THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF APPLICATION OF DUKE ENERGY OHIO, INC. FOR AUTHORITY TO ESTABLISH A STANDARD SERVICE OFFER PURSUANT TO R.C. 4928.143 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 APPLICATION OF DUKE ENERGY OHIO, INC. FOR AUTHORITY TO AMEND ITS CERTIFIED SUPPLIER TARIFF, P.U.C.O. NO. 20.	CASE NO. 14-842-EL-ATA

SECOND ENTRY ON REHEARING

Entered in the Journal on March 21, 2018

I. SUMMARY

{¶ 1} The Commission grants, in part, and denies, in part, the applications for rehearing of the April 2, 2015 Opinion and Order.

II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services (CRES) necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer (MRO) in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On May 29, 2014, Duke filed an application for an SSO, in the form of an ESP, pursuant to R.C. 4928.143.

{¶ 5} On April 2, 2015, the Commission issued its Opinion and Order approving Duke's proposed ESP, with certain modifications (ESP 3 Order).

{¶ 6} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 7} On May 1, 2015, and May 4, 2015, applications for rehearing of the ESP 3 Order were filed by: Duke; Industrial Energy Users-Ohio (IEU); Ohio Energy Group (OEG); Ohio Partners for Affordable Energy (OPAE); Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (ExGen) (jointly, Exelon); Ohio Consumers' Counsel (OCC); Ohio Manufacturers' Association (OMA); Retail Energy Supply Association (RESA); city of Cincinnati (Cincinnati); Environmental Law & Policy Center (ELPC) and Ohio Environmental Council (OEC) (the Environmental Advocates); Direct Energy Services, LLC and Direct Energy Business, LLC (Direct Energy); Interstate Gas Supply, Inc. (IGS); and Sierra Club (Sierra Club). Memoranda contra the various applications for rehearing were filed by: Duke; IEU; OEG; OPAE; the Environmental Advocates; Exelon; OCC; OMA; RESA; Miami University and The University of Cincinnati (Miami/UC); and IGS.

{¶ 8} By Entry on Rehearing dated May 28, 2015, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing.

III. Discussion

{¶ 9} The Commission has reviewed and considered all of the arguments raised in the applications for rehearing. Any argument that was raised on rehearing and that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

A. Price Stability Rider

{¶ 10} In these proceedings, Duke requested approval of a Price Stability Rider (PSR) that, as proposed, would flow through to customers the net benefit or cost from the Company's sale of its Ohio Valley Electric Corporation (OVEC) contractual entitlement into the PJM Interconnection, LLC (PJM) market less all associated costs. In the ESP 3 Order, the Commission concluded that the PSR proposed by Duke met the requirements of R.C. 4928.143(B)(2)(d) to be included in an ESP and authorized the establishment of the PSR mechanism, as a zero placeholder rider. However, after thoroughly considering the record evidence, the Commission found the PSR proposal, as put forth in these proceedings, would not provide a sufficiently beneficial financial hedge, or other commensurate benefits, to Duke's customers to justify approval of the OVEC PSR. Further, the Commission offered factors that it will consider, but not be bound by, in its evaluation of future requests for a PSR. ESP 3 Order at 47.

{¶ 11} Duke argues the Commission's conclusion on the PSR unreasonably prohibits the Company from offering its customers a hedge against volatile wholesale prices. Duke submits there are significant changes in the wholesale market, including PJM's proposal of a new capacity product, proposed environmental regulations, reliable coal plants, and pending federal litigation. According to Duke, these uncertainties, coupled with the volatile wholesale market, render retail rates unpredictable and unstable. Therefore, to protect against some of the volatility of the cost of energy and capacity, Duke proposes to provide customers with a financial hedge, in the form of the PSR. Duke argues the Commission's decision cannot be substantiated by the evidence in the record. Duke contends the Commission's reliance on the uncertainty and speculation in projecting the net impact of the proposal is misplaced and runs afoul of established regulatory practice, disregards the 25-year duration of Duke's proposal, and ignores the purpose of the rider. Further, Duke asserts reliance on the availability of other means to hedge volatility is misplaced. Duke argues that the laddering and staggering approach for SSO auction products, as well as fixed-price CRES contracts, noted by the Commission are general methods to smooth price changes and do nothing to prevent customers from feeling the full effect of increasing market prices.

{¶ 12} The Commission finds, that Duke has raised no new arguments on rehearing and that we already considered and evaluated Duke's arguments in the ESP Order. In our decision, we reasonably concluded that the evidence of record demonstrates that, as proposed, the PSR may result in a net cost to customers, with little offsetting benefit from the rider's intended purpose as a hedge against market volatility. In doing so, we thoroughly considered the testimony presented by Duke and the other parties regarding the PSR's projected costs and rate stability benefits. Further, we recognized Duke's concerns regarding rate stability, noting that a properly designed proposal to recover OVEC costs could help protect customers from price volatility in the wholesale market. However, we also noted significant hedges against rate volatility already exist, such as fixed-price contracts and the laddering and staggering of SSO auction products. ESP 3 Order at 45-47.

{¶ 13} Therefore, we affirm our decision in the ESP 3 Order not to approve Duke's recovery of any OVEC costs in this proceeding. In that decision, which was based solely on the record in these proceedings, we recognized the uncertainty associated with PJM market reforms, environmental regulations, and federal litigation. Further, we specifically noted our decision did not preclude Duke from seeking recovery of OVEC costs in a future filing. In sum, our decision to not approve the PSR was reasonable and supported by the record. ESP 3 Order at 45-47. Duke's request for rehearing on this issue should be denied.

1. Adoption of a placeholder Price Stability Rider

{¶ 14} OPAE, Exelon, and OMA assert it is unlawful and unreasonable for the Commission to allow Duke to establish a placeholder PSR and to encourage Duke to file another PSR proposal. OCC, Exelon, and OMA note that the Commission found Duke failed in its burden to show that the proposed PSR would provide rate stability and certainty for customers as required by R.C. 4928.143(B)(2)(d). OMA argues the PSR may not be properly established unless and until Duke demonstrates that it will have the effect of stabilizing or providing certainty regarding retail electric service. OCC and RESA contend that the Commission approved the placeholder PSR under the theory that a properly conceived PSR proposal in a future filing could meet the statutory requirements; however, the placeholder PSR was not supported by facts admitted into the record in these proceedings. According to RESA, if the proposal submitted by Duke was not approved and Duke must present more information before the PSR can take effect, then the Commission did not have any evidentiary basis to establish and approve the placeholder PSR. Exelon agrees, stating it is unjust and unreasonable to conclude that a placeholder PSR satisfied the statutory requirements.

{¶ 15} IEU offers that R.C. 4928.143(B) sets forth the terms that the Commission may authorize as a provision of an ESP, and none of those terms authorizes a placeholder rider. Cincinnati agrees there is nothing that authorizes the Commission to establish an undefined placeholder PSR based on a theoretical benefit not found in the record.

{¶ 16} OCC opines that the Commission violated R.C. 4903.09 by not basing its decision on the record. According to OCC, residential consumers are prejudiced by the Commission's approval of the placeholder PSR because they are denied the factual information upon which to contest approval of the rider. In addition, with the PSR set at zero and the Commission's intent to permit cost recovery in a future proceeding, consumers are precluded from considering the PSR's costs and other attributes in contesting whether the ESP is more favorable than an MRO. Moreover, IEU claims that by approving a placeholder rider with authorization for cost recovery in a future filing, the Commission has permitted Duke to evade its burden to prove that the ESP is more favorable in the aggregate that an MRO, as required in R.C. 4928.143(C)(1).

{¶ 17} Duke responds that the Commission's decision was based on the evidence of record. According to Duke, the Commission, in reaching its decision, may rely on the arguments of any party and all evidence of record.

{¶ 18} We affirm our decision from the ESP 3 Order authorizing a placeholder PSR. As noted in the Order, we have previously approved placeholder riders, with an initial rate of zero, within an ESP. ESP 3 Order at 47, citing *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) at 17; *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al. (ESP 2 Case), Opinion and Order (Nov. 22, 2011) at 51; *In re Columbus S. Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) at 24-25; *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO (AEP ESP 3 Case), Opinion and Order (Feb. 25, 2015) at 25; *In re Ohio Edison Co.*, et al. Case No. 08-935-EL-SSO, et al., Second Opinion and Order (Mar. 25, 2009) at 15. The basis for our decision to authorize the placeholder rider was explained in the Order and based on the evidence of record, consistent with R.C. 4903.09. In the ESP 3 Order, the Commission concluded that Duke's proposed PSR rider would not provide customers with sufficient benefits. Accordingly, the Commission denied Duke's specific PSR proposal. However, we found that a properly designed and implemented PSR rider proposal has the potential to supplement the benefits derived from the staggering and laddering of the SSO auctions; protect customers from market price volatility; and provide value for consumers through a significant financial hedge that truly stabilizes rates, particularly during periods of extreme weather. ESP 3 Order at 46-48. As discussed in greater detail below, R.C. 4928.143(B)(2)(d) provides the statutory authority for the PSR and nothing in the statute precludes the Commission approving a placeholder rider, with cost recovery determined at a future date.

2. Statutory Requirements of R.C. 4928.143(B)(2)(d)

{¶ 19} R.C. 4928.143(B)(2)(d) provides that the Commission can approve, as a component of an ESP, terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.

{¶ 20} The Environmental Advocates, Sierra Club, OMA, RESA, and IGS submit the Commission erroneously concluded it has the authority under R.C. 4928.143(B)(2)(d) to approve the PSR. IGS contends, pursuant to R.C. 4928.143, the only time the Commission may authorize a nonbypassable generation-related rider is where generating facilities are under construction or constructed after 2009. IEU contends the ESP 3 Order is unlawful because it authorizes a nonbypassable generation-related rider that is not included in the list of permissive ESP provisions authorized by R.C. 4928.143(B)(2). The Environmental Advocates assert the Commission's conclusion authorizes Duke to force all distribution customers to cover the costs of its generating plants even though the plants are uneconomic in the competitive market, resulting in an anticompetitive subsidy in contravention of R.C. 4928.02(H). The Environmental Advocates reason that R.C. 4928.06 requires the Commission to ensure the policy in R.C. 4928.02 is effectuated; therefore, approval of the PSR in contravention of R.C. 4928.02(H) was unlawful and unreasonable regardless of the scope of its authority under R.C. 4928.143(B)(2)(d).

{¶ 21} OCC asserts, and IEU agrees, the Commission's approval of a placeholder for the PSR is unreasonable and unlawful because the determination that the PSR may be included in an ESP and charged to all distribution customers under R.C. 4928.143(B)(2)(d) lacks record support, violating R.C. 4903.09, and contravenes legislative intent. Sierra Club agrees that approval of the PSR was not supported by the record evidence. While OCC, Sierra Club, and IGS acknowledge that, in accordance with the statutory provisions in R.C. 4928.143(B)(2)(d), the PSR would be a charge to customers, they contest that the PSR relates to "limitations on customer shopping." According to OCC, "customer shopping" is synonymous with the term "customer switching." OCC opines that the General Assembly intended R.C. 4928.143(B)(2)(d) only to permit provisions in an ESP that would physically limit customer switching to a CRES provider, as opposed to the Commission's interpretation that permits a "financial" limitation on customer shopping. Sierra Club agrees that R.C. 4928.143(B)(2)(d) does not speak of the pricing for retail electric generation service, but of shopping for such service. Likewise, Cincinnati states that the statute speaks of charges relating to limitations on customer shopping, rather than financial limitations on customer shopping.

{¶ 22} In its reply, Duke contends that OCC is erroneously conflating "customer shopping" and "customer switching." Duke avers a customer that examines competitive offers and chooses to remain with the SSO still shopped for an offer, even though a switch did not occur. As to the intervenors' assertion that the limitation on customer shopping must be physical, the Company states the intervenors are wrongly inserting words and intent into the statute.

{¶ 23} OMA submits the PSR does not function as a limitation on customer shopping, financially or otherwise. In finding that the PSR would effectively "function as a financial restraint on complete reliance on the retail market for the pricing of retail electric generation service," OMA believes the Commission overlooked that many customers have fixed-price contracts or service under the SSO and thus do not rely on the fluctuations of the spot energy market for their retail electric generation service. Further, OMA states that Duke did not allege in its application that the PSR would have the effect of preventing, limiting, or inhibiting customer shopping for retail generation service, financially or otherwise, nor did Duke request a waiver of Ohio Adm.Code 4901:1-35-03(C)(9)(c), which requires Duke to provide such information in its ESP application.

