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. 14-841-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. 14-842-EL-ATA**

DIRECT TESTIMONY OF

LAEL CAMPBELL

ON BEHALF OF INTERVENORS

CONSTELLATION NEWENERGY, INC.

AND

THE RETAIL ENERGY SUPPLY ASSOCIATION

September 26, 2014

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I. INTRODUCTION

A. IDENTIFICATION OF WITNESS

Q 1. Please state your name and your business address.

A 1. My name is Lael Campbell, and my business address is 101 Constitution Avenue NW, Washington, DC 20001.

Q 2. By whom are you employed?

A 2. I am employed by Exelon Corporation.

Q 3. Please describe your position with Exelon Corporation.

A 3. I am Director, State Government and Regulatory Affairs for Exelon Corporation and for Constellation, an Exelon Corporation. In this role, I am responsible for advocating for and implementing regulatory and legislative policies for Exelon Corporation's retail marketing subsidiary, Constellation NewEnergy, Inc., and its wholesale marketing affiliate Exelon Generation Company, LLC, which owns and markets non-nuclear power generation in Ohio, Pennsylvania, Illinois, and Michigan.

Q 4. Please describe your educational and business experience.

A 4. I earned a Bachelor of Arts from Dickinson College in Carlisle, PA in 1994 and a Juris Doctorate from Washington and Lee University School of Law in 1998. I have been with Exelon and Constellation for over six years. Prior to my current role, I served as Assistant General Counsel with Exelon where I was responsible for providing legal and regulatory support to Exelon Generation's wholesale trading and marketing business. Before that, I served as Senior Regulatory Counsel for Constellation, supporting the regulatory activities of the Constellation NewEnergy, Inc., retail business, in addition to Constellation's wholesale market activities before state and federal regulatory agencies across the country. My previous experience prior to joining Constellation includes over five years as a Senior Trial Attorney at the U.S. Commodity Futures Trading Commission, where I represented the agency in numerous matters relating to physical and financial commodity markets, including energy markets.

Q 5. On whose behalf are you testifying?

A 5. I am testifying today on behalf of the Retail Energy Supply Association ("RESA") and Constellation NewEnergy, Inc., who is a member of the RESA (collectively referred to hereafter as "Suppliers").

Q 6. Please describe RESA and indicate its interest in this proceeding.

A 6. RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure. Several RESA members are certificated as competitive retail electric service ("CRES") providers and active in the Ohio retail electric market. Specifically, some RESA members currently provide CRES to both residential and commercial retail customers in the Duke Energy Ohio service area.

The testimony that I am presenting represents the position of RESA as an organization, but may not represent the views of any particular RESA member. RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy

Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.

Q 7. Please provide some background on Constellation NewEnergy, Inc.

A 7. *Constellation NewEnergy, Inc.* ("CNE"), a subsidiary of Exelon Generation, provides electricity and/or energy-related services to retail customers in Ohio as well as in every other state in the Continental U.S. and the District of Columbia, serving more than 150,000 business customers and one million residential customers nationwide. CNE holds a CRES license from the PUCO to engage in the competitive sale of electric service to retail customers in Ohio, and currently provides service to over customers in every customer class in Ohio.

Q 8. Has CNE participated in Ohio's electric market development proceedings?

A 8. Yes. CNE has been an active participant before the Commission and the General Assembly for a number of years. CNE was an ardent advocate in the wake of the passage of Senate Bill 221 for the use of a competitive procurement process as a better means for setting the rates that would be charged to Standard Service Offer ("SSO") customers, and has participated in every Electric Security Plan ("ESP") and Market Rate Offer case since that time. CNE also participated in the prior Duke ESPs.

Q 9. Has RESA participated in Ohio's electric market development proceedings?

A 9. Yes, since 2010, RESA has intervened and participated in each of the most recent ESPs filed by the EDUs, including Duke's previous ESP. RESA has also participated in the Commission rulemaking and workshops, including the Commission's investigation into the retail electric market (Case No. 12-3151-EL-COI), and some of the same issues are part of this proceeding.

Q 10. What is the purpose of your testimony?

