BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio 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. 14-0841-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. 14-0842-EL-ATA

REPLY BRIEF OF THE GREATER CINCINNATI HEALTH COUNCIL

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TABLE OF CONTENTS

I. INTRODUCTION

On December 15, 2014, the parties filed their Initial Briefs in this proceeding. On the major issues, there was remarkable unanimity in the parties' positions (other than Duke). The GCHC will take this opportunity to briefly recap the issues that it addressed in its Initial Brief and to respond to the Initial Brief of Duke Energy Ohio ("Duke"). Again, the failure of the GCHC to address any other issue should not be interpreted as acquiescence to Duke's proposal or that of any other Intervenor.

II. APPLICABLE LAW

There is no dispute among the parties that the contents of an Electric Security Plan ("ESP") must be statutorily supported by some provision in Revised Code § 4928.143. In addition, Duke has the burden of proving that the ESP, including its pricing and all other terms and conditions, is more favorable in the aggregate as compared to the expected results that would otherwise apply under § 4928.142 of the Revised Code, the Market Rate Offer ("MRO") option. Revised Code § 4928.143(C). What the parties do not agree upon is whether Duke's plan garners the necessary statutory support or, even assuming that it does, that the plan in the aggregate, including all pricing issues, is more favorable than an MRO.

III. ARGUMENT

A. Rider PSR Should Be Rejected.

Nineteen of the twenty one initial briefs filed in this proceeding addressed proposed Rider PSR. All but two of those briefs (Duke and OEG) opposed Rider PSR.[1] There was a

[1] IGS Energy, pp. 17-33; OPAE, pp. 7-16; Direct Energy, pp. 11-13; Staff, pp. 2-27; IEU-Ohio, pp. 2-32; Kroger, pp. 8-14; City of Cincinnati, pp. 2-9; Wal-Mart, pp. 7-10; Sierra Club, pp. 5-25; Constellation NewEnergy, pp. 2-13; RESA, pp. 6-21; UC/Miami, pp. 6-7; Ohio Environmental Council, pp. 2-17; Environmental Law & Policy Center, pp. 3-16; OCC, pp. 5-55; OMA, pp. 16-27; GCHC, pp. 4-13.

remarkable consensus among the opponents that Rider PSR would violate Ohio law, federal law, was an improper cross-subsidy, was unsupported by evidence and was just a plain bad idea. There is no need to re-recite the various arguments against Rider PSR here, but they are many-sided and compelling.

Duke and OEG's attempt to support Rider PSR in their Initial Briefs fell far short of the mark. Duke spent only a few pages of its brief addressing Rider PSR, an issue that dominated the hearing.[2] Apart from a discussion of the alleged statutory underpinnings for such a rider and a generalized discussion of why Duke thinks there may be price volatility in the future, there is virtually no discussion of the actual economics of Duke's proposal. It simply continues to assert that "Rider PSR will function as a counter-cyclical hedge."[3] Duke acknowledges that the only permissible items in an ESP are those that fit one of the statutory authorizations stated in R.C. § 4928.143(B)(2)(a)-(i).[4] Various Intervenors anticipated Duke's argument and have already refuted it.

Duke sole asserted statutory basis for Rider PSR is Revised Code § 4928.143(B)(2)(d).[5] Duke has wholly failed to prove that Rider PSR would have the effect of stabilizing or providing certainty regarding retail electric service. To the contrary, the evidence demonstrated that Rider PSR would create more uncertainty and volatility in the price customers would pay for electric service. It is unknown exactly how much Rider PSR would cost customers, but Duke's best guess is that it will cost $22 million during the three year ESP period. Rider PSR transfers the

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[2] Duke Initial Brief, pp. 18-24.
[3] Duke Initial Brief, p. 24.
[4] *In re Application of Columbus Southern Power Company*, 128 Ohio St.3d 512, 2011-Ohio-1788, at ¶ 32.
[5] In footnote 21 to its Initial Brief, OEG offers alternative statutory grounds to support Rider PSR, but all of these fail on their face. The PSR has nothing to do with purchased power for use in default service, is not a component of the SSO price, and is not used to raise funds to support economic development.

risk of ownership of OVEC from Duke's shareholders, where it belongs, to Duke's distribution customers, who have no connection with OVEC. Duke has done absolutely nothing to justify why Rider PSR, even if it is permitted, should be non-bypassable. If Rider PSR would be good for customers, it would be equally good for Duke to retain for itself when customers do not want it.

