantly excessive earnings. Pursuant to this statutory requirement, the Commission must ascertain the substantial likelihood of Duke Energy Ohio significantly over-earning from June 1, 2015, through the conclusion of the ESP on May 31, 2021. Again, a similar test will be conducted for the period of June 1, 2019, through May 31, 2021. In administering this test, Duke Energy Ohio recommends the following methodology.

For purposes of calculation, Duke Energy Ohio will use calendar year projections. At the time of the first test, the Company will provide a projection of earnings from its electric operations for each year through 2021. Importantly, it will be assumed, only for the purpose of this test, that the proposed ESP expires on December 31, 2021, and not May 31, 2021. The financial statements supporting this calculation will include an income statement and balance sheet for Duke Energy Ohio's electric operations. To calculate the projected return on equity, net income will be adjusted, if applicable, as follows:

- Eliminate all depreciation and amortization expense and impairment charges related to the purchase accounting recorded pursuant to the Duke Energy/Cinergy Corp. merger and post-merger impacts to retained earnings;

- Eliminate all impacts of refunds to customers pursuant to R.C. 4928.143(E);
- Eliminate all impacts of mark-to-market accounting;
- Eliminate all impacts of material, non-recurring gains or losses, including but not limited to, the sale or disposition of assets; and
- Eliminate all impacts of parent, affiliated, or subsidiary companies and, to the extent reasonably feasible and prudently justified in the opinion of Duke Energy Ohio, eliminate the impacts of its natural gas distribution business.

The Adjusted Net Income will be divided by Common Equity to determine the resulting return on equity (ROE). The following adjustments will be made to common equity:

- Eliminate the acquisition premium recorded to equity pursuant to the Duke Energy/Cinergy Corp. merger; and
- Eliminate the cumulative effect of the net income adjustments.

If the projected annual return on ending common equity for the relevant years, as adjusted pursuant to the above, is 50 percent higher than the ROE used for calculating Rider RC, there is a substantial likelihood that the Company will have significantly excessive earnings.[15] However, the Commission's reviews in year four and year eight do not obligate the Company to refund any monies to customers as a result of a prospective earnings test. Rather, should the Commission determine that the Company's ESP is no

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[15] *See In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order at pages 20, 24-25 (January 11, 2011).

longer better, in the aggregate, than the expected results under R.C. 4928.142 or that there is a substantial likelihood that Duke Energy Ohio will, prospectively, have significantly excessive earnings under the ESP, only then can the Commission decide whether to terminate the plan. If the Commission proceeds with terminating the ESP, Duke Energy Ohio recommends that it do so consistent with the conditions described in Section III.B.3, below.

The Company also proposes that the reviews contemplated for years four and eight of the ESP include consideration of the rate of return applicable to Rider RC. More specifically, as Rider RC is largely predicated upon costs to serve and a rate of return, it is reasonable to ascertain, during the year-four and year-eight reviews, whether any adjustment to the rate of the ROE is appropriate. Notably, the ROE may change due to several factors, such as general economic conditions and changes in risk profiles. Thus, as described by Duke Energy Ohio witness William Don Wathen Jr., the Company suggests that it, Commission Staff, and intervenors have the opportunity to submit testimony regarding changes to the ROE used to calculate Rider RC. In the event no testimony is filed within thirty days after the Company initiates the year-four and year-eight reviews, the then-current, approved ROE will persist until a subsequent review or plan expiration. If testimony is filed, all parties to the proceeding should be given due process, including the opportunity to submit rebuttal testimony and a hearing.

Duke Energy Ohio recommends that the administration of the first test under R.C. 4928.143(E) be completed by September 1, 2015, to enable an orderly transition to an MRO should the Commission determine that the Company's ESP is not the more favorable SSO structure. As such, Duke Energy Ohio proposes to initiate a filing no later than January 1, 2015, for purposes of the year-four test required under R.C. 4928.143(E), and it will similarly initiate a filing no later than January 1, 2019, in respect of the year-eight review.

3. Conditions for Transitioning Plans upon Termination

If the Commission decides to terminate the Company's ESP, it necessarily will have concluded that the ESP is not more favorable than the expected results under R.C. 4928.142. In that instance, the Company must transition from its ESP to the more advantageous alternative of the MRO.[16] To ease in this transition, Duke Energy Ohio recommends the following conditions.

Duke Energy Ohio proposes that the transition to the MRO occur effective June 1, 2016, in the event the transition occurs as a result of the review during year four, or effective June 1, 2020, in the event it results from the review during year eight. Because all of the energy supply for the 2015/2016 PJM planning year[17] will have been procured via auctions completed by September 2015 and because the initial years of the MRO will involve blending, commercial fairness dictates that the Commission not set aside contracts for energy supply for the period ending May 31, 2016. Rather, Duke Energy Ohio recommends conducting auctions no later than March 1, 2016 (or March 1, 2020, for a year-eight transition), for the 10 percent of its load that must be procured via competitive auctions, for delivery beginning June 1, 2016 (or June 1, 2020, for a year-eight transition). Subsequent auctions will necessarily incorporate the increasing percentages contemplated under R.C. 4928.142(D).

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[16] R.C. 4928.143(E).
[17] The 2015/2016 PJM planning year coincides with year four of the proposed ESP.

To ease such a transition, Duke Energy Ohio proposes that its auction manager for the ESP energy auctions serve as the auction manager for, at a minimum, the first three auctions under the MRO. This will enable an orderly and cost-effective process, as only informational websites and bidding documents would need to be updated. Furthermore, the Company recommends that the transition from the ESP to an MRO not be overly complicated by the submission of a comprehensive application for approval of an MRO.

The Commission's approval of the proposed ESP, described in this filing, will necessarily include approval of the Company's CBP plan, which has been guided by the requirements of R.C. 4928.142 and related Commission rules. Thus, another comprehensive review of the CBP plan and related bid documents would seem inefficient, unnecessary, and unduly burdensome. This conclusion is further supported by the fact that the Commission will have decided, in the context of either the year-four or year-eight review, that it was the prospective effect of the ESP, and not how pricing was determined, that caused the Commission to order termination. Thus, the Company recommends that bid documents, revised to reflect the blending period and any changes to the product offerings, as well as any proposed tariff revisions, be submitted for Commission approval. This will reduce the administrative burden and expense associated with the imposed migration to the MRO.

The Company further observes that it is premature to identify here every condition that is appropriate for an orderly transition of SSO plans, particularly where that transition could occur several years from now. As such, Duke Energy Ohio expressly reserves the right to propose additional conditions, through comments, testimony, or briefs, should its ESP be terminated.

C. Additional Provisions Relating to the Structure of the ESP – R.C. 4928.143(B)(2)

As the Ohio Supreme Court has found, an ESP may make provision for the categories listed in R.C. 4928.143(B)(2)(b). Such optional provisions do not replace the Company's obligation to include provisions for how generation service will be supplied and priced for the duration of the ESP, pursuant to R.C. 4928.143(B)(1). The Company details below those additional provisions of its ESP that are statutorily permitted under R.C. 4928.143(B)(2)(b), lending further support for the methods of supply and pricing, and cost recovery, as proposed herein.

1. Automatic Recovery of Costs – R.C. 4928.143(B)(2)(a) and O.A.C. 4901:1-35-03(C)(9)(a)

Pursuant to R.C. 4928.143(B)(2)(a), an ESP may make provision for the automatic recovery of prudently incurred costs of fuel, purchased power, emission allowances, and federally mandated taxes. In seeking such recovery, the Commission requires the EDU to provide a summary and detailed description of each such cost and, where applicable, the procurement policies and practices relevant to and benefits associated with said costs. As discussed in this Section, Duke Energy Ohio is proposing recovery of costs to comply with Ohio's alternative energy mandates and to true-up expiring riders.

a. Rider AER-R (Alternative Energy Resource Requirement)

Ohio law mandates that Duke Energy Ohio provide a portion of the electricity supply under its SSO from alternative energy resources (AER).[18] Thus, pricing of

[18] R.C. 4928.64.

generation, as authorized under R.C. 4928.143(B)(1), must incorporate the state's alternative energy requirements.

Currently, Duke Energy Ohio's costs to comply with the AER requirements are recovered through Rider PTC-FPP. But under its proposed ESP, the Company will recover costs specific to AER compliance via Rider AER-R (alternative energy resource requirement), thereby enabling a discreet review of the costs associated with this statutory mandate. As explained by Duke Energy Ohio witness Wathen, Rider AER-R will be filed quarterly, with true-up provisions included in each such filing. Duke Energy Ohio witness Andrew S. Ritch discusses the procurement practices and policies applicable to the AER requirements and potential benefits associated with same. The costs to comply with the AER requirements are bypassable.[19] Consistent therewith, Duke Energy Ohio proposes that Rider AER-R be avoidable by customers who purchase energy from a competitive provider.

b. Rider RECON (Fuel and Purchased Power Reconciliation)

Rider RECON is intended to true up Duke Energy Ohio's current Rider PTC-FPP (fuel and purchased power) and Rider PTC-SRT (system reliability tracker), both of which will expire upon the effective date of the ESP, as proposed in the Company's Application. It is virtually impossible to determine whether either of those riders will have a zero balance as of December 31, 2011. The purpose of Rider RECON, therefore, is to recover the collective balance of any over- or under-recovery in both of these riders. The anticipated duration of Rider RECON is short – Duke Energy Ohio should be able to resolve any over- or under-recoveries within six months after implementation of the new

[19] R.C. 4928.64(E).

ESP. And once that resolution occurs, Rider RECON will expire. As discussed in the Direct Testimony of Mr. Wathen, Rider RECON is proposed as a bypassable rider.

2. Terms, Conditions, and Charges Related to Retail Shopping and Bypassability – R.C. 4928.143(B)(2)(d) and O.A.C. 4901:1-35-03(C)(9)(c)(i), (ii), and (iii)

R.C. 4928.143(B)(2)(d) expressly authorizes an electric utility to include, in its ESP, "[t]erms, conditions, or charges relating to limitations on customer shopping for retail electric generation service [and] bypassability...as would have the effect of stabilizing or providing certainty regarding retail electric service." The Commission, in promulgating rules to enable application of this provision, further noted that an ESP may include components that would have the effect of promoting customer shopping.[20] Significantly, the Commission further authorized terms and conditions related to unavoidable charges.[21] Such statutory provisions and Commission rules, therefore, authorize the riders identified herein.

Prior to discussing the detail specific to the riders proposed in this part, Duke Energy Ohio summarizes the relevant factors, common to these riders, that will achieve stability or certainty with regard to retail electric service, while promoting customer choice. As discussed in the Direct Testimony of Duke Energy Ohio witnesses Trent and Kenneth J. Jennings, there are two capacity pricing alternatives in PJM – the Reliability Pricing Model and the Full Resource Requirements (FRR) option. Under the former, capacity prices are determined through three-year, forward-looking auctions; whereas, under the FRR alternative, options exist for the supply and pricing of capacity.

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[20] O.A.C. 4901:1-35-03(C)(9)(c)(i).
[21] Id.

Significantly, the FRR option, as elected by Duke Energy Ohio, enables a state-determined rate for capacity.

Here, Duke Energy Ohio proposes to limit the scope of retail competition to energy and to provide all customers in its service territory with capacity, as authorized under R.C. 4928.143(B)(2)(d) and O.A.C. 4901:1-35-03(C)(9)(c)(i). Decoupling capacity and energy, and charging customers a cost-based price for capacity, as has successfully been done in the gas industry in Ohio, undeniably stabilizes prices, without even considering any other component of the Company's plan. This price stability is further enhanced by the profit sharing mechanism proposed by the Company, which will have the practical effect of reducing the capacity charge for all customers. Thus, for almost a decade, customers will be afforded price certainty and stability under Duke Energy Ohio's proposed ESP. Furthermore, competition is preserved via the wholesale auctions proposed for securing all of the requisite energy supply and the suggested uncollectible rider, which will extend to the accounts receivable of competitive retail electric service (CRES) providers. Thus, the Company's proposed riders, as detailed below, undeniably fall within the parameters of R.C. 4928.143(B)(2)(d) and relevant Commission rules.

a. Capacity (Rider RC)

Duke Energy Ohio proposes to recover the costs necessary to provide capacity to all customers in its territory, plus a reasonable rate of return, on a non-bypassable basis. This capacity charge will be derived from verifiable and public information, detailing the Company's cost to operate its legacy generating fleet and provide customers with a reliable supply of capacity. As more thoroughly described in the Direct Testimony of Mr. Wathen, the Company has established a revenue requirement for the first year of its proposed ESP, based upon its annual fixed cost of production, using a formulaic rate. The information relied upon to develop this initial revenue requirement is that which is published in the Company's FERC Form 1 report for the year ending 2010. The annual revenue requirement is then divided by total retail sales to arrive at an average cost of capacity, with further revision to allocate that average cost among the Company's rate classes. The capacity costs, plus a reasonable rate of return as established by Duke Energy Ohio witness Roger A. Morin, Ph.D.,[22] are recovered through the Company's proposed retail capacity rider, Rider RC. Mr. Wathen also discusses the Company's proposal for adjusting Rider RC to account for changes that result from matters such as, for example, environmental expenditures.

As an FRR entity, Duke Energy Ohio must self-supply all of the capacity in its footprint and has various options available to it for that purpose. These options include the use of the Company's own resources, as well as demand response and market purchases. To the extent Duke Energy Ohio supplies the required capacity, for the term of this ESP, using non-owned resources, such costs would also be included in the formulaic rate for capacity, although such costs would not earn a rate of return. Rather, a rate of return is relevant only in respect of physical generating assets that are, or may be, owned by the Company.

Given the non-conventional term of the proposed ESP, consideration will likely have to be given, during the next ten years, to meeting customers' changing demands

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[22] *See In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code,* Case No. 10-1261-EL-UNC, Opinion and Order at pages 20, 21 (January 11, 2011) (Commission determined that an ROE between 10 and 11 percent was reasonable).

with supply options that are not purely market driven. Thus, in order to enable price stability and certainty, the Company envisions more permanent solutions to address anticipated changes in capacity supply and demand. In this regard, the ESP, as structured, enables new investment in Ohio, thus mitigating the risk of procuring needed capacity from the market, providing increased certainty as to available supply, and advancing the state's interest in job growth.

b. Profit Sharing Mechanism (Rider PSM)

As discussed below, the Company will obtain energy for its customers' needs through auction. Thus, the energy and ancillary services associated with the generating assets from which the capacity rate is derived will be available for sale in the market. Because all customers will be paying the retail capacity rate under Rider RC, all customers should benefit from any net profits associated with such sales. Consequently, through Rider PSM (profit sharing mechanism), Duke Energy Ohio proposes a sharing mechanism, with all customers receiving 80 percent of the profits (less a small portion that will be directed toward economic development) from the energy and ancillary services sales from the legacy generating assets, net of the variable costs of operating the assets for the production of energy and ancillary services, such as operation and maintenance costs, fuel, and similar items. The Company will receive the remaining 20 percent of the net profits (less a small portion that will be directed toward economic development), thereby preserving the necessary incentive on the part of Duke Energy Ohio to maximize profits.

As discussed by Duke Energy Ohio witness Wathen, the rates applicable under Rider PSM have been projected for the first quarter of 2012, using forecasted market prices. This projection is necessary to enable an immediate implementation of Rider PSM upon approval of the Application. To mitigate any disparities between projected and actual costs, Duke Energy Ohio proposes quarterly filings to true up Rider PSM.

Rider PSM is proposed as a non-bypassable rider and its practical effect will thus be a reduction in Rider RC. In this regard, the allocation of the credits under Rider PSM will be consistent with the allocation under Rider RC.

The commodities to which the profit sharing mechanism applies include energy and ancillary services sales from the economic legacy generation. Historically, Duke Energy Ohio has managed such commodities pursuant to active management, which is a form of portfolio management. As discussed by Duke Energy Ohio witness Salil Pradhan, the primary objective of active management is to conduct daily assessments of the portfolio and, where appropriate in order to mitigate exposure or make use of opportunity, to engage in transactions in the forward power market. The Company's use of active management has been recognized by the Commission as a benefit to SSO customers.[23] Consequently, Duke Energy Ohio proposes to continue its use of active management to maximize the credits available under Rider PSM.