A 10. I developed my testimony and recommendations based upon that history and longstanding advocacy for the advancement of competitive markets, as well as a desire to effectuate the goals of Section 4928.02 of the Ohio Revised Code to establish Ohio's policy to support retail competition and avoid anti-competitive subsidies.[1] The second electric security plan ("ESP") implemented by Duke was the product of an uncontested stipulation which ushered in many advancements in the development of the retail competitive market in Duke. Duke set about a plan of divesting its legacy generation, instituting an auction-based procurement policy, and developing a web-based data exchange interface between CRES providers and the utility. Duke also became the first EDU to institute purchase of receivables. Duke deserves credit for not only taking these major steps towards development market, but implementing them in accordance with the implementation timetable established in the November 2011 Opinion and Order adopting the Stipulation. Today, the success of the Duke ESP II can be seen in the impressive switching rates from the beginning to the latest Commission monitoring report for the Duke ESP II.

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[1]Section 4928.02 of the Ohio Revised Code provides, in relevant part, the following:

> It is the policy of this state to do the following throughout this state: ...(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;... [and] (H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates[.]

COMPARISON OF DUKE CUSTOMER SWITCHING RATES BY CLASS

Quarter Ending	Class	Switch Rate
12/31/2011	Residential	30.86%
6/30/2014	Residential	51.01%
12/31/2011	Commercial	44.19%
6/30/2014	Commercial	50.48%
12/31/2011	Industrial	62.62%
6/30/2014	Industrial	68.55%

("Summary of Electric Customer Choice Switch Rates in Terms of Sales," The Public Utilities Commission of Ohio's website, at *http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates/#customers*, accessed September 23, 2014.)

The ESP III application for the most part continues the bold steps taken by Duke in ESP II, but unfortunately proposes a number of amendments which if implemented would compromise the retail market in the Duke service territory. My testimony will address three negative proposals contained in the ESP III application: 1) the Price Stabilization Rider ("Rider PSR"), which institutes a non-bypassable ratepayer guarantee for the Ohio Valley Electric Corporation's Ohio and Indiana power plants; 2) the Supplier Cost Reconciliation Rider ("Rider SCR"), which in the future could saddle nonstandard-service customers with the cost of standard service generation; and 3) an early termination of ESP III at Duke's discretion.

B. SUMMARY OF POSITION

Q 11. Please summarize the Suppliers' position in this proceeding.

A 11. First, there are a number of problems associated with the proposed Rider PSR as it runs counter to the tremendous progress that the State of Ohio, the Commission, and Duke have made towards the transition to full retail and wholesale competition. Rider PSR would collect a non-bypassable surcharge from all customers to provide cost recovery on Duke's ownership interest in Ohio Valley Electric Corporation ("OVEC") generation entitlement. Under Duke's proposal, it will sell its OVEC entitlements into the PJM market, and the non-bypassable Rider PSR will either credit or charge both shopping and non-shopping customers the difference between the cost of the OVEC generation and the price the generation receives in the market. The concerns with Rider PSR are not just limited to the proposed treatment of Duke's share of the OVEC entitlement, but extend to the request that Duke be permitted to expand Rider PSR to include additional purchase power agreements ("PPAs").

Duke claims that Rider PSR will serve as a "hedge" to market volatility. To the extent Rider PSR will provide a "hedge," as will be discussed below, the recipient of that hedge is Duke, not the Ohio consumers who will be paying a higher price for electricity than the competitive market could otherwise offer. As such, Duke has presented an alternative that will likely increase costs to both shopping and non-shopping customers, with the benefits going solely to Duke.

Second, even if Rider PSR is to be approved to address the OVEC entitlement issue, Duke's proposal to potentially include additional PPAs under Rider PSR must be rejected. Any additional PPAs that potentially could be added to Rider PSR could effectively erase all progress to date on the path toward robust competition in the Duke service territory and the State of Ohio. Allowing above-market subsidies for generation units to be embedded in non-bypassable surcharges to shopping customers would establish a bad policy precedent. Any additional ratepayer guarantee to any power plants is counter to the progress made to date on the path toward robust competition in the Duke service area and the State of Ohio.

