

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| 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 |) | Case No. 14-841-EL-SSO |
| an Electric Security Plan, Accounting |) | |
| Modifications and Tariffs for Generation |) | |
| Service. |) | |

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| In the Matter of the Application of Duke |) | |
| Energy Ohio for Authority to Amend its |) | Case No. 14-842-EL-ATA |
| Certified Supplier Tariff, P.U.C.O. No. 20. |) | |

REPLY BRIEF

OF THE

RETAIL ENERGY SUPPLY ASSOCIATION

December 29, 2014

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I. Introduction

A. Procedural History

On May 29, 2014, Duke Energy Ohio, Inc. (“Duke” or “Company”) filed an application to establish a new electric security plan (“ESP”), which in accordance with the application would commence June 1, 2015, and end May 31, 2017 or May 31, 2018 at the election of Duke.¹ The Retail Energy Supply Association (“RESA”)² participated in this proceeding as a full party of record, sponsored witnesses, filed an Initial Brief, and now in accordance with the schedule established by the Attorney Examiners submits this Reply Brief.

B. Operational History

Today, Duke is operating under its second ESP plan which was the product of a stipulation which was not 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 most of the features of the ESP II; however, Duke has proposed several items which appear to benefit only Duke at the expense of the public and the competitive marketplace. Chief among these inequitable proposals are:

- A requirement that all CRES who use consolidated billing must enter into a purchase of receivables arrangement.

¹ Duke Ex. 1 (Application) at 1 and 16.

² 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. RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

- Introduction of a limit on utility consolidated bills to just collection for “commodity only” expenses.
- Proposed Price Stabilization Rider
- Redesign of the Retail Capacity charge for Standard Service
- A Unilateral “right” by Duke to call for an early termination of the ESP III

These proposed amendments to the current ESP should be rejected.

The hearing also brought out for the Commission the need to clarify two current ESP activities. Finally, RESA has proposed two additional services which would help achieve the State Energy Policy requirement to support providing retail customers with supply and supplier options³. The first clarification concerns how the Rider SCR should be augmented if 10% of the SSO revenue is needed to meet Rider SCR expenses (the “10% Trigger”). Duke believes that if mathematically the 10% Trigger is reached, Rider SCR automatically becomes non bypassable. RESA believes that if the 10% Trigger is reached Duke should file a plan to address a possible death spiral.⁴

The second current practice which needs to be addressed is consolidated billing of wire assurance plans. During the course of discovery, it became known that Duke was permitting a non-utility, unregulated affiliate to include home wiring assurance plans on the utility consolidated bill, but not allowing competitors access to the same service. Such a preference for an unregulated, non-utility service violates Duke’s Corporate Separation Plan and Section 4928.02(H), Revised Code.

³ Section 4928.02 (C), Revised Code.

⁴ RESA Ex. 3 at 17.

In addition, to the few changes to the ESP found in the Application, RESA proposed two additional pro-competitive market features. Specifically, RESA proposes an Enroll From Your Wallet pilot and a Market Energy Program. The Commission should approve both of these market enhancements as proposed.

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

Today, if a CRES provider has elected for billing purposes to have its services consolidated as part of the Duke monthly invoice, it may sell the receivable to Duke and conduct no collection effort on its own, or the CRES provider may elect not to sell the receivable to Duke and, in accordance with the allocation rules,⁵ have Duke send the payments received while conducting its own collection efforts. In the ESP III application, Duke proposes to eliminate the current option of not selling the receivable by requiring all CRES providers who use consolidated billing to sell Duke the receivable. Duke testified that the purpose of eliminating the current choice was to “align operations consistently and obviate the need to incur additional administrative costs for the few CRES providers that are not presently participating” in POR.⁶

While RESA does not dispute that a large number of CRES providers sell their receivables and will likely continue to do so in the near term, some CRES do not. Further, the offering of other energy-related products and services, or generation financing in the future, will be hampered if a CRES provider must sell its receivable to the utility. As RESA witness Ringenbach testified, the removal of the option to use consolidated billing without the purchase of receivables could turn some CRES providers away from the Duke market entirely or reduce the products and services being offered.⁷

⁵ Rule 4901:1-10-33(H) of the Ohio Administrative Code.

⁶ Duke Ex. 13 at 7-8.

⁷ RESA Ex. 1 at 8-9.

Duke supported its request for the restriction by noting that there may be an administrative cost savings if the option to use consolidated billing without the purchase of receivables was adopted. Duke, however, did not present any studies, estimates or data which verifies the existence of such savings or quantifies alleged “additional administrative costs” incurred to offer the option since the information and billing systems are in place. Further, Duke did not offer to credit back any such savings – if they do in fact exist – back to the customers. Given that the record is devoid of meaningful detail to support that a savings would occur at all and if it did that if the savings would benefit the retail customers, the Commission must conclude that Duke has not met its burden of proof or its burden of persuasion to amend the current supplier tariff to eliminate consolidated billing without the purchase of receivables.