As further discussed below, of the 80 percent of the net profits reserved for customers, 5 percent of said profits will be used, together with 5 percent of the Company's 20 percent share of the profits of energy sales, to fund Advance Southwest Ohio, an organization that will support economic development, retention, and expansion in targeted regional clusters in Duke Energy Ohio's service territory. This economic

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[23] *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).

development tool will be funded annually, for the duration of the Company's ESP. The details of this proposal are discussed below in Subpart 4.

c. Energy – Rider RE

As noted above, the Company proposes to narrow the products subject to competitive bid to energy and related products. In doing so, Duke Energy Ohio enables a rigorous bidding process. Indeed, market prices for capacity will not be summarily incorporated into bids and the costs passed through to customers. Rather, competitive suppliers will be competing only on the commodity itself: energy and related products. Customers should benefit from the most competitive price that the market will bear for this commodity.

Duke Energy Ohio submits that limiting auctions to energy will not adversely affect competition or result in new barriers to competition. On the contrary, under its proposal, Duke Energy Ohio will seek to procure energy to serve all of its SSO load from competitive wholesale suppliers over a ten-year period. Participation in the energy auctions is not dependent on owning generation and thus all prospective participants will be on a level playing field. The energy auction provides a level of certainty for all market participants that has not otherwise existed since deregulation was initiated more than ten years ago.

Duke Energy Ohio witness Jeffrey R. Bailey discusses how the wholesale energy prices will be converted into retail rates under the Company's proposed ESP.

d. Uncollectible Generation Expense – Rider UE-GEN

Unlike any other EDU in the state, Duke Energy Ohio currently purchases the accounts receivable of those CRES providers enrolled in its purchase of accounts receivable program. These accounts are purchased at a discount and CRES providers promptly receive the discounted payment from Duke Energy Ohio. This arrangement undeniably assists in the development of a competitive retail market. However, the Company seeks here to improve upon this arrangement by enlarging its scope while ensuring that the Company is not financially harmed.

Specifically, the Company proposes to purchase accounts receivable from CRES providers at no discount. Duke Energy Ohio will remit payment to CRES providers on the twentieth day following the month in which the billing occurs. In exchange for purchasing the accounts receivable from CRES providers, Duke Energy Ohio proposes a non-bypassable rider, Rider UE-GEN, to recover the bad debt expense associated with its SSO load, as well as the CRES providers' accounts receivable.

3. Distribution Service – R.C. 4928.143(B)(2)(h) and O.AC. 4901:1-35(C)(9)(g)(i)-(v)

R.C. 4928.143(B)(2)(h) authorizes Duke Energy Ohio to include, in its proposed ESP, provisions regarding single-issue ratemaking, revenue decoupling, and distribution infrastructure and modernization. This statutory provision is complemented by O.A.C. 4901:1-35(C)(9)(g), which sets forth additional criteria. Consistent therewith, Duke Energy Ohio proposes a distribution reliability rider, Rider DR, to recover incremental investment. The proposed rider also incorporates a revenue decoupling mechanism, thereby reducing any disincentive Duke Energy Ohio may have to promote energy efficiency programs. Duke Energy Ohio witnesses Wathen and James E. Ziolkowski detail Rider DR, and Duke Energy Ohio witness Mark D. Wyatt discusses the Company's existing infrastructure modernization program, the rider for which will be incorporated into proposed Rider DR.

4. Economic Development and Job Retention – R.C. 4928.143(B)(2)(i) and O.A.C. 4901:1-35(C)(9)(h)

As discussed in the Direct Testimony of Duke Energy Ohio witness Julia S. Janson, Duke Energy Ohio is proposing to create a new vehicle for advancing economic development in its service territory. This vehicle – Advance Southwest Ohio – will not replace the Company's current commitment to economic development under Rider ECF. Rather, after approval of the proposed ESP, opportunities for reasonable arrangements will continue to be available under Rider ECF, with Advance Southwest Ohio further supporting qualifying projects and thereby attracting, retaining, and developing operations in southwest Ohio.

The purpose of Advance Southwest Ohio will be to increase southwest Ohio's business strength by financially supporting economic development, retention, and expansion in targeted southwest Ohio regional clusters. Support for economic development will consist of direct funding of economic development initiatives and the creation of new, sustainable business and business-related jobs in Duke Energy Ohio's service territory. There will be three core initiatives to the Advance Southwest Ohio fund: Product Development, Product Marketing, and Project Closure. Product Development grants will be available for the redevelopment of Duke Energy Ohio-served existing buildings, public sector speculative building development, infrastructure improvements (including gas and electric), moving greenfield and brownfield sites closer to readiness for development, and business park developments. Product marketing grants will focus on prospect development; including, but not limited to, site consultant meetings, marketing to and meeting directly with prospects, relationship-building with targeted prospects in targeted regional clusters, and exposure through traditional and non-traditional advertising and public relations. Project Closure grants will be available to achieve economic agreements for relocation, expansion, or retention of companies in southwest Ohio.

Advance Southwest Ohio will support business competitiveness by strengthening the competitive position of existing business within Duke Energy Ohio's service territory through financial assistance to increase productivity, efficiency, and reliability, or that reduce environmental impacts.

The funds available under Advance Southwest Ohio will be administered through a formal grant process, with grant criteria and applications publicly available. The grant applications will be reviewed by the Company. With regard to grants made out of the funds supplied from the customers' portion of the proceeds, the grants will be reviewed and recommended by Duke Energy Ohio and submitted to Commission Staff. Thereafter, Commission Staff will have two weeks within which to review the proposal and to issue an authorization or rejection, under the signature of the Chairman of the Commission. Grants made out of the funds supplied from the Company's portion of the proceeds will be approved solely at the discretion of Duke Energy Ohio.

Once the Commission has approved the Company's ESP, as proposed, Duke Energy Ohio will promptly initiate the activities of Advance Southwest Ohio, with all costs to be reimbursed from the funds allocated to Advance Southwest Ohio.

D. In the Aggregate Comparison – R.C. 4928.143(C)(1)

Duke Energy Ohio has the burden of proving that its proposed ESP, including its pricing and all terms and conditions, is "more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code."[24] As the statutory language dictates, the inquiry concerns the entire ten-year term of the ESP and is not a year-by-year comparison. Further, because Duke Energy Ohio owned generating facilities as of July 31, 2008, the pricing of generation service under the proposed ESP cannot be compared to projected market prices. Rather, the appropriate comparison is the blended price that would otherwise apply under R.C. 4928.142. For purposes of determining the expected results under R.C. 4928.142, Duke Energy Ohio employed the blending percentages previously identified by the Commission in its Opinion and Order in Case No. 10-2586-EL-SSO as reflecting the default blending period.

Through his testimony, Duke Energy Ohio witness Rose confirms that the pricing of the ESP is, in the aggregate, more favorable than the results that would otherwise apply under R.C. 4928.142. More specifically, Mr. Rose testifies that the pricing under the ESP is, on average, 8 percent lower than the expected results under the MRO. Furthermore, the proposed ESP affords customers a $927 million net present value benefit as compared to the expected results under R.C. 4928.142, as testified to by Duke Energy Ohio witness Wathen.

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[24] R.C. 4928.143(C)(1).

The inquiry, however, extends to all of the terms and conditions of the proposed ESP[25] and, as the following confirms, Duke Energy Ohio has made provision for benefits in this ESP that would not be available under the MRO structure.

First, Duke Energy Ohio's proposed ESP provides customers with price stability and certainty over a substantial period of time. Significantly, customers can now contemplate longer-term decisions, whether in respect of investment, execution of business plans, or alternate suppliers. In particular, non-residential customers will benefit from knowing that system by which their electricity prices are determined will not be unknown, subject to revision after few years, or at risk of unexpected price surges.

Duke Energy Ohio's commitment not to seek to transfer its generating assets for the term of the ESP provides security for customers, who will, through the ESP, have a reliable and adequate supply of capacity – in Ohio – to serve them. This commitment again benefits customers in that they are protected from unpredictable and uncertain pricing.

The ESP enables a focus on economic development that could not exist under the MRO. Thus, consideration must be given to the benefits derived from creating and funding economic development tools via Advance Southwest Ohio, contrasting with the absence of similar programs and dollars for economic development that would be available under the MRO structure.

The proposed ESP facilitates a fully functioning competitive market in Ohio. Under the Company's plan, there is no restriction on the amount of energy that would be procured via an auction format. Thus, auction participants are not disadvantaged because

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[25] *In re Application of Columbus Southern Power Co.*, 128 Ohio St. 3d 402, 2011-Ohio-958 at ¶27.

they may not own generation. In addition, the competitive markets are benefitted by the proposed changes relating to CRES providers' accounts receivable. And unlike the statutory requirements for an MRO, a CBP plan under an ESP enables greater opportunity for Commission involvement.

Further, the Company's proposed revision to its Rider LM (load management) expands the scope of customers eligible for cost reductions by modifying their load shape.

Finally, with the long term plan proposed by Duke Energy Ohio, the Commission will have the ability, as mandated by statute, to confirm that the ESP is, and will continue to be, the more preferred SSO.

Duke Energy Ohio's proposed ESP – with its pricing and all terms and conditions – is better, in the aggregate, than the expected results under R.C. 4928.142.

IV. Rate Structure and Impacts

A. Pro Forma Financial Projections - O.A.C. 4901:1-35-03(C)(2)

As set forth in O.A.C. 4901:1-35-03(C)(2), Duke Energy Ohio must provide financial projections of the "effect of the ESP's implementation upon the electric utility for the duration of the ESP."[26] The Company must also provide sufficient information to enable an understanding of the assumptions used and methodology employed in deriving the pro forma financial projections.

Duke Energy Ohio witness Brian D. Savoy testifies as to the financial projections, which are set forth as attachments to his testimony.

[26] O.A.C. 4901:1-35-03(C)(2).

B. Rate Impacts – O.A.C. 4901:1-35-03(C)(3)

Duke Energy Ohio's Application must include "projected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals."[27] Duke Energy Ohio witness Bailey provides a summary of the rate impacts by rate class and describes how the projected prices were derived.

C. Tariffs

As detailed in the testimony of Company witness Ziolkowski, Duke Energy Ohio proposes to implement new riders under its ESP. Consistent therewith, certain riders currently in effect under its existing ESP will terminate while other riders will remain unchanged by the proposed ESP. Below is a summary description of the riders proposed in this ESP.

Proposed Riders	
Rider RC – Retail Capacity	Cost of service for capacity as of 2010; non-bypassable.
Rider RE – Retail Energy	Rider for energy, as derived from competitive auction; bypassable.
Rider PSM – Profit Sharing	Credit for net profits from energy and ancillary services sales; non-bypassable.
Rider AER-R – Alternative Energy Recovery Rider	Recovery of costs associated with alternative energy resource requirements; transfer REC costs from Rider PTC-FPP to Rider AER; bypassable
Rider RECON – Reconciliation Rider for over-/under-recovery of eliminated ESP-era riders	True up remaining balances of over-/under-recovery for Rider SRA-SRT and Rider PTC-FPP not included in generation rate.
Rider UE-GEN – Uncollectible Expense Rider for Generation	Recover cost of uncollectible generation expense for all customers; non-bypassable.
Rider DR – Distribution Reliability	Recovery of incremental costs for distribution-related investment; non-bypassable.

[27] O.A.C. 4901:1-35-03(C)(3).

For a full list of the tariffs that are being proposed in this ESP Application, see attachments to the Direct Testimony of Mr. Ziolkowski. The revisions to Tariff Sheet 19 (retail electric service) necessitated by the ESP are further reflected in Mr. Ziolkowski's testimony. As he also explains, certain sheets within Tariff 20, relating to certified suppliers, require amendment as a result of the proposed ESP and Mr. Ziolkowski discusses those amendments in his testimony.

V. Other Filing Requirements

A. Corporate Separation - O.A.C. 4901:1-35-03(C)(4) and 4901:1-35-03(F)

O.A.C. 4901:1-35-03(C)(4) imposes upon the Company an obligation to describe its current corporate separation plan. Such description must include "the current status of the...plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its...plan, and a timeline of any anticipated revisions or amendments."[28] Additionally, O.A.C. 4901:1-35-03(F) requires Duke Energy Ohio to demonstrate how its corporate separation plan is consistent with state policy.

Duke Energy Ohio witness Christian E. Whicker discusses the Company's current corporate separation plan, which was approved April 5, 2011, under Case No. 09-495-EL-UNC.[29] Mr. Whicker further provides a brief overview of the Company's prior corporate separation plans and the dockets in which they were approved. Duke Energy Ohio has neither sought nor obtained any waivers of its current corporate separation plan. Further, Mr. Whicker discusses the Company's proposed revision of its corporate separation plan, as well as future plans for revision.

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[28] O.A.C. 4901:1-35-03(C)(4).
[29] *In the Matter of the Application of Duke Energy Ohio for Approval of the Second Amended Corporate Separation Plan,* Case No. 09-495-EL-UNC, Opinion and Order (April 5, 2011).

B. Operational Support Plan – O.A.C. 4901:1-35-03(C)(5)

O.A.C. 4901:1-35-03(C)(5) requires the Company to state whether its operational support plan has been implemented and whether any problems exist with regard to such implementation. As explained by Duke Energy Ohio witness Daniel L. Jones, Duke Energy Ohio's Operational Support Plan was most recently approved in Case No. 08-920-EL-SSO, *et al.,* and has been implemented. Duke Energy Ohio is not aware of any outstanding problems with regard to that implementation.

C. Governmental Aggregation - O.A.C. 4901:1-35-03(C)(6) and (7)

Pursuant to O.A.C. 4901:1-35-03(C)(6), the Company's Application must include a description of how it proposes "to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code." Further, the Company must, pursuant to O.A.C. 4901:1-35-03(C)(7), include in its ESP a "description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed" in the ESP.

As supported by the testimony of Company witness Wathen, Duke Energy Ohio's ESP will not impede the formation of large-scale governmental aggregation. The provisions of R.C. 4928.20(I) are not implicated here as Duke Energy Ohio is not seeking a deferral, under R.C. 4928.144, in respect of its ESP. Similarly, Duke Energy Ohio is not seeking Commission approval of a separate charge for standby service and, consequently, the provisions of R.C. 4928.20(J) are not a consideration for Commission review. Admittedly, Duke Energy Ohio's proposed ESP does include non-bypassable charges. However, those charges will not adversely affect governmental aggregation. Rather, the Company's proposal should function to ease the process of evaluating competitive offers and ensure a vigorous environment in which CRES providers engage. Furthermore, a non-bypassable crediting mechanism removes from customers the dilemma of not switching suppliers in order to continue receiving the credit versus exercising the right to switch suppliers.

D. Advancement of State Policy - O.A.C. 4901:1-35-03(C)(8)

Pursuant to O.A.C. 4901:1-35-03(C)(8), the Company must describe how its proposed ESP advances the policies of the State as set forth in R.C. 4928.02. Significantly, these policies function only as guidelines, for the Commission to weigh in reviewing the Company's Application. As described in further detail in the direct testimony of Company witness Janson, the proposed ESP effectuates state policies. Specifically, Ms. Janson reviews each enumerated state policy and explains how the proposal set forth in this Application advances the goals of the state of Ohio.

E. Proposed Notice of Publication

Consistent with O.A.C. 4901:1-35-04(B), Duke Energy Ohio attaches hereto as Attachment I its proposed notice of publication regarding the filing of this Application.

F. Direct Testimony - O.A.C. 4901:1-35-03(A)

The Commission has required, through O.A.C. 4901:1-35-03(A), that the applicant for an ESP include a complete set of testimony, along with all schedules. Duke Energy Ohio incorporates herein the direct testimony of its witnesses, as identified in Section II, above.

G. Work Papers – O.A.C. 4901:1-35-03(G)

The Commission has required, under O.A.C. 4901:1-35-03(G), that each ESP application include a complete set of work papers. Attached hereto as Attachment J are the work papers of Duke Energy Ohio witnesses Rose. The work papers of Duke Energy Ohio witnesses Wathen and Savoy are included as Attachment WDW-2. The work papers of Duke Energy Ohio witness Ziolkowski are included as Attachments JEZ-5 and JEZ-6.