Third, Duke has requested the continuation of its Rider SCR. Rider SCR was a negotiated item included in the Stipulation in Duke's last ESP (Case Nos. 11-3549-EL-SSO et al.), which recovers generation costs for the SSO. Rider SCR becomes non-bypassable if there are too few SSO customers left to pay the full cost of their service. At the time of the Stipulation in 2011, the Commission had not ruled on whether a discrete generation cost for SSO service could be imposed on the classes of customers who do not take SSO service. The Suppliers request that the Commission no longer allow an automatic nonbypassable charge simply because of shortfalls in the SSO revenue stream. If there are irreversible shortfalls in the SSO program, Duke at that time should make an application are present a solution that is in the public's best interest.

Fourth, the proposed Unilateral Termination "right" of Duke must be rejected as inequitable and creating uncertainty that will be disruptive to customers, suppliers and the competitive market.

Finally, the Suppliers support Duke's divestiture of its legacy generation and the use of competitive auctions to meet its requirements for SSO supply. The Suppliers also agree with Duke's decision to include the PIPP supply as part of the auctions, rather than having it privately placed.

II. CERTAIN ELEMENTS OF DUKE'S ESP SHOULD BE APPROVED

Q 12. Does Duke's ESP continue the transition to a fully competitive retail and wholesale market?

A 12. Yes, in certain respects it does. Duke continues to rely upon a competitive procurement process for the purchase of electricity for customers that do not choose to take service from a CRES Provider. The Commission has taken great strides over the last few years to transition all of the Ohio EDUs towards a fully competitive retail and wholesale market. Duke has played a material role in the success of the transition thus far. For example, Duke set about a plan of divesting their legacy generation, instituting an auction-based procurement policy, and developing a web-based data exchange interface between CRES providers and the utility. Duke also became the first electric distribution utility to institute purchase of receivables. Duke expands on these developments by including PIPP supply as part of the auctions, rather than having it privately placed. In this proceeding, the Commission should support steps such as these that continue down that path to a fully competitive market.

III. THE COMMISSION SHOULD ELIMINATE RIDER PSR

A. NON-BYPASSABLAE GENERATION RIDERS SHOULD BE REJECTED

Q 13. Please describe your understanding of Duke's OVEC entitlement and the proposed Rider PSR.

A 13. I understand that Duke is entitled to a 9% share of the OVEC power participation benefits and requirements. Duke is proposing to sell its share of the OVEC entitlement into the PJM market, and to include the net benefit of those revenues in Rider PSR, less any costs associated with its share of the OVEC entitlement. The Application, however, does not provide any quantification of those costs. Instead, Duke expects retail customers, including shopping customers, to simply write a blank check. Duke has also indicated that Rider PSR is to be used for future PPAs, or similar products, that the Commission may approve.

Q 14. How does Duke plan to implement Rider PSR?

A 14. Duke's proposed Rider PSR is a non-bypassable generation-related charge.

Q 15. Please describe what you mean by "Non-bypassable Generation-Related Charge."

A 15. A non-bypassable generation-related charge is a fee or charge that the customer is required to pay to the utility regardless of whether the customer receives generation service from a CRES provider or the utility. Therefore customers are held captive to non-bypassable charges because the charges cannot be avoided by switching to a CRES provider.

Q 16. Should all charges be bypassable when a customer takes service from a CRES provider?

A 16. No, only those costs associated with the service they receive from a CRES provider should be bypassable. This prevents customers from having to pay the utility for services they no longer and do not wish to receive. For example, services which are distribution-related or non-generation supply-related should continue to be paid by all customers regardless of whether they choose to select a CRES provider or remain with the utility. Customers should only pay for the costs they cause from the services that they purchase.

Q 17. How do non-bypassable charges potentially cost customers more when their supply cost is lower than the utility SSO supply cost?

A 17. It is fairly simple. When a customer takes supply from a CRES provider, the customer is receiving all of the generation-related service from that company. The customer is no longer taking generation-related service from the utility. If a shopping customer is forced to continue to pay the utility for generation-related supply charges plus pay the CRES provider for generation service, the customer is effectively paying twice for the same service. Paying the utility for a service the customer is already receiving from the CRES provider could cause the customer to pay more for electric power than if the customer had not switched to the CRES provider even if the CRES supplier's generation is at a lower cost than the SSO. It also results in the CRES provider served customers effectively paying for generation it does not use. It is difficult to reconcile from a policy perspective why it is in the best interests of CRES provider served customers to continue to financially support unneeded generation.

