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 BRIEF OF THE OHIO MANUFACTURERS' ASSOCIATION

Kimberly W. Bojko, Counsel of Record
Jonathan A. Allison
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Phone: 614-365-4100
Fax: 614-365-9145
Email: Bojko@carpenterlipps.com
Allison@carpenterlipps.com

Attorneys for the Ohio Manufacturers' Association

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I. INTRODUCTION

On May 29, 2014, Duke Energy Ohio, Inc. (Duke) filed an application to establish a standard service offer (SSO) in the form of an electric security plan (ESP) to be in effect initially from June 1, 2015 through May 31, 2018.[1] On the same date, Duke also filed an application to amend its Certified Supplied Tariff, P.U.C.O. No. 20. The Ohio Manufacturers' Association (OMA), which is comprised of many members with facilities located in Duke's service territory, was granted intervention in the above-captioned proceeding on August 5, 2004, by means of the same entry (Entry) which established a procedural schedule for this matter. A hearing on the ESP proposed in the Application commenced on October 22, 2014, and ended on November 20, 2014. Pursuant to the Attorney Examiner's directive at the last day of hearing, OMA hereby files its initial brief in the above-captioned proceeding.

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

Duke's request for approval to include in its ESP several nonbypassable charges is unlawful, unjust, and unreasonable. Additionally, Duke's proposed ESP is more costly than the alternative market rate offer (MRO), and therefore, fails to satisfy the statutory requirement that the ESP, including its pricing and all other terms and conditions, be more favorable in the aggregate than an MRO.[2] For the reasons discussed herein, OMA respectfully requests that the Public Utilities Commission of Ohio (Commission) reject Duke's proposed ESP, as it does not satisfy the statutory requirements of Chapter 4928, Revised Code.

Alternatively, OMA requests that the Commission modify Duke's proposed ESP and deny Duke's requests to: (1) retain the option to terminate the ESP after its second year (May 31, 2017), (2) establish a distribution capital investment rider (Rider DCI) to recover unlimited capital expenditures outside of a distribution rate case, (3) immediately eliminate the Load Factor Adjustment Rider (Rider LFA), and (4) establish the proposed Price Stabilization Rider (Rider PSR).

II. STANDARD OF REVIEW

Section 4928.143(C)(1), Revised Code, sets forth the following standard of review, which applies to ESP cases:

> The burden of proof in the proceeding shall be on the electric distribution utility. The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date. Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the

[2] Section 4928.143(C)(1), Revised Code.

> commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.

In addition to, and in connection with, the provisions above, Section 4905.22, Revised Code, prescribes the following:

> Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such of the commission.

III. ARGUMENT

A. Duke's Proposed ESP is Unlawful and Unreasonable and Should be Rejected.

1. Duke's Request to Retain the Option to Terminate the Plan after its Second Year Should be Denied.

Although initially established as a three-year ESP with a term from June 1, 2015 through May 31, 2018, the Company purportedly reserves the following: [3]

> [T]he 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 the same. For purpose 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, decision of the Federal Energy Regulatory commission, and the rules, tariffs, and agreements of PJM Interconnection, L.L.C., or any successor regional transmission operator.

The Company's request is problematic and should accordingly be denied by the Commission. The events that function as conditions precedent to Duke terminating the proposed

[3] Application at 16; see also Direct Testimony of James P. Henning at 5 (Duke Ex. 2) and Direct Testimony of William Don Wathen Jr. at 3 (Duke Ex. 6).

ESP one year early are undefined.[4] Given the broad "change in law" provision plus language contained in the Application and without any further support or explanation in pre-filed testimony limiting such language or setting forth objective criteria, Duke may, at its sole discretion, terminate its ESP early if it becomes apparent to Duke that it may be more beneficial for the Company to terminate the ESP early than to continue the plan through the end of the three year period.[5] Because the terms set forth in the early termination language are so imprecise, the Company may tailor its rationale for early termination of the ESP to fall within virtually any of the categories set forth above.

Duke also included the unilateral right to early termination in the Master Standard Service Offer Supply Agreement (MSA),[6] which will "introduce unnecessary risk and uncertainty into the SSO supply procurement process," which could impact participation in the SSO auctions and the winning bid prices resulting from those auctions.[7] Duke witness Wathen recognizes that the early termination provision in the MSA creates a risk that must be considered by the SSO suppliers that bid into the SSO auctions, but he could not quantify that risk or know how a supplier would price that risk or factor it into their auction bidding practices.[8] Staff witness Strom further recognizes that if Duke implements its early termination right, the entirety of the SSO supply would terminate as of May 31, 2017, which could create rate volatility as 100% of the SSO supply would need to be replaced with prevailing market prices at the time.[9]

As noted by RESA/Constellation witness Campbell, "[T]he lack of certainty regarding the term of the ESP, and the potential outcome if Duke elects to trigger its unilateral termination

[4] Application at 16-17.
[5] Id.; see also Direct Testimony of Lael Campbell at 18-21 and Attachments LC-2 and LC-3 (RESA/Constellation Ex. 3).
[6] Direct Testimony of Raymond W. Strom at 3-4 (Staff Ex. 3); also see Tr. Vol. II. at 328, lns. 8-10.
[7] Staff Ex. 3 at 3-4.
[8] Tr. Vol. II. at 330, lns. 17-24.
[9] Staff Ex. 3 at 4.

'right,' imposes on customers, CRES providers, SSO suppliers, and both the competitive retail and wholesale markets a high degree of uncertainty and instability."[10] Historically, CRES suppliers have structured CRES offerings within the context of the ESP and the ESP term. Thus, an option to terminate the ESP early will create additional risk and uncertainty that will have to be added to product offerings by CRES suppliers.[11] A unilateral early termination provision could also limit the availability of longer term CRES contracts and, therefore, impact the ability of customers to enter into longer term contracts with CRES suppliers to create certainty in their electric rates.[12]

The RESA/Constellation witness also explains how this provision is impractical as there are only nine months from the time Duke is required to notify the Commission of its unilateral decision to terminate (September 1, 2016) and when the new ESP would have to be filed, approved, and commence (June 1, 2017).[13]

Permitting Duke to terminate, at its sole discretion and for virtually any reason, the ESP one year early gives the Company latitude that is not specifically authorized by statute.[14] The operative statutory provision governing the content of ESPs is Section 4928.143, Revised Code. Those provisions which must be included in an ESP are established in Section 4928.143(B)(1), Revised Code; provisions or mechanisms that may be included in an ESP are set forth in Section 4928.143(B)(2). Section 4928.143(B)(2), Revised Code, provides, "[t]he [electric security] plan may provide for or include, without limitation, any of the following…[.]" The section then continues to list nine categories of provisions that may be included in an ESP. Importantly, early

[10] RESA/Constellation Ex. 3 at 19.
[11] RESA/Constellation Ex. 3 at 19-20.
[12] Id. at 20.
[13] RESA/Constellation Ex. 3 at 20-21.
[14] RESA/Constellation Ex. 3 at 18.

termination or the ability to unilaterally revise an ESP after approval and implementation is not delineated in any of the nine categories.