VI. Waivers

Duke Energy Ohio submits that its Application, as supported by the testimony, schedules, and tariffs, complies with R.C. 4928.141 and 4928.143 and the relevant administrative rule, O.A.C. 4901:1-35-03.[30] However, Duke Energy Ohio respectfully seeks any waivers of the provisions of O.A.C. 4901:35-03 necessary to support the findings requested herein.

VII. Procedural Schedule

Duke Energy Ohio respectfully reserves to the Commission full discretion to identify a schedule consistent with its desired case management. However, it recommends a technical conference within one week of the filing of this Application to enable discussion of the Application and documents filed in support thereof.

VIII. Conclusion

Duke Energy Ohio respectfully requests that the Commission approve the proposed electric security plan, together with necessary accounting and tariff modifications described herein, as well as further modifications to P.U.C.O. Tariff 20 and the Company's corporate separation plan.

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[30] See Attachment A to this Application, which identifies the various filing requirements and the manner through which Duke Energy Ohio has complied with same.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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Case No. 11-3549-EL-SSO

Summary of Filing Requirements

The following summary is prepared for reference purposes only. It is not a substantive part of the Application and nothing herein should be interpreted as superseding the Application, the other Attachments to the Application, the testimony of the Company's witnesses, or any attachments thereto.

Ohio Administrative Code 4901:1-35-03(A)

Summary of Filing Requirement

Applications must include a complete set of direct testimony of the electric utility personnel or other expert witnesses. This testimony shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues identified by the electric utility.

Response

See Direct Testimony of

B. Keith Trent
Julia S. Janson
Judah L. Rose
Stephen G. De May
James S. Northrup
Robert J. Lee
William Don Wathen Jr.
Andrew S. Ritch
Roger A. Morin, Ph.D.
Kenneth J. Jennings
Salil Pradhan
Jeffrey R. Bailey
James E. Ziolkowski
Mark D. Wyatt
Brian D. Savoy
Christian E. Whicker
Daniel L. Jones

Ohio Administrative Code 4901:1-35-03(C)(1)

Summary of Filing Requirement

A complete description of the ESP and testimony explaining and supporting each aspect of the ESP.

Response

See Application and Direct Testimony filed in support thereof.

Ohio Administrative Code 4901:1-35-03(C)(2)

Summary of Filing Requirement

Pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP, together with testimony and work papers sufficient to provide an understanding of the assumptions made and methodologies used in deriving the pro forma projections.

Response

See Direct Testimony of Brian D. Savoy.

Ohio Administrative Code 4901:1-35-03(C)(3)

Summary of Filing Requirement

Projected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals, if any.

Response

See Direct Testimony of Jeffrey R. Bailey.

Ohio Administrative Code 4901:1-35-03(C)(4)

Summary of Filing Requirement

The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including, but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the commission pursuant to Chapter 4901:1-37 of the Administrative Code.

Response

See Direct Testimony of Christian E. Whicker.

Ohio Administrative Code 4901:1-35-03(C)(5)

Summary of Filing Requirement

Division (A)(3) of section 4928.31 of the Revised Code required each electric utility to file an operational support plan as a part of its electric transition plan. Each electric utility shall provide a statement as to whether its operational support plan has been implemented and whether there are any outstanding problems with the implementation.

Response

See Direct Testimony of Daniel L. Jones.

Ohio Administrative Code 4901:1-35-03(C)(6)

Summary of Filing Requirement

A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.

Response

See Direct Testimony of William Don Wathen Jr.

Ohio Administrative Code 4901:1-35-03(C)(7)

Summary of Filing Requirement

A description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP.

Response

See Direct Testimony of William Don Wathen Jr.

Ohio Administrative Code 4901:1-35-03(C)(8)

Summary of Filing Requirement

The initial filing for an ESP shall include a detailed account of how the ESP is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings shall include how the state policy is advanced by the ESP.

Response

See Direct Testimony of Julia S. Janson, Andrew S. Ritch, and Christian E. Whicker.

Ohio Administrative Code 4901:1-35-03(C)(9)(a)(i)

Summary of Filing Requirement

Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and certain other specified costs. An application including such provisions shall include, at a minimum, the information described below:

The type of cost the electric utility is seeking recovery for under division (B)(2) of section 4928.143 of the Revised Code including a summary and detailed description of such cost. The description shall include the plant(s) that the cost pertains to as well as a narrative pertaining to the electric utility's procurement policies and procedures regarding such cost.

Response

Rider Recon – William Don Wathen Jr.

Ohio Administrative Code 4901:1-35-03(C)(9)(a)(ii)

Summary of Filing Requirement

Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and certain other specified costs. An application including such provisions shall include, at a minimum, the information described below:

The electric utility shall include in the application any benefits available to the electric utility as a result of or in connection with such costs including but not limited to profits from emission allowance sales and profits from resold coal contracts.

Response

Rider AER-R – Andrew S. Ritch

Ohio Administrative Code 4901:1-35-03(C)(9)(a)(iii)

Summary of Filing Requirement

Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and certain other specified costs. An application including such provisions shall include, at a minimum, the information described below:

The specific means by which these costs will be recovered by the electric utility. In this specification, the electric utility must clearly distinguish whether these costs are to be recovered from all distribution customers or only from the customers taking service under the ESP.

Response

Rider Recon – William Don Wathen Jr.

Rider AER-R – William Don Wathen Jr.

Ohio Administrative Code 4901:1-35-03(C)(9)(a)(iv)

Summary of Filing Requirement

Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and certain other specified costs. An application including such provisions shall include, at a minimum, the information described below:

A complete set of work papers supporting the cost must be filed with the application. Work papers must include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative and other support of assumptions made in completing the work papers.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(b)(i)

Summary of Filing Requirement

Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an electric utility to include unavoidable surcharges for construction, generation, or environmental expenditures for electric generation facilities owned or operated by the electric utility. Any plan which seeks to impose surcharge under these provisions shall include the following sections, as appropriate:

The application must include a description of the projected costs of the proposed facility. The need for the proposed facility must have already been reviewed and determined by the commission through an integrated resource planning process filed pursuant to rule 4901:5-5-05 of the Administrative Code.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(b)(ii)

Summary of Filing Requirement

Applications must include a complete set of direct testimony of the electric utility personnel or other expert witnesses. This testimony shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues identified by the electric utility.

The application must also include a proposed process, subject to modification and approval by the commission, for the competitive bidding of the construction of the facility unless the commission has previously approved a process for competitive bidding, which would be applicable to that specific facility.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(b)(iii)

Summary of Filing Requirement

Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an electric utility to include unavoidable surcharges for construction, generation, or environmental expenditures for electric generation facilities owned or operated by the electric utility. Any plan which seeks to impose surcharge under these provisions shall include the following sections, as appropriate:

An application which provides for the recovery of a reasonable allowance for construction work in progress shall include a detailed description of the actual costs as of a date certain for which the applicant seeks recovery, a detailed description of the impact upon rates of the proposed surcharge, and a demonstration that such a construction work in progress allowance is consistent with the applicable limitations of division (A) of section 4909.15 of the Revised Code.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(b)(iv)

Summary of Filing Requirement

Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an electric utility to include unavoidable surcharges for construction, generation, or environmental expenditures for electric generation facilities owned or operated by the electric utility. Any plan which seeks to impose surcharge under these provisions shall include the following sections, as appropriate:

An application which provides recovery of a surcharge for an electric generation facility shall include a detailed description of the actual costs, as of a date certain, for which the applicant seeks recovery and a detailed description of the impact upon rates of the proposed surcharge.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(b)(v)

Summary of Filing Requirement

Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code authorize an electric utility to include unavoidable surcharges for construction, generation, or environmental expenditures for electric generation facilities owned or operated by the electric utility. Any plan which seeks to impose surcharge under these provisions shall include the following sections, as appropriate:

An application which provides for recovery of a surcharge for an electric generation facility shall include the proposed terms for the capacity, energy, and associated rates for the life of the facility.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(c)(i)

Summary of Filing Requirement

Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:

A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service. Such components would include, but are not limited to, terms and conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale and, to the extent possible, a quantitative justification shall be provided.

Response

Rider RC –	William Don Wathen Jr. Roger A. Morin, Ph.D.
Rider PSM –	William Don Wathen Jr. Salil Pradhan
Rider RE –	Robert J. Lee James S. Northrup William Don Wathen Jr. James E. Ziolkowski Jeffrey R. Bailey
Rider UE-GEN –	William Don Wathen Jr. James E. Ziolkowski

Ohio Administrative Code 4901:1-35-03(C)(9)(c)(ii)

Summary of Filing Requirement

Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:

A description and quantification or estimation of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery, together with the carrying costs, amortization periods, and avoidability of such charges.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(c)(iii)

Summary of Filing Requirement

Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:

A listing, description, and quantitative justification of any unavoidable charges for standby, back-up, or supplemental power.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(d)

Summary of Filing Requirement

Division (B)(2)(e) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for automatic increases or decreases in any component of the standard service offer price. Pursuant to this authority, if the ESP proposes automatic increases or decreases to be implemented during the life of the plan for any component of the standard service offer, other than those covered by division (B)(2)(a) of section 4928.143 of the Revised Code, the electric utility must provide in its application a description of the component, the proposed means for changing the component, and the proposed means for verifying the reasonableness of the change.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(e)

Summary of Filing Requirement

Division (B)(2)(f) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the securitization of authorized phase-in recovery of the standard service offer price. If a phase-in deferred asset is proposed to be securitized, the electric utility shall provide, at the time of an application for securitization, a description of the securitization instrument and an accounting of that securitization, including the deferred cash flow due to the phase-in, carrying charges, and the incremental cost of the securitization. The electric utility will also describe any efforts to minimize the incremental cost of the securitization. The electric utility shall provide all documentation associated with securitization, including but not limited to, a summary sheet of terms and conditions. The electric utility shall also provide a comparison of costs associated with securitization with the costs associated with other forms of financing to demonstrate that securitization is the least cost strategy.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(f)

Summary of Filing Requirement

Division (B)(2)(g) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions relating to transmission and other specified related services. Moreover, division (A)(2) of section 4928.05 of the Revised Code states that, notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs (net of transmission related revenues), including ancillary and net congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.

Any utility which seeks to create or modify its transmission cost recovery rider in its ESP shall file the rider in accordance with the requirements delineated in Chapter 4901:1-36 of the Administrative Code.

Response

N/A

Ohio Administrative Code 4901:1-35-03(C)(9)(g)(i)

Summary of Filing Requirement

Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility shall provide a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses any cost savings to the electric utility, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility shall also include, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific requirements:

A description of the infrastructure modernization plan, including but not limited to, the electric utility's existing infrastructure, its existing asset management system and related capabilities, the type of technology and reason chosen, the portion of service territory affected, the percentage of customers directly impacted (non-rate impact), and the implementation schedule by geographic location and/or type of activity. A description of any communication infrastructure included in the infrastructure modernization plan and any metering, distribution automation, or other applications that may be supported by this communication infrastructure also shall be included.

Response

See Direct Testimony of William Don Wathen Jr., James E. Ziolkowski, and Mark D. Wyatt.

Ohio Administrative Code 4901:1-35-03(C)(9)(g)(ii)

Summary of Filing Requirement

Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility shall provide a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses any cost savings to the electric utility, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility shall also include, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific requirements:

A description of the benefits of the infrastructure modernization plan (in total and by activity or type), including but not limited to the following as they may apply to the plan: the impacts on current reliability, the number of circuits impacted, the number of customers impacted, the timing of impacts, whether the impact is on the frequency or duration of outages, whether the infrastructure modernization plan addresses primary outage causes, what problems are addressed by the infrastructure modernization plan, the resulting dollar savings and additional costs, the activities affected and related accounts, the timing of savings, other customer benefits, and societal benefits. Through metrics and milestones, the infrastructure modernization plan shall include a description of how the performance and outcomes of the plan will be measured.

Response

See Direct Testimony of Mark D. Wyatt.

Ohio Administrative Code 4901:1-35-03(C)(9)(g)(iii)

Summary of Filing Requirement

Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility shall provide a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses any cost savings to the electric utility, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility shall also include, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific requirements:

A detailed description of the costs of the infrastructure modernization plan, including a breakdown of capital costs and operating and maintenance expenses net of any related savings, the revenue requirement, including recovery of stranded investment related to replacement of un-depreciated plant with new technology, the impact on customer bills, service disruptions associated with plan implementation, and description of (and dollar value of) equipment being made obsolescent by the plan and reason for early plant retirement. The infrastructure modernization plan shall also include a description of efforts made to mitigate such stranded investment.

Response

See Direct Testimony of Mark D. Wyatt.

Ohio Administrative Code 4901:1-35-03(C)(9)(g)(iv)

Summary of Filing Requirement

Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility shall provide a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses any cost savings to the electric utility, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility shall also include, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific requirements:

A detailed description of any proposed cost recovery mechanism, including the components of any regulatory asset created by the infrastructure modernization plan, the reporting structure and schedule, and the proposed process for approval of cost recovery and increase in rates.

Response

See Direct Testimony of James E. Ziolkowski.

Ohio Administrative Code 4901:1-35-03(C)(9)(g)(v)

Summary of Filing Requirement

Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility shall provide a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses any cost savings to the electric utility, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility shall also include, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific requirements:

A detailed explanation of how the infrastructure modernization plan aligns customer and electric utility reliability and power quality expectations by customer class.

Response

See Direct Testimony of Mark D. Wyatt.

Ohio Administrative Code 4901:1-35-03(C)(9)(h)

Summary of Filing Requirement

Division (B)(2)(i) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for economic development, job retention, and energy efficiency programs. Pursuant to this section, the electric utility shall provide a complete description of the proposal, together with cost-benefit analysis or other quantitative justification, and quantification of the program's projected impact on rates.

Response

See Direct Testimony of Julia S. Janson.

Ohio Administrative Code 4901:1-35-03(F)

Summary of Filing Requirement

The SSO application shall include a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. If any waivers of the corporate separation plan have been granted and are to be continued, the applicant shall justify the continued need for those waivers.

Response

See Direct Testimony of Christian E. Whicker.

Ohio Administrative Code 4901:1-35-03(G)

Summary of Filing Requirement

A complete set of work papers must be filed with the application. Work papers must include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative or other support of assumptions made in the work papers. Work papers shall be marked, organized, and indexed according to schedules to which they relate. Data contained in the work papers should be footnoted so as to identify the source document used.

Response

See Attachment J to the Application. See also Direct Testimony of James E. Ziolkowski and William D. Wathen Jr.

Ohio Administrative Code 4901:1-35-03(H)

Summary of Filing Requirement

All schedules, tariff sheets, and work papers prepared by, or at the direction of, the electric utility for the application and included in the application must be available in spreadsheet, word processing, or an electronic non-image-based format, with formulas intact, compatible with personal computers. The electronic form does not have to be filed with the application but must be made available within two business days to staff and any intervening party that requests it.

Response

See Direct Testimony of James E. Ziolkowski.

Ohio Revised Code 4928.143(C)(1)

Summary of Filing Requirement

The burden of proof in the proceeding shall be on the electric distribution utility. ...[T]he commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.

Response

See Direct Testimony of B. Keith Trent, Judah L. Rose, Julia S. Janson, William Don Wathen Jr., James E. Ziolkowski, and James S. Northrup.

Ohio Revised Code 4928.143(B)(1)

Summary of Filing Requirement

[I]f the proposed electric security plan has a term longer than three years, it may include provisions in the plan to permit the commission to test the plan pursuant to division (E) of this section and any transitional conditions that should be adopted by the commission if the commission terminates the plan as authorized under that division.

Response

See Direct Testimony of William Don Wathen Jr. and Robert J. Lee.

Attachment C

Bidding Rules for Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions

Table of Contents

1. INTRODUCTION

These Bidding Rules apply to the competitive bidding process ("CBP") auctions for Duke Energy Ohio to procure supply for the provision of Standard Service Offer supply ("SSO Supply") for all of their retail customers that take retail generation from Duke Energy Ohio.