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 state only “commodity” charges can be included on the utility consolidated bill.⁸ Depending on how the Commission interpreters the current definition of “commodity” in the Duke tariff, this addition of “commodity only” restriction may or may not impose a new restriction. The current tariff definition describes “commodity” as “the unbundled generation service of electric energy which End-use Customers may purchase from a Certified Supplier in the Customer Choice Program.”⁹ That definition focuses on what is being offered by the CRES which will change over time. Currently, CRES providers using bill-ready billing are allowed to place on a customer’s bill as part of generation service demand and other related but non-power items.¹⁰ If Duke is trying by use of this

⁸ Duke Ex. 13 at Attachment DLJ-1 at page 18.

⁹ Duke Ex. 13 at Attachment DLJ-1 at page 2.

¹⁰ RESA Ex. 1 (Ringbach Direct) at 7.

provision to shrink what is currently available to CRES providers today it will harm the retail market. Further, this narrowing comes at a time when the vast majority of Duke customers will be getting access to advanced meters that can support more complex generation related services. Duke's support for its addition of "commodity only" to the tariff provision of CRES billing rests on Duke Witness Jones' observation that EDI transactions cannot separate commodity charges and non-commodity charges for those using the bill-ready option.¹¹ Since Duke has not established what has changed with EDI that forces it to now narrow its billing, or for that matter whether in fact it is seeking to narrow its offering, the Commission should simply find that Duke has not met its burden to change the current tariff.

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

While Duke in its Application for ESP III specifically sought to reduce the use of consolidated billing to just the CRES willing to sell its receivable to Duke, and then to narrow the consolidated billing to just "commodity service only", the record in this case revealed that Duke is allowing an affiliate named Duke One to place on the utility consolidated without purchase of receivable an interior wire insurance product.¹² Duke One offers services called Strike Stop and Underground Protection Service.¹³ These services were never approved by the Commission as utility services and were never listed as part of the tariff service for either retail customers or suppliers. Further, a parallel consolidated billing service is not offered to CRES providers or other competitors of Duke One.¹⁴

¹¹ Tr. IV at 1065-1066.

¹² RESA Ex. 1 (Ringbach Direct) at 8 and Appendix A, page 1; Tr. Vol. IV at 1047; Duke Ex. 11 at Attachment MEH-2 at page 30.

¹³ Tr. IV at 1049.

¹⁴ RESA Ex. 1 at 8 and Appendix A, page 3; Tr. IV at 1047.

RESA does not oppose per se having an internal wiring protection service on the consolidated utility bill, but it does oppose a special arrangement only offered to competitive affiliates of Duke. Duke has been given a monopoly franchise for wire service in its Southwestern Ohio service area pursuant to Section 4933.81, Revised Code et. seq. Using that state franchise monopoly in order to gain commercial advantage for a non-utility service business violates Sections 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 a Corporate Separation plan be "... 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." On its face, Duke is allowing its affiliate to bill for internal wire insurance on the utility bill, with all the implicit endorsement such billing provides, while not offering the same to wire insurance plan providers with equal financial and technical expertise. This clearly crosses the line drawn by Section 4928.17, Revised Code. Thus, the Commission should require Duke to allow CRES non-commodity services on its consolidated utility bill under the same terms and conditions it now offers to Duke One. Further, Duke must file with the Commission the exact terms and conditions that now apply for the Duke One service, including specifically how customer payments are accounted for the express amount charged the affiliate.

IV. Price Stabilization Rider

In its Initial Brief, Duke presents the Price Stabilization Rider ("Rider PSR"), as a device to reduce retail electric service price volatility as provided for in Section 4928.143 (B)(2)(d),

Revised Code¹⁵. Even though the majority of the testimony and cross examination during the three week hearing focused on Rider PSR, Duke only devoted seven pages of its fifty page Initial Brief to Rider PSR. Further, most of the seven pages were devoted to describing the mechanics of how the Rider would operate, and background information on the Ohio-sited Kyger Creek and the Indiana sited Clifty Creek coal plants. Though Duke has received transition monies to transfer its legacy generation¹⁶, and the Opinion and Order in ESP II specifically provide for the transfer of the OVEC generation, Rider PSR keeps the OVEC plants with the utility but transfers the ownership risks for losses and profits from Duke's shareholders to Duke's ratepayers.