{¶ 24} According to IEU, the Commission relied on the testimony of OEG's witness to support the position that the PSR stabilizes rates, not on Duke's application. Therefore, IEU contends Duke failed to carry the burden of proof to establish that the PSR is a limitation on shopping and the manifest weight of the evidence contradicts the Commission's finding.

{¶ 25} RESA notes the Commission found that the PSR would be a generation rate and, in Ohio, generation is a competitive retail electric service under R.C. 4928.01(A)(27) and 4928.03. In addition, RESA asserts that the EDU is limited to providing noncompetitive utility services, with the exception of competitive services provided as part of a bundled, default electric retail service. RESA points out that the PSR does not bundle generation to any Duke customers; rather, under the PSR, OVEC generation is sold wholesale into the PJM market. Moreover, the PSR, as a nonbypassable rider, applies to both shopping and nonshopping customers and mandates that all customers pay for the costs of competitive retail electric service, even though the shopping customers did not use the generation from OVEC. Therefore, according to RESA, the PSR is not authorized by R.C. 4928.143(B)(2)(d), because the rider is for generation and involves competitive services.

{¶ 26} Duke disagrees with RESA, asserting that the statutes specifically designed ESPs as a mechanism through which a utility may provide generation service. Thus, because the PSR relates to generation, Duke contends an ESP proceeding is the appropriate proceeding to establish such a rider.

{¶ 27} OCC and OPAE offer that, without its express inclusion in the items listed in R.C. 4928.143(B)(2)(a) through (i), a financial limitation on customer shopping is forbidden. OCC and OPAE submit the Commission relied entirely on OEG's theory on brief that the PSR represents a financial limitation on shopping; however, there is no evidence on the record to support this claim.

{¶ 28} OCC, Sierra Club, OMA, IEU, and IGS argue the PSR does not provide rate stability or certainty as required by R.C. 4928.143(B)(2)(d). IGS submits the PSR does not serve as a hedge against rising electricity prices. OCC notes the PSR will not function as a countercyclical hedge by rising and falling in the opposite direction of the market, as asserted by Duke. OCC and IEU believe the ESP 3 Order is inconsistent in finding that the PSR would, in theory, have the effect of stabilizing retail service, yet also finding it was unclear, based on the record, how much the PSR would cost customers and whether customers would benefit from a financial hedge. OPAE, IEU, and RESA assert the purpose of the PSR is to shift the business risk associated with the OVEC generating plants to Duke's distribution customers. Further, OCC and OPAE note that shopping customers already have solutions to hedge against price volatility available to them through the SSO auctions, such as laddering and staggering. In addition, OPAE notes customers receiving service under the SSO are served under one- and two-year full requirement contracts established through periodic auctions. Therefore, OCC asserts the PSR is not needed because CRES providers can provide products that allow customers to elect the amount of risk they want to take. IEU asserts the PSR will alter fixed-price contracts and inject price instability into the SSO. OPAE further advocates that the PSR does not give Ohio customers any greater reliability than any other customer in PJM.

{¶ 29} Sierra Club and IGS state that rate stability and certainty under R.C. 4928.143(B)(2)(d) refers to the provision of retail electric service; the PSR, however, does not impact retail electric service and has nothing to do with supply of retail electric service to Duke's customers in Ohio, as defined in R.C. 4928.01(A)(27). According to Sierra Club, what customers will be paying for under the PSR would not be used to serve those customers. Rather, with the PSR, Duke would sell 100 percent of its OVEC share into the wholesale market and default customers will still receive their own energy supply through an SSO auction process. Sierra Club avers Duke's proposal would essentially require customers to become merchant generators, paying for all of the costs of producing energy for sale in to the wholesale energy market and receiving whatever revenue might accrue from such sales. IGS asserts approval of the PSR would inject uncertainty and instability into the retail electric market, stating that requiring customers to subsidize uneconomic generation will discourage market entry and development of the competitive market.

{¶ 30} After considering the applications for rehearing, we affirm our decision that R.C. 4928.143(B)(2)(d) permits the authorization of the PSR. In the ESP 3 Order, we determined Duke's PSR would satisfy the three requirements of the statute. Specifically, the PSR would: consist of a charge, constitute a financial limitation on customer shopping for retail electric generation service, and have the effect of stabilizing or providing certainty regarding retail electric service. ESP 3 Order at 43-46. In finding that the second criterion was met, we noted that the PSR rider would function as a financial restraint on complete reliance on the retail market for the pricing of retail electric generation service. In finding that the PSR is a financial limitation on customer shopping, we relied on, among other evidence, the testimony of OEG witness Taylor. ESP 3 Order at 45 (Tr. VII at 1875). The argument that Duke did not meet its burden of proof because Mr. Taylor was not a Duke witness has no merit. All evidence in the record may be used to satisfy a statutory burden, just as the Commission may rely on all evidence in the record to reach its decision. We also determined that the third criterion was satisfied, because a properly conceived PSR rider would provide a generation-related hedging service that stabilizes retail electric service, by smoothing out the market-based rates paid by all customers. ESP 3 Order at 44.

{¶ 31} We do not find that the language of R.C 4928.143(B)(2)(d) prevents the Commission from authorizing a non-bypassable generation-related rider. Further, R.C. 4928.143(B)(2)(d) references only "limitations on customer shopping" and, therefore, does not preclude authorization of a charge constituting a financial limitation on customer shopping, contrary to OCC's assertion. Additionally, although Ohio Adm.Code 4901:1-35-03(C)(9)(c)(i) requires an ESP application to include a descriptive rationale and other information for any component of the ESP that would have the effect of limiting customer shopping, at the time of the filing of its ESP application, Duke did not propose the PSR rider as a limitation on customer shopping for retail electric generation service and, therefore, the Company was not required to comply with the rule. We also reject the arguments questioning the potential rate stabilizing effect of the PSR. In declining to approve the specific rider proposed to us, we did determine, after a careful and balanced consideration of the record, that there may be value for consumers in a properly conceived PSR proposal.

In doing so, we found the evidence suggested that the right proposal could provide a significant financial hedge that stabilizes rates and protects all customers from market-based price volatility, including shopping customers with fixed-rate contracts. ESP 3 Order at 44-45. Thus, we have already fully considered the opposing intervenors' arguments regarding rate stability, as well as our analysis of R.C. 4928.143(B)(2)(d). Accordingly, we find that the requests for rehearing on these issues should be denied.

3. Corporate Separation Provisions of R.C. 4928.17

{¶ 32} RESA argues the PSR violates R.C. 4928.17 because it allows Duke to contract with its affiliate without any direct approval from the Commission. RESA contends, and Exelon agrees, that Duke is not permitted to supply noncompetitive distribution service and a competitive generation service without a corporate separation plan under R.C. 4928.17. RESA and Exelon also note that, in the ESP 2 Case, Duke was required to separate its generation assets from its distribution assets by the end of 2014, citing ESP 2 Case, Opinion and Order (Nov. 22, 2011) at 44-46.

{¶ 33} According to IGS, the PSR could provide Duke with above-market compensation for unregulated generation assets. Thus, IGS argues the PSR allows Duke to evade the corporate separations requirements contained in R.C. 4928.17 by providing an undue preference and a competitive advantage to Duke in the form of a guaranteed cost recovery for an unregulated service. In addition, IGS submits approval of the PSR facilitates the abuse of market power.

{¶ 34} We find the intervenors' arguments regarding the corporate separation requirements of R.C. 4928.17 to be without merit. The requirements of R.C. 4928.17 are applicable "[e]xcept as otherwise provide in sections 4928.142 or 4928.143 * * * of the Revised Code." R.C. 4928.17(A). In our decision, we determined a PSR may be approved pursuant to R.C. 4928.143(B)(2)(d), making the corporate separation requirements inapplicable.

Therefore, we find the intervenors' arguments are misplaced under the circumstances and should be denied.

4. STATE POLICY OF R.C. 4928.02

{¶ 35} R.C. 4928.02(A) provides that it is the policy of the state to ensure reasonably priced retail electric service. OPAE asserts that, because the Commission denied approval of the proposed PSR on the basis that it did not benefit customers, the Commission cannot find that the PSR would ensure reasonably priced retail electric service in accordance with R.C. 4928.02(A).

{¶ 36} R.C. 4928.02(H) provides that it is the policy of the state to ensure effective competition "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." OCC, OPAE, IEU, and IGS state the PSR provides an anticompetitive subsidy funded by customers and that R.C. 4928.02(H) prohibits the recovery of noncompetitive generation-related costs through distribution rates paid for by utility customers. RESA and Exelon agree the PSR would violate R.C. 4928.02(H) because it would recover generation-related costs through distribution and transmission rates. According to OCC, Exelon, IEU, and RESA, although the Commission characterizes the PSR as a generation rate, it is actually a distribution rate and Commission precedent supports that R.C. 4928.02(H) prevents the recovery of generation-related costs from all distribution customers, citing *In re Ohio Power Co.*, Case No. 10-1454-EL-RDR, Finding and Order (Jan. 11, 2012). OPAE contends that, under Ohio law, Duke's shareholders, not the distribution customers, should bear the risk of OVEC's profits or losses in the market. RESA and Exelon note that, since all ratepayers will pay the OVEC generation costs, the PSR creates a subsidy for generation service and OVEC will have an advantage over other competitive generators because the OVEC units will be guaranteed to recover their costs, including a return on equity. In addition, RESA and

Exelon offer that the PSR will free Duke from any market/price risk associated with the OVEC generation.

{¶ 37} The Environmental Advocates submit the language in R.C. 4928.02(H) is only one specific example of a type of anticompetitive subsidy barred by state policy. Thus, the Environmental Advocates assert the Commission should have inquired as to whether the PSR effects an invalid anticompetitive subsidy by other means when it allows the transfer of money from a noncompetitive retail electric service to support the competitive generation service provided by OVEC. Because the PSR was approved for both shopping and nonshopping customers, without the possibility for CRES providers to offer competing options to address price volatility, the Environmental Advocates state the PSR's purported financial hedging service constitutes a noncompetitive retail electric service supplied to ratepayers. The Environmental Advocates note that Duke will then use the revenue from that noncompetitive service to cover its share of the costs for the OVEC plants, plants that would otherwise have to compete in the free market as a source of generation for retail customers. This economic support to the OVEC plants will be provided by Duke without any competitive process to ensure the best service to customers at the least cost. According to the Environmental Advocates, the Commission should ensure that competitive and noncompetitive retail electric service stand on their own when applying the statute. OCC agrees the PSR creates an anticompetitive subsidy by requiring Duke's customers to underwrite the costs of OVEC's generation, which is a benefit that other competitive retail or wholesale generation providers do not have. In addition, OCC notes, the record reflects that the PSR could incent Duke to cause lower-cost OVEC power to be withheld from the market to the benefit of Duke's affiliate's unregulated generation in PJM.

{¶ 38} Sierra Club offers that the PSR is contrary to state policy and would reverse the transition to a competitive marketplace because it requires customers to subsidize potentially uneconomic generation and guarantees income to generation regardless of market performance; unfairly subjects customers to the risk of owning generation over the long term without any control over the decisions that affect costs and revenues; and is an inappropriate mechanism to manage volatility in a competitive environment.

{¶ 39} Duke responds that the PSR complies with state policy and would be beneficial to ratepayers. According to Duke, the PSR does not create a subsidy. Duke notes its contractual responsibility with OVEC continues whether the PSR is approved or not and OVEC would not receive more or less revenue from Duke as result of the PSR. Duke asserts the PSR would only serve a countercyclical hedge for ratepayers against volatile energy rates.