Bidders also need to be familiar with other documents for the auctions including the Master Standard Service Offer Supply Agreement ("Master SSO Supply Agreement"), the Part 1 Application, the Part 2 Application, the Communications Protocols, and the Glossary. Bidders also should visit the Information Website regularly for up-to-date information including information specific to each auction.

The URL for the Information Website is http://www.duke-energyohiocbp.com. It contains relevant data, the schedule and key dates for participating in the auction process, frequently asked questions, and other information.

Unless noted otherwise, "days" refer to business days and times refer to prevailing Eastern Time. Unless noted otherwise, all capitalized terms are defined in the Glossary found on the Information Website.

Examples in these Bidding Rules are illustrative only.

These Bidding Rules may be modified from time to time by the Auction Manager in order: (i) to facilitate a more competitive process, (ii) to make any necessary corrections and/or clarifications, (iii) to account for any change in ESP products, (iv) to conform to any change in state or federal law or rule, and (v) for any other reason deemed necessary at the discretion of the Auction Manager. Such modifications will be carried out in consultation with Duke Energy Ohio but without prior consent from the Public Utilities Commission of Ohio ("PUCO") or any past, current, or potential bidder and will be posted to the Information Website.

1.1 Auction Manager

The Auction Manager is CRA International d/b/a Charles River Associates, Inc. The Auction Manager can be contacted by sending an email to duke-energyauctionmanager@crai.com. The full contact information for the Auction Manager is as follows:

CRA International, Inc.
John Hancock Tower
200 Clarendon Street, T-33
Boston, MA 02116-5092
Phone: 617.425.3365
Fax: 617.425.6574
Email: duke-energyauctionmanager@crai.com
Attn: Robert Lee, Principal / Auction Manager

2. THE PRODUCTS BEING PROCURED

This section summarizes the common elements of the products to be procured in the auctions. The Information Website provides details about the products to be procured in a specific auction, including the delivery periods, the number of tranches, the nominal MW size of the tranches, and the seasonal price factors.

2.1 SSO Load

Standard Service Offer ("SSO") Load will be Duke Energy Ohio's full electricity requirements for SSO Service for SSO Customers and it will include distribution losses. For purposes of these Bidding Rules, an "SSO Customer" is a retail customer of Duke Energy Ohio taking Standard Service Offer.

SSO Load will exclude the requirements of customers served by Competitive Retail Electric Service suppliers ("CRES Suppliers"). CRES Suppliers are certified by the PUCO and serve shopping customers.

SSO Load will include the requirements of any Special Contract customers of Duke Energy Ohio who are served under special contracts.

2.2 Full Requirements Service

The auctions are designed to procure all elements of full requirements service for SSO Customers of Duke Energy Ohio except for the SSO capacity obligation. Winning bidders will assume all responsibilities of a Load Serving Entity ("LSE") and will be responsible for supplying all obligations associated with full requirements service except for the capacity obligation. Full requirements service includes energy, capacity, market-based transmission service and market-based transmission ancillaries, and any other LSE service or other service as may be required by PJM to serve the SSO Load of Duke Energy Ohio. Duke Energy Ohio will supply the capacity obligation for the Duke Energy Ohio service territory on behalf of all winning bidders and CRES suppliers. All other responsibilities related to full requirements service will be the responsibility of winning bidders.

Duke Energy Ohio also will provide distribution services and will be responsible for Network Integrated Transmission Services ("NITS") charges and for other non-market-based FERC approved transmission charges for shopping and non-shopping load.

Full requirements service and the LSE obligations of winning bidders are defined in the Master SSO Supply Agreement.

2.3 Tranches

SSO Load will be divided into identical units called tranches, each representing an equivalent percentage of SSO Load. Each tranche represents one percent (1%) of the actual hourly energy required for SSO Load for the applicable delivery period.

The number of tranches intended to be procured for each product in the auction is referred to as the "tranche target" for that product. The Auction Manager may reduce the tranche targets prior to the auction if indications of interest in the auction are such that doing so is required to promote more competitive bidding.

3. PRICES PAID TO SSO SUPPLIERS

The payment to SSO Suppliers for tranches won will be a seasonal function of the auction prices. The summer payment for a tranche, paid to the winning bidder of the tranche from June 1 through September 30 during each year of the applicable delivery period, will be higher than the winning price for that tranche. The winter payment for the same tranche, paid to the winning bidder of that tranche for the remaining months in the calendar year during each year of the applicable delivery period, will be lower than the winning price for that tranche. The seasonal factors are multiplied by the winning price for a tranche in determining the summer and winter payments for that tranche. Duke Energy Ohio reserves the right to calculate the seasonal factors in advance of each auction in response to changing market conditions. The seasonal factors will be announced to suppliers prior to the auction and will be constant during the duration of the Master SSO Supply Agreement.

Example 1. Seasonal Supplier Payments

Assume the summer factor is 1.0727 and the winter factor is 0.9580, and the delivery period is June 1, 2013 through May 31, 2015.

Assume a bidder in the auction wins three (3) 24-month tranches at a price of $60.00/MWh. The size of each tranche is 1% of the SSO Load. Thus, the bidder will serve 3% of the SSO Load from June 1, 2013 through May 31, 2015. The bidder will receive $64.36 ($60.00 X 1.0727) for each MWh of SSO Load served in the summer months and $57.48 ($60.00 X 0.9580) for each MWh of SSO Load served in the winter months.

4. PRIOR TO THE START OF BIDDING

4.1 Information Provided to Bidders

Duke Energy Ohio will make available certain information to suppliers in advance of qualification. This information will be posted on the Information Website.

4.1.1 Load Data

Duke Energy Ohio will provide:

- Load data for a historical three-year period.
- Historical hourly load data for total retail load and SSO Load.
- Historical switching statistics and historical load profiles.

4.1.2 Minimum and Maximum Starting Prices

The Auction Manager will announce a minimum starting price and a maximum starting price for each product in the auction. The minimum and maximum starting prices establish the range for the possible round 1 prices for the auction.

4.1.3 Tranche Size, Tranche Target

No later than eight (8) days prior to the Part 1 Application Due Date, the Auction Manager will announce for each product in the auction:

- The tranche target or the number of tranches being procured.
- The size (%) and MW-measure of the tranches in the auction.

No later than four (4) days prior to the Part 2 Application Due Date, the Auction Manager will announce:

- Any update to the MW-measure of the tranches in the auction.

4.2 Qualification Process

There are two parts to the application process. In Part 1, prospective bidders apply to become Qualified Bidders. In Part 2, each Qualified Bidder provides certifications and its indicative offer and pre-bid security in order to become a Registered Bidder.

4.2.1 Part 1 Application: Certifications and Other Qualified Bidder Requirements

In the Part 1 Application process, prospective bidders will be required to:

- Submit an application from a person with the power to bind the bidder.
- Agree to comply with all rules of the auction.
- Agree that if they become winning bidders, they will execute the Master SSO Supply Agreement with Duke Energy Ohio within 3 business days following the close of the auction.
- Show either that they are a PJM Market Participant and Load Serving Entity in PJM, or that there exist no impediments to them becoming a PJM Market Participant and Load Serving Entity in PJM by the start of the applicable delivery period.
- Agree that if they become winning bidders, they will comply with the creditworthiness requirements set forth in the Master SSO Supply Agreement.
- Certify that if they qualify to participate, they will not disclose information regarding the list of Qualified Bidders or confidential information that may be obtained during the bidding process about Qualified Bidders.
- Certify that if they qualify to participate, they will not substitute another entity in their place, transfer their rights to another entity, or otherwise assign their status as Qualified Bidders to another entity.

Part 1 Applications must be submitted to the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time on the Part 1 Application Due Date. Prospective bidders will be notified by the Auction Manager no later than three (3) days after the Part 1 Application Due Date whether they succeeded in becoming a Qualified Bidder.

A prospective bidder that has qualified during the Part 1 Application process becomes a Qualified Bidder. The Auction Manager will send a list of all Qualified Bidders to relevant parties that have undertaken to maintain the confidentiality of the list of Qualified Bidders. The relevant parties that will receive this list of Qualified Bidders are as follows:

- Each Qualified Bidder.
- Other parties as necessary to oversee the proper conduct of the auction, including representatives from Duke Energy Ohio, PUCO Staff, and any advisor ("PUCO Consultant") that PUCO Staff may have retained for this purpose.

All parties receiving a list of Qualified Bidders will be subject to the confidentiality requirements as specified below and in the Communications Protocols.

4.2.2 Part 2 Application: Certifications, Indicative Offer, and Pre-Bid Security

For each auction, Qualified Bidders must successfully complete the Part 2 Application process in order to become a Registered Bidder that can bid in the auction. Only Qualified Bidders may submit a Part 2 Application.

Part 2 Applications must be submitted to the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time on the Part 2 Application Due Date. Qualified Bidders will be notified by the Auction Manager whether they succeeded in the Part 2 Application process no later than three (3) days after the Part 2 Application Due Date.

<u>Certifications</u>

In the Part 2 Application, each Qualified Bidder will make a number of certifications regarding associations to ensure that they are participating independently of other Qualified Bidders and to ensure the confidentiality of information regarding the auction.

A Qualified Bidder is associated with another Qualified Bidder if the two bidders have ties that could allow them to act in concert or that could prevent them from competing actively against each other. The competitiveness of the auction and the ability of the auction to produce competitive prices may be harmed by the coordinated or collusive behavior that associations facilitate. As the Auction Manager relies on a number of factors to assess and promote competitive bidding, including the number of independent competitors, using inaccurate information or insufficient disclosure of associations in the Part 2 Application is prohibited.

Indicative Offer

With its Part 2 Application, a Qualified Bidder will be required to submit an indicative offer and to post pre-bid security sufficient for this indicative offer. A Qualified Bidder's indicative offer specifies two (2) numbers of tranches for each product in the auction. For each product, the first number represents the number of tranches that the Qualified Bidder is willing to serve at the minimum starting price for the product and the second number represents the number of tranches that the Qualified Bidder is willing to serve at the maximum starting price for the product. For each product, the number of tranches specified in the indicative offer at the minimum starting price cannot exceed the number of tranches specified at the maximum starting price.

Indicative offers are important in two respects. First, the Auction Manager may use the indicative offers to inform the setting of the starting price for each product (i.e., round 1 announced price). Second, the total number of tranches indicated by the Qualified Bidder at the maximum starting prices is used to determine the Qualified Bidder's initial eligibility (i.e., the maximum total number of tranches the Qualified Bidder can bid across all products in round 1 of the auction). The Qualified Bidder's initial eligibility is set to the sum of the number of tranches at the maximum starting prices across all products in the Qualified Bidder's indicative offer. During the auction, bidders are free to switch their tranches among products in response to changes in announced prices (subject to any bidding restrictions). However, a bidder will never be able to bid a total number of tranches across products that exceeds the bidder's initial eligibility. Thus, the number of tranches for each product at the maximum starting prices in the Qualified Bidder's indicative offer does not limit the number of tranches the Qualified Bidder can bid on a particular product, but the total number of tranches at the maximum starting prices across all products in the indicative offer must be equal to the Qualified Bidder's desired initial eligibility across all products.

Restrictions on the Indicative Offer

A Qualified Bidder may have restrictions on its initial eligibility — due to a credit-based tranche cap and/or due to load caps — and therefore may have restrictions on its indicative offer.

A Qualified Bidder may have a credit-based tranche cap that limits the Qualified Bidder's initial eligibility. Thus, the total number of tranches at the maximum starting prices across all products in the Qualified Bidder's indicative offer must not exceed the Qualified Bidder's credit-based tranche cap. This credit-based tranche cap is based on the credit rating of the Qualified Bidder or its Guarantor. A Qualified Bidder's credit-based tranche cap is determined as follows. The Qualified Bidder or Guarantor must:

- Be rated by at least one of the following rating agencies: Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's"), or Fitch, Inc. ("Fitch") and
- Have a senior unsecured debt rating (or, if unavailable, corporate or issuer rating).

If the Qualified Bidder or Guarantor is rated by only one rating agency, that rating will be used. If the Qualified Bidder or Guarantor is rated by only two rating agencies, and the ratings differ, the lower of the two ratings will be used. If the Qualified Bidder or Guarantor is rated by three rating agencies and the ratings differ, the lower of the two highest ratings will be used provided that, in the event that the two highest ratings are common, such common rating will be used. The credit-based tranche cap for a Qualified Bidder or its Guarantor is determined as shown in the following table:

Table 1. Credit-Based Tranche Cap

Credit Rating of Qualified Bidder or Guarantor			
S&P	Moody's	Fitch	Credit-Based Tranche Cap
BB and above	Ba2 and above	BB and above	No Cap
BB-	Ba3	BB-	10
Below BB-	Below Ba3	Below BB-	5

The parameters in the table above may vary by auction and over time, at Duke Energy Ohio's sole discretion. The credit-based tranche cap is in effect only during the bidding process. After the Master SSO Supply Agreement has been executed by a winning bidder, the credit-based tranche cap will no longer be in effect and the SSO Supplier will be required to meet the credit terms in accordance with Article 5: Credit and Performance Security in the Master SSO Supply Agreement.

In addition to any credit-based tranche cap, a Qualified Bidder will be subject to a load cap that limits the number of tranches the bidder can bid on and win. The load cap will be 80 percent on an aggregated load basis across all auction products for each auction date such that no bidder may bid on and win more tranches than the load cap. The load cap will be implemented by ensuring that each bidder's initial eligibility does not exceed the load cap in an auction.

Pre-Bid Security

Each Qualified Bidder must post pre-bid security sufficient for its indicative offer at the maximum starting prices. Each Qualified Bidder must post pre-bid security in an amount equal to $250,000 per tranche for all products included in the bidder's indicative offer at the maximum starting prices. Either cash or a letter of credit will be accepted as pre-bid security. Some bidders may be subject to additional credit requirements or may be required to submit a letter of intent from a Guarantor or a letter of reference from a bank. The standard form of the letter of credit and other security documents that are in a form acceptable to Duke Energy Ohio will be posted to the Information Website.

If a draft letter of credit, alternate guaranty, letter of intent, letter of reference, or any alternate security submitted by the prospective bidder with the Part 1 Application does not conform to the standard form, the prospective bidder shall indicate clearly any and all modifications in electronic, redlined format from the standard form. Duke Energy Ohio will assess, in their sole and exclusive discretion, whether such modifications are acceptable. The prospective bidder, in its Part 2 Application, must provide the required executed credit documents that either use the standard form or incorporate only those modifications to the standard form accepted by Duke Energy Ohio upon review of the bidder's Part 1 Application.

The following is an example calculation of the pre-bid security.

Example 2. Pre-Bid Security

A Qualified Bidder submits an indicative offer of 5 tranches for Product 1 at the minimum starting price and 10 tranches for Product 1 at the maximum starting price, 3 tranches for Product 2 at the minimum starting price and 6 tranches for Product 2 at the maximum starting price, and 2 tranches for Product 3 at the minimum starting price and 4 tranches for Product 3 at the maximum starting price. The Qualified Bidder must submit with this indicative offer of 20 tranches at the maximum starting prices cash or a letter of credit of $250,000 per tranche. The Qualified Bidder thus posts cash or a letter of credit of $5.0 million (20 tranches multiplied by $250,000 per tranche).

Depending on whether the Qualified Bidder is relying on its own financial standing or on that of a Guarantor, and depending on the results of the creditworthiness assessment at the time of the Part 1 Application, the Qualified Bidder may be required additionally to submit a letter of intent to provide a guaranty from its Guarantor or to provide a letter of reference from its bank. Any such additional requirements would be communicated to the Qualified Bidder at the time of qualification during the Part 1 Application process.

For a Part 2 Application to be accepted, it must be complete, including the Qualified Bidder's indicative offer, letter of credit, and additional security (if required). After its Part 2 Application is accepted, a Qualified Bidder becomes a Registered Bidder. The Auction Manager will send each Registered Bidder a summary of its indicative offer, pre-bid security amount, and the Registered Bidder's initial eligibility.