Q 18. Has the General Assembly addressed the issue of whether generation-related expenses can be collected in a utility distribution fee?

A 18. Yes, in Senate Bill 221, the General Assembly amended Section 4928.02(H), Revised Code, which addresses anti-competitive subsidies by specifically: "...prohibiting the recovery of any generation-related costs through distribution or transmission rates." The clear intent articulated by the General Assembly is foundational to a thriving competitive retail market in Ohio, but Duke's Rider PSR, which is a non-bypassable generation-related rider, appears to be in conflict with this statutory provision.

Q 19. What is the effect on the competitive retail market when shopping customers are required to pay the utility for generation services they do not receive?

A 19. Making shopping customers pay Duke for generation service that they do not receive from Duke has the potential to destroy the development of the competitive retail market, and in fact was a major contributing factor in the collapse of retail competition and governmental aggregation programs in other Ohio service territories in 2005, where utility rate subsidy programs artificially lowered SSO prices compared to the competitive market. The overall result puts Ohio at a competitive disadvantage, as businesses will face unnecessarily higher energy costs and receive no benefit from Rider PRS costs.

Q 20. Are there specific generation-related costs and charges that Duke seeks to impose on customers regardless of whether they actually purchase electric generation service from Duke?

A 20. Yes, simply put, Rider PSR imposes generation-related, non-bypassable charges or credits based on the sale of generation. Duke will be charging customers for the cost, if any, from the OVEC generation, and the possibility that OVEC generation may produce a gain does not change the fact that it is generation risk. Requiring customers who purchase electricity from CRES providers to pay Duke for its generation losses is contrary to Ohio law, fundamentally unfair, and anti-competitive. The imposition of non-bypassable riders to recover generation-related costs inappropriately places the financial risks of Duke's business decisions squarely on the shoulders of its customers. Business risks for generation-related costs properly belong with Duke.

Furthermore, generation-related, non-bypassable surcharges can thwart competition and can eliminate any economic advantage from shopping. Rider PSR will prohibit customers from being able to choose the lowest cost source of generation service and could mean higher costs for electricity customers and businesses that provide jobs in Ohio. The Commission has the ability to alter the proposed ESP, and should do so by rejecting the proposed Rider PSR.

B. RECOVERY OF OVEC ENTITLEMENT SHOULD BE VIA ALTERNATIVE MEANS

Q 21. What does Duke describe as the purpose of its PSR Rider as related to OVEC?

A 21. Witness Henning claims that the proposed Rider PSA is "a partial hedge structure that involves Duke Energy Ohio's nine percent interest in The Ohio Valley electric Corporation (OVEC), but could be expanded to include similar financial arrangements with other generators to provide further protection for Ohio customers." (Henning, Dir., p. 10: 5-8.)

Q 22. Has Duke indicated what its allocated costs for OVEC are?

A 22. The Application did not supply such information, but in discovery the Suppliers did ask for the historic information on what OVEC's weighted average cost per MWh was. There was an increase of $21.96 or 44% increase over just a five-year period. Further, the OVEC power costs do not compare favorably with the auction results for the standard service generation auctions which commenced in 2011. A comparison of the OVEC power costs and the SSO auctions prices is summarized below:

Year	Weighted Average Cost of OVEC power	Time of Auction	Auction Clearing Price	Delivery Period
2009	$49.82 per MWh	N/A	N/A	N/A
2010	$48.82 per MWh	N/A	N/A	N/A
2011	$56.62 per MWh	December 2011	$49.92 per MWh $51.10 per MWh $57.08 per MWh	January 2013 - May 2013 January 2012 - May 2014 January 2012 - May 2015
2012	$69.80 per MWh	May 2012 November 2012	$52.14 per MWh $50.56 per MWh	June 2013 – May 2015 June 2013 – May 2015
2013	$71.78 per MWh	May 2013 November 2013	$54.16 per MWh $50.11 per MWh	June 2013 – May 2015 June 2013 – May 2015

(See, RESA INT-01-006, copy attached as Attachment LC-1, and Case No. 11-6000-EL-UNC)

Q 23. What is the value of Rider PSR to customers taking supply from CRES providers?