{¶ 40} In the ESP 3 Order, we found our adoption of the placeholder PSR was consistent with the state policy specified in R.C. 4928.02 and, in particular, with our obligation under R.C. 4928.02(A) to ensure the availability to consumers of reasonably priced retail electric service. In the Order, we also rejected claims that the rider is contrary to R.C. 4928.02(H) or inconsistent with our decision in Case No. 10-1454-EL-RDR. ESP 3 Order at 47-48. In that case, we specifically determined that the plant closure costs in question were not authorized under R.C. 4928.143; here, we noted that a PSR is permissible under R.C. 4928.143(B)(2)(d), which permits rate stability mechanisms. Although we did not approve the PSR, as proposed, we did find that a PSR could provide significant customer benefits. Therefore, there is no conflict with R.C. 4928.02(A) or (H). We further find that the opposing intervenors' arguments, as they pertain to Duke's recovery of costs through the PSR, are premature. As previously emphasized, we have not approved any cost recovery in these proceedings. ESP 3 Order at 48. Accordingly, requests for rehearing on this issue should be denied.

5. COMPLIANCE WITH OTHER STATUTES

{¶ 41} OCC, OPAE, and IEU assert the PSR is an unlawful transition charge and must be disallowed under R.C. 4928.38 and 4928.39. OCC and IEU explain the PSR would require customers to pay for lost revenues when the cost to Duke of generation from OVEC is too high to compete in the PJM market. OCC and IEU note that, in accordance with R.C. 4928.38, the recovery of generation transition charges was permitted only until the end of the market development period, which ended December 31, 2005. Moreover, IEU insists R.C. 4928.143(B) does not carve out an exception to the bar on authorization of transition revenue or its equivalent, noting that R.C. 4928.141 contains an explicit bar on the authorization of additional transition revenue. IEU contends that, based on the legislative intent and past precedent, the Commission cannot authorize a rate stability charge under R.C. 4928.143(B)(2)(d) if doing so permits the EDU to secure transition revenue or its equivalent in violation of R.C. 4928.38.

{¶ 42} OPAE points to R.C. 4928.143(B)(2)(b), stating that, under Ohio's competitive retail generation market, Duke's distribution customers cannot be required to subsidize energy and capacity produced by any particular power plants, unless Duke demonstrates a need for a new plant and the Commission authorizes Duke to build one.

{¶ 43} IEU notes that, under Duke's proposal, the balance collected through the PSR from retail customers is the difference between the wholesale costs Duke is charged by OVEC under the FERC-approved wholesale contract and the wholesale revenue Duke received under PJM tariffs. Therefore, IEU submits that the PSR is a charge or credit that increases or decreases Duke's compensation for wholesale capacity and energy services. IEU argues that the definition of EDUs in R.C. Chapters 4905 and 4928 does not give the Commission the statutory authority to adjust the compensation of an EDU for wholesale electric service; rather, the definitions limit the Commission's jurisdiction over EDUs to instances in which a retail service is being provided.

{¶ 44} IEU further states that authorization of the PSR is barred by the settlement approved in *In re Cincinnati Gas and Elec. Co.*, Case No. 99-1658-EL-ETP, et al., Opinion and Order (Aug. 31, 2000). According to IEU, the stipulation in that case provided the Company with no generation transition charge and placed the electricity market price risk on the Company.

{¶ 45} In Duke's reply, it contends the PSR does not remit transition revenue to Duke and is in compliance with R.C. 4928.38 and 4928.39. According to the Company, costs or credits from the PSR are not directly assignable or allocable to retail generation service and thus R.C. 4928.38 and 4928.39 are not applicable. Further, Duke asserts the Commission already addressed this in the ESP 3 Order. Duke also asserts that IEU's reliance on another proceedings' stipulation is misplaced, as that stipulation did not extend to contractual entitlements not included in Duke's rate base and does not preclude the Company from offering a rate stability rider.

{¶ 46} In the ESP 3 Order, we noted that the PSR would serve as a rate stability charge and specifically rejected the claim that it would permit Duke to collect untimely transition costs. We determined a properly conceived PSR could provide a significant financial hedge that stabilizes retail rates and protects customers from price volatility. Because a rate stability mechanism is permitted under R.C. 4928.143 there is no conflict with R.C. 4928.38 or 4928.39. Further, because we have not approved the recovery of any costs through the placeholder PSR, the contention that we have authorized the receipt of transition or equivalent revenues is without merit. We also do not find merit in IEU's claim that the PSR permits Duke to increase its compensation for wholesale generation-related services, as we expressly determined that the rider would constitute a financial limitation on customer shopping for retail electric generation service. ESP Order at 47-48. For the above reasons, requests for rehearing on these issues should be denied.

6. Preemption

{¶ 47} OCC and IEU argue on rehearing that the Commission violated R.C. 4903.09 by not ruling on the federal preemption argument. OCC claims the question of whether the Commission's exercise of jurisdiction is preempted, among other things, by the Federal

Power Act (FPA), through the Supremacy Clause of the U.S. Constitution (Supremacy Clause), is the threshold question with respect to the PSR; however, according to OCC, the Commission sidestepped this issue and proceeded to assert jurisdiction over the PSR. IEU states that, under the Supremacy Clause, federal law preempts state legislation and regulating authority if: Congress, in enacting a federal statute, has expressed a clear intent to preempt state law; it is clear, despite the absence of explicit preemptive language, that Congress has intended to occupy an entire field of regulation; or compliance with both state and federal law is impossible or when compliance with state law stands as an obstacle to the federal policies in the federal law. According to OCC, OPAE, Sierra Club, RESA, and IGS the PSR is preempted under the FPA, because it would establish the wholesale market price Duke would receive for its sales into the PJM wholesale markets of energy, capacity, and ancillary services.

{¶ 48} OCC, RESA, IEU, and IGS submit the PSR cannot be distinguished from the state programs the courts found to be preempted under the FPA, where those state programs were found to be supplementing the PJM wholesale auction clearing prices with the revenues secured through out-of-market state subsidies. See *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014) (*Nazarian*); *PPL Energy Plus v. Soloman*, 766 F.3d 241 (3d Cir. 2014) (*Soloman*). Exelon agrees, that in *Nazarian* and *Solomon* the courts tossed out efforts to require retail customers to buy or subsidize the wholesale power on the ground that they are preempted by federal law. OCC explains that, like the situations posed in *Nazarian* and *Solomon*, the PSR ensures that the market participant, Duke, would receive a customer-funded fixed payment for its sale into the PJM markets regardless of the PJM capacity auction clearing prices. In the instant case, OCC believes the Commission is supplanting the rate generated by the PJM auction with an alternative rate preferred by the state, a make-whole rate subsidized by customers. OCC challenges Duke's attempts to distinguish the PSR from the state programs preempted in *Nazarian* and *Solomon*, stating any distinctions between new and existing plants is irrelevant, and noting that, while the PSR may not create a "fixed revenue stream" for Duke, there is a guaranteed revenue stream. Moreover, OCC insists Duke's PSR is an attempt to set wholesale market prices. OCC further asserts the PSR would have anti-competitive effects on wholesale markets, stating it is not consistent with competition in the PJM wholesale power markets and it would: constitute a subsidy analogous to the subsidies preempted in *Nazarian* and *Solomon;* adversely affect bidding behavior in the wholesale competitive markets and make it difficult or impossible for generating units without subsidies to compete in the market; and suppress prices in the PJM energy markets and negatively affect incentives for nonsubsidized resources to build new generation in the region. Sierra Club opines that, as explained in *Nazarian,* market participants rely on price signals in determining whether to construct new capacity or expand; however, Sierra Club believes the signals intended to incentivize new construction may break down if new entrants are forced to compete against existing generation that is immune from price signals via the PSR.

{¶ 49} OPAE, Sierra Club, and IGS emphasize that the PSR would recover costs of a wholesale purchased power contract that is subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC), thus, interfering with federal jurisdiction of wholesale power purchases and regional transmission organizations. IGS submits that PJM's retail price model (RPM), which was approved by FERC, sets a uniform price for electric generation at various locations through a competitive process that rewards efficient sellers and drives inefficient sellers out of business, and supports infrastructure investment by providing a transparent uniform clearing price three years in advance in order for market participants to respond. According to IGS, in *Nazarian* and *Solomon,* the courts found that arrangements, such as the PSR, would undermine the RPM construct and are preempted by federal law; thus, state commissions cannot approve purchased power contracts between distribution utilities and wholesale generators that ensure that the generator receives a set amount of compensation that differs from that which the generator can obtain from market-based wholesale revenues.

{¶ 50} Duke replies that the PSR is not preempted by the FPA and that the Commission has jurisdiction to decide on retail ratemaking issues. According to the Company, the proposed PSR has no factual similarities to the issues in either *Nazarian* or *Solomon*. Duke asserts those cases center around state and federal laws and that Ohio laws do not conflict with the FPA or FERC's jurisdiction. Duke further contends that there are other, major dissimilarities between the PSR and the *Nazarian* and *Solomon* cases. One is that the PSR is a strictly retail matter, as the mechanism has no effect on clearing prices for wholesale capacity. Further, the generation plants involved with the PSR are neither owned nor operated by Duke.

{¶ 51} In the ESP 3 Order, in declining to address constitutional issues, we noted that under the specific facts and circumstances of these proceedings such issues were best reserved for judicial determination. In doing so, consistent with R.C. 4903.09, we explained the basis for our decision. ESP 3 Order at 48. We do not find any error in our decision determining that the PSR is authorized under Ohio law. Whether Ohio law is preempted by the FPA is a constitutional question. Accordingly, we affirm that such arguments should be reserved for judicial determination. Therefore, the requests for rehearing should be denied.

7. Future PSR Filing and Commission's List of Factors

{¶ 52} In the ESP 3 Order, the Commission did not authorize, at that time, Duke's recovery of costs through the PSR, stating that, in a future filing, Duke will have to justify any requested cost recovery and requiring that, at a minimum, in that filing Duke must address the following factors: financial need of the generating plant; necessity of the generating facility, in light of future reliability concerns, including supply diversity; description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations; and the impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development within the state. The Commission reserved the right to require a study by an independent third party of reliability and pricing issues and required Duke, in its PSR proposal, to provide for rigorous Commission oversight of the rider, including a proposed process for a periodic substantive review and audit; commit to full information sharing with the Commission and its Staff; and include an alternative plan to allocate the rider's financial risk between both Duke and its ratepayers. Finally, the ESP 3 Order required Duke to include a severability provision recognizing that all other provisions of its ESP will continue, in the event the PSR is invalidated, in whole or in part, at any point, by a court of competent jurisdiction.

{¶ 53} In its application for rehearing, IEU maintains that the factors the Commission intends to consider in future filings is tantamount to rulemaking. Thus, IEU contends the factors are invalid and improper, as the Commission is required to comply with the procedural requirements of R.C. 119.03 in order to adopt rules.

{¶ 54} Sierra Club asserts the new criteria for evaluating future cost recovery requests has no basis in law, offering that R.C. 4928.143(B)(2)(d) establishes the standard for approving such requests, and these new factors are inconsistent with that standard. Sierra Club also believe these factors threaten to bias the Commission's analysis in favor of approving a PSR-related cost recovery request. For example, balancing the "financial need of the generating plant" could tilt the decision in favor of approving a request in cases where the generating plant is unprofitable, while disregarding the negative of effects resulting from continued operation of a plant that is losing money. Thus, Sierra Club insists the Commission clarify that these factors, which are not based on the statute, will not guide its evaluation.

{¶ 55} The Environmental Advocates, OCC, and OMA submit the factors listed in the ESP 3 Order are inadequate. The Environmental Advocates state the factors do not adequately reflect the relevant statutory and legal considerations and propose the Commission add the following two requirements to the list of factors: first, require Duke to address not only the necessity of the generating facility in light of future reliability concerns, but also the necessity of the PSR to address any other issues relating to retail electric service stability or certainty, such as the price volatility concerns cited by Duke; and, further, consider whether Duke's proposal for stabilizing or providing certainty regarding retail electric service is a result of a competitive procurement process that ensures a just and reasonable outcome for customers. A competitive procurement process involving requests for proposals that are based on a consideration of all relevant resources is necessary, according to the Environmental Advocates, in order to comply with the state policy in R.C. 4928.02 of ensuring reasonably priced retail electric service; comply with the just and reasonable rates requirement in R.C. 4905.22; prevent anticompetitive subsidies in violation of state law; and comply with the corporate separation requirements in R.C. 4928.17.