The Auction Manager also will send simultaneously to each Registered Bidder, and to those other parties as necessary to oversee the proper conduct of the auction, a list of Registered Bidders, and the total initial eligibility aggregated across all Registered Bidders. The list of Registered Bidders and the total initial eligibility will not be released publicly. Qualified Bidders, in their Part 2 Applications, will have undertaken to maintain the confidentiality of the list of Registered Bidders and the total initial eligibility, and to destroy documents including electronic files with this information provided by the Auction Manager within five (5) days following the conclusion of the auction, as explained further in the Part 2 Application.

Letters of credit and additional security (if required) will remain in full force, at a minimum, until the fifth calendar day after the conclusion of the auction. Subsequently, a bidder's financial guaranty will be marked cancelled and returned:

- As soon as practicable if the bidder has won no tranches.
- After the bidder has signed the Master SSO Supply Agreement and has complied with all creditworthiness requirements of the Master SSO Supply Agreement for the tranches that it has won.

Duke Energy Ohio can collect on the financial guarantees of bidders that win tranches but that fail to sign the Master SSO Supply Agreement or fail to comply with the creditworthiness requirements immediately following the close of the auction.

4.2.3 Sanctions for Failing to Comply with the Part 1 and Part 2 Applications

Sanctions can be imposed on a bidder for failing to disclose information relevant to determining associations, for coordinating with another bidder, or for failing to abide by any of the certifications that it will have made in its Part 1 and Part 2 Applications. Such sanctions can include, but are not limited to, termination of the Master SSO Supply Agreement, loss of all rights to provide supply for Duke Energy Ohio to serve any load won by such bidder, forfeiture of financial guarantees and other fees posted or paid, prosecution under applicable state and federal laws, debarment from participation in future competitive bidding process, and other sanctions that may be appropriate. For any failure to disclose information or for any violation of the certifications, the Auction Manager will make a recommendation on a possible sanction.

4.3 Starting Prices (Round 1 Prices)

No later than three (3) days before bidding starts for an auction, the Auction Manager will inform all Registered Bidders of the starting price for each product in the auction, which are the announced prices that will be in effect for round 1. For each product, the starting price will be no higher than the maximum starting price and no lower than the minimum starting price for the product. The Auction Manager will set the starting prices.

4.4 Extraordinary Events

The Auction Manager, in consultation with Duke Energy Ohio, may determine that, due to extraordinary events, the minimum starting prices and the maximum starting prices require revision. In this event, the schedule for the auction process also may be revised. If the indicative offers have already been received, the Auction Manager will request that the Registered Bidders (or the Qualified Bidders if the Part 2 Application process had not been completed) revise their indicative offers on the basis of the revised minimum starting prices and the revised maximum starting prices.

For such a revision to be necessary, an extraordinary event must occur between the time at which the minimum starting prices and the maximum starting prices are announced and the day on which bidding starts. An extraordinary event must be agreed to by Duke Energy Ohio and the Auction Manager. Such events could include, but are not limited to, the advent of war, the disruption of a major supply source for potentially extended periods, or other events that could affect significantly the cost of supply.

If an extraordinary event occurs during that time, the Auction Manager in consultation with Duke Energy Ohio will determine revised minimum starting prices and revised maximum starting prices. New indicative offers based on these prices will be required from bidders. To the extent practicable, the determination of new minimum and maximum starting prices, the submission of new indicative offers, and if necessary the announcement of new starting prices, will be carried out so as to afford bidders sufficient time. If an extraordinary event occurs during that time that causes a possible change in the schedule, the Auction Manager in consultation with Duke Energy Ohio will determine a revised schedule.

5. BIDDING FORMAT

In order to participate in the auction, bidders must have been successful in the Part 1 Application process and the Part 2 Application process. Only Registered Bidders are permitted to participate in the auction. Registered Bidders will bid in the auction by accessing the Auction Manager's secure Bidding Website.

5.1 Descending-Price Clock Format

The auction format is a simultaneous, multiple-round, descending-price clock format for "N" rounds. The number of rounds "N" for the auction is not pre-determined. Instead, it is determined by the closing rule for the auction. All products are available to bid on simultaneously in the auction. Bids are submitted during bidding rounds. Prices are announced for the products prior to each bidding round, and during a bidding round, a bidder submits for each product the number of tranches it would supply at the product's announced price. If the total number of tranches bid on a product exceeds the product's tranche target — i.e., the product is over-subscribed — the announced price for the product will be reduced for the next round. Announced prices will tend to decline round by round until the number of tranches bid falls sufficiently so that no product is over-subscribed and the auction closes.

An important rule is that a bidder cannot reduce the number of tranches it bids on a product if the product's announced price does not fall from one round to the next, the bidder can only maintain or increase the number of tranches it bids on the product (subject to other rules).

5.1.1 Rounds

Each bidding round has a specified start time and a specified end time. These start and end times are enforced by the Bidding Website. Prior to the start of the auction, the initial schedule of rounds will be available on the Bidding Website. As the auction progresses, the Auction Manager will keep bidders informed of the start and end times of subsequent rounds through the Bidding Website. The Auction Manager retains the option of pausing a round, delaying the start or end of a round, or otherwise adjusting the round times. The Auction Manager will inform bidders through the Bidding Website if it exercises this discretion to change the start time or end time of a round.

Bidders submit bids only during a round. When a round ends, the bids submitted during that round are processed and results of that round are reported to all bidders as explained in the section "Reporting Round Results" below. Each bidder then prepares to submit a bid for the next round if the auction remains open.

5.1.2 The Announced Prices and a Bid

Prior to the start of each round, the Auction Manager announces the price that will be in effect for each product for the round. The announced prices are specified in dollars per MWh or $/MWh. The price announced by the Auction Manager for a product applies to all the product's tranches. Each bidder decides how many tranches it is willing and able to supply for each product at the product's announced price. A bid by a bidder is, for each product, the number of tranches that the bidder is willing to supply at that announced price for the product. All bids are irrevocable and binding upon the bidders.

At sufficiently high announced prices there will be excess supply for a product causing it to be over-subscribed; that is, the number of tranches bid on the product will exceed the product's tranche target. Excess supply for a product is measured as the total number of tranches bid across all bidders on the product in the round minus the product's tranche target.

5.1.3 Reservation Prices and Starting Prices

There are reservation prices for the auction. The reservation price for a product is the price above which tranches for the product will not be purchased. If, at the conclusion of the auction, the reservation price for a product has not been met, no tranches for that product will be awarded. At the conclusion of the auction, the Auction Manager will inform bidders through the Bidding Website if the reservation price for a product has not been met.

Starting prices for the auction are determined after reservation prices are determined. The starting price for a product will be no lower than the reservation price for the product. The starting price may be the same as or higher than the reservation price for the product. The Auction Manager will not announce the reservation prices to bidders in advance of an auction.

5.1.4 Restrictions on What a Bidder Can Bid

The total number of tranches a bidder bids across all products in a round cannot exceed the bidder's eligibility for that round. That is, a bidder's eligibility to bid in a round is the maximum number of tranches it is allowed to bid across all products in that round. A bidder's eligibility for a round simply is the number of tranches the bidder bid across all products in the preceding round. Thus, a bidder cannot increase its eligibility from round to round; its eligibility can only stay the same or decrease from round to round.

A bidder is not allowed to bid more tranches on a product in a round than the product's tranche target.

A bidder is not allowed to bid a number of tranches that would violate either its credit-based tranche limit or any applicable load cap.

If the announced price for a product has been reduced from one round to the next round, the bidder can reduce the number of tranches it bid on that product.

If the announced price for a product has not been reduced from one round to the next round, the bidder cannot reduce the number of tranches it bid on that product.

Subject to the rules above, in each round a bidder is free to bid its tranches of eligibility across products however it would like to. Thus, subject to the rules above, bidders are free to reduce the tranches it bids and/or to switch tranches across products from round to round in response to changes in the announced prices for the products.

As discussed above, a bidder's initial eligibility is its eligibility for round 1 of the auction and is determined by the total number of tranches across products at the maximum starting prices in the bidder's indicative offer. During the course of the auction, the bidder's eligibility will decline or remain unchanged depending on the total number of tranches bid by the bidder across all products in each round of the auction.

If a bidder's eligibility falls to zero tranches, it will not be allowed to bid in any more rounds of the auction.

5.1.5 Multiple Bids by a Bidder

Because a bidder may decide to change a bid it submitted previously within the current open round, a bidder is allowed to make multiple bid submissions in a round as long as the round remains open for bidding, with each new confirmed bid fully replacing any prior bids it submitted in the round. If a bidder submits multiple bids in a round, the only bid considered in the round for that bidder is the last confirmed bid it submitted in the round.

5.1.6 Default Bid

After the end of a round, a default bid is submitted automatically on behalf of a bidder if the bidder:

- Entered the round with positive eligibility, and
- Did not submit a confirmed bid in the round.

If the announced price for a product declined from the prior round, then zero tranches will be the default bid for that product.

If the announced priced for a product did not decline from the prior round, then the number of tranches that the bidder bid on the product in the prior round as determined by the end-of-round ("EOR") procedure following the prior round will be the default bid for the product.

Each bidder is solely responsible for ensuring it submits a confirmed bid prior to the end of the round in order to avoid a default bid of being submitted on the bidder's behalf.

5.1.7 The EOR Procedure

At the end of each round, the EOR procedure is used to process the confirmed bids submitted during the round. The EOR procedure includes the following steps.

(a) The supply for each product is measured by summing up — across the confirmed bids for all bidders — the number of tranches bid for each product.

(b) The subscription level for each product is measured by comparing the supply for the product to the tranche target for the product. A product is over-subscribed, subscribed, or under-subscribed if supply (i.e., the number of tranches bid) is greater than, equal to, or less than the product's tranche target, respectively.

(c) If a product has become under-subscribed in a round after being over-subscribed or subscribed the preceding round, then tranches will be rolled back to the point that the product is subscribed. That is, at least some of the tranches that were bid on the product in the preceding round but that were not bid on the product this round will be deemed to still be bid on the product. The price at which a rolled-back tranche is deemed to have been bid simply is the announced price at which the bidder had bid the tranche. There is a priority for selecting tranches to roll back: tranches that otherwise would no longer be bid on any product in the auction and therefore would be reductions in bidders' eligibilities are rolled back first (referred to as "eligibility reduction tranches"), and then if needed, tranches that were switched from being bid on the product to being bid on another product are selected next for rollbacks (referred to as "switched tranches"). Eligibility reduction tranches are selected for rollback proportionally tranche by tranche, not bidder by bidder. Likewise, switched tranches are selected for rollback proportionally tranche by tranche, not bidder by bidder. More precisely, because integer tranches are needed, the actual selection mechanism uses a random number generator to select rollbacks tranche by tranche (first for eligibility reduction tranches and then for switched tranches), but on average the selection process results in proportional rollbacks (with priority given to rolling back eligibility reduction tranches first and then switched tranches second). All tranches that are rolled back maintain their eligibility for the bidder. Any bidder subjected to a rollback will be notified through the Bidding Website that a rollback has taken place and will be informed about the number of tranches deemed bid on each product and the price at which those tranches have been deemed bid.

For example, suppose a bidder bids five tranches on a product and no tranches on other products in round 8, and the price for that product is reduced for round 9 and the bidder bids only 1 tranche on the product and no tranches on other products for round 9. Absent any EOR rollbacks following round 9, the bidder's eligibility would fall from 5 tranches to 1 tranche. But during the EOR procedure, suppose two of the bidder's 4 "eligibility reduction tranches" are rolled back on the product, so after the EOR procedure the bidder is deemed to have bid 3 tranches on the product — one at the announced price of the round just ended and two at the announced price of the preceding round — and therefore the bidder is deemed to have 3 tranches of eligibility for round 10.

(d) "Free eligibility tranches" are determined as follows. A product's "bid stack" is just a list of the tranches currently deemed bid on the product and the price at which each tranche was bid for the product. Because of rollbacks, a product's bid stack could have tranches bid at two different prices: some tranches bid at the earlier, higher announced price and some tranches bid at the current, lower announced price. Any new tranche bid on such a product necessarily will be bid at the current, lower announced price. This new tranche will displace a tranche in the product's bid stack at the earlier, higher announced price. The displaced tranche becomes a "free eligibility tranche". The free eligibility tranche counts as eligibility for the bidder and the bidder can bid the tranche on any product next round, or the bidder can choose not to bid the tranche at all. But if the bidder does not bid the free eligibility tranche next round, it will be withdrawn from the auction permanently and will reduce the bidder's eligibility by one tranche after the next round.

(e) In some cases, the Auction Manager may reduce the tranche targets. The criteria that could lead to such a reduction will be determined prior to the auction but will not be announced to bidders. Once certain pre-specified criteria related to excess supply and related to the reservation price have been met, the discretion to reduce a product's tranche target because of insufficient supply will be eliminated. Thus, any tranche target reduction would be more likely in the earlier rounds of the auction. If the Auction Manager reduces the tranche target for a product, bidders will be informed of the revised tranche target. Any bidder that otherwise would have eligibility exceeding the new tranche targets will have its eligibility reduced so as not to exceed the new tranche targets.

(f) A determination is made as to whether the auction has concluded. The auction concludes if either case (1) or case (2) holds as follows:

(1) If no product is over-subscribed and no bidder has free eligibility tranches, then the auction has concluded. Note that it is possible for the auction to continue with no reductions in announced prices: if no product is over-subscribed there will be no reductions in announced prices but if there are free eligibility tranches (which "expire" after one round), the auction will remain open for one more round (subject to case (2) described next), allowing bidders with free eligibility to bid those tranches.

(2) If this is the Nth consecutive round in which no product is over-subscribed, and the number of tranches of free eligibility across all bidders as a percentage of the sum of the tranche targets across all products is less than or equal to X percent, then the auction has concluded. The parameter values for N and X will be determined before the auction and disclosed to bidders. The likelihood that this case (2) would occur in a particular auction is expected to be low.

(g) If the auction has concluded, then winning tranches, winning bidders, and winning prices are determined as described below.

(h) If the auction has not concluded, then each bidder's eligibility is determined for the next round and the price decrement (if any) is determined for each product for the next round.

5.1.8 Price Decrements

The announced prices will decrease round by round by a price decrement for over-subscribed products. Pre-specified price guidelines are used to determine the price decrements. Generally the price decrement for a product will be larger for the earlier rounds in the auction and when the excess supply for the product is greater. The price decrement is expected to be between 0.5 percent and 5 percent of the announced price for the most recently completed round.

The Auction Manager reserves the right to override the price decrement guidelines. The exercise of that right is expected to occur rarely and only if doing so is believed to facilitate timely progression of the bidding process.

5.2 Determination of Winning Tranches, Winning Bidders, and Winning Prices

At the close of the auction, the winning tranches, winning bidders, and winning prices will be determined as follows.

As a result of the EOR procedure as described above, there are two possible scenarios for a product at the close of the auction.

5.2.1 Bid Stack for a Product has All Tranches at the Same Price

In this scenario, there are no rolled-back tranches in the product's bid stack: all tranches in the bid stack were bid at the last announced price, including any tranches bid on the product in the last round of the auction as determined by the EOR procedure. That announced price is the product's clearing price, and all tranches in the product's bid stack are winning tranches if the clearing price satisfies the product's reservation price. Bidders who bid those tranches are winning bidders for those tranches, and all bidders with winning tranches on a product are paid the same price — i.e., the clearing price — for each winning tranche on the product. Note that this scenario includes the case in which a product was over-subscribed at some point in the auction and later became subscribed, as well as the case in which a product was always under-subscribed in the auction (i.e., it was never subscribed or over-subscribed in the auction).

5.2.2 Bid Stack for a Product has Tranches at Two Different Prices

In this scenario, there are rolled-back tranches in the product's bid stack: some tranches in the bid stack were bid at the last announced price (including any tranches bid on the product in the last round of the auction as determined by the EOR procedure), and some tranches in the bid stack were bid at the next most recent announced price. In this case, the product's clearing price is the next most recent announced price — which necessarily is higher than the last announced price for the product. All tranches in the product's bid stack are winning tranches if the clearing price satisfies the product's reservation price. Bidders who bid those tranches are winning bidders for those tranches, and all bidders with winning tranches on a product are paid the same price — i.e., the clearing price — for each winning tranche on the product.