The Supreme Court of Ohio has previously held the following regarding Section 4928.143(B)(2), Revised Code:[15]

> By its terms, R.C. 4928.143(B)(2) allows [electric security] plans to include only "any of the following" provisions. It does not allow plans to include "any provision." So if a given provision does not fit within one of the categories listed "following" (B)(2), it is not authorized by statute.

Given that a provision such as that proposed by Duke, permitting a revision to the implemented ESP and early termination, does not fall within any of the categories enumerated in Section 4928.143(B)(2), Revised Code, Duke may not permissibly include such a provision in its plan.

Permitting early termination for numerous, undefined reasons further eliminates from consumers the predictability and security arising from the approval of an ESP for a defined term. The term "ESP," as a statutory creation, is defined as an "electric security plan." Any action, such as the reservation of rights by Duke to terminate its ESP early eliminates any security and stability in the ESP, and "creat[es] a new, unhedgeable risk for CRES providers and, by extension, consumers."[16]

Moreover, Commission authorization of this type of action sets forth a dangerous precedent for other electric distribution utilities (EDUs) similarly situated to the Company. Permitting one EDU to terminate its ESP early may open the door for approval of similar requests by other Ohio EDUs, which would further destabilize the security, for consumers and others, supposedly arising from the approval of an ESP.

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[15] See *In re Application of Columbus Southern Power Company, et al.* (2011), 128 Ohio St.3d 512, 520, 947 N.E.2d 655.

[16] RESA/Constellation Ex. 3 at 20.

For all the reasons stated above and as recommended by Staff and others, the Company's unilateral option to terminate the ESP as of May 31, 2017 should be rejected and removed from the MSA.[17]

2. Duke's Request to Establish Rider DCI to Recover from Ratepayers Costs Associated with Distribution Capital Investment is Unlawful, Unreasonable, and Unjust, and Should be Denied.

According to the Application, the Company is establishing Rider DCI "to enable the necessary investment in the Company's distribution system, while allowing for appropriate and timely cost recovery."[18] Through Rider DCI, Duke projects to charge customers approximately $211 million during the term of the ESP ("It would be whatever was being collected from—the [$22 million] for the first year, [$63 million] for the second year, [$83 million] for 2017, and five months of the [$104 million]").[19] Duke also alleges that "[m]aintaining a reliable system is a continuing obligation that Duke cannot meet absent ongoing capital investment. And without timely recovery of such investment, the Company's financial health and vitality are compromised." Thus, Duke's Application implies that Rider DCI is necessary in order to maintain a reliable system and for the Company's health and vitality.[20] However, after further examination, Duke admits that this is simply not the case.[21] Duke has alternative means for recovery of capital investment from ratepayers, and Duke has not demonstrated that the traditional base rate mechanism is insufficient to collect its costs.[22] As Duke recognizes, timely

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[17] Staff Ex. 3 at 3-4; RESA/Constellation Ex. 3 at18-21.
[18] Application at 11.
[19] Tr. Vol. II at 445.
[20] Id.; also see Direct Testimony of Marc W. Arnold at 16 (Duke Ex. 21); Direct Testimony of Jerome D. Mierzwa at 7-8 (OCC Ex. 45).
[21] See Duke Ex. 21 at 17 (stating that Duke cannot guarantee that system reliability or customer satisfaction will improve as a result of implementing the distribution plans included under Rider DCI); Direct Testimony of James D. Williams at 15-16 (OCC Ex. 47).
[22] Direct Testimony of Steve W. Chriss at 6 (Walmart Ex. 1); Direct testimony of James D. Williams at 14 (OCC Ex. 47); OCC Ex. 45 at 17.

recovery for investments made to maintain a reliable system can occur through a base rate case,[23] and there are no guarantees that recovery of the same capital investments through a rider mechanism (in lieu of a base rate case) will improve the reliability of the system.[24] Duke admits that it is currently meeting its reliability standards without the establishment of Rider DCI and that it will continue to meet its reliability standards in the future, even without the approval of Rider DCI.[25] Nonetheless, Duke has not appropriately demonstrated that its implementation of Rider DCI as proposed is just, reasonable, prudent, or lawful and, thus, recoverable from consumers.[26] Staff concurs, testifying that, as filed, Staff would not recommend approval.[27]

Specifically, Staff and other witnesses concluded that Rider DCI should not include general or common plant costs, as those assets are more appropriately considered for recovery in a distribution rate case.[28] Furthermore, as OCC witness Mierzwa recognizes, "[c]ommon general plant is not distribution infrastructure and does not relate to the modernization of that infrastructure."[29] He continued: "[w]hile additions to common general plant may indirectly lead to improved electric service reliability, such additions do not represent upgrades or modernization of distribution infrastructure."[30] Additionally, Staff and other witnesses stated that the revenue recovery for Rider DCI should be based upon actual plant additions, not projected additions.[31] Staff basis this recommendation upon the general principle that only plant that is used and useful should be incorporated into the revenue calculation.[32]

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[23] Cite;
[24] Duke Ex. 21 at 17; OCC Ex. 47 at 15-16.
[25] Duke Ex. 21 at 7; See also Prefiled Testimony of Peter K. Baker at 4 (Staff Ex. 7)(Staff witness Baker confirms that Duke has met both of its reliability performance standards during each of the past three years (2011-2013).
[26] OCC Ex. 47 at 15-17, 25; OCC Ex. 45 at 17.
[27] Tr. Vol. XIV at 3909.
[28] Tr. Vol. XIV. at 3902-03; Prefiled Testimony of Doris McCarter at 3 (Staff Ex. 6); OCC Ex. 45 at 20-21.
[29] OCC Ex. 45 at 21.
[30] Id.
[31] Staff Ex. 6 at 3; Direct Testimony of Kevin C. Higgins at 4, 12 (Kroger Ex. 1); OCC Ex. 45 at 18.
[32] Staff Ex. 6 at 3.