{¶ 56} Exelon agrees the list should have been more explicit as to what information must be provided to ensure that the PSR complies with state and federal law, and is in the best interest of ratepayers. In addition to a competitive bid process that ensures the lowest cost, Exelon submits the financial need element should take into account the PJM capacity market reforms. Further, Exelon states the environmental factors should be more robust and require a showing of actual environmental value to ratepayers and not just bare environmental compliance. According to Exelon, a PSR application that is premised on reliability needs should be temporary and should address the need to retain certain generating plants until more permanent solutions are in place.

{¶ 57} OCC asserts the factors were incomplete and unreasonable because they skewed in favor of approving the PSR without fully considering the impact of the PSR on customers. According to OCC, the Commission failed to include factors that would enable it to assess the benefits, or detriments, to customers. OMA avers the Commission should also address factors surrounding the generation plant, such as ownership, location, and the cost of compliance with environmental regulations.

{¶ 58} Duke asserts that nothing precludes the Commission from establishing guidelines for future consideration the PSR. The Company points out the Order only established minimum guidelines and was not binding on the Commission. Further, Duke contends the Commission, in other proceedings, has enumerated factors it will consider in future filings. According to Duke, the Commission is afforded broad discretion in setting rates. In outlining specific considerations, Duke avers the Commission acted appropriately and lawfully.

{¶ 59} As discussed in the ESP 3 Order, the enumerated factors were not meant to be an exhaustive list of the issues to be considered by the Commission in any future PSR proceeding. The list of factors was intended to identify matters of broad concern to the Commission; it was not intended to limit the scope of any future proceeding or limit the issues raised by intervenors. Thus, neither the list of factors nor the future filing process constitutes administrative rulemaking. We have broad discretion to manage our dockets and we routinely set forth directives in our orders that are intended to instruct the future filings of utilities. In a future PSR filing, the Commission would consider the factors, but not be bound by them.[1] Nothing in the ESP 3 Order precludes the intervenors from fully participating in a future PSR proceeding and calling the Commission's attention to issues they deem relevant. In such a proceeding, as we did here, we would weigh all of the evidence of record. Therefore, we do not consider the list of factors to be vague, arbitrary, or outside the bounds of our jurisdiction. Accordingly, rehearing on this issue should be denied.

8. BYPASSABILITY OF THE PRICE STABILITY RIDER

{¶ 60} The Environmental Advocates argue it is unreasonable for the PSR to be a nonbypassable charge on both shopping and nonshopping customers. The Environmental

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1 On March 31, 2017, Duke filed an application for approval to modify Rider PSR in Case No. 17-872-EL-RDR.

Advocates assert the Commission's rationale that the PSR should be nonbypassable because both shopping and nonshopping customers may benefit from the stabilizing effect of the PSR on the price of retail electric service, does not justify forcing ratepayers to accept a purported hedge against price volatility sourced only from Duke's OVEC entitlement in contravention of Ohio law favoring an open retail market. According to the Environmental Advocates, this is especially true given other means that provide significant hedge against price volatility, such as laddering and staggering and fixed-price contracts, pointed out by the Commission. The Environmental Advocates note that, while Duke failed to show a demand for additional hedges, the existence of these arrangements shows there is a demand and such demand can be met through competitive products chosen by customers on the open market. The Environmental Advocates state there is no reason for the PSR to be nonbypassable and believe it could be offered as part of Duke's default service, leaving customers the option to shop and decide if they want an alternative hedging mechanism.

{¶ 61} We affirm our finding in the ESP 3 Order that the PSR should be nonbypassable. In reaching our decision in the Order, we thoroughly considered the position of the Environmental Advocates and explained that the intention of the rider, in theory, is to stabilize the price of retail electric service. This would be accomplished by smoothing out fluctuations in the market-based rates paid by both shopping and non-shopping customers, resulting in all customers benefiting from the hedging mechanism. ESP 3 Order at 44-45. Thus, the Environmental Advocates request for rehearing should be denied.

9. SEVERABILITY PROVISION

{¶ 62} According to OCC, the Commission erred in ordering an asymmetric severability provision without requiring that the PSR be collected subject to refund to avoid prejudice to customers, due to the Ohio Supreme Court's prohibition against retroactive ratemaking, citing *Keco Industries., Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957). OPAE agrees that the temporary imposition of the PSR charge would deny Ohio retail customers any remedy because there is no mechanism to refund the charges. Duke replies that the Commission's decision was economic and appropriate.

{¶ 63} In the ESP 3 Order, we directed Duke to include, in any future PSR proposal, a severability provision that recognizes that, in the event that the PSR is invalidated, in whole or in part, by a court of competent jurisdiction, all other provisions of the ESP will continue. We also emphasized that Duke was not authorized to recover any costs through the PSR and the Company would be required, in a future filing, to justify any requested cost recovery. ESP 3 Order at 47. Given that no charges have been approved in these cases, we therefore find that OCC's argument to collect rider charges subject to a refund is premature. Accordingly, OCC's request for rehearing on this issue is denied.

B. Divestiture of Ohio Valley Electric Corporation Entitlement

{¶ 64} In these proceedings, the issue of whether Duke was required under the stipulation in the ESP 2 Case to transfer its OVEC entitlement out of Duke was raised. In the ESP 3 Order, the Commission noted that, while the record reflects arguments supporting both sides of this issue, in light of the fact that the stipulation in the ESP 2 Case was coming to an end, it was not necessary to evaluate the intent of the stipulating parties in the ESP 2 Case. However, the Commission clarified that, in adopting the stipulation in the ESP 2 Case, it was not the Commission's intent to exempt Duke from pursuing the divestiture or transfer of the OVEC contractual entitlement. Thus, the Commission directed Duke to pursue transfer or divestiture of the OVEC entitlement, and file annual status reports on this issue. ESP 3 Order at 48.

{¶ 65} In its application for rehearing, Duke argues the Commission's directive that Duke pursue divestiture of its stock in OVEC is unreasonable, arbitrary, unconstitutional, beyond the scope of this proceeding, and outside the Commission's jurisdiction. Duke submits the Commission did not explain its rationale for directing divestiture of OVEC as required by R.C. 4903.09. According to Duke, the Commission's new interpretation of the stipulation approved in the ESP 2 Case is a violation of Duke's due process rights, as the rehearing and appeal time frames for the ESP 2 Case have passed. Duke asserts that neither the statute nor the stipulation in the ESP 2 Case require Duke to divest generation assets or contractual entitlements in entities that own and operate generation assets. Duke maintains the Commission's new reading of the stipulation in the ESP 2 Case is illogical, pointing out that, if the stipulation was meant to require the transfer of the stock Duke owns in OVEC, then what about other comparable ownership interests, in the form of a subsidiary (e.g., Duke Energy Kentucky, Inc.) or an affiliate (e.g., Duke Energy Indiana, Inc.). Duke submits the stipulation in the ESP 2 Case did not require Duke to sell its stock in Duke Kentucky or break its affiliation with Duke Indiana. Duke claims the Commission's mandate to dispose of the OVEC interest without any justification or due process is a governmental taking and violates both the Ohio Constitution and U.S. Constitution. Finally, Duke contends the notion that Duke is prohibited from owning generation assets, directly or indirectly, or investing in entities that own such assets is at odds with Ohio law and serves to illegally preempt federal law.

{¶ 66} OMA, Exelon, RESA, and IGS respond that the Commission's directive for Duke to transfer its OVEC entitlement or divest the assets is reasonable and should be upheld. Contrary to Duke's assertions, OMA confirms that this is not a new interpretation of the stipulation in the ESP 2 Case; rather, the evidence in these proceedings reflects that the majority of the parties agree with this interpretation. Exelon submits, and RESA agrees, that Duke should be estopped from claiming that the evidence and arguments on divestiture of OVEC are outside the scope of these proceedings, because Duke was the party that presented evidence and raised the question in these proceedings of whether it was obligated to divest as part of the stipulated terms in the ESP 2 Case. In addition, Exelon and RESA point out that Duke addressed the question in its brief. IGS agrees that the stipulation in the ESP 2 Case required full legal separation, noting that R.C. 4929.17(A)(1) mandates that EDUs provide competitive and other unregulated services through a separate affiliate with separate books. According to Exelon, the ESP 3 Order must flow from the Order approving the stipulation in the ESP 2 Case, which called for divestiture of OVEC. Moreover, Exelon argues Duke's due process rights were not violated and Duke's reference to other generating assets owned by affiliates or subsidiaries is irrelevant. Further, RESA offers that the question of divestiture stems from the stipulated terms in the ESP 2 Case, not a comparison of other generating assets; thus, there is no governmental taking of private property. Finally, Exelon and RESA note that the Commission, in the ESP 3 Order, analyzed and weighed the issues raised by Duke and Duke is merely asking the Commission to reweigh the evidence and arguments.

{¶ 67} With regard to Duke's assignment of error, the Commission finds that Duke raises no new issue not already thoroughly considered in our ESP 3 Order. Contrary to Duke's allegations, in the ESP 3 Order, the Commission thoroughly considered the evidence concerning Duke's divestiture of OVEC as it relates to the stipulation in the ESP 2 Case. ESP 3 Order at 36-38. In the ESP 3 Order, the Commission made it clear that, by approving the stipulation in the ESP 2 Case, it was never our intention to excuse Duke from pursuing the divestiture or transfer of the OVEC contractual entitlement. Duke's assertions to the contrary are unfounded and without merit. Therefore, the Commission finds that Duke's request for rehearing of this issue should be denied.

C. *Generation Service Supply - Master SSO Supply Agreement – Section 3.9 – Declaration of Authority*

{¶ 68} The Master SSO Supply Agreement (MSA) sets forth the contractual obligations of successful suppliers and Duke with respect to each auction. The second and third sentences of paragraph 3.9 of the MSA provide that:

> Duke * * * shall have the right to modify at any time the Attachment A – Addendum to the Declaration of Authority. In the event Duke * * * exercises such right to modify * * * each SSO Supplier shall execute

an amendment to the Declaration of Authority or a new Declaration of Authority***as required by Duke * * * *

{¶ 69} On the record, ExGen argued that these sentences in paragraph 3.9 should be deleted because Duke should not be permitted to unilaterally revise the declaration of authority, unless such change is necessary to maintain consistency between the declaration of authority and the parties' obligation under the MSA. In the ESP 3 Order, the Commission declined to adopt ExGen's proposal stating that, to the extent Duke exercises this provision to protect SSO customers by ensuring proper credentials by auction participants, the language is appropriate. ESP 3 Order at 52-54.

{¶ 70} On rehearing, Exelon argues it was unjust and unreasonable for the Commission to include the entirety of paragraph 3.9 in the MSA because this provision allows Duke too much discretion to unilaterally modify the declaration of authority for any reason. Exelon insists that deletion of the second and third sentences in paragraph 3.9 would not remove flexibility for Duke or preclude Duke from protecting SSO customers; removal would ensure no unfair actions are taken by Duke and Duke can still run its auctions with good business practices.

{¶ 71} In response, Duke argues that, if these sentences are deleted, Duke would be forced to unnecessarily expend resources to ensure uniformity and equity among suppliers and, ultimately, customers from whom the costs are recovered. Duke explains that the declaration of authority reflects a process through which certain identified PJM billing items are transferred between the load serving entities that are customarily allocated such charges and Duke. According to Duke, the designated billing line items must uniformly apply to all suppliers so there are no discrepancies in the costs ultimately borne by customers and inconsistencies in the competitive market. Duke submits that paragraph 3.9 ensures that changes to the declaration of authority are accepted by all suppliers in a timely manner and that a recalcitrant supplier cannot force inconsistencies by refusing to agree to modifications.

In addition, Duke insists that it has no intention of arbitrarily revising the billing line items included in the declaration of authority process. Duke asserts any amendments or revisions will be made consistent with good business practices and in an effort to protect customers.

{¶ 72} As stated in the ESP 3 Order, the Commission finds that this language is appropriate, so long as Duke exercises this provision to protect SSO customers by ensuring proper credentials by auction participants. ESP 3 Order at 54. There is no evidence, other than Exelon's speculations, that leads the Commission to believe Duke will enact this provision outside of these parameters. If there appears to be difficulty in the future, we would expect the stakeholders to make us aware of their concerns at that time. Accordingly, we find that Exelon's request for rehearing on this issue is unfounded and should be denied.