In its Initial Brief, RESA presented the legal arguments why a rate payer guarantee for Kyger Creek and Clifty Creek generation units violate both state and federal law¹⁷ and reincorporates those arguments by reference rather than repeat them. Even if Rider PSR were not illegal though, Rider PSR should be rejected as it will harm both the retail and wholesale market to the detriment of retail customers. Although the proposed Rider PSR will last for 25 years to 2040, and during the ESP III period alone is projected to lose millions of dollars, Duke conducted no studies itself, and only submitted an OVEC forecast through 2024¹⁸. In fact, Duke in its Initial Brief supports Rider PSR by use of a simply three step syllogism¹⁹. In step one Duke states that wholesale capacity rates are going to spike upwards after 2018 and remain high. In step two Duke states that its 200 MW of Kyger Creek and Clifty Creek generation plants will not spike upwards as fast as the other PJM capacity. Finally, in step three Duke declares that in light of steps one and two transferring the ownership risks and rewards of Kyger Creed and

¹⁵ Duke Initial Brief at 18 and footnote 61.

¹⁶ Case No. 99-1658-EL-ETP, Opinion and Order, August 31, 2000.

¹⁷ Initial Brief of RESA, Section IV(D), at 17-19.

¹⁸ OMA Ex. 5, at 5-8.

¹⁹ Id p. 18-24.

Clifty Creek from its shareholders to its rate payers it will make the rate payers retail electric service less volatile.

A review of the record in this case shows that none of the three steps in the syllogism are factually or logically supported, and even if all three steps were correct, that Rider PSR is not best of the options to achieve retail rate stability. The first claim that wholesale capacity rates are going to spike upward in the next few years is supported in the Initial Brief only by fact that current PJM projections estimate that 27,000 MW of generation will be retired by 2019, 76% of which is coal fired.²⁰ While Duke in its Initial Brief carefully points out the amount of capacity being retired, it fails to mention the amount of capacity being added. Those figures are publically available from PJM and are part of the record²¹. Simply put, when one looks at the strong level of additional capacity being added there is no factual support that PJM is on the verge of a capacity shortage which in and of itself would make all existing capacity profitable. Only by focusing on the retirements alone does Duke support its assertion that a capacity rate spike is coming.

This brings us to the second step of the Duke syllogism, namely that Kyger Creek and Clifty Creek units have stable capacity costs which will not rise as quickly as other PJM generation. Duke produced no estimates of the capacity costs for Kyger Creek and Clifty Creek. In fact, Duke provided no cost projections at all and only at end of the proceeding introduced OVEC's cost projections for the two plants. To start an evaluation of whether Clifty Creek and Kyger Creek will have capacity costs below the rest of PJM, whose base residual auction is the market for capacity, one must start with the recent past. The record shows that the past five years the Kyger Creek and Clifty Creek costs have not been stable and have been above market.

²⁰ Duke Initial Brief at 21.

²¹ IGS Exhibit 1.

Between 2009 and 2013, OVEC charges to Duke for the energy and capacity from Clifty Creek and Kyger Creek have averaged:

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

That comes out to a 53% increase in the course of just five years. Duke in accordance with the final order in ESP II sold its OVEC generation into the PJM market, in the same manner as it is proposing to do as part of Rider PSR. The record shows that for that time period the cost Duke paid to OVEC for the generation exceeded the revenue it received for selling the capacity and energy.²²

In its rebuttal testimony, Duke presented the PJM estimates of the cost to construct new capacity,²³ claiming that the new capacity will be more costly than Kyger Creek and Clifty Creek. That conclusion, though, is not based on any comprehensive study and at best is highly speculative. In order to assure itself of receiving a capacity payment, Kyger Creek and Clifty Creek must enter the PJM base residual auction held every year for implementation 36 months after the auction. Duke offers no evidence that beginning in 2018 the mixture of existing generation plus the lowest cost of the new generation will have a capacity cost greater than Kyger Creek and Clifty Creek beginning in 2018. In fact, by 2018 it is likely that the current draft carbon emission rules will be final. We know that the 60 year old coal burning OVEC plants will have to comply, but what is not known is what the cost of that compliance will be. Further, the Clifty Creek plant is in Indiana and will not be part of the Ohio compliance program.

²² IEU Exs. 8-13; Tr. IX at 2462; OMA Ex. 5 at 5-8.

²³ Duke Ex. 41.

The fact that 76% of the scheduled retirements in PJM by 2019 are coal fired units though indicates that other owners of midcentury coal plants have questions about the future profitability of old, coal plants. In sum, for the past year Clifty Creek and Kyger Creek have not been profitable, and there is no hard evidence in this record that starting with the next base residual auction the two OVEC units will clear the auction,²⁴ let alone be profitable.

