BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	)))	Case No. 17-32-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	))	Case No. 17-33-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 17-34-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR.	)))	Case No. 17-872-EL-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR.	)))	Case No. 17-873-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 17-874-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service.	)))))))	Case No. 17-1263-EL-SSO
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	))))	Case No. 17-1264-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Vegetation Management Costs.	)))	Case No. 17-1265-EL-AAM

In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards Pursuant to Chapter 4901:1-10, Ohio Administrative Code.	)))))	Case No. 16-1602-EL-ESS

REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTLITIES COMMISSION OF OHIO

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INTRODUCTION

The Public Utilities Commission of Ohio (Commission) is presented with a Stipulation that resolves all the issues in ten complex cases that were consolidated to form this proceeding. The Stipulation is reasonable and meets the Commission's three-part test for approval of stipulations. It should be adopted by this Commission. Below is Staff's reply to arguments raised by opposing intervenors in their initial briefs.

DISCUSSION

I. The Stipulation meets the Three-Part Test for reasonableness.

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.[1] In considering the reasonableness of a stipulation, the Commission has used the following criteria:

> (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
>
> (2) Does the settlement, as a package, benefit ratepayers and the public interest?
>
> (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.[2] When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission "may place substantial weight on the terms of a stipulation," it "must determine, from the evidence, what is just and reasonable."[3] The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement.[4]

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[1] *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St, 3d 123, at 125, citing *Akron v. Pub. Util. Comm*. (1978), 55 Ohio St, 2d 155.

[2] *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St. 3d 559, citing, *Consumers' Counsel, supra,* at 126.

[3] *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370.

[4] *In re Application of Columbus S. Power Co.* (2011), 129 Ohio St.3d 46.

The signatory parties, and the Commission staff, respectfully submit that the Stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

A. Serious Bargaining

OCC argues that the Signatory Parties do not represent a variety of diverse interests and there was not serious bargaining.[5] These claims are baseless. The Stipulation is the product of serious negotiations among knowledgeable parties. The list of parties that signed the stipulation represents a variety of diverse interests, which include low-income customer advocates, industrial and commercial advocates, and commercial customers. The signatories are a listing of the major users of power in the Duke service territory and the Staff. The signatory parties have an extensive history of participation and experience in matters before the Commission. The signatory parties and non-opposing parties are knowledgeable on regulatory matters before the Commission, regularly participate in proceedings before the Commission, employ experts in the industry, and are represented by experienced and competent counsel.[6] All intervenors were provided an opportunity to participate in discussions and the settlement process.[7] The terms of the Stipulation represent serious bargaining among diverse parties

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5 OCC Brief at 19-20.

6 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 9.

7 *Id*.

to find a mutually acceptable agreement for all signatory and non-opposing parties.[8] Concessions were made by parties to mitigate the litigation risk inherent in proceeding to a hearing.[9]

Although the conclusion that the Stipulation results from serious bargaining among knowledgeable parties is obvious, that does not prevent opposing parties from challenging it. In sum, the Stipulation is the product of serious negotiations among knowledgeable parties.

B. Public Interest

The Stipulation benefits customers and is the public interest.[10] As stated in Staff's initial brief, the Stipulation, among other things:

- resolves a multitude of issues that span ten open cases before the Commission;[11]
- provides long-term certainty and predictability for all customers;[12]
- supports and advances the Commission's PowerForward initiative;[13]

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8 *Id.*

9 *Id.*

10 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 9.

11 *Id.*

12 *Id.*

13 *Id.*

- accounts for the reliability and safety of the grid to ensure that the Company continues to effectively operate and maintain its distribution system;[14]

- supports low-income weatherization initiatives; and[15]

- allows the Company to populate Rider PSR with the costs the Company has incurred related to the Company's ownership percentages in OVEC units.[16]

Opposing intervenors challenge whether the Stipulation is in the public interest. Those challenges are meritless as follows:

1. Rider PSR

Contrary to opposing intervenors' arguments, Rider PSR is in the public interest. The Commission previously approved the rider in Case No. 14-841-EL-SSO, *et al*.[17] Through the Stipulation, the Company is able to populate the rider with the net profit or net loss the Company incurred starting in January 2018 and through the end of the term of the ESP.[18] For each Ohio Electric Distribution Utility (EDU) which has direct ownership shares of OVEC units, the Commission has granted a nonbypassable rider to

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14 *Id.* at 10.

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

allow the credits or costs to be flowed back to that utility's customers.[19] While each EDU has its own unique issues, circumstances and situations that should be evaluated on their own merits, OVEC is a unique issue and circumstance that three of the Ohio EDUs share in common.[20] The Commission has approved the Ohio Power Company and the Dayton Power and Light Company to recover or credit their individual ownership share of the OVEC plants through a rider.[21] The Commission has deemed that those riders operate as a hedge for the costs and associated revenues of the EDU's ownership share of OVEC and are in the public interest.[22] Staff does not believe that the facts in this case differ enough to merit a change in Commission precedent.