D. Generation Service Pricing – Retail Capacity Rider

{¶ 73} Duke's Retail Capacity Rider (Rider RC) recovers the cost for capacity, which is the amount of generation Duke has available to serve customers under the SSO. In the ESP 3 Order, the Commission approved Duke's proposal to change the manner in which capacity costs are allocated in the calculation of Rider RC. Specifically, the Commission authorized Duke to allocate the capacity costs that resulted from PJM's Reliability Pricing Model (RPM) prices based on each class's 5 coincident peaks (5CP) demand, as opposed to the allocation methodology that was stipulated to in the ESP 2 Case. ESP 3 Order at 55-56. The Commission found that the 5CP methodology was appropriate as it is structured to avoid a disparity between SSO rates and CRES offers and provides customers with an effective mechanism to compare SSO and CRES offers. ESP 3 Order at 60.

{¶ 74} In its application for rehearing, OPAE asserts the Commission acted unreasonably and unlawfully by approving Rider RC and the cost allocation for the rider. OPAE argues there is no need for Rider RC, as Duke does not incur direct capacity costs associated with SSO service apart from the capacity costs that are built into the competitive bid auction prices; therefore, there are no capacity costs to allocate. OPAE submits winning suppliers in the SSO auction bid and are paid on a flat dollar per megawatt hour basis to supply a bundled capacity, energy, ancillary services, and load-following generation product. According to OPAE, the pricing of each individual component of the generation is not revealed and the capacity costs are an implicit and unquantified component of the total payments to SSO suppliers. In addition, OPAE believes that Rider RC improperly charges residential SSO customers a price premium, noting that, since the capacity cost is not separately identified, neither is the cost to serve a particular class identified. OPAE contends marketers do not purchase capacity based on the 5CP method, they purchase it based on forward market prices that do not reflect peak usage. OPAE argues Duke's allocation methodology penalizes the residential class, as it increases the allocation for the residential class from 39.12 percent to 45.37 percent.

{¶ 75} In response, Duke notes that Rider RC is the same rider that was included in the stipulation approved in the ESP 2 Case, to which OPAE was a signatory party. Duke explains that the purpose of Rider RC continues to be the recovery of capacity costs from SSO customers. According to Duke, there is a capacity cost inherent in SSO supply, which results in a charge that suppliers will be billed by PJM based on the 5CP method. Thus, Duke must reimburse suppliers for the capacity they provide. Duke states that it proposes to perpetuate Rider RC, with slight modifications to the rate design and cost allocation, which will align the rider with recognized cost causation principals to provide customers with greater transparency into the pricing components for SSO supply. Duke believes OPAE seeks to evade this principle, thus, shifting costs that should be properly allocated to residential customers to nonresidential customers.

{¶ 76} The Commission initially notes that our approval of Rider RC in these proceedings represents a continuation of the process Duke has employed for many years to recover capacity costs. OPAE's argument that such a mechanism is not appropriate is not substantiated by the evidence in the record. In addition, OPAE continues to point to the stipulated allocation methodology in the ESP 2 Case to support the argument that the Rider

RC allocation should not be revised. However, the record in this case supports our finding that the 5CP methodology, which is based on PJM's market price for capacity, is reasonable and is structured to avoid a disparity between SSO rates and CRES, while providing customers a mechanism to compare SSO and CRES offers. ESP 3 Order at 60. Accordingly, we conclude that OPAE's arguments for rehearing are without merit and should be denied.

E. *Distribution Service – Distribution Capital Investment Rider*

{¶ 77} In the ESP 3 Order, the Commission approved Duke's proposed Distribution Capital Investment Rider (Rider DCI), which is a nonbypassable rider designed by Duke to recover a return on capital investment in order to support 19 programs Duke considers vital to maintaining customer reliability. The Commission approved Duke's proposed 9.84 return on equity (ROE) for Rider DCI, and established the following annual caps on how much Duke can recover: $17 million in 2015; $50 million in 2016; $67 million in 2017; and $35 million for the first five months of 2018. In addition, we adopted the design advocated by two of the intervenors, which provides an equal percentage increase on distribution rates to all rate classes. The Commission further found that general plant should not be included in Rider DCI, and the calculation of the revenue requirement should be based off of actual plant balances. ESP 3 Order at 71-72.

10. APPROVAL OF RIDER DCI

{¶ 78} OPAE submits the Commission erred in approving Rider DCI. According to OPAE, the Commission acted unlawfully and unreasonably, as Duke did not present evidence showing that the rider was necessary in order to maintain reliability. OPAE notes that the Company has met reliability standards since 2011. Further, according to OPAE, Duke did not present evidence that the rider would improve reliability for customers, as the recovered funds will only go towards infrastructure maintenance, not modernization.

{¶ 79} Duke responds that improved reliability is a stated goal of the rider. The Company asserts it provided testimony illustrating such and that the rider will allow it to modernize equipment on a proactive, instead of a reactive, basis. Duke further notes that, because it is being proactive, the rider's effects on reliability may not be quantifiable.

{¶ 80} The Commission finds Duke's Rider DCI was properly approved. R.C. 4928.143(B)(2)(h) authorizes utilities to recover capital costs for distribution infrastructure through an ESP. In approving such recovery, the Commission must examine the reliability of the utility's distribution system and make sure customers and the utility's expectations are aligned and that the utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system. In approving the rider, the Commission found that the expectations of Duke and its customers are aligned. Further, relying on precedent from *In re Columbus S. Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) at 47 and testimony submitted by Duke (Duke Ex. 21 at 11-15), we found that Duke's proactive maintenance program is an appropriate use of resources that should have a positive effect on reliability. ESP 3 Order at 71-72. Therefore, the rider was appropriately approved by the Commission, and OPAE's request for rehearing should be denied.

11. Return on Equity for Rider DCI

{¶ 81} On rehearing, OPAE also avers that Duke's approved ROE is unreasonably high. The approval of this rider decreases Duke's business risks, thus, according to OPAE, the ROE should be lower than what was approved in Duke's base rate case, not the same.

{¶ 82} The Commission finds that the 9.84 percent ROE was properly approved. In approving the ROE, the Commission specifically considered the effect Rider DCI would have on Duke's business risk and, based on testimony submitted by Duke witness Morin, found it was insignificant and that the ROE is lower than what is approved in similar riders for other EDUs. ESP 3 Order at 72. Accordingly, the Commission finds that OPAE's request for rehearing on this issue is without merit and should be denied.

12. Property Taxes and Rider DCI

{¶ 83} OCC argues the Commission failed to consider how property taxes will be addressed in Rider DCI and the Commission should adopt OCC's proposal that only allows Duke to expense property taxes when the taxes are actually incurred. OCC states property taxes should not be included until the taxes appear on Duke's books and the property is properly considered taxable.

{¶ 84} Duke avers it uses standard accounting methods to expense property taxes. According to the Company, it uses the accrual method of accounting, which expenses taxes in the year they are assessed, as they are a known legal liability at that point in time. Duke notes this is an accepted accounting practice that it consistently uses.

{¶ 85} In approving the Company's rider, the Commission relied on, among other things, Duke testimony stating that the property taxes go on its books, as a valid expense, in the year the property is assessed (Tr. Vol. III at 790). No evidence was presented to show this is not an accepted accounting practice. Therefore, OCC's application for rehearing on this issue is denied.

13. Cap for Recovery under Rider DCI

{¶ 86} OMA, in its assignment of error, argues that in the Commission's approval of Rider DCI the approved cap on recovery is not supported by evidence in the record. OMA requests that the cap be lowered. Duke counters that OMA's argument lacks factual or legal support.

{¶ 87} The Commission finds OMA's assignment of error to be without merit. When the Commission modified the rider to include a cap on recovery, it relied specifically on testimony and recommendations submitted by Staff. ESP 3 Order at 72 (Staff Ex. 6 at 5-6). Further, OMA requested the Commission adopt these same cap numbers from Staff in its reply brief (OMA Reply Br. at 28). Therefore, the Commission concludes that this assignment of error should be denied.

14. General Plant Exclusion from Rider DCI

{¶ 88} Duke submits that the Commission inappropriately disallowed the inclusion of general plant expenditures. The Company avers that the Commission is going against precedent, as it previously allowed another utility to include general plant expenditures with a similar rider in *In re Ohio Edison Co., et al.*, Case No. 12-1230-EL-SSO (FirstEnergy ESP Case), Opinion and Order (July 18, 2012).

{¶ 89} In response, OCC points out the FirstEnergy ESP Case resulted in a stipulation and recommendation adopted by the Commission and was not to be binding on other proceedings. Precedent was set, according to OCC, in AEP ESP 3 Case, Opinion and Order (Feb. 25, 2015) at 46, when the Commission excluded general plant from a comparable rider.

{¶ 90} The Commission finds Duke's argument to be without merit. First, the decision to exclude general plant from the rider was based on the evidence in the record showing that general plant does not go towards proactively modernizing infrastructure. ESP 3 Order at 72 (OCC Ex. 45 at 20; Staff Ex. 6 at 3). Second, the Commission's ruling is in line with prior decisions. The FirstEnergy ESP Case cited by Duke, as OCC notes, was the result of a negotiated stipulation and is not binding on the Commission. Further, the Commission's decision to exclude general plant from a distribution rider is in line with prior Commission opinions, including the AEP ESP 3 Case, Opinion and Order (Feb. 25, 2015) at 46.

F. Distribution Service – Distribution Storm Rider

{¶ 91} In the ESP 3 Order, the Commission approved the Distribution Storm Rider (Rider DSR), which is a nonbypassable rider intended to assist Duke in recovering the financial impact caused by major storms. As modified by the ESP 3 Order, Duke should file an application with Commission seeking recovery under the rider when the balance of the asset or liability is over $5 million, and the application should include a monthly rider charge when the amount is positive or a monthly rider credit when the amount is negative. We determined that the carrying costs would be at the long-term debt rate approved in Duke's last rate case and they should not begin until the conclusion of the calendar year that a deferral is determined and they should cease once the recovery begins. In addition, we concluded that Staff would perform an annual audit of the costs, and that eligible costs must be incremental and consistent with the exclusions set forth in the ESP 3 Order. ESP 3 Order at 74-75.

15. Approval of Rider DSR

{¶ 92} OPAE submits the Commission erred in approving Rider DSR, as Duke failed to prove the rider was necessary. OPAE believes that, in order to properly review costs, a base rate case is the appropriate proceeding for Duke to recover costs associated with such a rider. Duke responds that OPAE's argument is not supported by the facts or the law.

{¶ 93} The Commission finds that OPAE's request for rehearing on this issue should be denied. In approving the rider, the Commission relied on testimony from Duke showing a necessity to recover from the financial impact caused by major storms (Duke Ex. 9 at 6-7). Further, in its modifications, the Commission ensures costs are appropriately reviewed and audited. ESP 3 Order at 74.

16. Allocation of Rider DSR

{¶ 94} In its assignment of error, OCC asserts the Commission failed to address how Rider DSR would be allocated and should have adopted OCC's proposal to allocate costs using Duke's cost-of-service study from the last base rate case. OCC states the current method of allocation does not follow cost-causation principles and could over-collect from residential customers. OCC believes its proposed method more accurately reflects cost-causation and is fairer to residential customers.

{¶ 95} The Commission notes that OCC proposed the same form of allocation for Rider DCI, which the Commission also declined to adopt. In the ESP 3 Order, the Commission noted that the Greater Cincinnati Health Council (GCHC), in opposing OCC's proposal, pointed out that the cost-of-service study used by OCC was previously challenged and ultimately not adopted. ESP 3 Order at 69 (GCHC Br. at 15). In declining to modify how Rider DSR is allocated, the Commission found OCC's argument unpersuasive. Therefore, OCC's application for rehearing on this issue should be similarly denied.

17. ELIGIBLE RECOVERY COSTS FOR RIDER DSR MUST BE INCREMENTAL

{¶ 96} According to Duke, the Commission erred in finding that eligible recovery costs must be incremental. Duke asserts the direction is too vague and more details are needed. Duke states, for planning purposes, it needs to know in advance which expenses are incremental and which are in the baseline.

{¶ 97} OCC responds that the ESP 3 Order defines incremental costs as those relating to straight-time labor from working on storms, overtime compensation paid to employees, and mutual assistance. Further, OCC notes that Duke is to bear the burden of showing, in its application, that costs are incremental.