5.3 Example of Round by Round Bidding

Appendix A provides an illustrative example of round by round bidding.

5.4 Reporting Round Results

During a round, a bidder will see the current status of the auction and the status of the current round including the announced price for each product as well as the bidder's own bidding status. A bidder will not see information about other bidders.

Between rounds the Bidding Website will report the results for the most recently completed round. Results for all prior rounds also will be accessible. The round results for each completed round in the auction will show:

- The announced price for each product and a range of total supply across all bidders and all products (that is, a range that includes the total number of tranches bid). The range of total supply will be defined by two different integers. Actual total supply will not be reported but will be at least as high as the lower of the two integers and no higher than the higher of the two integers. There is an exception to reporting total supply as a range of two integers: if and when total supply has declined below a pre-determined level, total supply will be reported simply as being below that level. The reporting ranges will be made available to bidders in advance of each auction.
- For each bidder, that bidder's bid for the round — i.e., the number of tranches bid on each product — and the bidder's eligibility for the next round. (Each bidder does not see information about other bidders.)
- The announced price for each product for the next round if the auction will continue with the next round.

5.5 Frequency of Rounds

The early rounds of bidding may be longer in duration than later rounds. The duration of a bidding round will be at least five (5) minutes.

The time between early rounds of bidding may be longer in duration than for later rounds. The time between bidding rounds will be at least five (5) minutes.

The schedule of rounds and any changes to the schedule will be made available to bidders through the Bidding Website.

5.6 Auction Pause Declared by Auction Manager

At any time during the auction, the Auction Manager may decide to pause the auction. This is not expected to happen often and it may not happen at all. If the Auction Manager pauses the auction, bidders will be notified and bidders will be notified if there are any changes to the schedule of rounds.

6. AFTER THE AUCTION CLOSES

6.1 Notification of Results

At the close of the auction, if the Auction Manager determines that the auction did not violate the competitive bidding process rules in such a manner so as to invalidate the auction, the Auction Manager will notify Duke Energy Ohio, the PUCO, the PUCO Consultant (if one has been retained), and the bidders as follows.

- The Auction Manager will notify Duke Energy Ohio, the PUCO, and the PUCO consultant of the identity of winning bidders, the number of tranches won by each winning bidder, and the prices for the tranches won.
- The Auction Manager will notify each winning bidder of how many tranches the bidder has won and at what prices. The Auction Manager also will notify the unsuccessful bidders that they have not won any tranches.

The names of the winning bidders, the number of tranches won by each bidder, and the winning prices will remain confidential until released publicly by the PUCO or as required by law.

The PUCO may reject the results of the auction within forty-eight (48) hours of the conclusion of the auction based upon a recommendation from the Auction Manager or the PUCO's consultant that the auction violated the competitive bidding process rules in such a manner so as to invalidate the auction.

6.2 Execution of Master SSO Supply Agreement

The winning bidders and Duke Energy Ohio will execute the Master SSO Supply Agreements three (3) business days following the close of the auction once the specific pricing information and load obligations have been inserted upon completion of the auction. Each winning bidder must demonstrate compliance with the creditworthiness requirements set forth in the Master SSO Supply Agreement.

6.3 Sanctions for Failure to Execute the Master SSO Supply Agreement

A winning bidder's financial guaranty posted with its Part 2 Application may be forfeited if the winning bidder does not execute the Master SSO Supply Agreement within three (3) business days following the close of the auction, if it fails to demonstrate compliance with the creditworthiness requirements set forth in the Master SSO Supply Agreement, or if it fails to agree to any of the terms of the Master SSO Supply Agreement. If Duke Energy Ohio exercises its right to collect on the financial guarantees, then any contractual rights or other entitlements of the winning bidder will terminate immediately without further notice by Duke Energy Ohio. In addition, the winning bidder will be liable for damages incurred by Duke Energy Ohio, which will be determined in accordance with the terms of the Master SSO Supply Agreement as though the winning bidder were a defaulting party to the Master SSO Supply Agreement.

7. USE OF THE BIDDING WEBSITE

Bidders will bid in the auction by accessing the Auction Manager's secure Bidding Website. An Authorized Representative of a bidder will access the Bidding Website using their own Web browser. The URL address for the Bidding Website, as well as user names and passwords, will be provided to Registered Bidders prior to the start of the auction.

The Bidding Website provides Web pages that allow a Registered Bidder to submit and confirm bids, to verify its status, to view results from prior rounds, to view the schedule of rounds, and to view messages from the Auction Manager.

7.1 Importance of Confirmed Bids

Submitting a bid on the Bidding Website involves three steps:

(1) Web page for entry and submission of the bid quantities. The bidder enters its desired bid and then submits the bid in order to proceed to the next step.

(2) Web page for validation of the bid. The bidder is asked to review the bid it submitted in the first step before proceeding to the confirmation step.

(3) Web page showing confirmation of the bid. The bidder receives a unique confirmation ID for the bid and the time-stamp at which the bid was recorded by the Bidding Website server.

It is important to note that a bid is not accepted and recorded as an accepted bid until and unless the bidder reaches the third step in which the bid confirmation Web page displays the unique confirmation ID and time-stamp for the bid.

7.2 Requirements for Using the Bidding Website

Access to the Bidding Website requires all of the following:

- User name and password provided by the Auction Manager.
- Access to the Internet.
- Compatible Web browser.
- Status as a Registered Bidder.

A bidder loses access to the Bidding Website after it no longer is possible to win tranches in the auction.

7.3 Messaging

The Bidding Website displays messages from the Auction Manager. These messages from the Auction Manager are displayed for all bidders with access to the Bidding Website.

8. BACKUP BIDDING PROCEDURE

In case a bidder has technical difficulties, and as a result is not able to submit a bid via the Bidding Website in a round, a backup bidding procedure will be provided as follows. The bidder uses the Backup Bidding Fax Number to submit its bid via facsimile. It is recommended that the bidder call the Help Desk and inform the operator that it has submitted a bid using the backup bidding procedure. Reasonable efforts will be made to contact the bidder if the backup bid is not received via facsimile in the time expected. Once the backup bid is received via facsimile, a member of the Auction Manager team will attempt to enter the bid on the Bidding Website on behalf of the bidder.

Prior to the auction, bidders will be provided with the Backup Bidding Fax Number and with forms to use for faxing a bid using the backup bidding procedure.

Bidders must be aware and understand that there is no guarantee or other assurance that if it submits a bid using the backup bidding procedure that its bid will be submitted and confirmed on its behalf by the Auction Manager team consistent with the intentions of the bidder and in time before the round ends.

If a backup bid submitted by a bidder is not accepted and confirmed by the Bidding Website because the round has ended, a default bid will be entered for the bidder as described above in the sections on default bids.

If a backup bid submitted by a bidder is not accepted and confirmed by the Bidding Website for other reasons (e.g., the number of tranches bid is greater than a bidder's eligibility or violates the bidder's credit-based tranche limit or applicable load cap), the Auction Manager team will use reasonable efforts to inform the bidder that a new bid must be submitted.

If a backup bid submitted by a bidder is confirmed by the Bidding Website, the Auction Manager team will contact the bidder by faxing confirmation of the accepted bid to the bidder.

Bidders use the backup bidding procedure at their own risk. In all cases involving backup bids, the Auction Manager team does not accept any responsibility, obligation, or liability for errors, omissions, timeliness, or otherwise, related to whether a backup bid is entered into and confirmed by the Bidding Website on behalf of the bidder or as intended by the bidder.

9. WHO TO CONTACT IN CASE OF PROBLEMS DURING THE AUCTION

A bidder should contact the Help Desk if it has questions or problems. The phone number for the Help Desk will be provided to bidders prior to the start of the auction.

10. CONTINGENCY PLAN TO PURCHASE TRANCHES

10.1 If Fewer Tranches than the Tranche Target are Purchased in the Auction

In the event that fewer tranches than a product's tranche target are purchased in the auctions in a given year, Duke Energy Ohio will implement a Contingency Plan for the unfilled tranches. Under that plan, any unsubscribed tranches from the first auction in a year will be rolled over to the second auction in the year. If all tranches are not fully subscribed after all the auctions in any given year, the remaining tranches will be offered to current Duke Energy Ohio SSO Suppliers. These suppliers will have won tranches in the current or a prior Duke Energy Ohio CBP auction. An SSO Supplier will be considered a current SSO Supplier from the conclusion of the CBP auction in which such supplier won tranches until the termination of the prevailing Master SSO Supply Agreement. Suppliers will be assigned a random number and each unfilled tranche will be offered to current SSO Suppliers in descending order of random number, subject to any credit-based tranche limits and any applicable load caps for such suppliers. The tranches will be offered to current suppliers at the clearing price, starting price, or reservation price, whichever is lowest.

If, after the conclusion of the steps above used to assign unfilled tranches there still are unfilled tranches, then the necessary SSO supply requirements will be met through PJM-administered markets at prevailing Day-ahead, Real-time zonal spot prices, and, unless otherwise instructed by the PUCO, Duke Energy Ohio will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve these tranches.

10.2 If a Winning Bidder Defaults Prior to or During the SSO Delivery Period

In the event a winning bidder defaults prior to or during the delivery of SSO Load requirements, Duke Energy Ohio will implement a Contingency Plan for the open tranches. Open tranches will be offered to other current SSO Suppliers using the same procedure as used for unfilled tranches at the auction as described above.

If tranches still remain open after the procedures above are applied, the necessary SSO supply requirements will be met through PJM-administered markets at prevailing Day-ahead, Real-time zonal spot prices, and, unless instructed otherwise by the PUCO, Duke Energy Ohio will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve these tranches.

Additional costs incurred by Duke Energy Ohio in implementing the Contingency Plan will be assessed first against the defaulting supplier's credit security, to the extent available.

11. ASSOCIATION AND CONFIDENTIAL INFORMATION RULES

The Association and Confidential Information rules are described below.

11.1 Process for Reporting Associations, Identifying Concerns and Remedies

A prospective bidder applying to qualify to bid will be required to disclose in its Part 1 Application any bidding agreement or arrangement in which it may have entered. A prospective bidder will be required to certify in its Part 1 Application that, should it qualify to participate, it will not disclose information regarding the list of Qualified Bidders. A prospective bidder also will be required to certify that it accepts the terms of the Master SSO Supply Agreement and, should it win tranches, it will sign the applicable Master SSO Supply Agreement and comply with all creditworthiness requirements by the stated deadline.

Once entities are qualified to bid, each Qualified Bidder will be asked in its Part 2 Application to make a number of certifications, each detailed in the Part 2 Application, and each bidder may be required to provide additional information to the Auction Manager if a certification cannot be made. Each Qualified Bidder will be asked to certify that it will undertake to appropriately restrict its disclosure of Confidential Information relative to its bidding strategy and Confidential Information regarding the auction. A Qualified Bidder also will be asked to certify that it has not and will not come to any agreement with another Qualified Bidder with respect to bidding in the auction, except as disclosed and approved by the Auction Manager in its Part 1 Application.

Before obtaining sealed documentation necessary to participate in the auction, Registered Bidders will be required to certify that they will continue to maintain the confidentiality of any information that they will have acquired through their participation in the auction.

11.2 Confidential Information

Confidential Information relative to bidding strategy means information relating to a bidder's bid(s) in the auction, whether in writing or verbally, which if it were to be made public likely would have an effect on any of the bids that another bidder would be willing to submit. Confidential Information relative to bidding strategy includes (but is not limited to): a bidder's strategy; a bidder's indicative offer; the quantities that a bidder wishes to supply; the bidder's estimation of the value of a tranche; the bidder's estimation of the risks associated with serving the load for the auction; and a bidder's contractual arrangements for purchasing power to serve such load were the bidder to win tranches in the auction.

Confidential Information regarding the auction means information that is not released publicly by the PUCO, Duke Energy Ohio or the Auction Manager and that a bidder acquires as a result of participating in the auction, whether in writing or verbally, which if it were to be made public could impair the integrity of current or future competitive bidding processes, impair the ability of Duke Energy Ohio to hold future competitive bidding processes, or harm consumers, bidders or applicants. Confidential Information regarding the auction includes (but is not limited to): the list of Qualified Bidders, the list of Registered Bidders, the initial eligibility, the status of a bidder's participation, and all non-public reports of results and announcements made by the Auction Manager to any or all bidders in this auction.

Absolute protection from public disclosure of the bidders' data and information filed in this auction process cannot be provided. By participating in this auction process, each bidder acknowledges and agrees to the confidentiality provisions set forth herein, as well as any limitations thereto.

In addition, the bidder agrees the bidder's data and information submitted in this auction process will be disclosed if required by any federal, state or local agency (including, without limitation, the PUCO) or by a court of competent jurisdiction. However, Duke Energy Ohio will endeavor to notify the bidder in advance of such disclosure. In any event, neither Duke Energy Ohio nor the Auction Manager, nor any of their employees or agents, will be responsible to the bidders or any other party, or liable for any disclosure of such designated materials before, during or subsequent to this auction. Notwithstanding the above, Duke Energy Ohio and the Auction Manager reserve the right to use and communicate publicly and/or to third parties any and all information/data submitted as part of this auction process in any proceedings before FERC, the PUCO, and any other regulatory body and the courts, if necessary, without the prior consent/approval of, or notice to, any such bidder.

11.3 Certifications and Disclosures to Be Made

A prospective bidder will be required in its Part 1 Application to disclose any bidding agreement or any other arrangement in which the prospective bidder may have entered and that is related to its participation in the auction. A prospective bidder that has entered into such an agreement or arrangement must name the entities with which the prospective bidder has entered into a bidding agreement, or a joint venture for the purpose of participating in the auction, or a bidding consortium, or any other arrangement pertaining to participating in the auction. A bidding consortium is a group of separate businesses or business people joining together to submit joint bids in the auction.

In addition, a prospective bidder will be required to make the certifications listed in the Part 1 and Part 2 Applications.

The PUCO may publicly release the winning prices and the names of the winning bidders from the auction. The PUCO may choose to release additional information. After the auction, a winning bidder itself may release information regarding the number of tranches it has won, and a non-winning bidder itself may release information only regarding the fact that it participated in the auction. The winning bidders and the non-winning bidders otherwise continue to be bound by their certifications as described previously. In particular, no winning bidder and no non-winning bidder itself can reveal the winning prices of the auction prior to these being publicly released by the PUCO.

11.4 Actions to Be Taken if Certifications Cannot Be Made

If a bidder cannot make all the certifications above, the Auction Manager will decide within five (5) days following the deadline to submit the Part 2 Application on a course of action on a case-by-case basis. To decide on this course of action, the Auction Manager may make additional inquiries to understand the reason for the inability of the bidder to make the certification.

If Qualified Bidders do not comply with additional information requests by the Auction Manager regarding certifications required in the Part 2 Application, the Auction Manager may reject the application.

11.5 Sanctions for Failure to Comply

Sanctions may be imposed on a Qualified Bidder for failing to properly disclose information relevant to determining associations, for coordinating with another bidder without disclosing this fact, for releasing Confidential Information or disclosing information during the auction (aside from only the specific exceptions provided above with respect to entities explicitly named in the Part 1 Application as entities that are part of a bidding agreement or other arrangement, to an Advisor; or bidders with which it is associated), and in general for failing to abide by any of the Communications Protocols. Such sanctions can include, but are not limited to, any one or more of the following: termination of the Master SSO Supply Agreement; the loss of all rights to provide tranches won by such bidder; the forfeiture of letters of credit and other fees posted or paid; action (including prosecution) under applicable state and/or federal laws; attorneys' fees and court costs incurred in any litigation that arises out of the bidder's improper disclosure; debarment from participation in future competitive bidding processes; and/or other sanctions that may be appropriate. Should such an event occur, the Auction Manager will make a recommendation to Duke Energy Ohio regarding sanctions. The imposition of such sanctions will be at the discretion of Duke Energy Ohio.

