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

INITIAL TRIAL BRIEF

BY THE

RETAIL ENERGY SUPPLY ASSOCIATION

December 15, 2014

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I. Introduction

On May 29, 2014, Duke Energy Ohio, Inc. ("Duke" or "Company") filed an application to establish a new electric security plan ("ESP III"), which in accordance with the application would commence June 1, 2015, and end May 31, 2017 or 2018, at the election of Duke.[1]

A. Description of the Retail Energy Supply Association

The Retail Energy Supply Association ("RESA") participated in the prior electric security plan proceedings for Duke,[2] in the prior market-rate offer case for Duke,[3] and was granted intervention as a full party of record in the matter at bar. RESA is a broad and diverse group of 21 retail energy suppliers who share the common vision that competitive energy retail markets deliver a more efficient, customer-oriented outcome than the regulated utility structure. Several RESA members are certificated as Competitive Retail Electric Service ("CRES") providers and are active in the Ohio retail market, including the Duke service territory. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

B. Description of Duke

The status of the electricity market in the Duke service territory is a fundamental and critical factor which must be considered in evaluating multiple aspects of Duke's latest proposed ESP. As of June 30, 2014, 76.62% of the megawatt-hours consumed by Duke customers were supplied by CRES providers in Duke's territory.[4] The remaining 23.38% megawatt-hours are consumed by

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[1] Duke Ex. 1 (Application) at 1.

[2] Duke's prior ESP proceeding was *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 11-3549-EL-SSO et al., Opinion and Order (November 22, 2011).

[3] Duke's market-rate offer proceeding was *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, Opinion and Order (February 23, 2011) and Entry on Rehearing (May 4, 2011).

[4] Staff Ex. 1 (Choeuiki Direct) at 10.

non-shoppers, which are procured via a Commission-administered standard service offer ("SSO") auction.[5]

Duke provides distribution and transmission services, along with providing the SSO service, to its customers.[6] Duke is a "wires only" company and does not sell generation service to its customers. Duke should continue to be a "wires only" company through this ESP III period and thereafter. To that end, Duke's proposed ESP III contains several important pro-competitive market features, with which RESA agrees – continuation of its competitive bidding process for procurement of generation for the SSO customers and continuation of its purchase of receivables program.

C. Description of the Application

Today, Duke is operating under an Electric Security Plan ("ESP II") which was the product of negotiations with all the stakeholders and with which no one contested. The ESP II plan was a forward-thinking program which maximized market forces while also addressing the specific needs of a wide range of interests. For the most part, Duke is retaining the ESP II; however, Duke has added several items which benefit only the utility to the harm of the public and the competitive marketplace. Chief among these are:

- Proposed Price Stabilization Rider
- Redesign of its Retail Capacity and Retail Energy Riders
- Unilateral "right" for an early termination of the ESP III
- The bypassability of the Supplier Cost Reconciliation Rider
- Mandate of the use of the purchase of receivables program in order for CRES providers to have utility/CRES consolidated bills
- Limit on utility/CRES consolidated bills to "commodity only" without an appropriate definition

[5] *Id.*
[6] Tr. Vol. 1 at 163.

- Allowing its affiliates to include non-commodity charges on its bills, while prohibiting CRES providers from including non-commodity charges on the utility/CRES consolidated bills

D. RESA-Raised Items for the Duke ESP III

In the matter at bar, RESA has proposed that additional pro-competitive market features be added in Duke's service territory so that the market can further develop in new ways and so that customers can learn about, experience, and benefit from competitive offers. Specifically, RESA proposes an Enroll From Your Wallet pilot and a Market Energy Program. These two features are discussed in further detail later in this brief.

II. Mandating Use of Purchase of Receivables in Order to have Utility/CRES Consolidated Bills

Duke offers utility-consolidated billing to all CRES providers operating in its service territory. It also offers a purchase of receivables ("POR") program to all CRES providers. Currently, a CRES provider is not required to participate in the POR program when it selects utility/CRES consolidated billing for a customer.

In this ESP III proposal, Duke proposes to change who can participate in the POR program and who can use utility/CRES consolidated billing. Specifically, Duke proposes to make POR mandatory if a CRES provider uses utility/CRES consolidated billing in Duke's service territory. Duke claims that this will "align operations consistently and obviate the need to incur additional administrative costs for the few CRES providers that are not presently participating" in POR.[7]

Duke pointed to the number of CRES providers who do not currently use POR.[8] However, Duke noted that the administrative effort is not frequent and did not present any numbers or data of the alleged "additional administrative costs" involved for the few CRES providers that are not

[7] Duke Ex. 13 at 7-8.
[8] *Id.* at 7.

presently participating" in POR.[9] Thus, the record is devoid of meaningful detail on the "additional administrative costs" that Duke seeks to avoid. This evidence is not sufficient to justify such a revision to the POR program. As, RESA witness Ringenbach explained, this change will turn CRES providers away from the Duke market, and those participating will be forced into the "narrow scope of allowable charges."[10] Moreover, this one tariff change will negatively impact the willingness of diverse CRES providers to participate in the Duke competitive market, contrary to Section 4928.02(C), Revised Code. The Commission should reject this change.

III. Limitations on Utility-Consolidated Bills

A. Proposed Supplier Tariff Language Changes to Allow "Commodity Only" billing on Utility/CRES Consolidated Bills

Duke has proposed tariff changes that will effectively allow "commodity only" charges to be included on the utility/CRES consolidated bills:

- Supplier Tariff Section X, paragraph 10.9(b): Adding a provision limiting CRES providers using POR and bill-ready billing to submitting "electric commodity only" charges. The language also declares the submission of charges other than electric commodity charges to be a condition of default. Examples of non-commodity charges were identified: termination fees, equipment charges, software charges, and arrears from previous months billed under separate billing/dual billing.[11]

Duke has not revised its definition of "commodity" – which is "the unbundled generation service of electric energy which End-use Customers may purchase from a Certified Supplier in the Customer Choice Program."[12] This definition and the proposed tariff revision create ambiguity. RESA assumes that Duke is seeking to limited CRES providers to just competitive retail electric

[9] Tr. Vol. IV at 1062-1063.
[10] RESA Ex. 1 at 8-9.
[11] Duke Ex. 13 at Attachment DLJ-1 at page 18.
[12] Duke Ex. 13 at Attachment DLJ-1 at page 2.

generation service (as defined by Ohio law).[13] However, Duke's proposal is simply unclear from the start.

Moreover, the effect of this proposal is also problematic. First, as RESA witness Ringenbach noted, today, a CRES provider using bill-ready billing is allowed to place other charges beyond only the commodity on a customer's bill.[14] The roll-out of smart meters (which Duke is close to finishing) is expected to lead to new and different product options for customers beyond a standard per-kWh option. Thus, Duke's petition to limit the products and services available for utility/CRES consolidated billing comes at a time that when it is likely to be the most useful for the consumer and when the market is ready for greater expansion and development. Second, she pointed out that Duke's billing system is already designed to charge for utility service, CRES or utility generation charges, and other non-commodity services.[15] Duke's proposal to use the term "commodity only" therefore places new limits that will only dampen the competitive options for customers wishing to receive a single bill.

B. Current Practice Prohibits Against CRES Providers' Non-Commodity Charges on Utility/CRES Consolidated Bills While a Duke Affiliate is Given Different Treatment

Today, Duke customers who also purchase a service from one of its affiliate, Duke One, are billed through one bill – Duke's electric utility bill.[16] Duke One offers non-commodity services called Strike Stop Service and Underground Protection Service.[17] Thus, Duke is including charges for non-commodity services on its electric bills for an affiliate. However, Duke is currently prohibiting CRES providers parallel access to the electric bills.[18] This action violates Sections

[13] RESA Ex. 1 (Ringenbach Direct) at 6.
[14] RESA Ex. 1 (Ringenbach Direct) at 7.
[15] RESA Ex. 1 (Ringenbach Direct) at 7.
[16] RESA Ex. 1 (Ringenbach Direct) at 8 and Appendix A, page 1; Tr. Vol. IV at 1047; Duke Ex. 11 at Attachment MEH-2 at page 30..
[17] Tr. Vol. IV at 1049.
[18] RESA Ex. 1 at 8 and Appendix A, page 3; Tr. Vol. IV at 1047.

4928.02(H) and 4928.03, Revised Code, Rule 4901:1-10-29, Ohio Administrative Code, and Duke's corporate separation plan (Section 4928.17(A)(3), Revised Code, requires that "[t]he plan is sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or nonelectric product or service."). The Commission should require Duke to allow CRES non-commodity services on its utility/CRES bills, since it allows its own affiliate such space.