{¶ 98} Contrary to Duke's assertions, in modifying Rider DSR so that only incremental charges are eligible for recovery, the Commission outlined its expectations. As noted by OCC, the ESP 3 Order discussed how straight-time labor from working on storms, overtime compensation paid to employees, and mutual assistance are to be handled. Duke previously stated it always intended to only include incremental labor in its recovery (Duke Reply Br. at 41). In its application for recovery, the Company is expected to show that the expenses were reasonable and prudent. Further, its accounting for the rider is to be audited by Staff on an annual basis. ESP 3 Order at 74-75. The Commission finds that the ESP 3 Order provides sufficient guidance, and Staff's audits will provide sufficient review, such that the Company can reasonably conclude what is expected. Therefore, we find that Duke's request for rehearing on this issue is without merit and should be denied.

18. Carrying Costs for Rider DSR

{¶ 99} Duke further claims the Commission erred in ordering carrying costs to cease accruing after recovery begins. The Company believes the Commission ignores the time-value of money, which will unfairly hurt either Duke or its customers. OCC counters that the decision was reasonable and follows precedent.

{¶ 100} The Commission denies Duke's request for rehearing on this issue. In reaching its decision, the Commission relied on testimony from Staff and remained consistent with precedent finding that, because risk is minimized once recovery begins, the accrual of carrying costs should cease. ESP 3 Order at 74-75. (Staff Ex. 4 at 5; AEP ESP 3 Case, Opinion and Order at 55 (Feb. 25, 2015).

G. Distribution Service – Load Factor Adjustment Rider

{¶ 101} According to Duke the Load Factor Adjustment Rider (Rider LFA) was originally the result of a negotiated settlement in the ESP 2 Case and was created in order to incentivize larger customers to reduce their load factor. In the ESP 3 Order, while the Commission agreed that Rider LFA should eventually terminate, we concurred with Staff and others that the rider should be gradually phased out, stating this would avoid any major rate shock for customers who were previously given incentive to adjust their load. Therefore, we found that the rider should continue as it did under the ESP 2 Case but shall be reduced by 33 percent in the first year, 33 percent in the second year, and finally 34 percent in the third year. After that, the rider shall conclude with a final true-up. ESP 3 Order at 74.

{¶ 102} In OEG's application for rehearing, it submits that the Commission's decision to phase out Rider LFA requires clarification. According to OEG, by reducing the rider 33 percent in year one, 33 percent in year two, and 34 percent in year three, there are two possible interpretations. OEG states it is ambiguous whether, in years two and three, the reduction should be taken off of the original $8 per kilovolt-amp (kVa) credit, or the already reduced number. Under the first interpretation, the rider is completely phased out after two years. Under the second interpretation, the rider would last three years. OEG states the second interpretation is preferable as it is more gradual and offers less rate shock. Miami/UC support OEG's request, stating that they also prefer the second interpretation.

{¶ 103} Duke avers the ESP 3 Order is clear. According to Duke, the yearly reduction should be off of the original credit, which would result in the rider being fully concluded at the end of the ESP.

{¶ 104} Upon review of the issue raised by OEG, the Commission clarifies that the original credit is to be reduced by 33 percent in year one, by another 33 percent in year two (thus, 66 percent less than the original credit), and a final 34 percent in year three (resulting in a complete 100 percent reduction).

{¶ 105} The chart below illustrates how the Commission intends to gradually phase out Rider LFA:

ESP year	Calculation	Resulting Rider LFA Credit
1	33% of $8.00/kVa = $2.64	$5.36/kVa
2	33% of $8.00/kVa = $2.64	$2.72/kVa
3	34% of $8.00/kVa = $2.72	$0/kVa

{¶ 106} With this clarification, the Commission finds that, to the extent OEG and Miami/UC are requesting rehearing on this issue, their requests should be denied.

H. Distribution Service – Large Customer Interruptible Load Program

{¶ 107} In its application in these proceedings, Duke proposed to eliminate its large customer interruptible load program that was established in the ESP 2 Case, which gave customers a chance to receive an above-market credit for allowing Duke to use interruptible load in Duke's fixed resource requirements (FRR) plan. The end of this program would result in the termination of the Company's Economic Competitiveness Fund Rider (Rider DR-ECF). Currently, there are four customers in the program. Duke noted that it will cease being an FRR entity on June 1, 2015, and, thus, will no longer need the demand resources.

{¶ 108} In the ESP 3 Order, the Commission found that the large customer interruptible load program should continue, stating that, although Duke will no longer be an FRR entity, the advantages of the program are still available. We modified the program to make participating customers subject to unlimited emergency-only interruptions year round and found that the level of credit should remain at 50 percent of the net cost of new entry. We also continued Rider DR-ECF and provided that Duke may apply for cost recovery. Finally, we determined the Company should bid the additional capacity resources associated with the program into PJM's BRAs held during the ESP term, with any resulting revenues credited back to customers through Rider DR-ECF. ESP 3 Order at 76-78.

19. PJM'S BRA AND THE LARGE CUSTOMER INTERRUPTIBLE LOAD PROGRAM

{¶ 109} In regards to the Commission's decision to continue the large customer interruptible load program, Duke conveys that the requirement for Duke to bid additional capacity resources associated with the program into PJM's BRA requires clarification. The Company notes the auctions occur once a year and relate to a delivery date over three years in the future. Duke says the BRA regarding the delivery years covered by the ESP already occurred. If Duke participates in the next BRA, then the delivery period would go beyond the term of the ESP. Bidding into incremental auctions is possible, according to the Company, but the auctions for 2015/2016 are already completed.

{¶ 110} OCC agrees with Duke that bidding the resources into the BRA is not feasible. OCC submits Duke should be required to reduce the amount of the interruptible credits provided to each interruptible customer by the actual PJM BRA clearing price for each individual delivery year. The net amount of credits minus the actual BRA clearing price would be collected from the customers by Duke. OCC asserts this would prevent customers from being charged twice for the same capacity resource and would reduce the overall interruptible subsidy from Duke's customers.

{¶ 111} OMA submits that Duke should bid the capacity resources from the interruptible load program into the incremental auctions held during the last two years of the ESP term. This practice, according to OMA, is still within the ESP term and at least partially offsets the amounts that would otherwise be recovered from customers.

{¶ 112} ELPC/OEC argue that Duke should still bid into the BRA, even though new bids into the BRA will involve delivery dates outside of the ESP term. ELPC/OEC aver that extending past the ESP term date is a product of how the PJM capacity markets are designed. According to ELPC/OEC, demand response programs are worthwhile ventures that are valuable in extreme weather circumstances and also provide daily benefits to customers, such as lower capacity prices and additional revenue. Further, ELPC/OEC submit that, compared to the incremental auction, bidding into the BRA maximizes the value of the resource.

{¶ 113} To ensure that customers receive the intended benefit during the ESP period, the Commission clarifies that Duke should bid the program's related capacity resources into PJM's incremental capacity auctions held during the ESP term, to the extent that such capacity resources have not already been bid by the customer into any of PJM's auctions for the three delivery years of the ESP term. The resulting revenues should be credited back to customers through Rider DR-ECF. With this clarification, the Commission finds that, to the extent Duke is requesting rehearing on this issue, its request should be denied.

20. RIDER DR-ECF AND THE LARGE CUSTOMER INTERRUPTIBLE LOAD PROGRAM

{¶ 114} Duke also seeks clarification regarding the operation of the large customer interruptible load program's recovery mechanism, Rider DR-ECF. Duke seeks clarification on if there is to be a review of its application for recovery. The Company submits it was not clear whether it was allowed to recover actual costs of providing the program.

{¶ 115} The Commission clarifies it is appropriate for Duke to recover its actual costs associated with providing the large customer interruptible load program and it was not the Commission's intent to suggest otherwise. However, the Commission will fully review any application for recovery to ensure that the costs were actually incurred and that recovery was properly calculated. With this clarification, the Commission finds that, to the extent Duke is requesting rehearing on this issue, it should be denied.

I. Purchase of Receivables and Billing

{¶ 116} Duke currently operates a purchase of receivables (POR) program, where it purchases the accounts receivable of CRES providers and processes the collection efforts on its own. In the ESP 3 Order, the Commission denied Duke's proposal to amend its certified supplier tariff (CST) to make POR mandatory for CRES providers using the consolidated billing service. However, the Commission found that the Company's assertion that bill-ready billing should be limited to only electric commodity charges was reasonable and approved Duke's proposal to amend it tariff on this point. The Commission stated that, because Duke's affiliate, Duke Energy One, which currently places charges for noncommodity services on Duke's bill, does not provide retail electric service, the entity is not comparable to a CRES provider. ESP 3 Order at 87-89.

21. LIMITING BILL-READY BILLING TO ONLY COMMODITY CHARGES

{¶ 117} IGS and RESA assert several assignments of error regarding the Commission's decision to approve Duke's changes to the CST to limit bill-ready billing for CRES providers to only commodity charges. Direct Energy notes it supports RESA's arguments. First, IGS and RESA assert it is unreasonable for the Commission to allow the change because it gives undue preference to a Duke affiliate, Duke Energy One, which is permitted to use Duke's bill to charge for noncommodities, and discriminates against CRES providers, which cannot. They assert this violates Duke's corporate separation requirements and violates R.C. 4905.35 and 4928.03. According to IGS and RESA, Duke Energy One is advantaged by being on the utility bill, as it is more economical for the Company and more convenient, and, thus, preferable for customers. They request for CRES providers to be able to bill noncommodities on the utility bill, or, alternatively, that Duke Energy One also be prevented from appearing on the utility bill. IGS and RESA further state there is no evidence to support that Duke cannot separate noncommodity charges from its POR program. They claim Duke's affiliate's ability to put noncommodity charges on the bill is proof that the charges can be separated, whereas Duke's assertion otherwise is unsupported. Therefore, IGS and RESA request that the tariff change not be approved. If the change remains approved, they seek orders mandating Duke to develop the ability to separate the two charges.

{¶ 118} Duke responds that it met its burden regarding its corporate separation plan (CSP) as it pertains to its ESP application. Duke avers it only needed to demonstrate the current status of its CSP, with a timeline of anticipated revisions. Because its current plan was previously approved by the Commission, Duke asserts it is in compliance and met its burden. In regards to any undue preference, Duke asserts IGS and RESA failed to demonstrate its existence. Because the Company has not denied any CRES provider access to its utility bill, they cannot prove any preferential treatment exists. Duke further conveys that the record is insufficient to show Duke is giving unfair advantages to an affiliate and the proper forum for this to be litigated is in a complaint case. Moreover, Duke states that its reasoning for excluding noncommodities was sufficiently supported by testimony. According to the Company, Daniel L. Jones testified on behalf of Duke that including noncommodity charges is currently not feasible. The testimony noted that Duke's billing system currently cannot separate commodity and noncommodity services.

{¶ 119} The Commission finds that the applications for rehearing on this issue filed by IGS and RESA should be denied. Initially, we find that, because Duke had a Commission-approved CSP and provided a timeline of proposed revisions, the Commission also found the Company met its burden of proof regarding the CSP as it pertains to its ESP application. IGS and RESA have not presented a new, persuasive argument to demonstrate that Duke has not met its burden. For specific issues regarding the CSP, the Commission again informs the parties this is not the proper forum. In addition, the Commission relied on the evidence in the record in determining that Duke's billing system is currently not able to separate commodity charges and noncommodity charges. ESP 3 Order at 89 (Tr. Vol. IV at 1065-1066). The arguments by IGS and RESA regarding these issues are neither new nor persuasive.

22. CRES Providers Opt-Out of the POR Program

{¶ 120} According to IGS and RESA, the Commission erred in not allowing CRES providers that opt out of the POR program from utilizing the utility bill to charge for noncommodities. IGS and RESA assert that part of Duke's rationale for excluding noncommodities from the bill was because the noncommodities would be unfairly included into the POR program. Because the Commission allowed CRES providers to opt out of the POR program, those choosing to do so are, according to IGS and RESA, unjustifiably prevented from including noncommodities. Therefore, they request that those opting out of the POR program should be able to include noncommodities on their utility bill. Similarly, IGS and RESA also submit that CRES provider affiliates that do not provide retail electric service and are not part of the POR program should be able to access the utility bill. Direct Energy notes it supports RESA's arguments.