There is one other risk involved if the Commission approves Rider PSR, and that is the cost of shut down and mitigation. Just a few years ago, Duke extended its participation in OVEC. In accordance with the terms of the Inter-Company Power Agreement (“ICPA”)²⁵ Duke will not only be allocated nine percent of OVEC’s costs (fixed and variable) until 2040 but also the cost of decommissioning including environmental mitigation.²⁶ Absent Rider PSR the cost of compliance for the Clifty Creek and Kyger Creek units will fall on the shareholders OVEC’s owners including Duke’s shareholders. With Rider PSR those costs will fall on Duke’s rate payers if the plant closes on or before 2040? If the Commission commits rate payers to remaining life of these 60 year old plants, it should specifically order that Duke’s shareholders alone pay the decommissioning and mitigation costs.

Step three of the syllogism presented in Duke’s Initial Brief is that by transferring the ownership risk and rewards of Duke’s share of the Kyger Creek and Clifty Creek units’ retail customers will enjoy more stable retail electric rates. First, it should be noted that nowhere in the record is there support for the concept that retail customers prefer stable high electric service rates over lower retail electric service rates that fluctuate. There appears to be rejoicing by the public over the drop in gasoline prices instead of concern that gasoline prices have changed dramatically over the last two month period. It is price spikes that the public fear and merely

²⁴ Tr. XVI at 4305-4313.

²⁵ IEU Ex. 6 at 2; Tr. I at 58, 85; Tr. II at 480.

²⁶ *Id.*; IEU Ex. 5.

transferring the risk of the Kyger Creek and Clifty Creek plants to the rate payers will not assure the public that retail electric rates will not spike. In fact, given the outcome of the carbon rules, the Clifty Creek and Kyger Creek plants could contribute to a price spike.

This brings us to the greatest defect with the third step in the Duke syllogism. Duke did not present any evidence that Rider PSR is the best way to achieve retail rate stability. Even if Kyger Creek and Clifty Creek end up after 2019 being less costly than the PJM market for capacity that does not mean that other programs or policies could not have led to stable retail electric service by other means. The record does show that retail customers now can buy fixed priced products from CRES that covers the ESP III period for less than the cost of Kyger Creek or Clifty Creek generation.²⁷ Further, customers could buy financial hedges or build their own distributive generation to achieve long term retail electric service cost stability. For customers who indeed purchase fixed price products from CRES, or buy options from a financial institution, or install distributive generation, Rider PSR only introduces uncertainty which makes the retail electric service less predictable.

The fact that Duke did not investigate any other method for achieving retail electric service cost stability, but focused solely on Rider PSR which provides Duke with revenue stability raises the prospect that “revenue stability” – not “rate stability” is the true purpose for Rider PSR. Along those lines, it should be noted that the outcome of the carbon rules, cost of new capacity or poor revenue production from the Clifty Creek and Kyger Creek plants, Rider PSR will not affect the revenue stability which Rider PSR provides Duke.

In sum, Duke has the burden of proof and the burden of persuasion that for the next 25 years transferring the financial risk for the Kyger Creek and Clifty Creek power plants to the rate payers is in the public interest and fulfills the State Energy Policy. The three part syllogism

²⁷ RESA Ex. 3 at 13.

Duke presented in its Initial Brief, backed up by no studies of its own, and an OVEC study which does not examine the entire 25 year period, but shows losses for the ESP III period simply does not meet those burden.

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

On pages 5-8 of its Initial Brief, Duke explains the changes that it plans for Retail Capacity Rider (“Rider RC”). Duke desires to maintain the current use of Rider RC as a way to first calculate capacity costs for SSO and then to allocate those capacity costs to customers. RESA agrees with Duke that capacity is a defined cost component of retail electric service. Further, that the capacity cost are established by PJM and that they should be separately calculated and allocated. RESA witness Ringenbach testified that the capacity cost component is calculated separately and priced-in competitive generation offers.²⁸ Duke in the Application proposes to allocate among the SSO classes the cost of capacity based on the contribution of each class to the PJM five coincidental peak hours (“5 CP”). Contribution to the 5 CP hour method is the way in which PJM determines capacity prices. Thus, Duke’s allocating capacity costs based on the contribution to the 5 PC hours would be cost in accordance with the rate making principle of cost causation.

Where RESA and Duke part company on demand cost allocation is with Duke’s second level of allocation, the allocation from the class to the individual. Duke is in the final throes of installing 700,000 smart meters, each capable of tracking interval usage.²⁹ That means that as soon as Duke completes the IT updates so that it cannot only collect the interval data but use it for billing purposes, a greater level of cost transparency and allocation based on individual usage

²⁸ RESA Ex. 1 at 15-18.

²⁹ 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.

will be possible. For the retail customer this has important practical implications. If the individual customer is going to be billed based on their actual usage and they can find out what that usage is then the customer can lower their costs by becoming efficient. RESA urges the Commission to put in its Opinion and Order the goal of having Duke move to pricing capacity on the actual contribution to the PJM 5 CP instead of allocating by class and conducting a second level allocation within the class which is not based on peak usage.