IV. Price Stabilization Rider

Duke proposes a new non-bypassable rider, Price Stabilization Rider ("Rider PSR"), whose rates will be based on the difference between the revenues and costs of Duke's entitlement in the Ohio Valley Electric Corporation ("OVEC").[19] OVEC was formed in 1952 by a group of investor-owned utilities and their parent companies in order to provide electricity for a uranium enrichment plant in southern Ohio.[20] Since 1955, OVEC has been generating that electricity at two plants – the Kyger Creek Plant in Cheshire, Ohio, and the Clifty Creek Plant in Madison, Indiana.[21] OVEC's owners ("Sponsoring Companies") agreed to provide the electricity needed by the enrichment plant, and then entered into another agreement ("Inter-Company Power Agreement" or "ICPA") to take any excess energy, capacity, and ancillary services not used by the enrichment plant.[22] In 2003, the agreement to provide electricity for the enrichment plant terminated and, since then, the Sponsoring Companies have been obligated to take their individual share of OVEC's entire generating capacity, per the terms of the ICPA. The ICPA was amended more recently, and its current terms extend to June 30, 2040.[23]

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[19] Duke Ex. 1 (Application) at 13.
[20] IEU Ex. 6 at 2; Duke Ex. 6 (Wathen Direct) at 10-11.
[21] The Kyger Creek Plant generates 1,086 megawatts and the Clifty Creek Plant generates 1,304 megawatts. IEU Ex. 6 at 2.
[22] *Id.*
[23] *Id.*; IEU Ex. 5.

Duke is one of the OVEC Sponsoring Companies and Duke's participation requirement ("entitlement") is nine percent of OVEC's power.[24] Duke is also allocated nine percent of OVEC's costs (fixed and variable). During the ESP III term, Duke proposes to sell its entitlement to the nine percent of the OVEC energy, capacity, and ancillary services into the PJM market.[25] Duke seeks to establish Rider PSR for the period during which Duke is contractually required to support OVEC power, which at present is until 2040 under the ICPA. Thus, Duke seeks Commission approval of Rider PSR for 25 years.

As proposed, Rider PSR will be adjusted quarterly, up or down, depending on the difference between (a) actual revenues received from the sale of the power into the PJM market and actual expenses charged by OVEC, and (b) projected revenues and expenses from the prior quarter.[26] As a result, proposed Rider PSR will change repeatedly throughout the proposed 25-year term.

Duke claims that this proposed rider will be beneficial for its customers because:

- Rider PSR will mitigate "some of the volatility in overall rates for generation services."
- It will not interfere with CRES providers' ability to compete for customers because Rider PSR will not reward or penalize customers' decisions to shop.
- OVEC is a reliable source of generation.[27]

A significant number of parties have opposed Rider PSR in testimony, including RESA.

A. What Proposed Rider PSR is Not

1. Rider PSR is not a hedge against market price volatility.

Duke considers a market hedge to be a mechanism that locks in the market price. Duke also considers its proposed Rider PSR to be such a market hedge. Duke witness Wathen explained further:[28]

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[24] IEU Ex. 6 at 2; Tr. Vol. I at 58, 85; Tr. Vol. II at 480.
[25] Duke Ex. 1 (Application) at 13; Duke Ex. 6 at 11.
[26] Duke Ex. 6 at 16.
[27] Duke Ex. 1 (Application) at 13-14; Duke Ex. 6 at 12, 13-15; Tr. Vol. I at 151.
[28] Tr. Vol. II at 472.

> A hedge essentially just locks in a price. That's the way I look at it. But SSO -- if I hedge the SSO and everybody is shopping, then I am not giving them any benefit. All the shopping customers are exposed to volatility then.

However, Mr. Wathen also correctly recognized that not all Duke customers are shopping now.[29] Nor should we assume that all Duke customers will be shopping during the 25-years in which Rider PSR is proposed. As noted earlier, approximately 23 percent of Duke's customers are served under the SSO auctions and are not served with market-priced generation.[30] Thus, those SSO customers are not subject to the potential market price volatility that Rider PSR is allegedly intending to hedge.[31] As a result, Rider PSR cannot be a market hedge for Duke's SSO customers.

As for the shopping customers, Mr. Wathen acknowledged that currently those with fixed-price CRES contracts in effect (without a pass-through provision) actually will not experience volatility because their price of generation is fixed.[32] Yet, Rider PSR would be an additional component on the electric bills of those customers – one which Duke estimates will be a charge throughout the entire ESP III term. It is impossible for a shopping customer's market price to be "locked in" with Rider PSR because Rider PSR is being added on top of the customer's price of generation per the CRES contract. Rider PSR simply does not function as a market hedge and the Commission should not be fooled.

Additionally, there is another group of Duke customers too that have no need for the purported price stabilization "benefit" of Rider PSR. Customers that self-generate, for instance, would have to pay for Rider PSR, but they are not subject to the potential market price volatility that Rider PSR is allegedly intending to hedge. Under Duke's proposal, these customer will also have to pay for Rider PSR.

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[29] *Id.*
[30] Staff Ex. 1 (Choueiki Direct) at 10.
[31] Accord, OCC Ex. 43 (Wilson Direct) at 12.
[32] Tr. Vol. II at 472-473.

Duke has argued that Rider PSR is not a perfect hedge, but it can mitigate the volatility in the cost of generation because Rider PSR could be a credit on customer bills (assuming that the OVEC revenues exceed the OVEC costs).[33] The reality is that proposed Rider PSR will be an add-on to customers' bills; it is separate and distinct from the generation purchases that the customers will make. Rider PSR will not lock-in the customers' price of generation and thus does not amount to a market hedge as Duke defines it.

Additionally, the Commission should not consider Rider PSR to be a hedge under the theory that Rider PSR may be a credit and therefore be beneficial to customers. There is simply no guarantee that Rider PSR will be a credit during the ESP III or thereafter. More importantly, there are at least two scenarios under which Rider PSR would become a significant cost to Duke's customers because there may be little or no revenues to include in the calculation – namely, the OVEC generation might not sell in the PJM market. First, RESA witness Campbell explained that Duke's costs for the OVEC power have increased,[34] and if the OVEC power costs more than what the market is willing to pay, the OVEC power may not clear (be purchased) in the market.[35] Duke witnesses Wathen and Jennings too acknowledge the possibility that the OVEC power may not clear in the market.[36] If that occurs, Duke will still incur costs from OVEC. Specifically, the ICPA states that the Sponsoring Companies shall pay OVEC every month for energy charges, demand

[33] Tr. Vol. II at 520; Tr. Vol. III at 706.

[34] Between 2009 and 2013, OVEC charges to Duke have basically increased:

Year	Charge per MWh
2009	$46.18
2010	$49.48
2011	$55.15
2012	$70.92
2013	$70.61

IEU Exs. 8-13. Moreover, Duke Energy Corporation's 2013 Form 10-K reflects that environmental rulemakings could also increase the costs of OVEC and that increase would be passed through to Duke. Kroger Ex. 1 at 7.

[35] Tr. Vol. X at 2709.

[36] Tr. Vol. II at 412-413; Duke Ex. 41 at 8; Tr. Vol. XVI at 4309-4310.

charges, and transmission charges. If power is not purchased in the PJM market, there will be not be energy or transmission charges, but there will still be demand charges.[37] The demand charges are made up of six components, one of which is a return on investment and it is expected that the cost-plus mechanism will continue through the term of the ICPA (June 2040).[38] Thus, in this situation where no OVEC power is purchased in the market, there would be no revenues to offset the costs. Under Rider PSR, Duke would pass along those demand charges (less the capacity cost) to its customers and they would cover Duke's OVEC costs, including payment of a return on the OVEC investment.[39] Nothing in this situation is a hedge against market price volatility for customers – Rider PSR would operate solely as a pass-through mechanism so that Duke is not saddled with its share of OVEC demand charges. Therefore, it is Duke that is receiving a "hedge" against risk, not Ohio customers.

Second, if one the OVEC plants were to retire (after all, they were constructed in the 1950s), the ICPA obligates the Sponsoring Companies to pay decommissioning costs as part of the demand charges. Again, in this situation, there would be less OVEC power to be purchased in the market, and there would be fewer revenues to offset the costs. Under Rider PSR, Duke would pass along those decommissioning costs as part of the demand charges to its customers and they would cover Duke's OVEC decommissioning costs.[40] Nothing in this situation is a hedge against market price volatility – once again, Rider PSR would operate solely as a pass-through mechanism so that Duke is not saddled with its share of OVEC decommissioning costs.