A 23. Rider PSR will raise prices for Ohio electricity customers while providing little benefit in return. While Duke claims that Rider PSR will provide a market volatility hedge to customers, it is really Duke, not Ohio customers, that is being shielded from risk. Duke is the only party that will be guaranteed a return from the Rider PSR, in contrast to any customer credit from Rider PSR which is contingent on the whims of the market and speculation that wholesale electricity prices will someday exceed the high cost of the OVEC PPA. To the extent that Rider PSR provides any "rate stabilizing" benefit to Ohio consumers, it does so at the high price necessary to subsidize the out-of-the-market OVEC entitlement. The entity that directly benefits from Rider PSR is Duke because it stabilizes its revenue stream and return, from the OVEC generation plant.

Q 24. If a customer wants to hedge its generation costs, are there other options available to the customer?

A 24. Yes, CRES providers may have a number of different offerings for customers, geared toward the customer's goals and objectives, including their risk tolerance or desire for a market hedge. Without a non-bypassable Rider PSR, competitive suppliers can provide retail customers with a true fixed-price generation product. For example, CNE has posted on the Commission's Apples to Apples chart an offer to residential customers in Cincinnati for 6.39¢ per kilowatt-hour ("kWh") fixed for three years. Those customers know for the next three years exactly what the cost of competitive power will be. The value of that certainty is erased in part if such customers must be charged the OVEC generation losses via Rider PSR.

Q25. Do the Suppliers agree with Duke's approach of retaining the OVEC entitlement at the utility level?

A 25. No. Duke claims that because OVEC generation plants are not directly owned by Duke, Duke has no obligation to transfer its equity interest in OVEC to an affiliate as part of the broader transfer of directly owned assets. (Wathen Dir., p. 11:11-17). The wording of the Stipulation and Recommendation will be addressed in the Suppliers' briefs. Putting aside whether the Stipulation and the subsequent Commission order does in fact commit the Duke to divest the OVEC generation, if the OVEC generation is not being used to supply utility service, and is not dedicated to the Duke customers, there does not seem to be a reason that it should be held by the utility. Duke the utility should not merely hold title to the OVEC entitlement so that it may have a rate payer guarantee.

Q 26. Would an additional PPA under Rider PSR provide any benefits to Ohio customers?

A 26. No. Similar to Duke's claims that Rider PSR and the embedded subsidy to the OVEC entitlement will provide rate stability and serve as a "hedge" to market volatility, any argument that adding an additional PPA is to customers' benefit is equally disingenuous. Any mechanism for potentially recovering any Duke generation-related costs beyond OVEC is just a means of having customers, shopping and non-shopping, pay additional subsidies for out-of-the-money generation units.[2] If Duke is truly interested in including long-term PPAs as a part of the SSO supply portfolio mix for the benefit of customers, any such procurement must be done through a competitive bid process. Any strategy by Duke to subsidize generation undermines the Ohio policymakers' explicit goal for retail

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[2] In light of the recently-announced sale to Dynegy of the Duke Ohio generation portfolio it is unclear what if any other PPA's Duke may include.

competition: to provide customers the right to choose less costly options rather than be captive to one provider's costs. See, e.g., Sections 4928.02(C) and (H), 4928.03, and 4928.06(A) and (B), Revised Code. The Commission should summarily reject any mechanism that allows additional PPAs to be included under Rider PSR.

Q 27. Would an additional PPA under Rider PSR be necessary or appropriate to maintain reliability in Ohio?

A 27. No. Witness Wathen claims that the 2014 polar vortex supports use of Rider PSR. (Wathen Dir., p. 14:9-22). However, because of the robust transmission system linking the Duke zone to the rest of PJM, capacity resources in any part of the 13-state PJM regional transmission organization can be used to support capacity needs in the Duke zone and Ohio as a whole. Even if a bona-fide reliability concern existed, a state-sanctioned subsidy of generation via an embedded non-bypassable surcharge to shopping customers is not the appropriate approach. If reliability truly is an issue, PJM has a process for studying reliability and providing a Reliability Must Run ("RMR") contract for any units determined necessary to maintain for reliability. FERC is looking at the issue of reliability, as well, in its Docket AD14-8, in the wake of significant cold weather events this past winter. In particular, they are assessing adequacy of infrastructure, market compensation models, fuel procurement and diversity, and policy implications or changes that can be made in both the short and long terms. Most recently, in response to events surrounding the January 2014 Polar Vortex, PJM has put forth a proposal for a "Capacity Performance Product" that would impart greater performance and fuel security requirements on generation resources, in particular during extreme weather events. PJM and FERC have the appropriate authority and are well equipped to ensure reliability and to make changes to provide the proper market structure for the interstate market that Ohio's consumers are part of. Duke should continue to work with PJM and FERC to address their concerns.