Other witnesses agree that an approach which includes establishment of and continuous increases in distribution riders, such as Rider DCI, to recover incremental distribution-related costs is not appropriate and could result in uneconomic incentives.[33] OCC witness Mierzwa explains that distribution riders "allow regulated utilities to collect designated costs from customers outside of the context of a traditional base rate proceeding, where all elements of the cost of service are examined. As a general matter, riders that provide for the automatic collection of certain costs from customers are contrary to sound ratemaking principles. When a utitly is permitted to collect costs through a rider, the incentive for the utility to control costs tends to be reduced or eliminated. . . . a rider can even potentially give a utility a perverse incentive to make uneconomic choices."[34] He also cited to a report issued by the National Research Regulatory Institute (NRRI), which "found that 'Good regulatory policy rejects costs trackers that are not essential for protecting a utility from a dire financial situation.'"[35]

Furthermore, OCC witness Kahal and Walmart witness Chriss correctly argue that Duke should make an adjustment to its proposed return on equity calculation to account for the reduction in the risk of regulatory lag that Duke will enjoy with its implementation of Rider DCI.[36]

As part of the modifications to Rider DCI that Staff is recommending in order for Rider DCI to be approved, Duke must implement caps on the amount that may be collected from customers pursuant to Rider DCI.[37] Staff proposes annual caps of $17 million for 2015, $50

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[33] OCC Ex. 45 at 3-6; OCC Ex. 47 at 25.
[34] OCC Ex. 45 at 3-4, lns. 21-5.
[35] OCC Ex. 45 at 5 (citing JDM Attachment-1, pg 14).
[36] Direct Testimony of Matthew I. Kahal at 4, 6-7, 8-12 (OCC Ex. 32); Walmart Ex. 1 at 7.
[37] Staff Ex. 6 at 5; Tr. Vol. XIV at 3905.

million in 2016, and $35 million for the first five months of 2018.[38] Staff also proposes that both the mechanism and rate associated with Rider DCI sunset with the end of the ESP term, May 31, 2018, after which Duke would be required to file a base rate case to recover the incremental plant in service (unless a subsequent ESP has already been approved to continue Rider DCI).[39]

Pursuant to Section 4928.143(B)(2)(h), an ESP may provide for or include "provisions regarding the utility's distribution infrastructure and modernization incentives for the electric distribution utility." At the outset, Duke's proposal to include nineteen programs (both new and enhancements to existing programs) as part of its "overall infrastructure modernization plan" as described in Duke witness Arnold's testimony seemingly falls within this provision of the law.[40] However, upon further review, it appears that the programs cited by Duke to be recovered under Rider DCI are not distribution expenses related to distribution infrastructure and modernization incentives, but rather, are merely "'system integrity-based programs proposed to maintain the current level of system asset condition'" and are focused on "'maintaining the serviceable condition of the asset and not specifically on improvements to reliability indices.'"[41] As OCC witness Williams recognized, maintenance activities instead of infrastructure modernization plans are not permitted to be included in an ESP under the statute.[42]

Furthermore, Section 4928.143(B)(2)(h), Revised Code, sets forth the burden of proof associated with authorizing such infrastructure and modernization incentives for an EDU:

> As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the

[38] Staff Ex. 6 at 5.
[39] Id.
[40] Duke Ex. 21 at 18-35, Attachment MWA 7.
[41] OCC Ex. 47 at 16 (quoting Attachment JDW-2)(emphasis omitted).
[42] OCC Ex. 47 at 17.

> electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

As stated above, EDU and customer expectations about the EDU's distribution system must necessarily be aligned if the Commission is to include, for instance, a distribution investment rider in an ESP.[43] To satisfy this requirement, Duke must look to customer satisfaction with the EDU's service and customer satisfaction with the cost of that service. Despite this requirement, Duke did not sufficiently demonstrate, in its Application or through supporting testimony, that its expectations and the expectations of its customers, regarding the Company's distribution system, are aligned.[44]

Additionally, Duke's proposal for Rider DCI to evolve over time to include additional programs or modifications to the initial programs in response to technological advances or changes in field conditions at the discretion of the utility,[45] does not allow the Commission to affirmatively determine that the utility and customers' expectations are aligned under the infrastructure modernization program proposed or will continued to be aligned for the existence of Rider DCI since the program will change.

Duke also did not provide sufficient analysis as to how the proposed investments will improve reliability for customers, but instead admits that Duke "cannot guarantee that system reliability or customer satisfaction will improve in terms of specific reliability index scores or a

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[43] See generally Section 4928.143(B)(2)(h), Revised Code; Prefiled Testimony of Peter Baker at 2-3 (Staff Ex. 7).
[44] OCC Ex. 47 at 25.
[45] Duke Ex. 21 at 18.

particular level of performance from implement its infrastructure improvement plans."[46] Duke further explains that there are other factors that impact reliability that Duke cannot control.[47]

Duke is currently meeting the Commission's distribution reliability standards and will continue to if Duke uses base distribution cases for funding if Rider DCI is not approved.[48] In fact, the Company admitted that it would be able to provide reliable service as measured by current reliability performance indices if the Commission did not approve Rider DIR as proposed in this proceeding.[49] Requesting to establish Rider DCI, without conducting an analysis of how or when reliability may improve and at what cost to consumers, is unreasonable and imprudent.[50] Given these circumstances, establishing Rider DCI to fund additional investments in the distribution system (without the benefit of research supporting their necessity) would be imprudent and, therefore, any imprudently incurred costs under the proposed programs cannot be recovered from ratepayers.

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[46] Id. at 17.
[47] Id.
[48] Id.
[49] Id.
[50] See OCC Ex. 47 at Attachments JDW-2, JDW-4, JDW-7, JDW-8, and JDW-17.

3. Duke's Request to Eliminate the Load Factor Adjustment Rider (Rider LFA) Immediately Should be Rejected.

Duke proposes to eliminate Rider LFA in order to eliminate a non-market-based influence in the competitive market and prevent subsidies from occurring between certain rate schedules (i.e., DS, DP, and TS).[51] Duke explains that the establishment of Rider LFA was a result of a negotiated settlement in the last ESP proceeding, which would incentivize large customers for reducing their load factor.[52]

While OMA supports Duke's request to eliminate Rider LFA (and eliminate cross subsidization within the commercial rate class), OMA agrees with Staff witness Donlon that Rider LFA should be phased out over the term of the ESP to mitigate the impact on certain customers who will see a rate increase from the elimination.[53] Based upon the theory of gradualism, Staff proposes that Rider LFA be "reduced by 33% in year one and two and by 34% in year three."[54] After the final true-up, Staff recommends that Rider LFA be eliminated.[55] Staff's recommended phase out "will reduce the initial rate impact of those customers receiving a credit from [Rider LFA], while still reducing the cost of those customers that are paying into [Rider LFA]."[56] Staff's phase out proposal is reasonable and should be adopted as a means to mitigate any negative rate impacts that may occur to some customers from the elimination of the rider.