In stark contrast, there is credible evidence in the record illustrating that real hedges against market price volatility already exist and, therefore, Duke's illusory hedge proposal should be

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[37] Tr. Vol. III at 660.
[38] IEU Ex. 5 at 8-11; IE Ex. 6 at 8; Duke Ex. 6 at 13; Tr. Vol. X at 652.
[39] Tr. Vol. III at 660.
[40] Duke witness Wathen testified that Rider PSR would continue "for as long as we are taking power." Tr. Vol. III at 679. This does not clearly reflect that Rider PSR will terminate if one of the OVEC plants retires.

rejected. Staff witness Choeuiki noted that, for the SSO customers, the structure of the SSO auctions provides an effective hedge against SSO price volatility, pointing out that the staggering of auctions and laddering of products are particularly effective.[41]

For shopping customers, there is also a truly effective opportunity to hedge against market price volatility. RESA witness Campbell explained that a real market hedge is available to Duke's customers currently – competitive suppliers can provide a true fixed-price contract.[42] In fact, Constellation NewEnergy Inc. has posted on the Commission's Apples-to-Apples chart an offer for residential customers in Cincinnati for 6.39¢ per kilowatt-hour, fixed for three years.[43] Thus, those residential customers who want a hedge can select this offer and know for the next three years exactly what the cost of the electric supply portion of their bill will be. Mr. Wathen similarly acknowledged that CRES providers are offering long-term, fixed-rate contracts, specifically citing to several residential offers publicly available through the Commission's Apples-to-Apples chart.[44] He agreed that shopping customers can obtain market price stability separate and apart from Duke's proposed ESP III.[45] In other words, shopping customers who desire a hedge have available other options, which are entirely different from the changing value of Rider PSR being added onto customers' bills, especially when Rider PSR will be an additional charge (as is predicted throughout the ESP III period).

For all the foregoing reasons, Rider PSR is not the hedge that Duke claims it is. Moreover, the evidence demonstrates that customers do not need Rider PSR.

[41] Staff Ex. 1 (Choueiki Direct) at 12-13.
[42] RESA Ex. 3 (Campbell RESA Direct) at 13. Accord, Direct Energy (Ringenbach Direct) Ex. 1 at 6.
[43] *Id.*; Tr. Vol. X at 2697.
[44] *Id.* at 474.
[45] *Id.* at 475.

2. Rider PSR does not encourage resource diversity.

Rider PSR is based on Duke's OVEC entitlement. The OVEC power is generated from two coal-fired generating plants. Currently, Duke's OVEC entitlement is being sold into the PJM market.[46] The addition of Rider PSR will not change the fact that Duke's OVEC entitlement will continue to be sold into the PJM market. Thus, Rider PSR will not change the resource diversity at PJM.[47]

Also, electricity for Ohioans is supplied primarily from coal-fired generating plants.[48] The addition of Rider PSR will not change the "mix" of resources providing electricity to Ohioans and, similarly, establishing a ratepayer guarantee for this nine percent entitlement will also not diversify the resources. This rider will simply make it more likely the two OVEC coal-fired generating plants will continue to supply electricity into the PJM region.

RESA's point is one with which Duke even agrees. Duke witness Henning acknowledges that Duke is not proposing any resource diversity, even though resource diversity would diminish price volatility.[49]

3. Rider PSR does not assist with generation reliability for Ohioans.

Several Duke witnesses' testimony establishes that Rider PSR will not assist with generation reliability for Ohioans. First, Duke witness Henning agreed that Duke's ESP and Rider PSR will not prevent generating plants in the PJM region from retiring.[50] Second, Duke witnesses Wathen and Jennings testified that Duke will clear its OVEC entitlement in the PJM market when the market price exceeds its variable cost of generation,[51] which decision is not dependent on approval

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[46] Tr. Vol. II at 430.
[47] RESA recognizes that the other resources in the PJM market are changing, as some coal-fired generation assets are retiring. Duke Ex. 2 (Henning Direct) at 4; Tr. Vol. I at 165. The overall generation mix in the PJM region may be changing in the near future. However, Rider PSR is making any changes to PJM's resource mix.
[48] Sierra Club Ex. 1 at 4; IGS Ex. 1 at 2.
[49] Tr. Vol. I at 99.
[50] Tr. Vol. I at 98.
[51] Tr. Vol. II at 412-413; Duke Ex. 41 at 4.

of Rider PSR. Third, Mr. Jennings stated that, regardless of approval of Rider PSR, Duke will bid its share of OVEC generation into the PJM market (via base residual auctions).[52] More blatantly, Mr. Jennings stated that Rider PSR "has no impact on PJM capacity markets, because in no way is the Company's behavior changed by approval of Rider PSR."[53]

In case there is any doubt, additional evidence of record reflects that the OVEC capacity is committed to PJM right now until May 31, 2018.[54] Thus, approval or rejection of Rider PSR will not have any effect on the ESP III term. Mr. Jennings suggested that the OVEC capacity might be committed for even longer too.[55]

B. What Proposed Rider PSR is

1. Rider PSR will apply to all Duke customers.

As noted earlier, Duke proposes Rider PSR to be a nonbypassable, mandatory rider – one that will be in effect for the ESP III term as well as for decades later (unless Duke later decides to eliminate this rider in future years' ESPs, perhaps when it is a credit).[56] Also, Duke has not designed this rider to allow customers to take their own actions to address market price volatility.[57] As noted earlier, Rider PSR will adjust quarterly – when it is a charge, it will be a charge to all customers, even shopping customers with fixed-price contracts, fully passing on the very risk fixed customers sought to avoid by signing fixed-rate contracts.[58]

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[52] Duke Ex. 41 at 4.
[53] Duke Ex. 41 at 8.
[54] Tr. Vol. XVI at 4263.
[55] *Id.*
[56] Duke Ex. 1 (Application) at 13.
[57] RESA understands that Rider PSR will not preclude a shopping customer, for instance, from entering into a fixed-price contract as a means of controlling market price volatility. However, because Rider PSR is mandatory and nonbypassable, the rider will erode any such efforts made by customers. Duke's own projection for Rider PSR demonstrates that the rider will erode any such efforts made by shopping customers during the ESP III term.
[58] Duke Ex. 1 at 13; Tr. Vol. I at 113-114.

2. If approved, Duke will control how long Rider PSR is applicable.

Duke proposes that Rider PSR be effective throughout the ESP III term.[59] Moreover, Duke is seeking to have Rider PSR continue for as long as Duke holds the OVEC entitlement. Currently, that is expected to be until 2040.[60]

The ICPA sets forth how the OVEC entitlement can be transferred.[61] Nothing in the proposed Rider PSR or the ESP III addresses retention of the OVEC entitlement – Duke simply expects/plans to retain the OVEC entitlement. Thus, it is possible that Duke could elect to transfer its OVEC entitlement sometime during the time that Rider PSR is in effect.[62] Duke acknowledged that, if Duke sold/transferred its entitlement in OVEC, the PSR would terminate and the net benefit/cost to customers would terminate.[63] There is nothing in Duke's ESP III that prevents Duke from selling/transferring the OVEC entitlement during the ESP period.[64] In fact, the Staff has specifically included recommendations to the Commission in this area to encourage Duke to transfer its OVEC entitlement.[65] However, there is also nothing in the ESP III that would prevent Duke from "gaming" a sale/transfer of the OVEC entitlement such that Duke's customers incur charges under the Rider as is expected throughout the ESP III term, but then Duke sells/transfers the entitlement when the Rider is providing credits to Duke's customers. In essence, Duke's customers could pay for the OVEC entitlement, but once it is no longer a Duke financial burden, nothing in the proposal prohibits Duke from selling/transferring the entitlement. Customers could be saddled with the charges and not see any of the credits.

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[59] Duke Ex. 1 (Application) at 14; IEU Ex. 5.
[60] Duke Ex. 1 (Application) at 14; IEU Ex. 5.
[61] IEU Ex. 5 at 20-23.
[62] Duke already has FERC authority to transfer the OVEC entitlement to another entity. Tr. Vol. II at 492.
[63] Tr. Vol. I at 117.
[64] Tr. Vol. I at 117-118.
[65] Staff Ex. 1 (Choueiki Direct) at 11, 14, 17.

C. Rider PSR only Provides Revenue Certainty to Duke

1. Duke's own witnesses and others establish the real purpose of Rider PSR is to provide Duke with revenue certainty.

Currently, there is no guarantee in place for Duke to recover its OVEC costs.[66] Duke witness Henning acknowledged that, if approved, Rider PSR will guarantee that Duke's OVEC costs are covered.[67] Similarly, Duke witness Wathen admitted that Rider PSR guarantees that Duke will have no losses associated with the OVEC entitlement, which provides certainty to Duke.[68] Moreover, Mr. Wathen stated that, with Rider PSR, Duke is shifting the risks (and benefits, if any) to Duke's customers.[69]

Similarly, multiple other witnesses concluded that that Rider PSR will shift the risks associated with the OVEC generation stations to Duke's customers:

Witness	Citation
RESA witness Campbell	RESA Ex. 3 at 11
Staff witness Choeuiki	Staff Ex. 1 at 11
Ohio Consumer Counsel ("OCC") witness Wilson	OCC Ex. 43 at 13-14
Kroger Company witness Higgins	Kroger Ex. 1 at 6
Sierra Club witness Jackson	Sierra Club Ex. 4 at 5
Interstate Gas Supply Witness Haugen	IGS Ex. 12 at 6

The Commission should recognize such a widespread understanding of the true impact of Rider PSR.

2. Duke's own actions establish the real purpose of Rider PSR is to provide Duke with revenue certainty.

If Duke were truly interested in developing a proposal for the ESP III that provided stability and certainty for its customers, Duke would have brainstormed different approaches and evaluated them, and proposed the best available option. The evidence in this record concretely establishes that Duke did nothing like that:

[66] Tr. Vol. II at 568.
[67] Tr. Vol. I at 106-107.
[68] Tr. Vol. II at 519.
[69] Tr. Vol. II at 520.