Q 28. Do you have any other concerns regarding the proposed Rider PSR?

A28. Yes. As will be presented in the Exelon and Constellation NewEnergy, Inc. trial brief recent federal court decisions have found unlawful various state-level efforts to subsidize the development of local power plants as a preemption of FERC's exclusive jurisdiction over the sale of wholesale power in interstate commerce. See PPL Energy Plus v. Solomon, Case No. 13-4330, slip op. (3rd Cir. Sep. 11, 2014) PPL Energy Plus v. Nazgrin, Case No. 13-2419, slip op. (4th Cir. June 2, 2014) and PPL Energy Plus v. Hanna, Civ. Action No. 11-745, 2013 WL 5603896 (Oct. 11, 2013). It is my understanding that the mechanism proposed in these states to provide cost recovery to the generators was nearly identical to the one proposed by Duke under Rider PSR.

IV. <u>RIDER SCR SHOULD NOT CONTINUE IN ITS CURRENT FORM</u>

Q 29. What are the Supplier's Concerns with Rider SCR?

A 29. Duke has requested the continuation of its Rider SCR. Rider SCR was a negotiated item included in the Stipulation in Duke's last ESP (Case Nos. 11-3549-EL-SSO et al.), which recovers generation costs for the SSO. Rider SCR has a provision in it that converts it from being paid only by the SSO customers who receive the generation to all customers becomes when a cost trigger of 10% of the generation cost is reached. As part of an uncontested settlement, Rider SCR was not subjected to hearing or intensive review by the Commission so the Commission at the time of approval was not presented with the consequences of Rider SCR. As of this date, the Rider SCR 10% cost trigger has not been reached and the Rider has not been charged to non-SSO customers. Suppliers do not support the continuance of this provision, which if triggered, will result in a non-bypassable generation charge being paid by shopping customers.

Q30. How do you propose that the Commission address this concern?

A30. The Commission reviewed a similar issue in the Dayton Power and Light ("DP&L") ESP II case (Case Nos. 12-426-EL-SSO et al.). DP&L in that case had proposed a non-bypassable rider for SSO costs when certain specific SSO riders reached certain prescribed deficit levels. That is similar to Duke's Rider SCR, which is triggered when "revenue" from five generation-related riders reaches a deficit trigger. At the DP&L hearing, retail customers, the Staff and suppliers pointed out the ill effects of any non-bypassable trigger for SSO generation costs. The Commission in DP&L rejected DP&L Reconciliation Rider as proposed, but did authorize a bypassable rider for auction-related costs, supplier default costs and carrying costs. The Commission also permitted DP&L to set up a non-bypassable rider, but it could not be effectuated without a specific application to the Commission and Commission approval. The Suppliers believe the Commission should, at a minimum, strike the section entitled "Non-Bypassable Provision" in Rider SCR and indicate that Duke should apply and carry the burden of demonstrating the a non-bypassable rider is the best solution for a irreversible shortfall in SSO revenues.

V. DUKE SHOULD NOT POSSESS A UNILATERAL TERMINATION RIGHT

Q 31. What term does Duke propose?