{¶ 121} Duke counters that such a scenario would be unfair to CRES providers, confusing for customers, and result in higher costs. Duke asserts CRES providers would be unfairly forced to choose between the POR program and using the utility bill to charge for noncommodities. Further, according to Duke, if all suppliers of noncommodity services gain access to the bill, the ensuing costs to make that feasible would likely need be absorbed by customers.

{¶ 122} Regarding the potential for CRES providers to opt out of the POR program and, thus, place noncommodities on the utility bill, the Commission finds that the applications for rehearing filed by IGS and RESA on this issue should be denied. We note the Commission has already opened dockets for the review of Chapters 4901:1-10 and 4901:1-21, which govern noncommodity billing by utilities and CRES providers. *In the Matter of the Commission's Review of Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD; *In the Matter of the Commission's Review of Chapter 4901:1-21 of the Ohio Administrative Code*, Case No. 17-1843-EL-ORD. In those dockets the rules will be open to comments from all interested parties and subject to review by the Commission. Thus, the Commission finds that, at this time, those dockets are the appropriate venue to address these issues.

J. Resettlement

{¶ 123} In the ESP 3 Order, the Commission denied Duke's request to revise its CST to require that, if Duke seeks to pursue settlement with PJM, all suppliers will agree to participate. ESP 3 Order at 90-91.

{¶ 124} Direct Energy disagrees with the Commission's decision to deny Duke's request to require certified suppliers to consent to billing adjustments or resettlements with

PJM. Direct Energy avers that the reason Duke would seek resettlement or a billing adjustment is to correct an error. For this reason, CRES providers should not object when Duke pursues such an action. However, PJM requires affirmative consent from all other providers in order for Duke to proceed. Direct Energy conveys that, in a current case, it found it difficult to elicit any responses from other CRES providers. Direct Energy believes requiring others to consent, at least for metering errors, would allow the market to operate fairly.

{¶ 125} Upon reconsideration, the Commission grants Direct Energy's application for rehearing. In Duke's ESP application, it proposed a provision be added to its supplier tariff where, if the Company seeks a billing adjustment or resettlement with PJM, each CRES provider shall consent to the billing adjustment or resettlement. Duke Ex. 13 at Att. DLJ-1 at 22. In the ESP 3 Order, we noted the onerous task of acquiring the required affirmative consent of all other CRES providers in order for Duke to go forward with resettlement. ESP 3 Order at 91. As discussed by Direct Energy, Duke would have no motivation to seek resettlement except to correct an error. Similarly, CRES providers should have no objection to Duke ensuring proper billing. Direct Energy demonstrated that acquiring affirmative consent from numerous parties that are in no way affected by the transaction can be overly burdensome. Accordingly, Direct Energy's application for rehearing should be granted and the provision language originally submitted by Duke should be approved.

K. *Economic Development*

{¶ 126} Noting that R.C. 4928.143(B)(2)(i) authorizes the inclusion of economic development programs in ESPs, in the ESP 3 Order, the Commission modified the ESP to include an economic development fund to be funded by shareholders at $2 million per year during the term of the ESP. The Commission stated that this program will create private sector economic development resources to support and work in conjunction with other resources to attract new investment and improve job growth in Ohio. ESP 3 Order at 91.

{¶ 127} In its application for rehearing, Duke asserts the Commission's decision to add an economic development program to be funded annually by $2 million in shareholder funds is not based on evidence or law, and is unconstitutional, arbitrary, and inconsistent with the treatment of other EDUs. Duke submits that the situation in this case is not comparable to the ESP 2 Case where the parties stipulated to an economic development program; in this case, Duke did not propose such a program in its ESP. Duke argues that, while R.C. 4928.143(B)(2)(i) allows a utility to propose an economic development program in an ESP, it says nothing about the Commission being allowed to require it be included in the ESP. According to Duke, precedent dictates that the Commission must base its decisions on record evidence and, in these cases, there is no record support for the implementation of an economic development program. *See Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999) (*Tongren*). Duke further notes that, in the AEP ESP 3 Case, which the Commission points to in support of its economic development contribution mandate, the Commission also required a $2 million contribution by AEP to an economic development fund; however, Duke points out that AEP is not comparable to Duke, because AEP has more than twice Duke's customer base and earnings. Finally, Duke states that, in the other cases cited by the Commission to support the economic development fund, the utility was granted the authority to receive some form of a nonbypassable generation charge in return; however, such is not the case in the ESP 3 Order. Therefore, Duke contends the requirement to add an economic development program to the ESP should be deleted or, in the alternative, modified such that no annual contributions from shareholders would be required unless Duke's annual return on equity, as determined under the significantly excessive earnings test in R.C. 4928.143(F) exceeds 10 percent. If the program is not deleted, the Commission should clarify that contributions toward economic development initiatives in Duke's territory shall continue, during the term of the ESP consistent with historical giving.

{¶ 128} First, the Commission points out that R.C. 4928.143(B)(2)(i) provides that ESPs may include provisions related to economic development. Contrary to Duke's assertions, as we have found for other EDUs, Duke's contributions to the economic development fund are voluntary, as Duke is not required to accept the ESP authorized by the Commission; however, if Duke accepts the authorized ESP, Duke shall contribute to the economic development fund. *See In re Dayton Power & Light Co.*, Case No. 12-426-EL-SSO, et al., (DP&L ESP Case) Second Entry on Rehearing (Mar. 19, 2014) at 32. In addition, we find that the $2 million annual contribution to the fund is comparable to other EDUs. *See* DP&L ESP Case, Opinion and Order (Sept. 4, 2013) at 42-43. Furthermore, the economic development fund furthers the state policy outlined in R.C. 4928.02. Specifically, it helps facilitate the state's effectiveness in the global economy, in concert with R.C. 4928.02(N). The Commission disagrees with Duke's comparison of our modification of the ESP in these cases to *Tongren*. The cases at issue in *Tongren* involved a merger application and gas cost recovery proceedings, not an ESP application filed under R.C. Chapter 4928. Unlike in the cases considered by the Court in *Tongren*, our consideration of an ESP application must include a review and adherence to the state policy under R.C. 4928.02 and the provisions set forth in R.C. 4928.143, including our weighing of all the ESP provisions against the expected results of an MRO. Should Duke disagree with the Commission's finding that the economic development program inclusion as an integral part of the ESP is not warranted, unlike the situation in *Tongren*, the statute provides Duke with a remedy. Under R.C. 4928.143(C)(1), the Commission has the authority to approve, or modify and approve, an ESP application if it finds that the ESP, including its pricing and all other terms and conditions, is more favorable in the aggregate as compared to the expected results of an MRO. As we determined in our ESP versus an MRO analysis, many of the provisions of the modified ESP, which includes Duke's contribution to an economic development program, advance the state policy under R.C. 4928.02 and support our finding that the modified ESP is more favorable. All of the provisions and the modifications adopted by the Commission as set forth in the ESP 3 Order taken together led the Commission to determine that the ESP should be approved, as modified. Accordingly, the Commission finds that Duke's request for rehearing regarding the economic development fund provision should be denied.

L. *State Policy R.C. 4928.02(L) - Protect At-Risk Populations*

{¶ 129} In the ESP 3 Order, the Commission found that, with the modifications required in the Order, the proposed ESP creates a reasonably priced rate structure for customers, noting that the Commission specifically considered the impact the ESP would have on at-risk populations, in line with R.C. 4928.02. ESP 3 Order at 79.

{¶ 130} On rehearing, OPAE argues the Commission disregarded the requirement in R.C. 4928.02(L) to protect at-risk populations when it approved the ESP. OPAE asserts that nothing in the ESP addresses the affordability of electric service or the protection of at-risk populations; rather, the ESP will increase the cost of electricity for residential and small commercial consumers without addressing the impact on consumers, especially low-income, at-risk residential consumers. OPAE submits there is ample proof on the record that Duke's electric service is unaffordable for many of its customers and that Duke's residential customers are struggling to pay their bills. OPAE states that the record reflects that the expected rate increases from the ESP riders could result in even more customers being disconnected for nonpayment, more customers ending up on the percentage of income payment plan (PIPP) and other payment plans, and more at-risk customers facing potential health and safety issues. According to OPAE, based on this assessment, Riders DCI and DSR should have been rejected and OPAE's recommendation to exempt at-risk customers from payment of these riders should have been adopted.

{¶ 131} Duke disagrees with OPAE's assertions, noting that, to accept OPAE's premise that, under the ESP, Duke's electric rates will become even higher and more unaffordable to customers, requires a concession that today's rates, which were previously approved by the Commission and stipulated to by OPAE, are unaffordable. To the contrary, Duke points out that when compared to the other EDUs in the state Duke's rates are the lowest. Duke also states that while OPAE continues to oppose Riders DCI and DSR, OPAE does not dispute that the costs are recoverable. Rather, for Rider DCI, OPAE disputes the manner of recovery, but ignores that the rider will be adjusted quarterly, thereby avoiding rate shock, thus, avoiding detrimental effects to the state's economy. In addition, the Commission imposed a revenue cap on Rider DCI, to ensure that spending is prudent and not too onerous for customers. As for Rider DSR, Duke submits that OPAE does not understand that the rider is structured as a tracking mechanism where the storm costs will be deferred with an adjustment in the next base rate case; however, only when the annual balance of the deferral exceeds $ 5 million will Duke initiate efforts to recovery or return the excess. Therefore, Duke offers that it is incorrect to say that Rider DSR will be adjusted at the frequency suggested by OPAE or that the rider will result in net costs to customers. Because the Commission did not fail to protect at-risk populations, Duke argues there is no justification for exempting a subset of customers from Riders DCI and DSR.

{¶ 132} In consideration of all of the requirements and policy objectives set forth in R.C. Chapter 4928 for an ESP proposal, including the impact on at-risk populations, the Commission thoroughly reviewed the record in these matters and determined that, as modified, the ESP proposed by Duke was reasonable and should be approved. ESP 3 Order at 79. In addition, the Commission will continue to explore and focus on various means to ensure electric utility service is affordable for Ohio's residential customers, including at-risk populations. Accordingly, the Commission finds that OPAE's request for rehearing on this issue is unfounded and should be denied.

M. Statutory Test – ESP Versus MRO

{¶ 133} R.C. 4928.143(C)(1) provides that the Commission must determine whether the proposed ESP, as modified, 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 an MRO in R.C. 4928.142. In the ESP 3 Order, the Commission concluded that the ESP, as modified, is more favorable than an MRO. ESP 3 Order at 96.

{¶ 134} On rehearing, OMA, OCC, and OPAE assert Duke failed to sustain its burden, under R.C. 4928.143(C)(1), to demonstrate that the ESP is more favorable in the aggregate than an MRO. OMA asserts the Commission's conclusion that the ESP was quantitatively and qualitatively more favorable was based, in large part, on the approval of the distribution-related riders, because such approval would hold base distribution rates constant over the ESP period. However, OMA notes that the Commission failed to take into account that Duke did not commit to refrain from filing a distribution rate case during the term of the ESP. In addition, according to OMA, the qualitative benefits related to Rider DCI and other distribution-related riders are illusory and it is unclear whether the qualitative benefits will come to fruition without the imposition of additional costs being placed on ratepayers. OMA also questions the Commission's reliance as a qualitative benefit of the ESP that Duke will implement fully market-based prices beginning on June 1, 2015. OMA contends that, if moving more quickly to market-based pricing than would be expected under an MRO represents a qualitative benefit of the ESP, as the Commission claims, then establishing the PSR as a financial limitation on shopping that would purportedly alleviate the risk associated with market-based pricing represents a step in the opposite direction and is not a benefit of the ESP. Finally, OMA maintains that, although the PSR has been set at zero as a placeholder rider, the Commission must still consider the effect that the establishment of the PSR in an ESP will have on customers as compared to the expected results that would otherwise apply under an MRO, noting a PSR would not be able to be established under an MRO.

{¶ 135} OCC asserts that, while the Commission quantified the costs of the PSR and Rider DCI at zero for purposes of finding the ESP more favorable than an MRO, the riders should have been quantified at a cost of $22 million and $272 million, respectively, for the ESP term. In addition, OCC contends that, because the costs of the approved ESP and an MRO were found to be the same, the ESP cannot be quantitatively more favorable than an MRO. According to OCC, absent costs being assigned and quantified, Duke cannot sustain its burden to show that the ESP is more favorable. In addition, OPAE submits Duke's proposed PSR requires distribution customers to pay the above-market costs of the OVEC generating units through the PSR. Thus, OPAE asserts that it is not possible that an ESP that includes a PSR charge priced higher that market could ever, under any circumstances, be equivalent or more favorable in the aggregate than an MRO.