12. MISCELLANEOUS

12.1 Warranty on Information

The information provided for the auction, including but not limited to information provided on the Information Website, has been prepared to assist bidders in evaluating the auction process. It does not purport to contain all the information that may be relevant to a bidder in satisfying its due diligence efforts. Neither Duke Energy Ohio nor the Auction Manager make any representation or warranty, expressed or implied, as to the accuracy or completeness of the information, and shall not, either individually or as a corporation, be liable for any representation expressed or implied in the auction process or any omissions from the auction process, or any information provided to a bidder by any other source. A bidder should check the Information Website frequently to ensure it has the latest documentation and information. Neither Duke Energy Ohio, nor the Auction Manager, nor any of their representatives, shall be liable to a bidder or any of its representatives for any consequences relating to or arising from the bidder's use of information.

12.2 Hold Harmless

Bidder shall hold Duke Energy Ohio and the Auction Manager harmless of and from all damages and costs, including but not limited to legal costs, in connection with all claims, expenses, losses, proceedings or investigations that arise in connection with the auction process or the award of a bid pursuant to the auction process.

12.3 Bid Submissions Become Duke Energy Ohio's Property

All bids submitted by bidders participating in the auction will become the exclusive property of Duke Energy Ohio upon conclusion of the auction process.

12.4 Bidder's Acceptance

Through its participation in the auction process, a bidder acknowledges and accepts all the terms, conditions and requirements of the auction process and the Master SSO Supply Agreement.

12.5 Permits, Licenses, Compliance with the Law and Regulatory Approvals

Bidders shall obtain all licenses and permits and status that may be required by any governmental body, agency or organization necessary to conduct business or to perform hereunder. Bidders' subcontractors, employees, agents and representatives of each in performance hereunder shall comply with all applicable governmental laws, ordinances, rules, regulations, orders and all other governmental requirements.

12.6 Auction Intellectual Property

All title, interests and other intellectual property rights in and to the auction design, the auction format and methodology, the auction software, the source code (including all modifications, enhancements, customization, adaptations and derivative works made by the Auction Manager) and associated documentation, including but not limited to these Bidding Rules, and the screen formats and forms designed by the Auction Manager (the "Auction Software"), are proprietary to the Auction Manager and all rights, title, and interest to the Auction Software remain with the Auction Manager. The Auction Manager grants Qualified Bidders a non-exclusive, non-transferable, limited license to use the Auction Software, solely for use in connection with the auction, subject to the terms and conditions set forth herein, and not for copying, relicensing, sublicensing, distribution or marketing by the Qualified Bidder. No other interest is conveyed to the Qualified Bidder other than the license expressly granted herein. The foregoing use license shall immediately terminate upon disqualification of the Qualified Bidder or upon termination or completion of the auction process. If at any time it is determined in the Auction Manager's sole discretion that the Qualified Bidder is in breach of this section 12.6, the Auction Manager shall be entitled to terminate the Qualified Bidder's access rights to the Auction Software.

Notwithstanding anything herein to the contrary, and without limiting the Qualified Bidder's other obligations herein, the Qualified Bidder shall not, nor shall it permit any third party to: (i) modify, translate or otherwise create derivative works of the Auction Software; (ii) reverse engineer, decompile, decode, disassemble or translate any Auction Software, or output thereof, or otherwise attempt to reduce to human readable form or derive the source code, protocols or architecture of any Auction Software; (iii) use or study any Auction Software, or output thereof, for the purpose of developing any software that is intended to replace, or that has functions, structure or architecture similar to, such Auction Software, or any part thereof; (iv) publish, or otherwise make available to any third party, any benchmark or other testing information or results concerning the Auction Software; (v) permit any other person who is not authorized to access or use all or any part of the Auction Software or (vi) copy the Auction Software, distribute the Auction Software, remove or obscure any proprietary labeling on or in the Auction Software, create any derivative works based on the Auction Software, or modify the Auction Software, in each case, except to the extent expressly permitted by the Auction Manager in writing.

In using the Auction Software, a Qualified Bidder shall take steps to prevent any virus, worm, built-in or use-driven destruction mechanism, algorithm, or any other similar disabling code, mechanism, software, equipment, or component designated to disable, destroy or adversely affect the Auction Software from being introduced into the systems.

APPENDIX A — EXAMPLE OF ROUND BY ROUND BIDDING

The illustrative example below shows for two bidders (BidderA and BidderB) and two products (Product-1 and Product-2) the confirmed bids (pre-EOR) and the post-EOR results for each round. In the example, the auction closes after round 4.

Round 1

For round 1, the announced prices are $75.00 and $82.00 for Product-1 and Product-2, respectively. At those announced prices, BidderA bids 55 tranches and 85 tranches on Product-1 and Product-2, respectively. BidderB bids 80 tranches and 27 tranches on Product-1 and Product-2, respectively.

When the round closes the EOR procedure is executed. Each product is over-subscribed: 135 tranches were bid on Product-1 which has a tranche target of 100, and 112 tranches were bid on Product-2 which has a tranche target of 100.

The announced price for Product-1 will be reduced from $75.00 to $72.50 for round 2. The announced price for Product-2 will be reduced from $82.00 to $78.60 for round 2.

BidderA will have eligibility of 55+85 = 140 tranches for round 2, and BidderB will have eligibility of 80+27 = 107 tranches for round 2.

Round 2

At the announced prices for round 2, BidderA bids 40 tranches and 85 tranches on Product-1 and Product-2, respectively. Thus, BidderA reduced its tranches bid on Product-1 from 55 to 40 tranches. BidderB bids 50 tranches and 57 tranches on Product-1 and Product-2, respectively. Thus, BidderB switched 30 tranches from Product-1 to Product-2.

When the round closes the EOR procedure is executed. Product-1 is under-subscribed by 10 tranches: only 90 tranches bid against the tranche target of 100 tranches: BidderA's bid represents a reduction in its eligibility by 15 tranches, while BidderB's bid maintained its eligibility. Thus, 10 of the 15 eligibility reduction tranches of BidderA are rolled back on Product-1. Those 10 tranches are priced at the announced price for Product-1 at which they were bid in round 1: $75.00. The announced price for Product-1 will remain at $72.50 for round 3.

Product-2 is over-subscribed by 42 tranches. The announced price for Product-2 will be reduced from $78.60 to $76.10 for round 3.

BidderA will have eligibility of 50+85 = 135 tranches for round 3 (including the 10 tranches rolled back on Product-1), and BidderB will have eligibility of 50+57 = 107 tranches for round 3.

Round 3

At the announced prices for round 3, BidderA bids 99 tranches and 36 tranches on Product-1 and Product-2, respectively. Thus, BidderA is switching 49 of the tranches bid from Product-2 to Product-1. BidderB bids 50 tranches and 35 tranches on Product-1 and Product-2, respectively. Thus, BidderB is reducing its tranches bid on Product-2 from 57 to 35 tranches.

When the round closes the EOR procedure is executed. Product-1 is over-subscribed by 49 tranches. Product-2 is under-subscribed by 29 tranches: only 71 tranches bid against the tranche target of 100 tranches: BidderA's bid maintained its eligibility while BidderB's bid represents a reduction in its eligibility by 22 tranches. Thus, all 22 of the eligibility reduction tranches of BidderB are rolled back on Product-2. Those 22 tranches are priced at the announced price for Product-2 at which they were bid in round 2: $78.60. Even after rolling back those 22 eligibility reduction tranches of BidderA, Product-2 still is under-subscribed — by 7 tranches. So 7 tranches that BidderA had switched from Product-2 to Product-1 are rolled back to Product-2. Those 7 tranches are priced at the announced price for Product-2 at which they were bid in round 2: $78.60.

After rolling back 7 tranches from Product-1 to Product-2 for BidderA, BidderA still has increased the number of tranches it is bidding on Product-1: from 50 tranches bid in round 2 (10 tranches at $75.00 and 40 tranches at $72.50) to 92 tranches bid in round 3 (10 tranches at $75.00 and 82 tranches at $72.50). Product-1 is over-subscribed as a result, so higher-priced tranches in Product-1's bid stack can be removed. All 10 of BidderA's higher-priced tranches are removed from Product-1's bid stack, and these 10 tranches become BidderA's free eligibility for round 4. In round 4, BidderA can bid any of the 10 tranches on any product, but to the extent those 10 tranches are not bid on a product in round 4, those free eligibility tranches and their associated eligibility for BidderA will be permanently removed from the auction after round 4.

Because Product-1 is over-subscribed, the announced price for Product-1 will be reduced from $72.50 to $70.15 for round 4. Because Product-2 is not over-subscribed, the announced price for Product-2 will remain at $76.10 for round 4.

BidderA will have eligibility of 82+43+10 = 135 tranches for round 4, and BidderB will have eligibility of 50+57 = 107 tranches for round 4 (including the 22 tranches rolled back on Product-2).

Round 4

At the announced prices for round 4, BidderA bids 46 tranches and 43 tranches on Product-1 and Product-2, respectively. Thus, BidderA reduced its tranches bid on Product-1 from 82 to 46 tranches. BidderB bids 32 tranches and 57 tranches on Product-1 and Product-2, respectively. Thus, BidderB reduced its tranches bid on Product-1 from 50 to 32 tranches.

When the round closes the EOR procedure is executed. Product-1 is under-subscribed by 22 tranches: only 78 tranches bid against the tranche target of 100 tranches: BidderA's bid represents a reduction in its eligibility by 36 tranches, while BidderB's bid represents a reduction in its eligibility by 18 tranches. Of the 54 fewer tranches bid on Product-1, 36 were eligibility reductions from BidderA and 18 were eligibility reductions from BidderB. Of those 54 fewer tranches bid, 100-78 = 22 tranches need to be rolled back on Product-1. The selection of which tranches are rolled back is done by assigning random numbers tranche by tranche (not bidder by bidder) to each of the 54 fewer tranches bid on Product-1. On average, the selection of the rolled back tranches will be proportional based on the number of tranches by which each bidder reduced its bid on the product. Thus, if the assignment of random numbers and selection of rolled back tranches were repeated many times, the number of rolled back tranches for BidderA on Product-1 would be expected to be 15 on average or (82-46)/(132-78)*(100-78) = 36/54*22, rounded, and the number of rolled back tranches for BidderB on Product-1 would be expected to be 7 on average: (50-32)/(132-78)*(100-78) = 18/54*22, rounded.

Auction Close

After the rollback is done for Product-1, it is determined that no product is over-subscribed and no bidder has free eligibility tranches. Thus, the criteria are met for closing the auction.

Product-1's bid stack has tranches bid at $72.50 and tranches bid at $70.15. So Product-1's clearing price is the higher of the two, or $72.50. BidderA wins 61 tranches and BidderB wins 39 tranches for Product-1. All 100 tranches procured for Product-1 are paid the price of $72.50.

Product-2's bid stack has tranches bid at $78.60 and tranches bid at $76.10. So Product-2's clearing price is the higher of the two, or $78.60. BidderA wins 43 tranches and BidderB wins 57 tranches for Product-2. All 100 tranches procured for Product-2 are paid the price of $78.60.

Example 3. Round by Round Bidding with Pre-EOR and Post-EOR Results

	Product-1					Product-2					Next-Round Eligibility	
Round	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Free	Total
1	$75.00					$82.00						
Pre-EOR		100	135		35		100	112		12		
BidderA			55	@ $75.00				85	@ $82.00		—	140
BidderB			80	@ $75.00				27	@ $82.00		—	107
Post-EOR		100	135		35		100	112		12		
BidderA			55	@ $75.00				85	@ $82.00		—	140
BidderB			80	@ $75.00				27	@ $82.00		—	107
2	$72.50					$78.60						
Pre-EOR		100	90		(10)		100	142		42		
BidderA			40	@ $72.50				85	@ $78.60		—	125
BidderB			50	@ $72.50				57	@ $78.60		—	107
Post-EOR		100	100		0		100	142		42		
BidderA			50	10 @ $75.00 40 @ $72.50				85	@ $78.60		—	135
BidderB			50	@ $72.50				57	@ $78.60		—	107

Round	Product-1					Product-2					Next-Round Eligibility	
	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Free	Total
3	$72.50					$76.10						
Pre-EOR		100	149		49		100	71		(29)		
BidderA			99	10 @ $75.00 89 @ $72.50				36	@ $76.10		—	135
BidderB			50	50 @ $72.50				35	@ $76.10		—	85
Post-EOR		100	132		32		100	100		0		
BidderA			82	@ $72.50				43	7 @ $78.60 36 @ $76.10		10	135
BidderB			50	@ $72.50				57	22 @ $78.60 35 @ $76.10		—	107
4	$70.15					$76.10						
Pre-EOR		100	78		(22)		100	100		0		
BidderA			46	@ $70.15				43	7 @ $78.60 36 @ $76.10		—	89
BidderB			32	@ $70.15				57	22 @ $78.60 35 @ $76.10		—	89
Post-EOR		100	100		0		100	100		0		
BidderA			61	15 @ $72.50 46 @ $70.15				43	7 @ $78.60 36 @ $76.10		—	104
BidderB			39	7 @ $72.50 32 @ $70.15				57	22 @ $78.60 35 @ $76.10		—	96

	Product-1				Product-2				
	Clearing Price	Tranche Target	Tranches Won		Clearing Price	Tranche Target	Tranches Won		Tranches Won
Results	$72.50	100	100		$78.60	100	100		100
BidderA			61				43		104
BidderB			39				57		96

Attachment D

Part 1 Application

Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions

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Name of Applicant

PART 1 APPLICATION
Duke Energy Ohio, Inc.'s CBP Auctions

INSTRUCTIONS

There are two parts to the application process.

- **Part 1 Application:** Applicants submit the Part 1 Application and all documents required therein to become Qualified Bidders for the Competitive Bidding Process ("CBP").
- **Part 2 Application:** Qualified Bidders for the CBP submit the Part 2 Application, in which they will agree to comply with the Bidding Rules and Communications Protocols, accept the terms of Duke Energy Ohio, Inc.'s ("Duke Energy Ohio") Master Standard Service Offer Supply Agreement ("Master SSO Supply Agreement"), make certifications regarding associations and handling of Confidential Information, submit Indicative Offers, and post Pre-Bid Security to become Registered Bidders.

This document is the Part 1 Application.

For further information, consult the Information Website.

Unless otherwise defined, capitalized terms in this document have the definitions provided in either the Glossary or the Master SSO Supply Agreement.

PART 1 APPLICATION SUBMISSION

To become a Qualified Bidder for the CBP, Applicants must submit the following to the Auction Manager electronically through the Secure Application Process and in hardcopy format to the address below by the Part 1 Application deadline:

- **Electronic Application Form:** Completed Part 1 Application;
- **Hardcopy Application Form:** One (1) printed Part 1 Application with original signatures and the name of the Applicant on every page of the Application;

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Name of Applicant

- **Supporting Documentation:** One (1) copy of required financial statements, and other requested documents supporting the Application as specified in Appendix A; and

- **Changes to Credit Documents (Optional):** One (1) copy of any changes to the templates for Letter of Credit, Letter of Intent to Provide a Guaranty, Letter of Reference, alternate guaranty and other credit support documents ("Credit Documents"). Any suggested modifications to the templates for the Credit Documents must be provided to the Auction Manager in an electronic, red-lined version.

Modifications to the Credit Documents and any other inquiries may be directed to the Auction Manager by email at duke-energyauctionmanager@crai.com. Inquiries also can be made through the Information Website.

The completed Part 1 Application and modifications to the Credit Documents MUST be received by the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time on the Part 1 Application due date as posted in the timeline on the Information Website.

Send hardcopies to:

Auction Manager
c/o Robert Lee, Principal
CRA International, Inc.
John Hancock Tower
200 Clarendon Street, T-33
Boston, MA 02116-5092

Phone: 617-425-3365

Photocopies and facsimiles of completed forms will not be accepted under any circumstances. It is in your interest to seek independent legal and financial advice before deciding to participate in the CBP.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

CONFIDENTIALITY OF PART 1 APPLICATION SUBMISSIONS

All Applicants are required to comply with the Communications Protocols.

Confidentiality requirements specific to the Part 1 Application are reiterated below.