A 31. Duke proposes a three-year ESP, from June 1, 2015 to May 31, 2018. However, the Application seeks a unilateral "right" to terminate the ESP one year early:

> Duke Energy Ohio expressly reserves the right to terminate its proposed ESP at the conclusion of the second year thereof, or May 31, 2017. Said unilateral right may be exercised in the event there is a substantive change in either Ohio or federal law that affects SSOs or rate plans concerning same. For purposes of this provision, Ohio law includes statutes, rules, regulations, Ohio Supreme Court decisions, and Commission decisions and federal law includes statutes, federal court decisions, rules, regulations, decisions of the Federal Energy Regulatory Commission, and the rules, tariffs, and agreements of PJM Interconnection, L.L.C., or any successor regional transmission operator.
>
> In the event the Company, at its sole discretion, exercises this right to terminate, it will do so by providing notice to the Commission no later than September 1, 2016. The Company will further submit an application for a new SSO to commence June 1, 2017.
>
> Should the proposed ESP terminate early, consistent with this provision, all MSAs pertaining to delivery between June 1, 2017, and May 31, 2018, shall be declared null and void, without recourse by or to any contracting party.

(Application, pp. 16-17)

Q 32. Do the Suppliers have concerns with that provision?

A 32. Yes. The Suppliers strongly oppose the provision, for a number of reasons. First, it lacks statutory authority, and Duke cites to none in its Application. Second, there is no objective criterion by which Duke may avail itself of the provision, or by which the

PUCO would evaluate whether Duke's election of the early termination provision is proper. Third, the lack of certainty regarding the term of the ESP, and the potential outcome if Duke elects to trigger its unilateral termination "right," imposes on customers, CRES providers, SSO suppliers, and both the competitive retail and wholesale markets a high degree of uncertainty and instability.

Q 33. Did Duke provide any objective criteria by which it would be permitted to terminate the ESP a year early?

A 33. No. The Application indicates that the "right" to terminate early is conferred whenever there has been "a substantive change in Ohio law or federal law that affects SSOs or rate plans concerning same." (Application, p. 16) Duke did not provide a witness to address that element of its proposed ESP in any more detail. Through the discovery process, CNE and RESA sought clarification of any objective criteria, or examples of items that would have met the criteria. However, Duke still failed to provide any objective criteria or otherwise provide any examples of circumstances under which Duke would (or potentially could) avail itself of the early termination right. (See, Attachments LC-2 and LC-3, CONSTELL-INT-1-018 and RESA-INT-01-032, respectively)

Q 34. Please describe the importance of objective criteria.

A 34. Certainty is crucial for the competitive environment. Suppliers in both the competitive retail market and the competitive wholesale market are making decisions now concerning their continued commitment to serving customers in Duke's service territory, or bidding into the Duke auction for SSO load, based on this Application and the resulting Commission Order. Vague language that gives Duke almost unfettered discretion to decide on a moment's notice to end the ESP III a year earlier than scheduled creates tremendous uncertainty within the market, which adds risk (and therefore cost) to doing business in Duke's service territory, which could chill competition. The fact that all Master Supply Agreements ("MSAs") pertaining to the final delivery year would be declared null and void, without recourse, would likely stifle participation in the auction for that period.

Q 35. What impact would this unilateral termination have upon retail customers?

A 35. Such a provision would limit the ability of customers to enter into longer term contracts with CRES providers and instill a high degree of instability for those customers who wish to minimize risk over a longer term than two years. Based on the lack of assurance regarding the ESP term, CRES providers may be reluctant to offer any contracts beyond the early termination date. Or, if CRES providers do offer contracts beyond the early termination date, they will necessarily have to build into their costs the possibility that Duke would terminate the ESP early, although CRES providers would not know what construct would then apply. In essence, Duke's early termination clause is creating a new, unhedgeable risk for CRES providers and, by extension, consumers.

Q 36. What would be the effect of an early termination, logistically?

A 36. Duke's Application indicates that it would provide written notice to the Commission not later than September 1, 2016 (Application at 16). There are only nine months between September 1, 2016 and June 1, 2017. Even assuming that Duke filed a new ESP contemporaneously with the notice of termination (which they have not committed to do), it is not a certainty that the Commission would be able to enter a final order in advance of June 1, 2017, given the amount of time that a fully litigated proceeding takes. Even if there was a final order in advance of June 1, 2017, there would still likely be an insufficient period to allow suppliers to make any internal changes to accommodate the new environment. So not only are suppliers exposed to more risk now by virtue of the inclusion of an early termination provision that could go into effect, suppliers (and customers) would face real and immediate risks to their business and operations if Duke actually elected to use that provision.

VI. CONCLUSION AND SUMMARY OF RECOMMENDATIONS

Q 37. Given those conclusions, what are Suppliers' recommendations?