Duke continues to assert that Rider PSR would be a hedge for customers against market volatility, but it ignores all of the economic evidence presented at the hearing, including its own financial projections, that Rider PSR would be a losing proposition during the ESP period. Furthermore, OVEC represents such a small percentage of Duke's load that its value as a hedge, even if it did generate positive results, is so small as to be negligible. Duke filed its case with no evidence to support the economics of Rider PSR. It is past the time for Duke to expect the Commission to accept Duke's unsupported "intuition" about Rider PSR; the *evidence* is to the contrary and the Commission should reject Rider PSR.

Duke also ignores the terms of its Corporate Separation Plan and Revised Code §4928.02(H) which prohibit cross-subsidization between captive distribution service and competitive generation service. Rider PSR saddles distribution customers with Duke's financial risk of owning a portion of OVEC. Such charges cannot be imposed on distribution customers, especially shopping customers who do not intend to rely upon Duke for any generation service or generation service pricing.

In the introduction to its Initial Brief, Duke proclaimed that its Second ESP had "fully separated its directly owned, legacy generation assets from distribution- and transmission-related assets."[6] However, rather than fully commit to a competitive market that separates *all* of its generation assets from its distribution business, Duke's proposed Third ESP would regress by forcing distribution customers to take financial responsibility for its "indirectly" owned OVEC generation assets. There is no rational basis to distinguish between direct and indirect ownership of generation assets for this purpose. Regardless of whether Duke owns all of a generation asset or only a minority interest, it has a financial interest in that asset and should not be tying such financial interest to distribution service. The only involvement an EDU should have with generation service today is to procure a default supply option for SSO customers. Rider PSR has nothing to do with that, since OVEC is not being used for SSO service or any direct generation service for Duke customers.

Duke's Initial Brief also fails to provide any support for the notion that one rider in an ESP (with a term of either two or three years) could continue to exist for 25 years independent of the plan in which it is approved. The Commission has never approved such a thing. The only riders that have been permitted to continue past the term of an ESP have been allowed to carry over only to permit recovery of costs that were incurred *during* the term of the ESP or for true-up purposes. Rider PSR would have a life of its own unrelated to anything else in the ESP.

Even OEG's support of Rider PSR is conditioned upon a significant revision of its terms. OEG made a "leveling" proposal that essentially has Duke financing early loss years (with additional carrying charges) so that the expected early losses are not so significant to customers. But even OEG's plan would be a net charge to customers over nine and a half years, providing no benefit to customers. OEG also proposes that Rider PSR be bypassable by very large customers (which coincidentally appears to describe the membership of OEG). Remarkably,

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[6] The words "directly owned" and "legacy" appear to have been carefully chosen so as to avoid inclusion of OVEC in this claim.

however, Duke has never indicated any willingness to go along with this proposal – Duke's Initial Brief completely ignores OEG's proposal, so the Commission must assume that Duke does not support it. Thus, OEG's variation on Rider PSR has no chance of success and it should also be rejected.

B. The Commission Should Reject Rider DCI.

Duke proposes Rider DCI to recover incremental capital investments in distribution plant without the need for a distribution rate case. The briefs of OPAE, OMA and OCC explain in detail why Rider DCI should not be approved as proposed.[7] The GCHC supports these arguments. While Staff supports Rider DCI, it also proposes some significant limiting changes to Duke's proposal.[8]

Further, as the GCHC explained in its Initial Brief, in the event the Commission approves some form of Rider DCI, the rate design proposed by Duke is seriously flawed with respect to the DP customer class.[9] These views on rate design are shared by Kroger.[10] While OCC proposed a different rate design, its proposal is flawed because it relies on a cost study from a former case that was never validated. If the Commission approves any form of Rider DCI, it should fix the rate design so that all customer classes would see an equal percentage increase over current base rates.

C. Rider LFA Should Be Continued.

Continuation of Rider LFA in some form or another was supported by Staff, Kroger, UC/Miami, OMA, OEG, and GCHC.[11] The ratemaking principal of gradualism justifies such a

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[7] OPAE Initial Brief, pp. 18-22; OMA Initial Brief, pp. 9-14; OCC Initial Brief, pp. 74-85.
[8] Staff Initial Brief, pp. 27-33.
[9] GCHC Initial Brief, pp. 14-15.
[10] Kroger Initial Brief, pp. 3-5.
[11] Staff Initial Brief, pp. 55-56; Kroger Initial Brief, pp. 5-6; UC/Miami Initial Brief, pp. 2-6; OMA Initial Brief, pp. 15; OEG Initial Brief, pp. 26-28; GCHC Initial Brief, pp. 15-16.

continuation with a phase-down, as opposed to an immediate termination of the program. The only party to address Rider LFA who opposed it was Duke.[12] But, Rider LFA is intentionally revenue neutral to Duke, so it cannot be harmed by its continuation. The Commission should continue Rider LFA and consider phasing it down over the term of the ESP, not eliminate it immediately.