CONFIDENTIALITY OF CREDIT INFORMATION

Any information and materials that you submit in this Part 1 Application may be provided on a confidential basis to the Auction Manager Team and the Public Utilities Commission of Ohio ("PUCO" or "Commission") and their representatives. Information that you provide in this Part 1 Application, except for information regarding bidding agreements provided in Section 1.11, may be provided on a confidential basis to representatives of Duke Energy Ohio for a creditworthiness assessment.

CONFIDENTIALITY OF QUALIFIED BIDDERS

Upon completion of the Part 1 Application process, the names of Qualified Bidders will be provided to other Qualified Bidders on a confidential basis. As part of this Part 1 Application, you are required to certify that you agree to release your name to other Qualified Bidders and that you will keep confidential the list of Qualified Bidders that is provided to you.

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Name of Applicant

PART 1 APPLICATION
Duke Energy Ohio, Inc.'s
CBP Auctions

This Part 1 Application is the application form to become a Qualified Bidder in Duke Energy Ohio's CBP.

I. Background Information

Before completing this form, please review the Bidding Rules document for this CBP ("Bidding Rules"), the Master SSO Supply Agreement, the Communications Protocols, and other documents posted on the Information Website so that you understand the conditions under which the CBP will be conducted.

II. Confirmation of Receipt

Online delivery: If your Part 1 Application is submitted online, an email will be sent to the Authorized Representative and Delegate to confirm receipt of the completed online application. You will still be required to submit a copy of the Part 1 Application with original signatures via post or hand delivery.

Delivery by Post or Hand Delivery: If your Part 1 Application is received only by post or hand delivery, an email will be sent to the Authorized Representative and Delegate to confirm receipt.

III. Incomplete Applications

If your Part 1 Application is incomplete or requires clarification, the Auction Manager will send a deficiency notice to your Authorized Representative by email. You will have until 12:00 p.m. noon prevailing Eastern Time on the Part 1 Application Due Date, or until 5:00 p.m. prevailing Eastern Time on the Business Day following the Business Day during which a deficiency notice is sent to you, whichever comes later, to respond. If you do not correct or adequately explain the deficiency within the time allowed, your Part 1 Application may be rejected and you may be unable to participate in the CBP. All corrections to remedy deficiencies within an Applicant's Part 1 Application must be submitted online. The Authorized Representative needs to sign and date next to the correction(s) to the Part 1 Application and send to the Auction Manager by email to duke-energyauctionmanager@crai.com, followed by hardcopy to the Auction Manager.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

IV. Late Applications

Part 1 Applications received after the stated deadline will NOT be accepted under any circumstances.

V. Rejection of Applications

If your application is rejected, your Part 1 Application and all supporting documents will be returned to you.

VI. Notification to Qualified Bidders

If you become a Qualified Bidder for the CBP, the Auction Manager will send a Notification of Qualification to your Authorized Representative by email after the Part 1 Application Due Date. The Notification of Qualification will also be sent to your Authorized Representative by courier.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

PART 1 APPLICATION FORMS

1.1 Applicant Basic Information

Name of Applicant (Company Name)

Legal Name of Applicant (if different from above)

Place of Incorporation, if applicable

Federal Tax I.D.

D&B DUNS #

Please state whether the Applicant is a corporation, partnership, etc

Years in Business

URL for Applicant's Website

Has the Applicant participated in a prior Duke Energy Ohio, Inc. auction?

If yes, indicate the most recent auction date (month,year):

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.2 Authorized Representative

The Authorized Representative is authorized to represent the Applicant in the CBP. The Authorized Representative will receive all documentation related to the CBP if and when the Applicant becomes a Registered Bidder, including any CBP procedures and Confidential Information required for the submission of bids in any trial auction and in the actual auction. The Authorized Representative must ensure that only authorized persons act on behalf of the Applicant in the CBP. The Authorized Representative is the only person authorized to distribute CBP procedures and Confidential Information and should do so in accordance with the Communications Protocols. The integrity of the CBP depends upon each Authorized Representative safeguarding Confidential Information and passwords used in the CBP. The Auction Manager will communicate exclusively with the Authorized Representative or, if instructed by the Authorized Representative, with a Delegate, as designated in this Part 1 Application.

The person designated below is the Applicant's Authorized Representative.

Last Name | *Given Name(s)*

Title

Street Address

City | *State* | *Zip Code*

Telephone No. | Cell Phone No. | Fax No. | Email Address

Communications with the Authorized Representative for purposes of the Part 1 Application are typically done via email and courier.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

The Applicant hereby acknowledges that any notification or other communication given by the Auction Manager to the Applicant with respect to the Part 1 Application shall be delivered by courier to the address provided above or emailed to the email address above and shall be deemed received by the Applicant at the time of delivery, provided that where delivery occurs after 5:00 p.m. prevailing Eastern Time on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 8:00 a.m. prevailing Eastern Time on the following Business Day.

This certification must be signed by the Authorized Representative and the signature must be notarized.

I hereby certify that I am authorized by the Applicant to serve as Authorized Representative, to represent the Applicant both (i) in the CBP, and (ii) to represent the Applicant for purposes of this Part 1 Application. I further certify that I will be responsible for all Confidential Information regarding the CBP and I will distribute Confidential Information only to other individuals who are authorized to act on behalf of the Applicant according to the Communications Protocols.

______________________________ ______________

Signature of Authorized Representative Date

______________________________ ______________

Signature and Seal from Notary Public Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

The person designated in this section by the Applicant is the Delegate. The Auction Manager will communicate with the Delegate if instructed to do so by the Authorized Representative.

Last Name

Given Name(s)

Company Name

Title

Street Address

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

1.3 Designation of the Applicant's Authorized Representative and Delegate for the CBP

This certification should be signed by an officer or director of the Applicant and should either be notarized or attested with the corporate seal. The person making this certification cannot be either the Authorized Representative or the Delegate.

I certify that I am an officer or director of the Applicant, empowered to undertake contracts and bind the Applicant. I have read and accept the Bidding Rules, the provisions contained in the Master SSO Supply Agreement, and the provisions of the Communications Protocols pertaining to bidders in the CBP.

All the information contained in this Application is true and correct to the best of my knowledge. If there are material changes to the Applicant's information provided in this Part 1 Application, I agree to notify the Auction Manager. I designate ____________________ to act as the Authorized Representative of the Applicant in the CBP and ____________________ to act as Delegate for the Authorized Representative. I am not designating myself as Authorized Representative or Delegate.

______________________________ ____________
Signature of Officer or Director of the Applicant Date

____
Printed Name

____
Title

______________________________ ____________
Signature and Seal from Notary Public Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

1.4 Applicant's Legal Representative in Ohio

Please check here ☐ if the Applicant's Authorized Representative is also the Applicant's Legal Representative. The Applicant's Legal Representative in Ohio must:

- be a legal counsel or a representative agent;
- have an address in Ohio; and
- be authorized and agree to accept service of process on the Applicant's behalf.

The person designated below is the Applicant's Legal Representative or Representative Agent.

Last Name	*Given Name(s)*

Title

Company Name

Street Address

City	*State*	*Zip Code*

Telephone No.	Cell Phone No.	Fax No.	Email Address

This certification must be signed by the Legal Representative and the signature must be notarized.

I agree to serve as Legal Representative of the Applicant. I am authorized and I agree to receive service of process on the Applicant's behalf.

_______________________________ _______________
Signature of Legal Representative Date

_______________________________ _______________
Signature and Seal from Notary Public Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.5 Applicant's Credit Representative

The Applicant's Credit Representative is the Applicant's in-house Credit Representative who can answer questions or provide information about the Applicant's credit with respect to the requirements for the CBP.

The person designated below is the Applicant's Credit Representative.

Last Name

Given Name(s)

Title

Street Address

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

1.6 General Requirements to Participate in the CBP

1. If the Applicant already is a Transmission Customer of PJM who has executed the applicable PJM Agreements as that term is defined in the Master SSO Supply Agreement, please check ☐ and please provide a copy of the signature page of the PJM Agreements.

   Otherwise, please certify that there exist no known impediments for the Applicant to execute the applicable PJM Agreements prior to the start of the supply period.

   ______________________________ ____________
   Signature of Authorized Representative Date

2. If the Applicant already has PJM E-Accounts necessary to provide SSO Supply, please check ☐ and please provide documentation from PJM that the Applicant has a PJM E-Account.

   Otherwise, please certify that there exist no known impediments for the Applicant to establish any PJM E-Accounts necessary to provide SSO Supply and execute the PJM E-Account contract(s) for the supply period by the start of the supply period.

   ______________________________ ____________
   Signature of Authorized Representative Date

3. If the Applicant already is a PJM Market Participant and a Load Serving Entity in PJM, please check ☐ and please provide documentation from PJM that the Applicant is a Market Participant.

   Otherwise, please certify that there exist no known impediments for the Applicant to become a PJM Market Participant and a Load Serving Entity in PJM by the start of the supply period.

   ______________________________ ____________
   Signature of Authorized Representative Date

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Name of Applicant

4. Further, please certify that:

a) The Applicant and its corporate officers have no indictments or pending criminal litigation in any federal, state or local jurisdiction relating to the Applicant;

b) The Applicant and its corporate officers have no criminal convictions;

c) The Applicant has no civil penalties, judgments, sanctions or consent decrees arising out of the violation of any law, rule, regulation or ordinance in connection with its business activities;

d) The Applicant has not had any permit or authority to do business in any jurisdiction revoked or suspended; and

e) The Applicant has never been barred from public bidding or sanctioned for unauthorized disclosure of confidential information.

______________________________ ____________

Signature of Authorized Representative Date

If you are unable to make these certifications in Section 1.6, subsections (1) to (4), please state which certifications you are unable to make and explain all reasons in the space given below.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

1.7 Financial and Credit Information for the Applicant

Please provide the following information for the Applicant:

a) If the Applicant is an SEC registrant, provide the Form 10-K most recently filed with the SEC. If unavailable, please provide most recent audited annual financial information (including a balance sheet, income statement, cash flow statement, and related footnotes);

b) If the Applicant is an SEC registrant, provide the Form10-Q most recently filed with the SEC. If unavailable, please provide most recent quarterly financial information (including a balance sheet, income statement, cash flow statement, and related footnotes);

c) If the Applicant is not an SEC registrant, or if the Applicant is an SEC registrant and both the Form 10-K and Form 10-Q most recently filed with the SEC are not available, please provide most recent annual (audited) and quarterly financial data, including related footnotes, accompanied by an attestation by the Applicant's Chief Financial Officer that the information submitted is true, correct and a fair representation of the Applicant's financial condition;

d) The following financial information along with page references to the relevant financial filings submitted;

	Amount ($)	Financial Document Page Number	Financial Document Source	Date of Financial Document Source
Goodwill				
Shareholders' Equity				
Net Intangible Assets				

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Name of Applicant

e) Applicant's senior unsecured debt ratings from the following three rating agencies if available;

	Rating	Date of the Rating
Moody's		
Standard & Poor's		
Fitch		

If senior unsecured debt ratings are unavailable, but corporate or issuer ratings are available, please provide the corporate or issuer ratings, and the date of the rating, along with documentation showing the name of the rating agency, the type of rating, and the rating of the Applicant:

	Rating	Date of the Rating
Moody's		
Standard & Poor's		
Fitch		

f) If the Applicant has not been incorporated or otherwise formed under the laws of the United States, the Applicant is asked to provide in addition to a)-f) above:

i. A legal opinion acceptable to Duke Energy Ohio of counsel qualified to practice in the foreign jurisdiction in which the Applicant is incorporated or otherwise formed that the Master SSO Supply Agreement will become the binding obligation of the Applicant in the jurisdiction in which it has been incorporated or otherwise formed.

ii. Any additional information that the Applicant wishes to give that could provide comparable credit assurances to those that are provided by other Applicants that have been incorporated or otherwise formed under the laws of the United States.

An Applicant that has not been incorporated or otherwise formed under the laws of the United States and that does not provide this information or any

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Name of Applicant

information that could provide comparable assurances of creditworthiness will be required to post the maximum Pre-Bid Security with its Part 2 Application.

Further, if such Applicants become SSO Suppliers, they will be required to submit additional documents as detailed in Article 5 of the Master SSO Supply Agreement, including:

- A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the SSO Supplier is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the SSO Supplier in the jurisdiction in which it has been incorporated or otherwise formed;
- The sworn certificate of the corporate secretary (or similar officer) of such SSO Supplier that the person executing the Agreement on behalf of the SSO Supplier has the authority to execute the Agreement and that the governing board of such SSO Supplier has approved the execution of the Agreement; and
- The sworn certificate of the corporate secretary (or similar officer) of such SSO Supplier that the SSO Supplier has been authorized by its governing board to enter into agreements of the same type as the Master SSO Supply Agreement.

Is the Applicant and/or its parent:

	Applicant		Parent	
	Yes	No	Yes	No
Operating under federal bankruptcy laws or bankruptcy laws in any jurisdiction?	☐	☐	☐	☐
Subject to pending litigation or regulatory proceedings (in state court, or in federal court, or from regulatory agencies, or in any other jurisdiction) which could materially impact the Applicant's and/or parent's financial condition?	☐	☐	☐	☐
Subject to collection lawsuits or outstanding judgments that could impact solvency?	☐	☐	☐	☐

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

Please provide a statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative, regulatory (State, FERC, SEC or DOJ) investigations and any other matters relating to financial or operational status for the past three years that arise from the sale of electricity or natural gas, or that materially affect current financial or operational status.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

1.8 Guarantor Information

The Guarantor information is required only if the Applicant expects to have a third party act as a Guarantor should the Applicant become an SSO Supplier.

Please check here ☐ if this section does not apply to you because you will not have a third party act as a Guarantor and proceed to the next section.

Basic Information for the Guarantor

Name of Guarantor

Legal Name of Guarantor (if different from above)

Place of Incorporation, if applicable

Federal Tax I.D.

D&B DUNS #

Please state whether the Guarantor is a corporation, partnership, etc

Years in Business

Guarantor's Contact Information

Last Name

Given Name(s)

Title

Email Address

Street Address

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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Name of Applicant

The Guarantor's Credit Representative

The Guarantor's in-house Credit Representative is the individual who can answer questions or provide information about the Guarantor's credit with respect to the requirements for the CBP.

The person designated below is the Guarantor's Credit Representative.

Last Name ____________________ *Given Name(s)* ____________________

Title ____________________

Street Address ____________________

____

City ____________________ *State* ____________________ *Zip Code* ____________________

Telephone No. ____________ Cell Phone No. ____________ Fax No. ____________ Email Address ____________

Please provide the following information for the Guarantor:

a) If the Guarantor is an SEC registrant, provide the Form 10-K most recently filed with the SEC. If unavailable, please provide most recent audited annual financial information (including a balance sheet, income statement, cash flow statement, and related footnotes);

b) If the Guarantor is an SEC registrant, provide the Form 10-Q most recently filed with the SEC. If unavailable, please provide most recent quarterly financial information (including a balance sheet, income statement, cash flow statement, and related footnotes);

c) If the Guarantor is not an SEC registrant, or if the Guarantor is an SEC registrant and both the Form 10-K and Form 10-Q most recently filed with the SEC are not available, please provide most recent annual (audited) and

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Name of Applicant

quarterly financial data, including related footnotes, accompanied by an attestation by the Guarantor's Chief Financial Officer that the information submitted is true, correct and a fair representation of the Applicant's financial condition;

d) The following financial information along with page references to the relevant financial filings submitted;

	Amount ($)	Financial Document Page Number	Financial Document Source	Date of Financial Document Source
Goodwill				
Shareholders' Equity				
Net Intangible Assets				

e) Guarantor's senior unsecured debt ratings from the following three rating agencies if available;

	Rating	Date of the Rating
Moody's		
Standard & Poor's		
Fitch		

If senior unsecured debt ratings are unavailable, but corporate or issuer ratings are available, please provide the corporate or issuer ratings, and the date of the rating, along with documentation showing the name of the rating agency, the type of rating, and the rating of the Guarantor:

	Rating	Date of the Rating
Moody's		
Standard & Poor's		
Fitch		