2. Staff's Rate of Return Calculation

The Stipulated ROR and ROE are reasonable. Duke's negotiated ROE of 9.84% is reasonable because it: (1) allows Duke to attract investment; and (2) falls comfortably within Staff's reasonable ROE range. The purpose behind using capital asset pricing model (CAPM) estimate and discounted cash flow (DCF) cost of equity estimate is to

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[19] *Id.* at 10-11 citing In the Matter of the Application of Ohio Power Company for Authority to *Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan,* Case No 16-1852-EL-SSO, et al., Opinion and Order at 22-23 (April 25, 2018); *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 16-395-EL-SSO, et al., Opinion and Order at 34-35 (Oct. 20, 2017).

[20] Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 11.

[21] *Id.*

[22] *Id.*

calculate an ROE that will allow a company to attract investment.[23] However, because they are estimates, they do not always yield reasonable ROE results. In this case, the CAPM estimate was so low (due to a low beta), in comparison with the five-year average ROE for electric utilities nationwide, that averaging the CAPM and DCF together would result in an unreasonable ROE.[24] Staff believes that adjustments to the weighting of CAPM and DCF are needed when reasonable ROE cannot be obtained otherwise.[25] Accordingly, rather than throwing out the CAPM altogether, Staff conservatively multiplied the 8.88% CAPM estimate by 25% and the DCF cost of equity estimate by 75%, resulting in a return of 9.55%.[26] After applying an issuance cost factor to the baseline cost of equity, the resulting ROE range was 9.22% to 10.24%.[27] Staff believes that the ROE range proposed in the Staff Report is reasonable because the five-year average ROE for electric utilities nationwide is 9.79%, well within the range of reasonableness Staff recommended.[28] Also, as admitted by OCC's witness, the 2017 national average for electric utilities is 9.74%, further validating Staff's recommended

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[23] Staff Ex. 4 (Buckley Direct in Response to Objections to the Staff Report) at 4; OCC Ex. 7 (Duann Direct) at 19-20.

[24] Staff Ex. 1 (Staff Report) at 18-19.

[25] Staff Ex. 4 (Buckley Direct in Response to Objections to the Staff Report) at 4.

[26] Staff Ex. 1 (Staff Report) at 18-19.

[27] *Id.*

[28] Staff Ex. 4 (Buckley Direct in Response to Objections to the Staff Report) at 6.

ROE range.[29] OCC's calculated ROE of 8.24% is well below any calculated national average and is, in fact, lower than any electric utility ROE approved nationwide in 2017.[30] Given that Staff proposed a reasonable ROE range and OCC proposed no alternative reasonable ROE range, OCC's objections as to ROE are immaterial.

Similarly, Staff believes that the rate of return range proposed in the Staff Report is reasonable because the average rate of return nationwide during that same five-year period is 7.39%. When a range of reasonableness is applied to that average, the result is a rate of return range of 6.89% to 7.89%.[31] The Stipulation provides a rate of return of 7.54%, which falls within the range of reasonableness that is based on the nationwide average.[32] Staff used a five-year average when comparing nationwide rates of return because rate cases are not typically filed annually.[33] Therefore, a five-year average is more representative of a long-term rate of return, as is set in a distribution rate case.[34]

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29 Tr. Vol. VI (Duann Cross) at 1216.

30 Tr. Vol. VI (Duann Cross) at 1218-1219.

31 Staff Ex. 4 (Buckley Direct in Response to Objections to the Staff Report) at 4.

32 *Id.*

33 *Id.*

34 *Id.*

3. Rider DCI

The Stipulation provides for the continuation of Duke's existing Rider DCI with numerous parameters which will apply to Rider DCI.[35] Despite OCC's disagreement,[36] Rider DCI is in the public interest. The structure of the DCI provides an economical and efficient process that enables the Company to make investments in its distribution system, which improves both the safety and reliability of the distribution system.[37] Additionally, the Company is required to file at least one base distribution rate case application on or before May 31, 2024 or lose the DCI.[38] This provision provides the opportunity to quantify, through the natural course of a rate case, the benefits of Rider PF and other initiatives provided for in this stipulation.[39]

The Stipulation has modified Duke's Rider DCI proposal such that there are revenue caps, a continuation of the annual audits, a requirement for the prospective assessment and approval of new capitalization policy changes, a credit to remove the impact of capitalized employee bonus expenses, a revenue cap adjustment for 2019 and 2020 for missed reliability targets, and an incentive for Duke to timely file its next base

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35 Joint Ex. 1 (Stipulation and Recommendation) at 10-13.