What Duke is proposing in the Application is that each member of the class get an allocation of the class responsibility for capacity costs based on load factor. Using load factor is a side step away from actual cost causation. A customer with 100% load factor is going to contribute its full load to each of the PJM 5 CP which will result in high PJM capacity costs rates³⁰. By contrast, a customer who uses power intermittently, but avoids the PJM 5 CP hours will have a low load factor but not be contributing to the PJM capacity charge. Bottom line, load factor is not a surrogate for interval data. Since Duke will soon have interval data it should pledge now to move to true interval pricing. RESA understands that Duke may not be in a position to go to actual 5 CP pricing on June 2015 when ESP III starts, but a date needs to be set and work begun.

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

While residential and small commercial customers must await receipt of the smart meters and the IT support to provide the customers with their actual interval demand usage, the 30 TS³¹ customers and 300 DP customers³² have demand meters now. For those that buy SSO, customers pay a separate demand charge as part of current Rider RC. Duke seeks to do away with the separate demand (capacity) charge. Once again, the goal should be moving towards an

³⁰ Tr. VI at 1602-1603.

³¹ Tr. VI at 1595.

³² Tr. VI at 1596.

individual capacity charge that accurately reflects the actual PJM capacity costs. Doing away with the discrete demand (capacity) charge sends the wrong message. The message should be that capacity has a true cost, and that the end user can control that capacity cost by paying attention to your temporal use of power. Duke should not remove the current demand charge component of Rider RC and replace that cost with the load factor based demand charge.

VI. Early Termination Provision

Duke “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).³³ Duke stated in the application 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.³⁴

Despite the language in Duke’s application and the testimony from multiple Duke witnesses,³⁵ Duke now attempts to change its proposal, stating in its Initial Brief that it is seeking only “a two-year ESP, with a one-year extension that would be automatically effective unless Duke Energy Ohio exercises its option for the extension not to occur.”³⁶ This is just a distraction – Duke’s ESP proposal is for a three-year ESP III, and Duke proposed to have a unilateral “right” to terminate that three-year ESP at the end of May 2017.

³³ Duke Ex. 1 at 1, 15-16.

³⁴ *Id.*

³⁵ Duke Ex. 2 (Henning Direct) at 5; Duke Ex. 3 (Lee Direct) at 5; Duke Ex. 5 at 4 (Mullins Direct) at 4; and Duke Ex. 6 (Wathen Direct) at 3.

³⁶ Duke Initial Brief at 35. Duke may point to the fourth footnote in its application for this theory. The fourth footnote of the application states: “The proposed term is for two years, which will automatically be extended for another year unless Duke Energy Ohio exercises its right to terminate the plan early as discussed in Section III.F., *infra*.” Nevertheless, Duke and all parties understand Duke’s proposal to be a three-year ESP, with an alleged “right” to terminate the ESP at the end of the second year.

Multiple parties, including RESA,³⁷ contend that this “right” to terminate lacks statutory authority. Section 4928.143, Revised Code, allows the utility to decide at the time the Commission modifies and approves a proposed ESP whether to accept the ESP or withdraw it, thereby terminating it. Nothing in that statutory authority allows for the utility to unilaterally terminate an ESP two years into a three-year term when the utility no longer likes the rates that were set. Moreover, nothing in Section 4928.143, Revised Code, would allow the ESP to automatically extend, if that was Duke’s actual proposal (which it is not). RESA concurs with the point made by Direct Energy Services LLC, Direct Energy Business LLC, and the Ohio Consumers’ Counsel (“OCC”) – if Duke had wanted a shorter term for its ESP III, it should have actually filed for a shorter term.³⁸

Moreover, the Commission has been presented with no clarification, examples or objective criteria by which this proposed early termination would be used. Giving Duke discretion to decide on a moment’s notice to end the ESP III a year earlier than scheduled creates tremendous uncertainty within the market, and adds risk and cost.³⁹ Kroger, Direct Energy, OMA and Exelon all concurred with these points.⁴⁰ RESA cannot support the injection of great uncertainty into the market. Duke has not presented sufficient evidence or justification for this “right” to terminate the ESP III early, at the end of May 2017. This part of Duke’s ESP III should be rejected.

³⁷ Kroger Initial Brief at 7-8; OMA Initial Brief at 5-9; RESA Initial Brief at 26-27; and OCC Initial Brief at 107-108.

³⁸ Direct Energy Initial Brief at 16; and OCC Initial Brief at 107.

³⁹ RESA Ex. 3 at 19-20; Staff Ex. 3 at 3-4.