- Duke did not show that it evaluated multiple options and selected Rider PSR as the best means to address market prices volatility for its customers.[70]
- Duke did not offer to sell the OVEC power as a power purchase agreement to a retail supplier at a fixed price.
- Duke did not consider any alternatives to Rider PSR, including putting out an Request For Proposals such as a third party providing a financial hedge for the SSO and shopping customers.[71]
- Prior to filing its ESP III, Duke was aware that Ohio Power Company had proposed an extremely similar rider for its ESP III.[72]
- Duke made no projection of Rider PSR prior to it submitting its proposal.[73]
- When Duke submitted its application and supporting testimony, Duke contended that Rider PSR would be beneficial to its customers and urged its approval based on its theoretical understanding of how the Rider will function.[74] At the same time, Duke assumed a zero value for Rider PSR (namely, that revenues and expenses would be equal) for the entire ESP III term.[75] It is unfathomable that Rider PSR will be zero throughout the ESP III term. Yet, that is the position that Duke has presented to the Commission in its application.

Duke did a *post hac* projection of how Rider PSR would work in June 2014.[76] The projection identifies what Duke predicts will be the Rider PSR charges during the entire ESP III period (totaling $20.6 million), and also what Duke predicts out to year 2024 (not to 2040).[77] After that projection was completed, Duke did not take certain logical actions that would lead one to believe that Duke is truly interested in developing a proposal for the EPS III that provided stability and certainty for its customers:

- Duke did not modify or amend its application and testimony to reflect its own projections for the ESP III term.
- Duke did not present any evidence to illustrate the "net present value" of Rider PSR. In other words, Duke has not attempted to show, despite being a

[70] Tr. Vol. II at 591-592; Tr. Vol. III at 627-628.
[71] Tr. Vol. II at 470-471; Tr. Vol. III at 627; Tr. Vol. X at 2741-2744. Duke apparently responded to another entity's request for proposal for that entity to step "into Duke's shoes" under the ICPA, but that was not consummated. Tr. Vol. X at 2742-2744, 2805-2806.
[72] Tr. Vol. III at 665.
[73] Tr. Vol. III at 652-653, 665-666.
[74] Tr. Vol. III at 652-653, 666-667.
[75] Tr. Vol. II at 543-544.
[76] Tr. Vol. III at 652.
[77] OMA Ex. 5, at 5-8.

cost to all of its customers during the ESP III, Rider PSR should be approved because its brings an overall value to its customers.

3. Duke simply decided what it wanted to do with its OVEC entitlement without pursuing alternative options.

Prior to proposing Rider PSR, Duke put together a proposal to transfer its OVEC entitlement in 2013.[78] Mr. Whitlock, President of Midwest Commercial Generation and Vice President of Gas Operations at Duke, explained further:[79]

> I can tell you that DE Ohio had an interest in ascertaining whether or not the sponsoring companies would allow us to transfer by unanimous vote or with some form of a guarantee, and I was involved in those conversations. * * * I mean, to actually transfer it, we had to have FERC approval and we also had to have the other operating companies, the other sponsoring companies of OVEC say they were amenable to that. So when you say did we intend to transfer it, we were certainly in the groundwork to create the flexibility to transfer it if we so choose.

. By August 2013, that transfer proposal was not successful.[80] In the meantime, Duke was divesting its legacy generation assets, as agreed in the ESP II stipulation, by December 31, 2014.[81] When the 2013 proposed transfer proved unsuccessful, Duke still had to decide what to do with its OVEC entitlement.

D. Rider PSR is contrary to Ohio's Restructuring Paradigm

Section 4928.03, Revised Code, separates electric service into open-market competitive services and regulated utility services. The statute specifically lists generation as a "competitive" service and allows the Commission discretion to name other services as competitive. Rider PSR subverts Section 4928.03, Revised Code. That statute limits the utility to supplying only non-competitive utility service unless a customer does not have a competitive supplier, in which case the utility can supply "bundled" utility service and competitive service. If Rider PSR is approved and,

[78] Tr. Vol. II at 454; Tr. Vol. X at 2724, 2729-2730.
[79] Tr. Vol. X at 2721, 2733-2734.
[80] OCC Exs. 27 and 27A; Tr. Vol. X at 2757, 2758.
[81] *Duke, supra*, Case No. 11-3549-EL-SSO, Stipulation at 25. See also, Tr. Vol. II at 490-491.

as is expected for all three years of the ESP the cost of the OVEC generation is more than the revenues Duke obtains from selling the OVEC power, shopping customers will pay Duke for part of the OVEC power costs.[82] Further, Duke witnesses confirmed that Duke is not looking to divest the OVEC generation and wants the right to expand the Rider PPA.[83] Thus, Rider PSR not only violates Section 4928.03, Revised Code, it frustrates the intention of Duke being a "wires only" company, all at the risk of the ratepayers.

RESA's members are in the business of supplying competitive services to retail customers. Shopping customers will receive all their generation and competitive needs from their CRES providers. For those who are concerned with the price volatility, they may obtain power at fixed prices or through other hedging arrangements. As noted earlier, Constellation NewEnergy, Inc. and other CRES providers currently offer, as a hedge, long-term fixed-price CRES products.[84] The alleged purpose of Rider PPA is to moderate the price of generation.[85] As such, it is a competitive service not a utility service.

In the Application, Duke proposes to make Rider PPA non-bypassable.[86] Thus, even though RESA's members' customers purchase power on a cents per-kilowatt-hour ("kWh") basis and would not need price stabilization, they must buy Duke's market-priced "stabilization" product as Duke has proposed it. Customers who buy fixed-price generation have no risk of price spikes and, therefore, making them pay for "rate stabilization" is unjust and unreasonable. Other Duke customers who self-generate likewise would have to pay for "rate stabilization," but they too would not need Rider PSR. Making Rider PSR non-bypassable is a direct violation of Section 4928.03, Revised Code. It also violates Section 4905.22, Revised Code, which prohibits unreasonable

[82] OCC Ex. 4.
[83] Tr. Vol. I at 57-58, 82, 105; Tr. Vol. II at 409-410.
[84] Tr. Vol. X at 2697; RESA Ex. 3 at 13.
[85] Duke Ex. 1 (Application) at 13; Duke Ex. 6 at 13-14.
[86] Duke Ex. 1 (Application) at 13.

charges by a utility. This is particularly true if Rider PSR will only result in an additional cost[87] - that is, it will stabilize the price by raising it. Some witnesses analogized Rider PPA to insurance.[88] RESA is not convinced that is an apt analogy, but it begs the question: how can the Commission justify compelling the many customers who are (a) SSO customers, (b) purchasing fixed-price generation, or (c) self-generating to also buy "insurance" against price volatility?

E. Option to Add Additional Arrangements

Duke not only proposes Rider PSR for its OVEC entitlement, Duke also proposes Rider PSR "as a rider in which additional contractual arrangements could be included to increase the benefits available to customers."[89] According to Duke's President, Mr. Henning, Duke is not proposing or even considering any specific additional contractual arrangement at this time; it is just seeking authorization to propose to add in other contractual arrangements in the future.[90]

Duke's request for authority to add additional arrangements is tantamount to "opening the door" to a complete reversal of the restructuring paradigm set forth in the Ohio Revised Code. While Duke's immediate request affects only seven percent of the load in its service territory, additional arrangements will modify that number and put the restructuring paradigm at greater risk. There is no reason that the Commission should accept this portion of the Rider PSR proposal. Accordingly, the option to include additional arrangements should be rejected.

F. Alternatives/Modifications Proposed by Various Parties

1. Ohio Energy Group witness Taylor

Ohio Energy Group ("OEG") proposed three signficant changes to Duke's Rider PSR: (1) to extend Rider PSR beyond the proposed ESP term of three years to a period of 9.5 years; (2) to levelize the expected benefits over the extended time period, with a true-up; and (3) allow

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[87] Duke's PSR projection estimates that Rider PSR will be a charge to all customers in all three years of the ESP III. OCC Exs. 4 and 4A.
[88] Tr. Vol. I at 88, 100; Tr. Vol. II at 466, 520; Tr. Vol. III at 653, 656, 722-724.
[89] Duke Ex. 1 (Application) at 13.
[90] Tr. Vol. I at 58, 86, 104-105. See also, Tr. Vol. III at 655.

customers "who can self-insure" to opt out of the rider.[91] For three reasons, the Commission should reject OEG's modified Rider PSR.

First, OEG's proposal does not comport with the ESP statute. Section 4928.143(B)(1), Revised Code, states that when the proposed ESP has a term longer than three years, "it may include provisions in the plan to permit the commission to test the plan." This portion of OEG's proposal certainly extends Duke's ESP beyond three years, but OEG's proposal contains no Commission testing. Further, while RESA does not oppose ESP terms longer than three years, they must be fair and market-based.