{¶ 136} OCC believes the Commission erred by relying on qualitative benefits in determining that the ESP was quantitatively more favorable than an MRO. According to OCC, qualitative benefits should not be included and considered as part of the ESP versus MRO test. Specifically, with regard to Rider DCI, OCC notes that Duke made no commitment to freeze base rates; thus, the Commission's benefit attributed to this rider keeping base rates constant is misleading. OCC notes that, if the result of Rider DCI is accelerated infrastructure reliability benefits, then the fact that customers must also pay for the improvements sooner should be recognized; therefore, the accelerated payment under Rider DCI should be considered as a wash with the payments under a base rate proceeding, which is over an indefinite period of time. Further, OCC claims that, while the Commission must review an ESP to ensure that its provisions do not violate state policy, the Ohio Supreme Court has limited the items that can be included in an ESP to those expressly listed in R.C. 4928.143(B). *Columbus S. Power Co. v. Pub. Util. Comm.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655 (*Columbus Southern* 2). OCC insists the Commission erred by finding that several qualitative factors provide a benefit under the ESP, stating that they may not lawfully be considered under R.C. 4928.143(B)(2) and that those factors provide no benefit at all. According to OCC, even if the alleged qualitative benefits did fall within R.C. 4928.143(B)(2), they would be excluded from consideration in the test because they can also be offered under an MRO. Moreover, OCC avers that none of the qualitative factors identified benefit Ohio consumers. OCC argues the Commission violated R.C. 4903.09 by failing to explain why *Columbus Southern 2* is not controlling and by failing to identify which ESP provisions advance what state policies. Finally, OCC argues that, while the

Commission identified Duke's transition to market-based rates as a qualitative benefit to customers under the ESP, it can not be considered a benefit because it was a benefit offered and approved previously in the ESP 2 Case and has already occurred.

{¶ 137} In its memorandum contra, Duke submits the Commission properly considered both quantitative and qualitative factors in its ESP versus MRO analysis, in keeping with the statute and the guidance provided by the Ohio Supreme Court. Moreover, Duke points out that the Commission delineated its reasoning in the ESP 3 Order supporting its findings regarding the qualitative and quantitative benefits of the ESP. Duke submits that, in its argument that qualitative factors are not to be considered, OCC erroneously merges two entirely different concepts, i.e., what costs may be recovered through an ESP, and how to evaluate the favorability of the ESP versus an MRO. Contrary to OCC assertions, Duke argues *Columbus Southern 2* related only to what cost recovery categories could be addressed through an ESP, and the case did not address the MRO test. According to Duke, *Columbus Southern 2* did not prohibit the inclusion of other provisions, it prohibited the inclusion of other categories of cost recovery. Rather, Duke states that an earlier Ohio Supreme Court case addressed the MRO test, providing that both pricing and other terms and conditions are to be factored into the Commission's consideration of the MRO test, citing *Columbus S. Power Co. v. Pub. Util. Comm.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501.

{¶ 138} In response to the quantitative measurements raised by OMA and OCC regarding the PSR, Duke notes that recovery of costs under the PSR is illusory, in that, while the rider exists in theory, there is no way to predict whether any rate will be assigned to the PSR and what dollar amount might be recovered. With regard to the concern over Rider DCI and that Duke might file a base rate case during the term of the ESP, Duke points out there is nothing in the ESP versus MRO test that requires a commitment in order for the Commission to find an advantage. Duke believes the Commission properly recognized that, with the approval of Rider DCI, Duke's rate of return is less likely to fall, thus, Duke is less likely to spend resources on a base rate case. While Duke agrees that faster recovery of costs will ensue with Rider DCI, Duke notes that OCC has failed to consider that the result will be lower carrying charges.

{¶ 139} The Commission finds that the requests for rehearing filed by OCC and OMA are without merit. Initially, we affirm our finding that the ESP, as modified, is more favorable in the aggregate than the expected results under R.C. 4928.142. Further, we affirm our finding that it is not necessary to attempt to quantify the impact of the PSR in the ESP versus an MRO analysis, given that the placeholder PSR has been set at zero, and any future costs associated with this rider are unknown and subject to future proceedings. Consistent with our determinations in other proceedings, we also affirm that it was unnecessary to consider the revenue requirements associated with the Rider DCI, and other approved distribution-related riders, because the results should be considered the same whether incremental distribution investments and expenses are recovered through the ESP or through a distribution rate case in conjunction with an MRO. AEP ESP 3 Case, Second Entry on Rehearing (May 28, 2015) at 56. As we noted in the ESP 3 Order, the Ohio Supreme Court, in *Columbus Southern 2*, determined that R.C. 4928.143(C)(1) does not bind the Commission to a strict price comparison but rather instructs the Commission to consider pricing, as well as all other terms and conditions. Therefore, it is the Commission's responsibility to ensure that the modified ESP, as a total package, is considered, including both a quantitative and qualitative analysis. Upon consideration of the modified ESP, in its entirety, we found that the ESP, as modified, is more favorable in the aggregate than the expected results under R.C. 4928.142. ESP 3 Order at 96.

{¶ 140} With regard to the arguments espoused by OCC and OMA related to the qualitative benefits of the ESP, the Commission again finds that that there are indeed qualitative benefits that make the ESP, as modified by the Commission, more favorable in the aggregate than the expected results under R.C. 4928.142. We previously determined that the ESP furthers the state policy found in R.C. 4928.02; enables Duke to implement fully market-based prices as of June 1, 2015; and should enable the Company to hold base distribution rates constant over the ESP period, while making significant investments in distribution infrastructure and improving service reliability. As noted in the ESP 3 Order, the evidence of record reflects that these are additional benefits that will occur as a result of the ESP. ESP Order at 97. For example, many of the riders incorporate benefits that would not otherwise be available. This includes the Distribution Decoupling Rider, which promotes energy efficiency and conservation efforts, and the Large Customer Interruptible Load Program, which can lower market prices during peak times and offer rate stability to participating customers. ESP Order at 76-77. Further, the DCI promotes gradualism in rates and includes a hard cap in recovery to ensure prudent spending. ESP Order at 71-72. We, therefore, do not agree with OMA's assertion that these benefits are not likely to come to fruition. We also disagree with OCC's contention that the nonquantifiable provisions of an ESP may not be considered in conducting the ESP versus MRO analysis. R.C. 4928.143(C)(1) specifically requires the Commission to determine whether the ESP, including not only pricing but also all other terms and conditions, is more favorable in the aggregate than an MRO. Further, we agree with Duke that OCC confuses the condition that an ESP may only include items listed in R.C. 4928.143(B) with the need to weigh the quantitative and qualitative benefits that those items provide, in performing the ESP versus MRO test.

{¶ 141} We also found that the ESP promotes the state policies enumerated in R.C. 4928.02, in a manner that may not be possible under an MRO, and we explained throughout the ESP 3 Order how specific provisions of the ESP promote state policy, contrary to OCC's claims. ESP 3 Order at 96-97. Specifically, we note the ESP included $2 million of Duke shareholder funds be directed to economic development. ESP Order at 91. Additionally, we find that the DCI and other distribution-related riders may enable the Company to hold base distribution rates constant over the term of the ESP, while continuing to invest in distribution infrastructure and improve service reliability. Accordingly, the Commission finds that the applications filed by OMA and OCC on this issue should be denied.

N. Procedural Issue – Confidentiality Agreements

{¶ 142} A prehearing conference was held in these cases for the purpose of considering various procedural motions regarding certain documents and information requested in discovery, including Duke's July 8, 2014 motion for protective order, OCC's July 18, 2014 motion to hold in abeyance Duke's motion for protective order, and OCC's July 18, 2014 motion to compel.

{¶ 143} At the August 12, 2014 prehearing conference, the attorney examiner determined that the parties should move forward and enter into protective agreements consistent with the confidentiality agreement attached to Duke's July 8, 2014 motion (referred to as Exhibit 3) with certain revisions, including that the agreement should be revised such that one copy of the alleged confidential information may be retained by the recipient and that rulings on the use of such information beyond these cases shall be dealt with in any subsequent cases. Accordingly, the attorney examiner: granted, in part, and denied, in part, Duke's July 8, 2014 motion for protective order; denied OCC's July 18, 2014 motion to hold in abeyance Duke's motion for protective order; and found that OCC's July 18, 2014 motion to compel was moot, given the ruling on the protective order.

{¶ 144} In consideration of an interlocutory appeal filed by Duke, by Entry issued August 27, 2014, the Commission found that the attorney examiner's rulings at the August 12, 2014 prehearing should be modified, in part. The Commission concluded that, in order to enable the parties to move forward with discovery in these proceedings, the document that was attached to OCC's memorandum contra Duke's July 8, 2014 motion for protective order (referred to as Exhibit 1) should be adopted and Duke should enter into protective agreements, like Exhibit 1 and the agreements entered into in the previous ESP proceedings, with the intervenors that are seeking the alleged confidential information. Accordingly, the Commission modified the attorney examiner's ruling such that: Duke's July 8, 2014 motion for protective order was granted to the extent the information marked confidential by Duke should be treated confidentially by the recipients until such time as the Commission rules otherwise, and denied to the extent Duke requested the Commission adopt Exhibit 3; and OCC's July 18, 2014 motion to compel responses to discovery was granted.

{¶ 145} By Entry on Rehearing issued October 22, 2014, Duke's application for rehearing of the Commission determination regarding the confidentiality agreements was denied, thus, affirming the Commission's decision in the August 27, 2014 Entry.

{¶ 146} In its brief filed in this matter on December 15, 2014, and again in its application for rehearing of the April 2, 2015 ESP 3 Order, Duke incorporates by reference its arguments disputing the Commission's August 27, 2014 Entry, as affirmed in the October 22, 2014 Entry on Rehearing.

{¶ 147} In their memoranda contra Duke's application for rehearing, OCC and IGS state that Duke has raised no new argument and, therefore, rehearing on this issue should be denied. IGS notes that Duke merely incorporates its prior arguments by reference. Therefore, IGS states the Commission should not second guess its prior rulings as they are supported by sound regulatory policy and precedent.

{¶ 148} The Commission finds that Duke raises no new issue concerning the Commission's ruling regarding the confidentiality agreements that has not already been thoroughly considered in these cases. Therefore, Duke's request for rehearing on this issue has no merit and should be denied.

O. IGS Motion for Protective Order

{¶ 149} At the hearing held in these matters, the attorney examiner granted the motions for protective treatment of certain information presented on the record in these dockets, as well as portions of the transcripts that contained testimony referencing confidential information. In addition, in the ESP 3 Order, the Commission granted protective treatment to portions of the briefs filed underseal by IGS, OCC, and Sierra Club. ESP 3 Order at 11.

{¶ 150} On May 4, 2014, IGS filed a motion for protective treatment of certain limited information contained in its application for rehearing filed on that same day. No one filed memorandum contra the motion for protective treatment filed by IGS.

{¶ 151} Upon review of the May 4, 2015 motion filed by IGS and the information filed under seal, the Commission finds that the redactions are consistent with the rulings in these cases and, therefore, the motion is reasonable and should be granted. Accordingly, consistent with our decision in the ESP 3 Order, pursuant to Ohio Adm.Code 4901-1-24(D), confidential treatment shall be afforded for a period ending 24 months. Until that date, the docketing division should maintain, under seal, the information filed confidentially. Any party wishing to extend the protective order must file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to the parties.

IV. ORDER

{¶ 152} It is, therefore,

{¶ 153} ORDERED, That, in accordance with paragraph 121, the applications for rehearing of the ESP 3 Order on that issue filed by IGS and RESA, be granted, that, in accordance with paragraph 124, the application for rehearing filed by Direct Energy be granted, and, as set forth in this Second Entry on Rehearing, all other applications for rehearing on all the remaining issues be denied in their entirely. It is, further,

{¶ 154} ORDERED, That, in accordance with paragraph 149, the motion for protective treatment filed by IGS be granted. It is, further,

{¶ 155} ORDERED, That a copy of this Second Entry on Rehearing be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

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Barcy F. McNeal
Secretary