D. The Existing GCHC Member Exemption in Rider BDP Should Not Be Eliminated.

Duke's brief described how a variety of riders are affected or not affected by its current ESP proposal. It included lists of new riders, riders that are being eliminated, riders that would continue with modification, and riders that would continue with no modification.[13] Noticeably absent from all of those lists was Rider BDP. Duke did not even address Rider BDP in its Application, in its supporting testimony, or in its Initial Brief. Duke simply made a supplemental filing on July 10, 2014 that made a substantial change to the Rider BDP tariff, then never said another word about it. (Duke Exh. 20; Tr. VI, p. 1625).

As the GCHC explained in its Initial Brief, the changes to the Rider BDP tariff would amount to a substantial rate increase for GCHC member hospitals.[14] This could amount to a multi-million dollar increase in Duke's distribution revenue, when its base rates are already fully recovering the cost of service. Duke is not proposing any offsetting reductions to its base rates in this proceeding. (Tr. VI, pp. 1629-30). Duke has offered no evidence or argument of any kind

[12] Ironically, one of Duke's reasons for eliminating Rider LFA is to have "the cost of competitive generation services determined by market influences alone." A curious statement, when Duke simultaneously proposes to impose Rider PSR on all distribution customers against their will – a rider that would interfere with both the market price for SSO service that results from a competitive auction and the market prices established by CRES providers through direct negotiation.
[13] Duke Initial Brief, pp. 25-26.
[14] GCHC Initial Brief, pp. 16-17.

in support of such a significant rate increase. The Commission should reject the proposed change to Rider BDP and continue the GCHC-member hospital exemption.

E. Duke Has Not Demonstrated That Its ESP Proposal Is More Beneficial in the Aggregate Than An MRO.

Duke has failed to prove that the ESP it has proposed is more favorable in the aggregate than an MRO plan that would be approved under Revised Code § 4928.142. Many parties agree that Duke has failed its burden of proof.[15]

Duke continues to assert that the ESP v. MRO test must consider both quantitative and qualitative factors.[16] Yet, it completely disregards the quantitative factors associated with Riders DCI and PSR in its discussion.[17] With respect to Rider DCI, for example, Duke touts the supposed qualitative advantages to having Rider DCI in its ESP, even acknowledging that Rider DCI could not be approved in an MRO proceeding.[18] Thus, Duke necessarily concedes that the quantitative cost of Rider DCI must be taken into account in determining whether the ESP is more favorable in the aggregate that an MRO. Nevertheless, it never mentions the quantitative cost of Rider DCI, let alone tries to explain how the supposed qualitative advantages outweigh the expected cost of $211 million during the ESP term. The substantial cost to ratepayers *has* to be considered, but Duke seems to pretend there is no quantitative cost for Rider DCI.

The balancing test also has to consider the cost of Rider PSR which, according to the evidence presented at the hearing, has a negative value of at least $22 million during the ESP period. Since Rider PSR could not be approved in an MRO either, this $22 million cost must weigh against the ESP. There is no separate qualitative benefit associated with Rider PSR, as its

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[15] IEU-Ohio Initial Brief, pp. 32-40; Kroger Initial Brief, pp. 15-17; Wal-Mart Initial Brief, pp. 2-4; OCC Initial Brief, pp. 55-68; OMA Initial Brief, pp. 27-30.
[16] *In re Columbus Southern Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, ¶ 407.
[17] Duke Initial Brief, p. 27 (addressing only SSO generation service rates).
[18] Duke Initial Brief, p. 31.

value as a "hedge" is purely financial (no energy is provided from OVEC to Duke's customers) and that financial value is already reflected in the $22 million loss.