Second, OEG's proposed changes will force all customers (except those OEG members who opt out of it) to pay Duke's generation costs. By virtue of the opt-out section for self-insurers, OEG guarantees that its own members will not have to pay for Rider PSR, while all other Duke customers will have no such option. This modification is not only discriminatory and unfair, but proves RESA's point that all customers may not like Rider PSR and should have the option to choose generation service that does not include Rider PSR.

Third, OEG's proposal forces the customers who cannot opt out to pay for OVEC generation for significantly longer than Duke is proposing. Given all of these flaws with OEG's proposed modification to Rider PSR, as well as the fact that the fundamental flaws with the rider would still remain, the Commission cannot lawfully or reasonably approve Rider PSR. Accordingly, Rider PSR and OEG's proposed changes to it, should be rejected.

2. Staff witness Choueiki

The Staff's primary position on Rider PSR is the correct position to take – Rider PSR should be rejected outright. Staff, also put forth other comments, in the event that the Commission reaches

[91] OEG Ex. 1 at 18-22.

a different conclusion on Rider PSR.[92] RESA responds to three of Staff's alternative recommendations.

First, Staff proposes limiting the term of the PSR to just the term of the ESP III.[93] Such a limitation will simply reward Duke for not having divested the OVEC entitlement. Moreover, given that the only projection about the impact of Rider PSR (the projection that Duke conducted in June 2014 discussed in detail above), this Staff proposal will have customers pay for the OVEC entitlement and receive none of the credits.

Second, Dr. Choueiki is not concerned with additional arrangements being proposed for Rider PSR because Duke has filed an application at FERC to sell all of the DECAM assets to Dynegy Resource I.[94] In other words, Staff will support expanding Rider PSR if the PSR is approved because a Duke affiliate is expected to transfer all of the Duke "legacy" generation assets in the near future. Staff has unfortunately overlooked the fact that the Dynegy transaction has not gone through yet and may not go through. Moreover, there is nothing to stop a Duke affiliate from acquiring other generation assets and Duke proposing additional arrangements (with either in-state or out-of-state plants) during the lengthy period in which Rider PSR is proposed.

Third, Staff put forth monitoring/evaluations of the bidding strategies used for the OVEC generating stations.[95] The problem with this notion is that audits/evaluations need specific direction and evaluation criteria. Moreover, records need to be kept/audited, and they will have to show whether the revenues equal variable costs or exceed the variable costs. Also, it will have to be determined whether bidding/selling done under variable costs occurred when Duke had indicated that it could not participate. For instance, Duke witness Jennings stated that, regardless of approval of Rider PSR, Duke will bid its share of OVEC generation into the PJM market (via base residual

[92] Staff Ex. 1 (Choueiki Direct) at 13-17
[93] Staff Ex. 1 (Choueiki Direct) at 14.
[94] Staff Ex. 1 (Choueiki Direct) at 13-14.
[95] Staff Ex. 1 (Choueiki Direct) at 15-16.

auctions).[96] He further added that Duke will only sell in the PJM energy markets when the market price exceeds the variable cost of generation for its share.[97] Such monitoring and evaluations will open up new and complicated evaluations of wholesale bidding, which is better avoided by rejecting Rider PSR altogether.

3. Ohio Consumers' Counsel witness Wilson

OCC witness Wilson suggests, as a less-preferred option, that Rider PSR be modified to be cost-neutral for Duke's customers. In this regard, Mr. Wilson is suggesting a cost-sharing (50/50) between Duke and its customers when the actual net cost differs from a benchmark established by the Commission.[98] He believes that this modification will provide customers with some protection and also restore an incentive for Duke to maximize revenues/minimize costs.[99]

This proposal still could result in additional costs for Duke's customers with Rider PSR. The only merit with this alternative is that the expected costs will be smaller for customers to bear. However, since Rider PSR is not appropriate to have in the first place, RESA cannot endorse a "half Rider PSR" as this would be.

V. Generation Service Pricing – Retail Energy Rider and Retail Capacity Rider

Duke witness Ziolkowski explained that the winning price from the SSO auctions is a blended winning auction price for a fixed auction period, around-the-clock price. Duke does not charge that winning auction price to the SSO customers; it converts that winning auction price into retail rates that appear on its Retail Capacity Rider ("Rider RC") and its Retail Energy Rider ("Rider RE").[100] In the ESP III, Duke has proposed to change two aspects of Riders RC and RE with which RESA takes issue.

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[96] Duke Ex. 41 at 8.
[97] Duke Ex. 41 at 4.
[98] OCC Ex. 43 (Wilson Direct) at 42-43.
[99] *Id.*
[100] Tr. Vol. VI at 1589.

A. Change in Demand Charge for Rates DS, DP, and TS

Pursuant to Duke's ESP II, Duke uses a one coincident peak to allocate and calculate demand charges to DP and TS customers; while the demand charges for the other customer classes are allocated and calculated on a kilowatt-hour basis.[101] For Rates DS, DP, and TS customers in the ESP III term, Duke is proposing to remove the demand component in Rider RC and, instead, to use a five coincident peak ("5CP") load factor for calculating their charges. Duke contends that this change will "better align" its overall SSO rates with CRES providers' offers.[102] Furthermore, Duke claims that the rate structure will protect low-load factor customers from high charges under Rider RC, and will provide high-load factor customers with benefits.[103]

The demand component in Rates DS, DP, and TS is intended to collect capacity costs.[104]

As RESA witness Ringenbach explained, this proposed change will result in a single kilowatt-hour ("kWh") SSO charge based on a rate-class-specific peak load contribution ("PLC"), not a customer-specific-PLC. Essentially, SSO customers will have less granularity in their SSO charges.[105]

This proposal comes just as Duke is nearing complete installation of smart meters in its service territory,[106] following a promise that the smart meters will allow customers to have detailed information with which to control their peak demand. As noted by RESA witness Ringenbach, this Duke proposal is contrary to the purpose of allowing customers to have the usage data to control their usage, and is contrary to Ohio's energy policy and federal energy policy.[107] Moreover, RESA witness Ringenbach explained that this rate design change will eliminate the incentive for customers

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[101] Tr. Vol. VI at 1592-1593.
[102] Duke Ex. 1 at 9; Duke Ex. 18 at 8-9.
[103] Duke Ex. 18 (Ziolkowski) at 10-11.
[104] Tr. Vol. XIII at 3790.
[105] RESA Ex. 1 at 16-17.
[106] *See. e.g.*, the Direct Testimony of Donald L. Schneider, Jr. at 3-4, filed on June 13, 2014, on behalf of Duke in *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2013 SmartGrid Costs*, Case No. 14-1051-GE-RDR.
[107] RESA Ex. 1 at 4-5, 16-17.

to reduce peak usage just as the significant majority of Duke customers will be getting access to the peak usage information.[108] Customers would see no reduction in capacity costs based on how they use energy because they are subject to the entire class average. A move toward individual usage such as the demand charge allows customers to impact their rates through peak reduction efforts regardless of what others in the same class are doing. Mr. Ziolkowski noted that all of Duke's TS and DP customers have interval meters, and the vast majority or all of the DS customers will have interval meters when the roll-out is completed,[109] which puts into place an important building block towards eventually allowing customers to impact the capacity portion of their energy bills.

This rate design also frustrates a CRES provider's ability to craft an offer for a customer based on the customer's actual contribution. Mr. Ziolkowski agreed that a CRES provider would be able, if they were getting integral meter readings, to basically charge the customer based on exactly what that customer's contribution was to the 5 CP.[110] Ms. Ringenbach added that CRES suppliers are, more and more, separating capacity from energy in their offers.[111] The fact that the overall CRES provider's charge is in a kWh format should not mean that the capacity (demand) component is not individually priced.

In sum, this proposed rate design will cause two problems: (1) the capacity component of the SSO charge will be based on a rate-class-specific PLC, even though Duke customers are gaining access to more granular data and (2) Duke customers will not be able to effectively compare the CRES providers' offers, particularly when those offers include individually priced capacity. Duke's proposal here would thwart an SSO customer's ability to make comparisons and would not make Duke rates more like those of CRES providers.[112]

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[108] *Id.* at 17.
[109] Tr. Vol. VI at 1595-1597.
[110] Tr. Vol. VI at 1594.
[111] RESA Ex. 1 at 17-18.
[112] RESA Ex. 1 at 17-18.

B. Compression of Differential Between Rates for Residential and Small Commercial Customers

Duke is proposing to lessen or "compress" the differential between the summer and winter rates in Rider RC and Rider RE. Duke contends that the compression will result in designing auction-procured rates that better reflect rates offered by CRES providers.[113] RESA witness Ringenbach explained that the proposed compression similarly does not correspond with developing customer-specific rates by CRES providers, will thwart customer efforts to rely on usage data to control usage, will eliminate the incentive for customers to reduce peak usage, and will not correspond to how rates are developed and offered by CRES providers.[114] Duke's proposal also ignores that when a customer peaks PJM bases the capacity obligation on summer peaks only, ignoring how the market works and shifting costs between customers.