A 37. Exelon recommends that the Commission adopt a modified ESP that contains the following elements:

- **Reject Rider PSR in its entirety.** There is no justification in this case for contemplating any PPAs other than OVEC or creating a non-bypassable rider that would allow for future PPAs. Duke should not be permitted to create a non-bypassable rider for OVEC costs. There are other, more appropriate means of accounting for Duke's OVEC participation than the Duke proposal.
- **Modify the Rider SCR to eliminate the provision that automatically converts Rider SCR into a non-bypassable rider. If the SSO program develops irreversible revenue shortfalls, Duke should at that time should file a new application with a solution that best fits the public interest.**
- **Eliminate Duke's Unilateral "Right" to Terminate the ESP prior to the end of the third year of the ESP.**

By adopting Duke's proposed ESP, with the modifications recommended herein, the PUCO can maintain the progress made to date. Without these recommendations, Duke's

ESP will constitute an unnecessary step backwards from the transition to full competition ordered by the Commission. These anti-competitive elements of the ESP should be eliminated.

Q 38. Does this conclude your testimony?

A 38. Yes, it does.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case (those individuals are marked with an asterisk below). In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 26th day of September 2014 upon all persons/entities listed below:

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Duke Energy Ohio
Case No. 14-841-EL-SSO, 14-842-EL-ATA
RESA First Set Interrogatories
Date Received: August 1, 2014

RESA-INT-01-006

REQUEST:

Please list the weighted average cost per MWh per year that Duke has paid to OVEC for the past five years.

2013

2012

2011

2010

2009

RESPONSE:

Objection. This Interrogatory seeks to elicit information that is irrelevant or not reasonably calculated to lead to the discovery of admissible evidence. The periods at issue in this Interrogatory are immaterial to the periods applicable to the Company's proposal regarding its OVEC entitlement, as set forth in its application. This Interrogatory is thus also unduly burdensome and overly broad. Without waiving said objection, to the extent discoverable, and in the spirit of discovery:

	Weighted Average Cost/MWh
2009	$49.82
2010	$48.87
2011	$56.60
2012	$69.80
2013	$71.78

Note: The rate is calculated with costs that include both the cost of power and the demand charges.

PERSON RESPONSIBLE: As to objection – Legal
As to response – Bryan Dougherty

Duke Energy Ohio
Case Nos. 14-841-EL-SSO, 14-842-EL-ATA
CONSTELLATION First Set Interrogatories
Date Received: September 5, 2014

CONSTELL-INT-01-018

REQUEST:

Please identify any objective criteria by which Duke would assess whether or not a "substantive change" had occurred which would trigger Duke's right to an early termination of the ESP III plan.

RESPONSE:

Objection. This Interrogatory is vague, ambiguous, and unduly burdensome. The question is susceptible to different interpretations and Duke Energy Ohio would have to engage in speculation or conjecture to ascertain the intended meaning of this request. Answering further, because this Interrogatory asks about Duke Energy Ohio's response to future, hypothetical events, the Company would have to engage in speculation or conjecture to provide a response. Answering further, to the extent that this Interrogatory seeks information that would of necessity be based upon the interpretation of future law, rules, orders, or other events, it seeks information subject to attorney-client privilege and attorney work product.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 14-841-EL-SSO, 14-842-EL-ATA
RESA First Set Interrogatories
Date Received: August 1, 2014

RESA-INT-01-032

REQUEST:

a. Identify the objective criteria by which Duke would assess whether or not to terminate the ESP III early.

b. Identify the subjective criteria by which Duke would assess whether or not to terminate the ESP III early.

RESPONSE:

Objection. This Interrogatory is vague, ambiguous, and unduly burdensome. The question is susceptible to different interpretations and Duke Energy Ohio would have to engage in speculation or conjecture to ascertain the intended meaning of this request. Answering further, because this Interrogatory asks about Duke Energy Ohio's response to future, hypothetical events, the Company would have to engage in speculation or conjecture to provide a response. Answering further, to the extent that this Interrogatory seeks information that would of necessity be based upon the interpretation of future law, rules, orders, or other events, it seeks information subject to attorney-client privilege and attorney work product.

PERSON RESPONSIBLE: Legal