⁴⁰ Kroger Initial Brief at 7-8; Direct Energy Initial Brief at 16; OMA Initial Brief at 5-9; Exelon Initial Brief at 13-14; and OCC Initial Brief at 108-109.

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.⁴¹ It is currently a bypassable rider. If the revenue balance within the SCR account becomes equal to or greater than ten percent of the Company's total actual SSO revenues collected for the most recent twelve month period under Riders RE, RC, RECON, RTO and AER-R, Rider SCR can turn into a non-bypassable rider. Duke proposes to continue this rider as is and argues that Rider SCR is just and reasonable.⁴²

RESA believes that the tariff as written is ambiguous. The tariff itself was the product of an accepted stipulation and was not examined at hearing.⁴³ The ambiguity is over what happens if the 10% trigger is reached. Duke believes that if the trigger is hit all it has to file is confirmation of the figures that the trigger has been hit, and then Rider SCR automatically becomes non by passable. As noted above, Rider SCR tracks several other riders. Further, it is possible that the mere fact that the trigger has reached once may be due to an anomaly or that one factor needs adjustment.

RESA believes that Duke should be made whole if dropping SSO sales threaten recovery of deferred expenses covered by Rider SCR. The Commission though ought not to automatically make all of Rider SCR non-by-passable, thus shifting the cost responsibility of the former SSO service. What is better policy is to have Duke file the notice that the 10% trigger has been hit and then allow the Company and interested stakeholders to suggest a remedy. That remedy may include making the Rider SCR non bypassable, but given the gravity of such a change it is prudent to permit other approaches. RESA witness Campbell addressed this issue as follows:

⁴¹ Duke Ex. 1 at 8. *See also*, P.U.C.O. Electric No. 19, Sheet 115.9.

⁴² Duke Ex. 1 at 8 and Duke Initial Brief at 10.

⁴³ RESA Ex. 3 at 17.

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 there's other solutions to the problem other than just an automatic nonbypassability.⁴⁴

Based on the foregoing, common sense justifies the removal of the conversion provision. 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.

VIII. Enroll From Your Wallet Program

Those involved with Ohio's competitive energy industry know that the utility account numbers are a barrier in the market. 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. Customers often do not know them off-hand and there are limited means for obtaining the numbers. The Commission has acknowledged these concerns and has directed stakeholders to work to resolve the concerns.⁴⁵ More importantly, the Commission directed its Staff and the EDUs “to work together in developing a website registration system that ensures customer protections on a utility-by-utility basis.”⁴⁶

RESA responded and proposed 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. The Enroll From Your Wallet pilot allows the CRES provider, with the customer's

⁴⁴ Tr. X at 2694.

⁴⁵ *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) at 35.

⁴⁶ *Id.*

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.⁴⁷ Despite those recent Commission directives, OCC and Ohio Partners for Affordable Energy (“OPAE”) raised opposition to this proposed pilot. Duke did not address this proposal in its Initial Brief.

OCC raised two arguments in response. First, OCC complains that, with this pilot, a customer may not make an informed decision because the customer will not necessarily have his/her old bills at the time the customer considers enrollment. OCC’s argument is not a reason to completely forego this pilot. Customers make large and small decisions every day based on a variety levels of information. The Enroll From Your Wallet pilot is not requiring a customer to actually enroll. Customers who want to gather further information will still have the opportunity to do so, with or without Enroll From Your Wallet. Second, OCC believes that RESA needed to analyze and/or document the fact that the utility account number is a barrier. In this regard, OCC appears to be arguing that a pilot cannot be run without such analysis or documentation. The Commission’s prior directives to Staff and the EDUs have demonstrated the Commission’s interest in resolving the existing concerns. RESA was not required to conduct empirical studies. Based on market experience, RESA is aware of this barrier. No one denies that it exists, not even OCC.

OPAE argued that (1) details are not worked out and (2) the Commission has rules that should govern.⁴⁸ Neither of these arguments actually is a valid basis for rejecting the proposed

⁴⁷ Briefly, 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 acknowledge its 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. RESA Ex. 4 at 7.

⁴⁸ OPAE Initial Brief at 29.

pilot. RESA's proposal is a pilot to respond to the Commission's earlier directives. All details are not proposed by RESA, but every single detail does not need to be proposed/decided/established in order for the Commission to approve implement Enroll From Your Wallet on a pilot basis. The Commission has not previously hesitated to approve pilots or competition-related initiatives that require further discussions before implementation.⁴⁹ In any event, the Commission will review the details of the pilot for final review and approval. Second, having further discussions among the key stakeholders will help make the pilot be more educational and successful. Third, it is particularly noteworthy that the one party who will have an extensive role in this pilot, Duke, has not expressed opposition to the pilot.

RESA continues to believe 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.⁵⁰ Accordingly, the Commission should reject the opposition to the Enroll From Your Wallet pilot and implement the pilot during the ESP III.