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[51] Direct Testimony of William Don Wathen Jr. at 21-22 (Duke Ex. 6).
[52] Id.; also see Tr. XIV at 3866.
[53] Prefiled Testimony of Patrick Donlon at 3 (Staff Ex. 5).
[54] Id.
[55] Id.
[56] Id. at 4.

4. **Duke's Request to Establish its Proposed Rider PSR, Which will be Recovered from Ratepayers, Should be Denied as Unlawful, Unreasonable, Imprudent, and not Supported by the Record.**

Through its ESP, Duke is requesting to establish Rider PSR, as "a partial hedge," which will purportedly "serve to mitigate some of the volatility in overall rates that customers pay for generation service."[57] In essence, Duke would like customers to pay for the expenses associated with its share of certain generating units.[58] In exchange for such payment, Duke will pass on to customers any net revenues obtained from selling the power from those generating units into the capacity and energy markets.[59] If the costs to operate the generating units exceed the revenues obtained in the wholesale markets, customers are still required to pay the costs of the generating units.[60] Thus, if market prices are high, the generating units will theoretically become more profitable (assuming all else equal), and those net revenues will be passed on to customers. Thus, Duke's proposal and any alleged benefits to customers will depend on high wholesale markets.

Duke initially proposes to include only the revenues and expenses associated with its nine percent share of the Ohio Valley Electric Company (OVEC) generating units; however, the Company is also requesting the authority to expand Rider PSR "to include similar financial arrangements with other generators."[61] As Staff explains, given Duke's September 11, 2014 filing at the Federal Energy Regulatory Commission (FERC) to sell all of the generators owned by Duke's affiliate, Duke Energy Commercial Asset Management (DECAM), to Dynegy Resource I, expanding Rider PSR to include financial agreements with non-affiliated generators

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[57] Direct Testimony of James P. Henning at 10, lns. 5, 3-4 (Duke Ex. 2).
[58] See Application at 13-14; Duke Ex. 2 at 10; Duke Ex. 6 at 16 ; Prefiled Testimony of Hisham M. Choueiki at 4, 12 (Staff Ex. 1).
[59] Id.
[60] Id.
[61] Duke Ex. 2 at 10; Application at 13.

seems to no longer be an option.[62] Duke, however, has not modified its Application or supporting testimony to remove said option that appears to be no longer feasible, or is at least nonsensical.[63] OMA, Staff, and numerous intervenors oppose the creation of Rider PSR and the recovery of any costs attributable to Rider PSR from Duke's customers.[64] Specifically, Staff stressed its opposition, stating:[65]

> Granting rider PSR shifts the risk associated with the OVEC generating stations to Duke Energy Ohio's customers. The latter is, in Staff's opinion, inconsistent with the Commission's objective of transitioning all Ohio EDUs to a fully-competitive retail-market construct and violates one of the state's policy goals as articulated in §4928.02(H), Revised Code.
>
> Additionally, in Case No. 13-2385-EL-SSO, Staff expressed its opinion that AEP Ohio's similarly proposed Purchased Power Agreement (PPA) rider would force all of AEP-Ohio's distribution customers, including shopping customers, to subsidize AEP-Ohio's generation assets. Duke Energy Ohio's proposed OCEC-related rider is almost identical to what AEP-Ohio proposed in its Electric Security Plan that was filed on December 20, 2013. Staff recommended that the Commission deny AEP Ohio's proposed PPA rider. Accordingly, Staff recommends that the Commission deny Duke Energy Ohio's proposed rider PSR.

a. Rider PSR is Unlawful.

As designed, Rider PPA effectively monetizes the contractual entitlements Duke retains in the OVEC generating units, which are co-owned by the Company and a number of other entities. Proposed on a nonbypassable basis, Rider PSR would pass through to customers the net costs or benefits, if any, associated with the sale of Duke's entitlement of its share of the energy and capacity output from the OVEC generating units into the PJM market. According to Duke,

[62] Staff Ex. 1 at 4-5, n.6; Tr. Vol. XII at 3370 .
[63] At the hearing, Staff witness Choueiki struggled with the nonsensical option of expanding Rider PSR to include purchase power agreements or financial arrangements with third-party or non-affiliated generators. Tr. Vol. XII at 3369-3371.
[64] Staff Ex. 1 at 10-13; Direct Testimony of Joseph Haugen at 6-19, adopting Tim Hamilton's Testimony (IGS Ex. 13); Direct Testimony of James F. Wilson at 5-45 (OCC Ex. 43); Kroger Ex. 1 at 4-8; Direct Testimony of Campbell at 6-8, 8-16 (RESA/Constellation Ex. 3); Direct Testimony of Steve W. Chriss at 9-10; Direct Energy Ex. 1 at 5-9; Direct Testimony of Sarah E. Jackson at 3-23 (Sierra Club Ex. 4).
[65] Staff Ex. 1 at 11-12 (citations omitted).

the Company is offering "the economic value of its share of the capacity and energy from OVEC to its retail customers for the duration of Duke Energy Ohio's entitlement."[66] Duke's proposal is to sell 100% of its share of OVEC's energy and capacity into the wholesale market and then pass onto customers the difference between "the revenue generated from such sales and the costs allocated from OVEC to [Duke]."[67] Duke contends that the capacity and energy from OVEC will not displace any of the capacity and energy procured for the standard service offer (SSO) or any provided by CRES providers, and thus, the proposal does not run afoul of the State of Ohio's objective of transitioning Ohio to a competitive retail market.[68]

Duke's attempt to pass through to customers the net costs (or benefits, assuming that any arise) resulting from the sale of the Company's OVEC generation entitlements into the PJM market is unlawful, as it seeks recovery from customers for costs associated with generation assets. "Full corporate separation," as contemplated in Chapter 4928 of the Revised Code, means the full divestiture of an electric distribution utility's generation assets. Duke cannot, therefore, hold ratepayers liable for costs stemming from generation assets. As explained further below, the 11-3549 Stipulation approved by the Commission envisioned full corporate separation by the end of 2014, whereas Duke would divest all of its generation assets, including Duke's OVEC contractual entitlements.[69] The OVEC entitlement was not excluded from that settlement or the Commission's Order.[70] The Commission neither intended for nor authorized Duke to indefinitely retain and, in so doing, monetize its OVEC contractual entitlements in the context of an ESP.