With respect to the supposed qualitative advantages Duke claims for its ESP, the first relates to the changes it proposes in the retail rate design. Simply put, Duke proposes to change how which it converts the SSO auctions results into retail rates, both in how it assigns costs to customer classes and how it determines the capacity and energy components of prices. However, this is a false comparison of the rate structure of this ESP to the last ESP, not the required comparison of this ESP to an MRO. An MRO that uses competitive bidding to procure generation service for SSO customers would also require a retail rate design to convert the auction prices into retail rates. Duke could (and likely would) use the same retail rate structure for both an ESP and an MRO when both are based on competitive auctions. The rate structure is a neutral factor; providing no qualitative weight in favor of Duke's ESP proposal for purposes of the balancing test.

The second purported qualitative advantage of the ESP is to further level the playing field between SSO auction winners and CRES providers. But this is nothing more than a variation of the rate design issues discussed above. Duke could establish the same alleged competitive leveling under an MRO as it proposes to do in this ESP, so this factor is also neutral.

The third purported advantage of the ESP is improvement of the distribution system through Rider DCI. To the extent there is such a qualitative advantage, Duke has not established that it would outweigh the $221 million cost of the program.

The fourth purported advantage of the ESP is the alleged price stabilization afforded by Rider PSR. It has been thoroughly explained in the direct discussion of Rider PSR by numerous parties that Rider PSR will not have any price stabilization impact – it will simply impose new costs on customers that they do not need or want. Plus, the supposed price stabilization is not a qualitative factor but, rather, is a quantitative factor – one that has been quantified (by Duke) as having a $22 million negative cost.

Thus, Duke's alleged qualitative factors are either non-existent, neutral, or come with substantial negative quantitative disadvantages that have not been addressed by Duke. Duke has not proven that the advantages outweigh the financial cost. The plan fails the ESP v. MRO balancing test as proposed and should be rejected unless Riders DCI and ESP are eliminated.

F. Duke Should Not Be Permitted to Terminate The ESP Early.

In its Application, Duke proposed that the ESP have a three year term, from June 1, 2015 to May 31, 2018.[19] It later described this as a proposed term of two years, with an automatic extension of one year unless Duke exercises its self-proclaimed right to terminate by September 1, 2015.[20] The only trigger necessary for Duke to cancel the third year of the plan would be a "substantive change" in Ohio or federal law, which Duke defined very broadly to encompass virtually any change to a state or federal statute, rule, regulation or a court or regulatory decision. Duke's attempt to reserve the right to terminate the plan early was opposed by Direct Energy, Kroger, Constellation NewEnergy, RESA, OCC, and OMA.[21] Duke cited no statutory authority for such an unprecedented unilateral right.

The GCHC will not repeat all the reasons stated in those parties' initial briefs, but it agrees with their analysis. Giving Duke a unilateral right to terminate the plan early creates too much uncertainty and potential for litigation over whether it has validly exercised the right. Because the scope of potential reasons is so broad and vague, there is the strong possibility that

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[19] Application, p. 1.
[20] Application, p. 16.
[21] Direct Energy Initial Brief, p. 16; Kroger Initial Brief, pp. 7-8; Constellation NewEnergy Initial Brief, pp. 13-14; RESA Initial Brief, pp. 26-27; OCC Initial Brief, pp. 105-110; OMA Initial Brief, pp. 5-9.

the Commission may have to resolve whether Duke had a proper reason for termination, when there would barely be enough time to even consider Duke's next SSO application. Giving Duke the right to terminate the plan after supply auctions have already occurred for the third year of the ESP could also distort the outcome of the auctions, which should only reflect market conditions and not added regulatory risk caused by giving Duke a unilateral cancellation right. The Commission should establish a definite term for the ESP (whether two or three years) and stick with that time frame in order to establish normalcy.

IV. CONCLUSION

As the GCHC argued in its Initial Brief, Duke's proposed Riders DCI and PSR should be rejected for numerous reasons. Duke has failed to offer justification for either rider. Further, even if the riders could pass muster on their individual merit, Duke has not met its burden of proof that its proposed ESP with the riders is better in the aggregate than an MRO. Duke ignores the economics of both riders, which need to be reviewed quantitatively under the statute. Duke improperly relies solely on a qualitative analysis, which is severely flawed because it mainly compares this ESP to the former one, not to what would occur in an MRO. Finally, Duke has offered no justification for the termination of the GCHC member hospital exemption to Rider BDP, which would be an unjustified rate increase and a windfall to Duke.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Brief of the Greater Cincinnati Health Council has been served to the parties listed below by electronic delivery this 29th day of December 2015.

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