IX. Market Energy Program

RESA's proposed Market Energy Program ("MEP") is designed to reach out to shopping-eligible customers who call Duke's service center and present to them an attractive and straight-

⁴⁹ By way of illustration, RESA points out that the Commission approved Duke's stipulation in its ESP II, *supra*, wherein Duke agreed to develop and implement a secure supplier web portal and the Commission to not decide/establish many details related thereto. Also, in the last ESP of The Dayton Power and Light Company, the Commission ordered that utility to implement a variety of competitive enhancements. *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 12-426-EL-SSO et al, Opinion and Order (September 14, 2013) at 38. The Commission did not decide/establish all of the details with those enhancements.

⁵⁰ RESA Ex. 4 at 6.

forward competitive offer as well as to educate such customers about shopping.⁵¹ The competitive product offering would be a three percent discount to the applicable Price-to-Compare (“PTC”) at the time of enrollment for a 6-month period.⁵² Duke did not address this proposal in its Initial Brief. Only OPAE and OCC oppose MEP, arguing against the MEP for three reasons: (a) the MEP will divert/undermine/replace the SSO; (b) the MEP is not sufficiently detailed; and (c) the MEP will require Duke to impermissibly market a CRES product and provide a subsidy to CRES providers.⁵³

The OCC and OPAE first argument against MEP makes clear that they do not want any eligible customers to know of or be offered CRES products.⁵⁴ It is outrageous to claim that asking a customer if they might be interested in one specific CRES product equates “diversion,” “undermining” or “replacing” the SSO. OPAE even argues that the MEP is just a “teaser rate” that may be increased substantially afterward.⁵⁵ Nothing could be farther from the truth. A three percent discount from the price-to-compare cannot seriously be considered a “teaser rate.” Moreover, OPAE has no basis for claiming that any future products will be substantially more expensive. This is just doomsday conjecture designed to scare the Commission away from a new idea. Most likely, OCC and OPAE are concerned that customers might be interested to learn more and then accept the MEP product. OCC and OPAE do not want customers to be interested to learn more or to try the MEP product. This is an untenable position for representatives of customers to take – the Ohio General Assembly establishes Ohio’s public policy and nowhere

⁵¹ 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. RESA Ex. 4 at 9.

⁵² *Id.* at 8.

⁵³ OPAE Initial Brief at 29-30; OCC Initial Brief at 100-103.

⁵⁴ OPAE Initial Brief at 29; OCC Initial Brief at 100-103.

⁵⁵ OPAE Initial Brief at 29-30.

within Ohio's statutes is it stated that representatives of customers should oppose competitive efforts such as MEP.⁵⁶

As to the second argument about resolving additional details, RESA acknowledged that additional details must be "hammered out" between Duke and CRES providers for the MEP, including the exchange of billing information for both rate-ready and bill-ready billing formats.⁵⁷ OPAE and OCC claim that this program is not sufficiently developed to be adopted. They are incorrect. First, every single detail does not need to be proposed/decided/established in order for the Commission to approve MEP. The Commission has not previously hesitated to approve competition-related initiatives that require further discussions before implementation.⁵⁸ There is no reason to hesitate when it comes to the MEP. The Commission will review the details of the MEP for final review and approval. Second, having further discussions among the key stakeholders will help make the implementation be more successful. This is exactly how the supplier web portals of Duke and Ohio Power Company were developed and implemented. Third, the one party who will have an extensive role in MEP, Duke, has not complained that MEP is insufficiently developed and therefore cannot be successfully implemented. This argument against MEP should be rejected.

The third argument raised by OCC and OPAE is that the MEP will require Duke to impermissibly market a CRES product and provide a subsidy to CRES providers. RESA

⁵⁶ In Section 4911.02(C), Revised Code, the OCC is statutorily required to follow the policies of Ohio that involve supporting retail natural gas competition. One would think that OCC would likewise follow the policies of Ohio that involve supporting retail electric service competition.

⁵⁷ RESA Ex. 4 at 12.

⁵⁸ There are many such examples. By way of illustration, RESA points out that the Commission approved Duke's stipulation in its ESP II, *supra*, wherein Duke agreed to develop and implement a secure supplier web portal and the Commission to not decide/establish many details related thereto. Also, in the last ESP of The Dayton Power and Light Company, the Commission ordered that utility to implement a variety of competitive enhancements. *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 12-426-EL-SSO et al, Opinion and Order (September 14, 2013) at 38. The Commission did not decide/establish all of the details with those enhancements.

disagrees. If the Commission agrees with the MEP, it will be an ESP program designed to educate customers and offer them a CRES product under a different structure. This is not “selling” in the market. Duke will not actively seek out its eligible customers or advertise the MEP. MEP involves a brief set of questions and, when a customer agrees, an enrollment being processed. Additionally, no subsidy will be created because participating CRES providers will pay Duke its costs for start-up and maintenance costs.⁵⁹

Finally, RESA wishes to highlight that, under MEP, customers are given choices:

- 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 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.⁶⁰

For all of these reasons, the arguments raised by OCC and OPAE should be rejected, and the Commission should approve the MEP as proposed by RESA.