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[66] Duke Ex. 6 at 11.
[67] Id. at 11-12.
[68] Id. at 12.
[69] See n.100.
[70] Staff Ex. 1 at 6-7; OCC Ex. 2 at 25-27; OMA Ex. 2 at 45-46.

As specified in Section 4928.143(B)(2)(a), Revised Code, an ESP may provide for or include "the cost of purchased power **supplied under the offer**, including the cost of energy and capacity, and including purchased power acquired from an affiliate[.]" (Emphasis added). However, as explained by Duke, none of the energy or capacity associated with the Company's OVEC entitlement would be bid into the auctions conducted to procure generation services for the SSO load or be used to offset any of the SSO load included in the auction. Thus, the energy and capacity associated with the Company's OVEC entitlement will not supply the SSO load. Thus, inclusion of a purchased power agreement rider that is not associated with the cost of supplying energy or capacity to standard service offer customers is not permitted under the statute. Contrary to Duke's claims, Duke's proposed Rider PSR is also not permitted under Section 4928.143(B)(2)(d), Revised Code. As discussed below, proposed Rider PSR is not a charge related to default service and will not have the effect of stabilizing or providing certainty regarding retail electric service as required by the statute.[71]

Moreover, providing a 'wires only' company with revenues associated with the costs of a generating facility is tantamount to providing the distribution utility with transition revenues outside of the market development period in violation of Section 4928.38, Revised Code.[72] Section 4928.38, Revised Code, states in pertinent part:

> [A]n electric utility that receives such transition revenues shall be wholly responsible for how to use those revenues and wholly responsible for whether it is in a competitive position after the market development period. The utility's receipt of transition revenues shall terminate at the end of the market development period. With the termination of that approved revenue source, the utility shall be fully on its own in the competitive market. The commission shall not authorize the receipt of transition revenues or any equivalent revenues by an electric utility

[71] *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, Opinion and Order at 21 (September 4, 2013).
[72] Kroger Ex. 1 at 4, 5-6.

except as expressly authorized in sections 4928.31 to 4928.40 of the Revised Code.

The Commission may not grant additional transition revenues in the form of revenues received from the implementation of Rider PSR. In a competitive market, collecting revenues associated with a generating facility from customers when the customers do not receive generation or another product or service from the generating facility is unlawful, unjust, and unreasonable.[73] IGS witness Haugen correctly stated that "Duke's generation should be required to stand on its own, just like all other generation in the market."[74] Staff noted that it has taken the Commission over a decade to transition all four electric utilities into a "fully-competitive retail-market construct" and "[Duke] has not been in the business of selling electric generation service since January 1, 2012." Staff then concluded that they "do not see a need for granting rider PSR."[75]

Rider PSR also violates the policy of the state.[76] As established in Section 4928.02(H), Revised Code, it is the policy of the state to

> 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.

Approval of and collection of costs through proposed Rider PPA would force all of Duke's distribution customers, including shopping customers, to subsidize a regulated distribution company's generation assets.[77] Section 4928.02(H), Revised Code, prohibits such result.[78]

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[73] IGS Ex. 13 at 6; Direct Energy Ex. 1 at 7; Kroger Ex. 1 at 4; RESA/Constellation Ex. 3 at 14-15.
[74] IGS Ex. 13 at 6.
[75] Staff Ex. 1 at 10.
[76] Staff Ex. 1 at 12-13; IGS Ex. 13 at 6-7; RESA/Constellation Ex. 3 at 10, 14-15; Sierra Club Ex. 4 at 5.
[77] Staff Ex. 1 at 11; IGS Ex. 13 at 6-7.

Further, any net costs (or benefits) that may arise from Rider PSR are "generation related." As evidenced by statute and case law, requiring all distribution customers to pay for generation-related costs associated with one or more generating facilities owned by their electric distribution utility is an anticompetitive subsidy that is prohibited.[79] Thus, the Commission should deny Duke's request to establish Rider PSR.

Moreover, the Commission is prohibited from approving Rider PSR, which would increase Duke's total compensation for wholesale electric service, as the Commission is preempted from regulating the wholesale price of capacity and energy by the Federal Power Act (FPA).[80] Recent Federal Court decisions have rejected states' attempts to subsidize the development of local power plants.[81] Adoption of Rider PSR would result in Duke being compensated for its participation in the wholesale market in a manner that conflicts with the PJM auction, which is impermissible due to FERC's exclusive authority over wholesale markets.

As proposed, Rider PSR has no lawful place in the Company's ESP and is unjust and unreasonable. Accordingly, the Commission should reject the proposed establishment of Rider PSR.

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[78] See generally *Industrial Energy Users-Ohio v. Pub. Util. Comm.* (2008), 117 Ohio St. 3d 486, 487-488, 885 N.E.2d 195; see also *In the Matter of the Application of the Ohio Power Company for Approval of the Shutdown of Unit 5 of the Philip Sporn Generating Station and to Establish a Plant Shutdown Rider*, Case No. 10-1454-EL-RDR, Finding and Order at 19 (January 11, 2012) (Sporn Case).

[79] See Section 4928.02(H), Revised Code; see also Sporn Case at 19; RESA/Constellation Ex. 3 at 10.

[80] IGS Ex. 13 at 8; RESA/Constellation Ex. 3 at 16; see also 16 U.S.C. § 824e(a).

[81] See, e.g., *PPL Energy Plus v. Nazarian* (4th Cir. June 2, 2014), 753 F.3d 467 (holding that under the Federal Power Act, Congress intended for FERC to occupy the field of wholesale sales of energy in interstate commerce, thus field preempting an order of the Maryland Public Service Commission directing Maryland utilities to enter into a contract for differences with new a power generation facility for the purpose of incentivizing the facility's construction, as the order functionally had the effect of setting the rate that the new facility would receive in capacity auctions overseen by FERC).

b. Rider PSR is Not a Hedge for Consumers.

Duke is proposing to use the output from OVEC as a benefit to customers as a "long term hedge (or insurance) against the volatility of future market prices" through Rider PSR for as long as Duke has its 9 percent equity interest in OVEC, which is currently committed through June 30, 2040.[82] Rider PSR, however, is not a true hedge for consumers. The Company's claim that Rider PSR will provide a hedge against market volatility is unfounded. Duke, not customers, is the one receiving the alleged hedge as Duke will be shielded from the risk of the OVEC generating units being uneconomical.[83] As RESA/Constellation witness Campbell correctly noted:[84]

> 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 PSRE is Duke because it stabilizes its revenue stream and return, from the OVEC generation plant.