C. Response to Staff

Staff agreed in concept with Duke's proposed rate design changes to Riders RC and RE. However, Staff expressed one concern – the effect of Duke's proposed rate design changes for Riders RC and RE will result in significant rate impacts for certain customers, namely customers served under the Option Residential Heating Schedule (ORH), the Common Use Residential Schedule (CUR), and the small commercial rate schedule (OM)."[115] Staff recommends that Duke phase in, over a two-year period, the rate design change for those customers, as well as any other customer class that will receive a substantial rate impact.[116]

Staff witness Turkenton, however, acknowledged that her review of the proposed rate design changes was focused on the specific effect those changes would have on customers. She further acknowledged that her review did not analyze whether the new rates would reflect the cost of

[113] Duke Ex. 18 (Ziolkowski) at 15-16.
[114] RESA Ex. 1 at 15.
[115] Staff Ex. 2 at 6.
[116] *Id.*

service or properly allocate costs to individual customers.[117] Given this explanation, the Commission should not simply adopt the Staff's agreement in concept with Duke's proposed rate design changes to Rider RC and RE. Greater review and analysis is required, and RESA witness Ringenbach provided such for Commission consideration.

As explained earlier, Duke's proposal here will not move rates to reflect true market costs. As a result, RESA urges the Commission to reject these specific proposed changes for Riders RC and RE. Instead, the Commission should allow the existing rate design for Rider RC to remain in place for the ESP III term and require Duke to work with CRES providers to formulate a plan to implement individual PLCs using the next ESP filing as a vehicle, rather than make this change now only to change back to allow customers to fully utilize the data from the smart meters Duke has installed.

VI. Early Termination Provision

Duke has "reserved the right" to unilaterally terminate the ESP III at the conclusion of the second year, notice of which would be provided by September 1, 2016 (with its effectiveness on May 31, 2017).[118] Duke contends that the termination could be exercised if there are substantive changes in either Ohio or federal law that affect SSOs or rate plans concerning the same.[119]

This provision of the ESP III should be rejected for several reasons. First, it lacks statutory authority, and Duke cites to none in its Application. Second, Duke has failed to present any objective criterion by which it may avail itself of the provision, or by which the Commission could evaluate whether Duke's election of the early termination provision is proper. RESA and others sought such information in discovery and Duke failed to provide any objective criterion then as

[117] Tr. Vol. XIII at 3791-3792.
[118] Duke Ex. 1 at 1, 15-16.
[119] *Id.*

well.[120] Third, the provision creates a lack of certainty and stability regarding (a) the actual term of the ESP III, and (b) the outcome if Duke elects to trigger its unilateral termination "right." As explained by RESA witness Campbell, the early termination provision will impose on customers, CRES providers, SSO suppliers, and both the competitive retail and wholesale markets a high degree of uncertainty and instability.[121] The Commission should not be instilling uncertainty and instability when adopting the ESP. Fourth, a notice of termination filed by September 1, 2016, does not allow the Commission enough time to reach a conclusion for the next period and does not allow the CRES suppliers enough time to make internal changes to accommodate the new environment, assuming that Duke filed a new ESP contemporaneously with the notice of termination. The Commission should avoid negative impacts on the competitive market and reject the early termination provision.

VII. Supplier Cost Reconciliation Rider

Duke's Supplier Cost Reconciliation Rider ("Rider SCR") reconciles and recovers costs related to the competitive auctions for the SSO load.[122] It is currently a bypassable rider and Duke proposes to continue this rider as is.[123] If certain conditions are satisfied, Rider SCR contains language that turns this rider into a non-bypassable rider. Specifically, Rider SCR states the following:

> NON-BYPASSABLE PROVISION
>
> Subject to Commission approval, Rider SCR becomes applicable to all jurisdictional customers in the Company's electric service territory including those customers taking generation service from a CRES provider under the following circumstance:
>
> > The revenue balance within the SCR account becomes equal to or greater than ten percent of the Company's total actual SSO revenues

[120] RESA Ex. 3 at 19 and at Attachments LC-2 and LC-3.
[121] RESA Ex. 3 at 19-21.
[122] Duke Ex. 1 at 8. *See also*, P.U.C.O. Electric No. 19, Sheet 115.9.
[123] Duke Ex. 1 at 8.

> collected for the most recent twelve month period under Riders RE, RC, RECON, RTO and AER-R. The total actual SSO revenue will be determined from data covering the most recent quarter for which it is available.
>
> Duke Energy Ohio shall apply to the Commission for confirmation that the Company should modify the Rider such that it becomes non-bypassable regardless as to whether or not the balance in the Rider results from over- or under-recovery.
>
> For customers of CRES provides, Rider SCR will become bypassable again when, at the time of the quarterly filing, the Rider balance of over- or under-recovery falls below the ten percent threshold.

As explained by RESA witness Campbell, Rider SCR was a negotiated in the Stipulation in Duke's ESP II.[124] As part of that uncontested settlement, Rider SCR was not subjected to hearing or an 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, Rider SCR's 10-percent cost trigger has not been reached and the Rider has not been charged to non-SSO customers.

RESA does not support the continuance of the conversion provision in Rider SCR, which if triggered, will result in a non-bypassable generation charge being paid by shopping customers.[125] The Commission should, at a minimum, strike the section entitled "Non-Bypassable Provision" in Rider SCR and indicate that, at the right time, Duke should apply and carry the burden of demonstrating that a non-bypassable rider is the best solution for an irreversible shortfall in SSO revenues.[126] Mr. Campbell further explained at the hearing;

> I think one of the reasons why we're asking for that is because if the 10 percent trigger occurred, we don't know what the specific cause of that would be, and we think it's a better process to have a stakeholder proceeding where we can explore out of the various elements that go into the rider SCR which – maybe there's one particular element that's causing the problem. Maybe

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[124] RESA Ex. 3 at 17.
[125] RESA Ex. 3 at 17; Tr. Vol. X at 2693.
[126] *Id.*

> there's other solutions to the problem other than just an automatic nonbypassability.[127]

RESA's concerns with the conversion provision are based on common sense. First, the conversion provision is not a necessity because a revenue-deficit situation may not arise. Plus, in the event that a revenue-deficit situation arises in the future, Duke can submit the appropriate application at the time. Second, having only one "fix" for a revenue-deficit situation pre-established is not reasonable. It is not known now what will cause any future revenue deficit that could trigger the non-bypassability provision of Rider SCR. It is not known now what will be the best way to solve any future revenue deficit. It, therefore, is not appropriate to retain the conversion provision in Rider SCR as the one and only solution for any future revenue deficit. Given, as Mr. Wathen noted,[128] that Duke could submit any request it wishes in the future, it is reasonable to remove the conversion provision from Rider SCR.

The Commission reviewed a similar issue in The Dayton Power and Light Company ("DP&L") ESP II case (Case Nos. 12-426-EL-SSO et al.). DP&L had proposed a non-bypassable rider for SSO costs when certain specific SSO riders reached certain prescribed deficit levels (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's 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.

[127] Tr. Vol. X at 2694.
[128] Tr. Vol. II at 410.

VIII. Enroll From Your Wallet Program

In order to enroll in CRES, customers must provide their utility account numbers directly to CRES providers, as an indication of the customers' willingness to enroll. Customer utility account numbers are lengthy and customers often do not know them off-hand. Moreover, there are limited means for obtaining the number – find a prior electric bill, attempt to contact the utility during business hours to request the account number, or attempt to log into a utility website to access the number. These methods likely require the customer to step away from the sale, particularly on weekends when the utility is closed or when the sale occurs at shopping venues like malls and stores – away from the customer's home where electric bills may be found. This process has resulted in errors in translation. As a result, obtaining the utility account number has been a barrier to shopping.

RESA proposes an Enroll from Your Wallet pilot for the Duke service territory as a creative and innovative means for overcoming this long-standing barrier to shopping. As explained by RESA witness Pickett, the Enroll From Your Wallet pilot allows the CRES provider, with the customer's advance consent, to obtain the utility account number from the utility through an electronic process, thereby relieving the customer of the duty to locate the utility account number. More specifically, a new interface will be installed in Duke's existing secure Supplier Portal. The process then will be as follows:

- The retail customer will give the CRES provider (a) authorization to obtain the utility account number from Duke, and (b) a personal code such as the customer's driver license number or personal fact – of the customer's choosing.
- Using the existing Duke web portal, the CRES provider will check the entry menu stating the CRES provider has authority including the verification code to receive the customer's utility account number. Duke's portal will then permit the CRES to obtain the customer's utility account number.
- The CRES provider will maintain the records of authorization, executed contract and the personal code.