X. Usage Data Access

A. Duke’s Proposed Change in the Definition of “Interval Meter”

Duke proposes to change the definition of “interval meter” in its supplier tariff, the effect of which is to state that only interval data from Interval Data Recorder (“IDR”) meters (or solid state records [“SSRs”]) will be provided to CRES providers.⁶¹ Duke claims that its definitional change is “necessary because the Company has deployed advanced meters [“AMI meters”]

⁵⁹ RESA Ex. 4 at 11.

⁶⁰ RESA Ex. 4 at 9.

⁶¹ Duke Ex. 13 at Attachment DLJ-1 at 3.

across its service territory,⁶² which meters provide interval usage data.”⁶³ Duke claims that it can only provide interval data from the IDRs/SSRs.

Duke has spent years deploying 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. Duke argues that to do so will require input from many stakeholders and will be very costly. As a result, 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, and Duke’s proposed definitional change here seeks to preserve the status quo throughout the ESP III term.

Not only is this proposed change in the definition of “interval meter” problematic for CRES providers, but it directly contradicts 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.⁶⁴ For all of these reasons, the Commission should reject this proposed supplier tariff change.

⁶² Duke downplays the advanced meters in its service territory. Duke has installed more than 716,000 electric AMI meters in its service territory, and it is nearly 100 percent complete in its deployment of AMI meters in its service territory. *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. In comparison, Duke has roughly 4,000 customers with IDRs/SSRs. Duke Ex. 13 at 8; Tr. Vol. IV at 1052.

⁶³ Duke Initial Brief at 37.

⁶⁴ *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). The Commission very specifically ordered that the tariff amendments address or include the following: (a) format, method, granularity, and frequency of the customer energy usage data that a CRES provider may receive; (b) implementation of individual network service peak load and peak load contribution formulas; and (c) recovery of any necessary capital improvement or infrastructure costs.

B. Adjustments/Resettlement of Interval Data

Duke proposed to add a new provision in its supplier tariff at Section XIV, paragraph 14.4, is authorize Duke to request an adjustment or resettlement and, when such is initiated by Duke, the CRES supplier is obligated to accept what Duke has decided to authorize or initiate.⁶⁵

Duke did not address this proposal in its Initial Brief. As RESA noted in its Initial Brief,⁶⁶ 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 only 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. 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

In its Initial Brief, the Ohio Environmental Council ("OEC") stated that the principal owner of usage data is the customer and the utility is the guardian of that data.⁶⁷ OEC also stated that data should be accessible to third parties at the authorization of the customer.⁶⁸ RESA agrees with OEC that competitive suppliers are the very third parties who should have access to the usage data beyond what is permitted in the current administrative rules – both 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-

⁶⁵ Duke Ex. 13 at Attachment DLJ-1 at 22.

⁶⁶ RESA Initial Brief at 36.

⁶⁷ OEC Initial Brief at 23.

⁶⁸ *Id.*

of-use products. Like OEC stated,⁶⁹ allowing access to customer data by third parties will spark the innovation in retail electric services and products envisioned by Ohio's Electric Policy.

OEC correctly noted that Duke is in a position to allow access to the interval data. The Commission should expressly acknowledge that CRES providers should have access to the usage data (with appropriate customer consent) as well.

XI. Unbundling the SSO Costs

In addition to the recommendations made in this brief, RESA supports Interstate Gas Supply Company's ("IGS") proposal to unbundle the costs that support the Standard Service Offer. Section 4928.141, Revised Code requires all electric distribution utilities, such as Duke, to offer a bundled electric service which provides not only the utility services under the same terms and conditions as the utility service for customers that shop, but to also provide the necessary competitive generation services so that all retail customers have full electric service. The General Assembly also required that there be no subsidies flowing either from the utility service to the competitive services or vice versa Section 4928.02(H), Revised Code.

For the Commission to carry out the mandate of both these statutes – standard service with all competitive service components and a prohibition on having utility service subsidize competitive services, periodically a full accounting of the utility costs must be undertaken. Such was not done in the ESP III application, but the Commission does have to assure that a base rate case is scheduled and that subsidies issues are examined.

XII. 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 to the Supplier Tariff, but should provide that Duke extend the same type of

⁶⁹ *Id.* at 25.

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,



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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 29th day of December 2014 upon all persons/entities listed below:



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