Duke's only forecast shows that Rider PSR will be a net charge or cost to consumers over the term of the ESP.[85] Thus, by Duke's own projections, it is unlikely that Rider PSR will provide any credits to customers during the term of the ESP,[86] and if it does, Duke is requesting to have the opportunity to unilaterally terminate the ESP in order to reap those benefits instead of customers. Regardless, the relatively small percentage of output from the

[82] Duke Ex. 6 at 13, 11.
[83] RESA/Constellation Ex. 3 at 13; IGS Ex. 13 at 6; Direct Energy Ex. 1 at 7; Sierra Club Ex. 4 at 22.
[84] RESA/Constellation Ex. 3 at 13.
[85] OCC Ex. 4 (Duke Response to IGS-POD-01-003); Tr. Vol. II at 409.
[86] IGS Ex. 13A at 10-16 (confidential); Sierra Club Ex. 4 at 22; OCC Ex. 43 at 7-10.

generating units of OVEC will not provide a meaningful hedge to customers.[87] Rider PPA will not increase price stability or certainty for customers, as the costs associated with Rider PPA during the three-year term of the proposed ESP are unknown, will be variable, and could be substantial.[88] Staff testified that "a more effective approach for mitigating price volatility" is the staggering of the procurement products and the laddering of multiple products in the competitive bid auctions used to procure the standard service offer supply.[89]

Additionally, Rider PSR will expose those customers served by CRES providers to the volatility of the wholesale market for OVEC output.[90] This is true even if a customer has sought to avoid the volatility of the wholesale market by entering into a fixed price contract with a CRES provider.[91] In essence, Rider PSR "will unravel the hedge that fixed price contracts provide to CRES customers," eliminating "the very protection from market volatility that the fixed price CRES customer has sought."[92]

c. Rider PSR will Not Provide Reliable Power to Ohio Consumers.

The Company's claim that establishing Rider PSR will assist the Company in continuing to ensure that Ohio consumers have access to reliable power and that OVEC generating facilities

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[87] Direct Energy Ex. 1 at 6 ("As proposed by Duke, PSR is simply the gain or loss of the utility selling power from OVEC into the market. There is no benefit in PSR for a customer taking service from a CRES provider."); IGS Ex. 13 at 6 ("While Duke claims that the purpose of the PSR is to hedge against market volatility, the actual function of the PSR is to insulate Duke from the risk of the market and ensure that it achieves adequate compensation to protect its investment in OVEC"); RESA/Constellation Ex. 3 at 14 (explaining that marketers do not need or want Duke to provide market hedges to its shopping customers. If Duke wants to include long-term PPAs as part of the SSO supply mix, then it must do so by a competitive bid process).
[88] OCC Ex. 4 (Duke Response to IGS-POD-01-003); RESA/Constellation Ex. 3 at 12; IGS Ex. 13A at 10-16 (confidential); Sierra Club Ex. 4A at 6-22 (public and confidential); OCC Ex. 43A at 7-10, 15- 25 (confidential); See also Tr. Vol. II at 404-407 (in which Duke witness Wathen agrees that the OVEC costs are not fixed costs and the OVEC ICPA contract contains clauses which allow for the costs charged to Duke to increase during the term of the ICPA).
[89] Staff Ex. 1 at 12-13.
[90] Direct Energy Ex. 1 at 6.
[91] Id.
[92] Id.

provide "steel in the ground" benefits to Ohio are red herrings.[93] PJM is the regional transmission organization responsible for coordinating capacity resources in Ohio and 12 other states. PJM is the reliability coordinator and if a reliability concern existed, PJM has a process for studying reliability concerns and addressing them in the most appropriate manner.[94] Additionally, customers pay for reliability through capacity charges under PJM's tariff, which are designed to ensure sufficient capacity to meet the region's needs.[95] As Direct Energy witness Ringenbach recognizes: If Rider PSR is approved, "Duke Ohio's customers will be paying to help keep plants open that may not be economically viable without the PSR subsidy. Customers in PJM outside of Ohio will not bear these costs."[96] However, this will not give Ohio customers any greater reliability than any other customer located in PJM.[97] Granting or denying Duke's proposed Rider PSR will have no impact on PJM's obligation to ensure reliability in Ohio and the region.

Additionally, any economic benefits that currently exist in Ohio due to the operation of OVEC will not disappear without the establishment of Rider PSR.[98] Duke's limited ownership share and relatively small percentage of output from the generating units of OVEC will not significantly impact the operations of OVEC or any touted benefits of the effect that OVEC has on Ohio.[99] This is true regardless of whether Rider PSR is approved. Additionally, the executed

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[93] Duke Ex. 6 at 15; also note that only one of the OVEC generating units, Kyger Creek, is actually located in Ohio. See Sierra Club Ex. 4 at 4-5.
[94] RESA/Constellation Ex. 3 at 15-16.
[95] Direct Energy Ex. 1 at 7.
[96] Id.
[97] Id.
[98] RESA/Constellation Ex. 3 at 15-16; IGS Ex. 13 at 9.
[99] See OCC Ex. 43A at 12-13 (public and confidential).

Inter-Company Power Agreement (ICPA) will not allow one owner to unilaterally dictate the fate of OVEC.[100]

d. Duke's Application Violates A Commission-approved Stipulation and Recommendation.

Duke's Application and supporting testimony are also contradictory to the requirements contained in the Stipulation and Recommendation filed in Case Nos. 11-3549-EL-SSO, et al., (11-3549 Stipulation) in which Duke was a signatory party.[101] Despite the requirements contained in the 11-3549 Stipulation, Duke has neither transferred its ownership in the OVEC generating units, or requested a waiver of the requirement to transfer its ownership in the generating assets to a third party.[102] Additionally, Duke has no present plans to transfer said ownership in OVEC by December 31, 2014 as required by the Stipulation, as Duke claims that "the Company has no obligation to transfer its equity interest in OVEC."[103]

Specifically, the 11-3549 Stipulation asserts that the ESP is better than MRO because the "ESP is consistent with and advances state policy, as set forth in R.C. 4928.02, as it: . . . "Mandates divestiture of Duke Energy Ohio's Generation Assets."[104] Section VIII(A) of the 11-3549 Stipulation also states that the "Parties agree that Duke Energy Ohio will transfer title, at net book value, to **all** of its Generation Assets out of Duke Energy Ohio. Such transfer shall occur on or before December 31, 2014, and Duke Energy Ohio commits to using its best commercial efforts to complete the transfer as soon as practicable upon its acceptance of a

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[100] IGS Ex. 13 at 9-10.
[101] *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, revised Code I the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 11-3549-EL-SSO, et al., Stipulation and Recommendation (October 24, 2011), OCC Ex. 2, Section VII(M) at 24, Section VIII(A) at 25-26, Section VIII(B) at 26-27, and Section VIII(C) at 27-28.
[102] Staff Ex. 1 at 6.
[103] Duke Ex. 6 at 11, lns. 15-16; Tr. Vol. II at 450.
[104] OCC Ex. 2, Section VII(M) at 24.