- If later there is a slamming claim or dispute, the CRES provider must produce all the verification documents.[129]

RESA witness Pickett explained that this pilot will (a) confirm the convenience to shopping customers of the Enroll From Your Wallet program; (b) add another benefit to Duke's ESP III for purposes of the ESP versus MRO test; and (c) give the Ohio Market Development Working Group actual field data to evaluate the original idea and suggest improvements before that group considers the program on a statewide basis.[130]

As part of any approval of the ESP III, RESA suggests that the Commission find merit in an Enroll from Your Wallet pilot and order a working group composed of the Staff, Duke, RESA, the Ohio Consumers' Counsel and other interested stakeholders to meet, discuss and complete the details for the pilot within six months of a Commission Opinion and Order. Those details would include an identifier or set of identifying data that is unique to a particular customer and yet is easy for customers to remember. The detailed Enroll From Your Wallet program pilot would then be presented to the Commission for final review and approval. Following pilot approval, the pilot would be implemented and thereafter Duke would submit quarterly reports to the Commission, detailing the customer enrollment processes used, customer feedback about the enrollment processes used, customer shopping levels, and any slamming allegations/incidents.

IX. Market Energy Program

RESA presented another program for Commission consideration in this proceeding. The Market Energy Program ("MEP") is designed to reach out to shopping-eligible customers in Duke's service territory and present them with an attractive and straight-forward competitive offer and educate them about shopping. RESA Witness Pickett explained the MEP proposal.[131] The shopping-eligible customers will be those residential and small commercial customers who are not

[129] RESA Ex. 4 at 7.
[130] RESA Ex. 4 at 6.
[131] RESA Ex. 4 at 8-13.

currently receiving service from a CRES provider and who call Duke's call center for any reason other than termination or emergencies. The competitive product will be a three percent discount to the applicable Price-to-Compare ("PTC") at the time of enrollment for a 6-month period.[132]

Mr. Pickett described the four goals of MEP:[133]

- Provide customers who have not otherwise participated in the competitive electric market, access to a competitive product that has been approved and sanctioned by the Commission.
- Offer an introduction to competitive products at a guaranteed discount to the default service price.
- Promote competition and supplier diversity.
- Educate customers about competition and the new role Duke plays with its trusted suppliers.

While acknowledging that additional details must be "hammered out" between Duke and CRES providers, Mr. Pickett also explained some of the mechanics and details of MEP:[134]

- If the customer expresses interest in the offered product and desires a specific CRES provider, Duke will process an enrollment on the MEP rate for that supplier. If the customer expresses interest in the offered product and has no desired CRES provider, a CRES provider from the list of participating CRES providers will be assigned sequentially to serve that customer pursuant to the terms of the program.
- New customers who call Duke and who choose to participate in the MEP will be enrolled with a CRES provider immediately.
- Moving, existing customers who call Duke and choose to participate in the MEP will be switched after one month on the default service.
- Duke will be required to create a process or system that can sequentially assign a participating MEP supplier in a non-biased manner. Duke will process enrollments via a standardized input built for the MEP, and process the enrollment as it would any other enrollment. Duke should be required to work with participating CRES providers to develop the details so that the billing information is exchanged for both rate-ready and bill-ready billing formats.
- At any time during the six-month term, the customer can elect to go with another CRES provider, choose a different product with the same CRES

[132] *Id.* at 8.
[133] RESA Ex. 4 at 11-12.
[134] RESA Ex. 4 at 9, 12.

provider or take the SSO without a termination fee. If just prior to the expiration of the six-month term the customer has not chosen a product, the MEP provider would be required to send renewal notices in a manner consistent with applicable Commission Rules.

- Customers can leave the program (without a termination fee during the program) to take another competitive product, return to default service, or while on a renewal product with a MEP provider, stemming from MEP service.

Mr. Pickett noted that CRES providers will have to meet eligibility requirements, and can enter and exit the program on a quarterly basis, with notice requirements and a service completion requirement.[135] Regarding costs, it is proposed that Duke, after consultation with the CRES providers who express interest in participating in the MEP program, submit a MEP start-up and maintenance plan with estimated costs to the Commission for review and approval of a per-enrolled customer charge at a level that will recoup the MEP's estimated start-up costs, amortized over a three-year period, as well as ongoing program maintenance costs.[136] Moreover, Mr. Pickett proposed an evaluation process through quarterly reports, detailing CRES provider and customer participation levels and an annual stakeholder meeting to review the program, assess its effectiveness against the stated goals, and promulgate any necessary changes to the program on a prospective basis.[137]

Mr. Pickett testified that a similar type of program exists in Pennsylvania, per order of the Pennsylvania Public Utility Commission. The program has been successful in that state, and the PPL utilities in particular are proposing to extend their customer referral program because of the success of the program.[138]

[135]RESA Ex. 4 at 10.
[136]*Id.* at 11.
[137]*Id.* at 12.
[138]RESA Ex. 4 at 12-13.

X. Usage Data Access

A. Duke Proposed Change in the Definition of "Interval Meter"

Duke has proposed to change the definition of "interval meter" in its supplier tariff as follows (with Duke's proposed redlining shown):[139]

> "Interval Meter" means an electric meter installed ~~that records~~ at an End-use Customer's premises for the purpose of providing measured hourly usage data, rather than estimated usage based on a Load Profile, to the Regional Transmission Organization for monthly wholesale power settlement of a load serving entity's aggregate load, as determined by the Company ~~electric usage for a defined interval, allowing the possibility for consumption during different time periods to be billed at different rates and providing a means for an End-use Customer's load pattern to be analyzed~~.

Since 2008, Duke has been installing AMI throughout its service territory. Duke pre-filed testimony earlier this year in another proceeding stating that Duke has installed more than 716,000 electric AMI meters in its service territory, and that it is nearly 100 percent complete in its deployment of AMI meters.[140] Duke has spent years deploying the AMI meters, but Duke has yet to provide any data from those AMI meters to CRES providers since it began installing those meters six years ago. In addition to those AMI meters, Duke has roughly 4,000 customers with Interval Data Recorder ("IDR") meters, an older-style interval meter.[141] As a result, a small number of customers are participating in Duke's time of use ("TOU") pilot programs. However, CRES providers have not been able to develop TOU or other dynamic pricing products that would allow all customers to further benefit from their advanced meters.

Duke witness Jones explained that the change in the definition of "interval meter" is to limit its applicability to the older-style interval meters only and to "make clear the distinction between

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[139] Duke Ex. 13 at Attachment DLJ-1 at 3.
[140] *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider AU for 2013 Grid Modernization Costs*, Case No. 14-1051-GE-RDR, Direct Testimony of Donald L. Schneider, Jr. at 3-4.
[141] Duke Ex. 13 at 8; Tr. Vol. IV at 1052.

these interval meters and AMI meters."[142] As a result of this proposal, the ability of CRES providers to asks for interval data under the supplier tariff will also be limited – limited to just interval data from the older-style meters.[143]

The impact of this proposed definitional change is another attempt to avoid the issue of AMI data access by eliminating the enhanced version of interval data that suppliers have been able to receive for years. Additionally, this proposed change in the definition of "interval meter" does not correspond with a Commission's Order issued only a few months prior to Duke filing this ESP III application. The Commission ordered all electric distribution utilities ("EDUs") in Ohio to file amended tariffs that "specify the terms, conditions, and charges" pursuant to which they will provide interval data (customer energy usage data) from AMI to CRES providers.[144] Moreover, the Commission very specifically ordered that the tariff amendments address or include the following:[145]

- Format, method, granularity, and frequency of the customer energy usage data that a CRES provider may receive.
- Implementation of individual network service peak load and peak load contribution formulas.
- Recovery of any necessary capital improvement or infrastructure costs.

This conclusion was confirmed on rehearing.[146] Instead of following that directive, Duke has proposed as part of its ESP III to limit CRES providers. As noted by RESA witness Ringenbach, this proposal is unwise,[147] as well as unfair, discriminatory, and contrary to a Commission order. The Commission should reject this proposed supplier tariff change.

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[142] Duke Ex. 13 at 8-9.
[143] Tr. Vol. IV at 1054.
[144] *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Opinion and Order at 36 (March 26, 2014).
[145] *Id.*
[146] May 21, 2014 Entry on Rehearing at 29-20.
[147] RESA Ex. 1 at 9-10.

B. Adjustments/Resettlement of Interval Data

Duke has proposed to add a new provision in its supplier tariff at Section XIV, paragraph 14.4, to address adjustments and resettlements related to interval data as follows:[148]

> The Company shall have no obligation to authorize or initiate a billing adjustment or resettlement under the RTO's rules, regulations, or agreements for any Certified Supplier or their designated TSA. However, in the event the Company authorizes or initiates any such billing adjustment or resettlement, each Certified Supplier or their designated TSA shall consent to such billing adjustment or resettlement within ten business days after receiving such notice form the Company.

Mr. Jones acknowledged that this proposed new language states that Duke is authorized to request an adjustment or resettlement and states that, when such is initiated by Duke, the CRES supplier is obligated to accept what Duke has decided to authorize or initiate.[149] This language is one-sided and unfair. As such, it should not be accepted by the Commission as proposed. Instead, the Commission could modify the provision to allow both Duke and the CRES provider to authorize or initiate a billing adjustment or resettlement under the RTO's rules, regulations, or agreements for any Certified Supplier or their designated TSA. The second sentence should be deleted altogether. Alternatively, the Commission could simply eliminate the provision in the supplier tariff and order an insertion in the Master Supply Agreement that states only that both Duke and the CRES provider can authorize or initiate a billing adjustment or resettlement under the RTO's rules, regulations, or agreements for any Certified Supplier or their designated TSA.

C. Ohio Environmental Council Recommendations

OEC witness Munn testified that usage data should be accessible to customers. Moreover, he stated that any data relating to demand and other information generated by a meter should be made available to both the customer and the utility.[150] RESA does not disagree with Mr. Munn's

[148] Duke Ex. 13 at Attachment DLJ-1 at 22.
[149] Tr. Vol. IV at 1067-1069.
[150] OEC Ex. 1 at 3.

point. RESA wishes to point out that competitive suppliers likewise should have access to the usage data (beyond what is permitted in the current administrative rules). Generic usage data and, upon receipt of customer consent, customer-specific usage data. CRES providers need such information in order to develop, market, provide and bill for advance products, such as time-of-use products. Any approval by the Commission of Mr. Munn's recommendation on this point should also allow CRES providers access to the usage data (with appropriate customer consent) as well.

Mr. Munn also recommended adoption of 21 metrics as a means for tracking Duke's performance under its Distribution Capital Investment Rider. RESA has taken no position regarding the Distribution Capital Investment Rider. However, RESA is generally familiar with the metrics recommended by Mr. Munn as they are similar to the metrics reported by Commonwealth Edison and Ameren in Illinois.[151] However, the performance measures should not simply be applied for the Distribution Capital Investment Rider. Given that Duke has nearly completed deployment of smart meters throughout its service territory, the Commission should require Duke to track the performance of such equipment and to report on the performance of the equipment. Moreover, as RESA argued above regarding the rate design changes for Riders RC and RE, RESA urges the Commission to move the competitive market forward. Usage data access is a "cross-over" topic with other cases at the Commission.[152] A cogent forward-moving plan is needed and the Commission is well within its authority to address usage data access in this proceeding.

XI. Conclusion

Wherefore, for the reasons detailed in this brief, RESA requests that the Commission reject Rider PSR as proposed in the Application. The Commission should also reject the proposed changes

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[151] OEC Ex. 1 at 4 and at DM-2.

[152] *See, e.g., In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding and Order (March 26, 2014) and Entry on Rehearing (May 21, 2014; *In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-2050-EL-EDU, Finding and Order (January 15, 2014), Second Entry on Rehearing (May 28, 2014); *In the Matter of the Review of the Consumer Privacy Protection and Customer Data Access Issues Associated with Distribution Utility Advanced Metering and SmartGrid Programs*, Case NO. 11-277-GE-UNC, Finding and Order (May 9, 2012) .

to the Supplier Tariff, but should provide that Duke extend the same type of messaging and collection opportunity it offers to its affiliate, Duke One, to the CRES providers. The Commission should allow both Duke and the CRES providers to authorize or initiate a billing adjustment or resettlement under the RTO's rules, regulations, or agreements for any Certified Supplier or their designated TSA. In addition, to enhance market development, the Commission should provide for the "Enroll from Your wallet" pilot and a "Market Energy Program" as proposed by RESA. Finally, RESA generally supports the efforts by Interstate Gas Supply in this case to have fair and prudent default service pricing in Duke's territory that fully reflects the costs to serve customers on the SSO product.

Respectfully submitted,

M. Howard Petricoff (0008287), Counsel of Record
Michael J. Settineri (0073369)
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
614-464-5414
614-719-4904 (fax)
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com

Attorneys for the Retail Energy Supply Association

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. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 15th day of December 2014 upon all persons/entities listed below:

Gretchen L. Petrucci

Duke Energy Ohio, Inc.
Amy B. Spiller
Rocco O. D'Ascenzo
Jeanne W. Kingery
Elizabeth H. Watts
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, OH 45201-0960
amy.spiller@duke-energy.com
rocco.dascenzo@duke-energy.com
elizabeth.watts@duke-energy.com
jeanne.kingery@duke-energy.com

Office of the Ohio Consumers' Counsel
Maureen R. Grady
Joseph P. Serio
Edmund "Tad" Berger
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
maureen.grady@occ.ohio.gov
joseph.serio@occ.ohio.gov
edmund.berger@occ.ohio.gov

Dane Stinson
Dylan F. Borchers
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
dstinson@bricker.com
dborchers@bricker.com

Ohio Energy Group
David Boehm
Michael L. Kurtz
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLlawfirm.com
mkurtz@BKL1awfirm.com
jkylercohn@BKLlawfirm.com

FirstEnergy Solutions Corp.
Mark A. Hayden
Jacob A. McDermott
Scott J. Casto
FirstEnergy Service Company
76 S. Main Street
Akron, OH 44308
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
scasto@firstenergycorp.com

Ohio Manufacturers' Association
Kimberly W. Bojko
Jonathan Allison
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus OH 43215
bojko@carpenterlipps.com
allison@carpenterlipps.com

IGS Energy
Joseph Oliker
6100 Emerald Parkway
Dublin, Ohio 43016
joliker@igsenergy.com

The Energy Professionals of Ohio
Kevin R. Schmidt
88 East Broad Street, Suite 1770
Columbus, OH 43215
schmidt@sppgrp.com

The Dayton Power and Light Company
Judi L. Sobecki
1065 Woodman Drive
Dayton, OH 45432
judi.sobecki@aes.com

Direct Energy Services, LLC and Direct Energy Business, LLC
Joseph M. Clark
21 East State Street, 19th Floor
Columbus, Ohio 43215
joseph.clark@directenergy.com

Gerit F. Hull
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Ave., N.W., 12th Floor
Washington, DC 20006
ghull@eckertseamans.com

Staff of the Public Utilities Commission of Ohio
Steven Beeler
Thomas Lindgren
Ryan O'Rourke
Attorney General's Section
Public Utilities Commission of Ohio
180 E. Broad St., 6th Floor
Columbus, OH 43215
steven.beeler@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
ryan.orourke@puc.state.oh.us

Industrial Energy Users-Ohio
Samuel C. Randazzo
Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

Ohio Power Company
Steven T. Nourse
Matthew J. Satterwhite
Yazen Alami
American Electric Power Service Corp.
1 Riverside Plaza 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com

People Working Cooperatively, Inc.
Andrew J. Sonderman
Margeaux Kimbrough
Kegler Brown Hill & Ritter LPA
65 East State Street
Columbus, Ohio 43215-4294
asonderman@keglerbrown.com
mkinbrough@keglerbrown.com

Ohio Environmental Council
Trent Dougherty
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
tdougherty@theOEC.org

The Kroger Company
Rebecca L. Hussey
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus OH 43215
hussey@carpenterlipps.com

Constellation NewEnergy Inc. and Exelon Generation Company LLC
David I. Fein
Exelon Corporation
10 South Dearborn Street, 47th Floor
Chicago, IL 60603
david.fein@exeloncorp.com

Cynthia Fonner Brady
Exelon Business Services Company
4300 Winfield Road
Warrenville, IL 60555
cynthia.brady@constellation.com

Lael Campbell
Exelon
101 Constitution Avenue, NW
Washington, DC 20001

Sierra Club
Christopher J. Allwein
Todd M. Williams
Williams Allwein and Moser, LLC
1500 West Third Ave, Suite 330
Columbus, Ohio 43212
callwein@wamenergylaw.com
toddm@wamenergylaw.com

The Greater Cincinnati Health Council
Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasehart.com

Ohio Partners for Affordable Energy
Colleen L. Mooney
231 West Lima Street
Findlay, OH 45839-1793
cmooney@ohiopartners.org

Wal-Mart Stores East LP and Sam's East Inc.
Donald L. Mason
Michael R. Traven
Roetzel & Andress LPA
155 East Broad Street, 12th Floor
Columbus, Ohio 43215
dmason@ralaw.com
mtraven@ralaw.com

Rick D. Chamberlain
Behrens, Wheeler & Chamberlain
6 N.E. 63rd, Suite 400
Oklahoma City, OK 73105
rdc_law@swbell.com

lael.campbell@constellation.com

Natural Resources Defense Council
Samantha Williams
20 N Wacker Drive, Suite 1600
Chicago, IL 60606
swilliams@nrdc.org

Environmental Law & Policy Center
Justin Vickers
33 East Wacker Drive, Suite 1600
Chicago, IL 60601
jvickers@elpc.org

Ohio Development Services Agency
Dane Stinson
Dylan Borchers
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
dstinson@bricker.com
dborchers@bricker.com

EnerNOC, Inc.
Gregory J. Poulos
471 E. Broad St., Suite 1520
Columbus, OH 43054
gpoulos@enernoc.com

Joel E. Sechler
Carpenter Lipps & Leland LLP
280 North High Street – Suite 1300
Columbus, OH 43215
Sechler@carpenterlipps.com

City of Cincinnati
Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com