Commission order approving the Stipulation and upon receipt of necessary regulatory approvals."[105] The Stipulation requires Staff or an independent auditor to ensure compliance with this section of the Stipulation, compliance with the corporate separation statue and rule, and "to ensure that no subsidiary or affiliate of Duke Energy Ohio that owns competitive generation assets has any competitive advantage due to its affiliation with Duke Energy Ohio."[106]

Duke's Rider PSR proposal in the current case seeks to undo the 11-3549 Stipulation terms as well as the findings that were the bases of approval of the 11-3549 Stipulation and last ESP.[107] Staff witness Choueiki, who was involved in the negotiations resulting in the 11-3549 Stipulation,[108] confirmed that the 11-3549 Stipulation requires the Company to transfer all of its generating assets by the end of 2014, regardless of whether Duke directly owns the generating asset or owns an equity/stock in a generating asset because the Company owns entitlement to all energy and capacity that comes from the generating asset.[109] Staff witness Choueiki disagreed with Duke witness Wathen, adding: "There was no provision in Section VIII of the [11-3549 Stipulation] Agreement that specifically excluded from the transfer requirement Duke Energy Ohio's entitlement in the OVEC generating stations."[110]

In Section VIII(B) of the 11-3549 Stipulation, the Stipulation states that approval of it will serve as approval of full legal corporate separation as soon as it is reasonably possible. Duke then agrees that after the transfer of its generation assets, Duke shall not, without prior Commission approval, do any of the following:[111]

1) provide or loan funds to;

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[105] OCC Ex. 2, Section VIII(A) at 25 (emphasis added).
[106] Id.
[107] Supra n.64, Opinion and Order (November 22, 2011), OMA Ex. 2 at 45-46; IGS Ex. 13 at 6.
[108] Tr. Vol. XII at 3366.
[109] Staff Ex. 1 at 6; Tr. Vol. XII at 3366-68.
[110] Staff Ex. 1 at 6-7, lns 17-18, 1-2.
[111] OCC Ex. 2, Section VIII(B) at 26.

2) provide any parental guarantee or other security for any financing for; and/or
3) assume any liability or responsibility for any obligation of subsidiaries or affiliates that own generating assets.

Notwithstanding this explicit language of the Stipulation, the proposed expanded PSR does exactly what the 11-3549 Stipulation prohibits: If approved, the proposed expanded PSR will provide guaranteed funds to an affiliate or third party that owns generating assets, will provide security and financing for the generating units, and will assume an obligation or liability for an affiliate or third party by providing the mechanism for a PSR, which will subsidize the generating assets.[112]

B. The Proposed ESP Fails to Demonstrate that the ESP, as Filed, is More Favorable in the Aggregate than an MRO, as Required by Section 4928.143(C)(1), Revised Code.

Before approving an ESP, the Commission must determine that the ESP is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO ("the MRO test").[113] Duke has the burden of demonstrating that its proposed ESP is, in fact, more favorable in the aggregate than an MRO.[114] In support of this requirement, Duke witness Wathen argues that the ESP is more favorable than an MRO because, "although the cost of generation service to customers under the proposed ESP is necessarily equal to the cost of generation service under an MRO, the totality of the proposed ESP does provide benefits to customers as compared to the expected results under the MRO provision of R.C.

[112] Direct Energy Ex. 1 at 7; IGS Ex. 13 at 6.
[113] Section 4928.143(C)(1), Revised Code; see also *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan,* Case No. 12-426-EL-SSO, Opinion and Order at 48 (September 4, 2013).
[114] Id.

4928.143(C)(1).[115] Duke admits, however, that this conclusion is based purely upon "qualitative benefits."[116]

Duke's claims and analysis are flawed. By its own admissions, Duke's analysis did not even consider the effects of many provisions contained in its ESP. Duke's MRO test did not consider the effects of Rider PSR on customers, which is projected to be a net charge to customers during the term of the ESP.[117] As OCC witnesses Wilson and Hixon explain, the net cost of Rider PSR in Duke's projection reaches $29 million by the end of 2018, with a projected net cost during the ESP term of $22 million.[118] Any costs or projected costs associated with Rider PSR during the term of the ESP must be considered in the MRO test as quantifiable costs as these are costs customers would not pay under an MRO scenario.[119] As Staff witness Turkenton recognized: if you consider the net cost to customers of the PSR of $22 million over the term of the ESP, "under a quantitative benefit, the [MRO] test would fail." [120]

Duke also failed to include the costs associated with Rider DCI in its MRO test analysis.[121] The new Rider DCI will result in a net rate increase to customers compared to current rates in the amount of approximately $211 million, and is not available under the MRO statute.[122] While the Company alludes to benefits associated with the proposed DCI, Duke does not quantify such benefits and the Commission has previously determined that no such quantifiable benefits exist between recovering distribution investment through a rider rather than

[115] Duke Ex. 6 at 24.
[116] Id. at 26.
[117] Tr. Vol. II at 409.
[118] OCC Ex. 43 at 17; OCC Ex. 48 at 4.
[119] OCC Ex. 48 at 5, 7-8.
[120] Tr. Vol. XIII at 3780.
[121] Tr. Vol. II at 445.
[122] Id. at 445, 447.

a base distribution rate case.[123] Additionally, Duke has not committed to refrain from filing a distribution rate case during the term of the proposed ESP.[124]

Despite Duke's claims to the contrary, the Company's MRO test fails to provide sufficient non-quantifiable benefits.[125] As explained previously, the proposed Rider PSR does not increase price stability or certainty for customers as the projected costs associated with Rider PSR during the three-year term outweigh any claimed benefits. The only benefit provided by Rider PSR is to Duke, as an owner of the entitlement to the output of the generating facilities. Rider PSR will allow Duke to recover all costs associated with its OVEC (or future generator) entitlement. Several witnesses, as cited above, also recognize that Rider PSR does not provide any additional reliability benefits for Ohio customers.[126]

Further, as stated previously, Rider DCI and Duke's unilateral early termination right also do not provide any qualitative benefits.

Given these factors, the ESP, as filed, is not more favorable in the aggregate than an MRO.[127] As explained by Staff Witness Turkenton, the ESP, as proposed (as filed), does not satisfy the MRO test.[128] Only with Staff's proposed modifications, including the rejection of Rider PSR, does Staff believe the ESP becomes more favorable in the aggregate than an MRO.[129] Similarly, several intervenor witnesses testified that the Commission should modify the Company's proposed ESP to eliminate Rider PSR and Rider DCI, both of which cannot be obtained under Section 4928.142, Revised Code. Numerous intervenor and Staff witnesses agree

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[123] *In the Matter of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 55-56 (July 18, 2012)).

[124] Tr. Vol. XIII at 3784-85.

[125] OCC Ex. 48 at 13-15.

[126] OCC Ex. 48 at 13.

[127] OCC Ex 48 at 5; Staff Ex. 2 at 3; Tr. Vol. XIII at 3783.

[128] Tr. Vol. XIII at 3783 .

[129] Tr. Vol. XIII at 3783; Staff Ex. 2 at 3.

that, as proposed and without significant modifications, the ESP is not more favorable in the aggregate than an MRO and cannot be approved.

C. The Proposed ESP Fails to Satisfy the Policy of the State of Ohio Pursuant to Section 4928.02, Revised Code.

Section 4928.02, Revised Code, provides, inter alia, that it is the policy of the state to do the following:

> (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;[130]
>
> * * *
>
> (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[.][131]

As noted by OCC witness Williams, "[n]othing in the Duke ESP III Application addresses the affordability of rates issue."[132] To the contrary, OCC witness Williams notes, "Duke appears to be using the DCI Rider as a way to collect routine maintenance expenses from its customers on an expedited basis without considering the impact on affordability."[133] In the course of this proceeding, Duke has shown little attention to the cost impacts associated with Rider PSR and Rider DCI proposed in its ESP. Duke has admitted that during the term of the

[130] Sections 4928.02(A), Revised Code.
[131] Sections 4928.02(H), Revised Code.
[132] OCC Ex. 47 at 5.
[133] Id.

proposed ESP, customers are projected to see an overall increase in their bills for these riders.[134] Duke's disregard for the cost impacts of its ESP on customers demonstrates that it has not attempted, through its proposed ESP, to ensure the availability of reasonably priced retail electric service to its customers in connection with the policy of Section 4928.02(A), Revised Code.

Further, as stated previously, the approval of and collection of costs through proposed Rider PSR would amount to the recovery of generation-related costs through distribution rates, in contravention of the state policy set forth in Section 4928.02(H), Revised Code. Despite Duke's contentions to the contrary, any net costs that arise from the "financial hedge" that Duke has proposed under Rider PSR have their genesis in the context of generation. Any costs to be borne by customers under Rider PSR would not exist but for the Company's retention of its OVEC contractual entitlements to generation. Requiring all customers to pay for generation-related costs associated with one or more generating facilities owned by Duke is an anticompetitive subsidy that is prohibited. "[A]llowing certain generating units (Duke's) to receive guaranteed recovery of costs from all Duke customers would harm all other generators that do not get guaranteed cost recovery" from ratepayers.[135] Consequently, in addition to being unlawful as discussed previously, Duke's proposed Rider PSR is contrary to state policy, and should be rejected.

D. Alternatively, the Commission Should Modify Duke's Proposed ESP to be Consistent with Ohio law.

As stated above, Duke's proposed ESP is unlawful and unreasonable and should be rejected in its entirety by the Commission. If, however, the Commission determines that it is

[134] Tr. Vol. I at 113.
[135] IGS Ex. 13 at 6.

prudent to modify the Company's proposed ESP to render it consistent and compliant with Ohio law, OMA submits the following recommendations: the Commission should (1) deny Duke's request to retain the option to terminate the plan after its second year; (2) deny the Company's request to establish Rider DCI and deny the request to recover costs under Rider DCI at uncapped levels; (3) deny the Company's request to immediately eliminate Rider LFA, and (4) deny the Company's request to establish Rider PSR. As discussed above, each of these modifications addresses important consumer concerns that need to be addressed. Accordingly, OMA recommends that the Commission adopt the modifications listed herein if it decides to modify the proposed ESP to comply with Ohio law.

IV. CONCLUSION

As established in the foregoing arguments, OMA respectfully requests that the Commission find that the proposed ESP is unlawful and unreasonable, and accordingly reject it. If, however, the Commission sees fit to modify the proposed ESP to render it compliant with Ohio law, OMA recommends that it modify Duke's ESP as provided for herein.

Respectfully submitted,

Kimberly W. Bojko, Counsel of Record
Jonathan A. Allison
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Phone: 614-365-4100
Fax: 614-365-9145
Email: Bojko@carpenterlipps.com
Allison@carpenterlipps.com

Attorneys for the Ohio Manufacturers' Association

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on December 15, 2014.

Kimberly W. Bojko

Steven.beeler@puc.state.oh.us
Thomas.lindgren@puc.state.oh.us
Ryan.orourke@puc.state.oh.us;
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
Schmidt@sppgrp.com
Judi.sobecki@aes.com
Maureen.Grady@occ.ohio.gov
Joseph.Serio@occ.ohio.gov
mjsatterwhite@aep.com
yalami@aep.com
asonderman@keglerbrown.com
mkimbrough@keglerbrown.com
hussey@carpenterlipps.com
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com
dmason@ralaw.com
mtraven@ralaw.com
Amy.Spiller@duke-energy.com
Elizabeth.watts@duke-energy.com
Rocco.dascenzo@duke-energy.com
Jeanne.Kingery@duke-energy.com
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
scasto@firstenergycorp.com
joliker@igsenergy.com
mswhite@igsenergy.com
joseph.clark@directenergy.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
callwein@wamenergylaw.com
tdougherty@theOEC.org
dhart@douglasehart.com
Edmund.Berger@occ.ohio.gov
NMcDaniel@elpc.org
gpoulos@enernoc.com
swilliams@nrdc.org
tobrien@bricker.com
ghull@eckertseamans.com
cmooney@ohiopartners.org