36 OCC Brief at 41-49.

37 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 17.

38 *Id.*

39 *Id.*

distribution rate case and electric service plan.[40] The inclusion of the parameters is a beneficial provision of the Stipulation.[41]

4. Rider PF

Multiple parties challenge the benefits of Rider PF. Rider PF is intended to support the modernization of energy delivery infrastructure, along with the development of innovative products and services for retail electric customers.[42] As stated in Staff's initial brief, Rider PF is a beneficial provision of the Stipulation. Rider PF will promote state policy and provide benefits to the overall Stipulation.[43] R.C. 4828.02(D) states it is the policy of the state to:

> encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure.[44]

The implementation of Rider PF furthers that objective by supporting the development of innovative products and services and giving Ohio customers more control over their energy usage.[45] Specifically, the implementation of Rider PF will make granular CEUD

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40 Staff Ex. 8 (McCarter Direct in Support of the Stipulation) at 3.

41 *Id.*

42 Staff Ex. 10 (Schaefer Direct in Support of the Stipulation) at 2.

43 *Id.*

44 R.C. 4928.02(D)

45 Staff Ex. 10 (Schaefer Direct in Support of the Stipulation) at 4.

available to CRES providers and update the settlement systems and processes for wholesale market data, so it can be monetized in the provision of retail electric service.[46] This includes calculating and settling individual total hourly energy obligation (THEO), peak load contribution (PLC) and network service peak load (NSPL) values for each customer, instead of relying on generic load profiles.[47] This customer-specific data will give customers more control over their energy consumption, so they can save money.[48] Finally, while the first and third components of Rider PF are currently placeholders, they provide future opportunities for the Commission to examine proposals that would further state policy objectives through grid modernization and enhancements to the customer experience.[49]

5. Subsequent Rider Modifications

OCC argues that Stipulation is contrary to public interest because Duke's proposed tariffs do not include refund language.[50] The Stipulation, however, provides a process for subsequent rider modifications as follows:

> The Signatory Parties acknowledge that automatically adjusting riders may temporarily go into effect but shall not be deemed final and shall be subject to reconciliation,

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46 *Id.*

47 *Id.* at 4-5

48 *Id.* at 5.

49 *Id.*

50 OCC Brief at 23.

> including but not limited to refund, until the prescribed audit is completed and the Commission, by order or entry, establishes the final rate. The automatically adjusting rider tariff sheets will be amended to provide for either refunds or decreases in rates consistent with the audit, as ordered by the Commission.
>
> The Signatory Parties acknowledge riders required to be reviewed annually shall be subject to reconciliation based solely upon audits instituted directly or under the supervision of the Commission Staff or as the result of Commission ordered changes recommended by interested parties in the audit proceeding. Such reconciliations, including but not limited to refunds and additional charges, shall only become effective if ordered by the Commission.

This above process outlined in the Stipulation contemplates potential refunds for annual audits. It is Staff's understanding that proper refund language is being added all tariffs as they are updated quarterly or annually. The process is reasonable and comports with the Ohio Supreme decision in FirstEnergy's Alternative Energy Rider case.[51]

6. Green Button Connect

The Environmental Defense Fund (EDF) and Ohio Environmental Council (OEC) argue that Duke, in this case, should implement Green Button Connect and that the Stipulation is against the public interest without that modification.[52] Staff disagrees.[53] Staff recognizes that providing access to customer energy usage data for retail customers

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[51] *In re Rev. of Alternative Energy Rider Contained in the Tariffs of Ohio Edison Co.*, Slip Op. 2018-Ohio-229 ("FirstEnergy").

[52] OEC/EDF Brief at 13-17.

[53] Staff Ex. 11 (Schaefer Direct in Response to Objections to the Staff Report) at 3.

and third parties is an important measure to ensure that the benefits associated with smart meters are maximized.[54] The Stipulation, however, advances smart meter data access. Specifically, the Stipulation establishes Rider PF, which is intended to support the modernization of energy delivery infrastructure, along with the development of innovative products and services for retail electric customers.[55]

The second component of Rider PF requires the Company to file an application in an electric rider (EL-RDR) case for the costs associated with providing the data enhancements for CRES providers listed in Attachment F of the Stipulation, along with the costs of the communications infrastructure needed to support the AMI transition.[56] In addition, if a non-CRES third party is interested in receiving customer energy usage data, the Company is required to develop a proposal to provide retail customers with the ability to authorize the release of customer energy usage data to third parties. To the extent the Environmental Intervenors believe this proposal should include an evaluation of Green Button "Connect My Data", Staff encourages the Environmental Intervenors to provide input into the electric rider case, once it is initiated.

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54 *Id.*

55 Joint Ex. 1 (Stipulation and Recommendation) at 16-18.

56 *Id.* at 5 citing Joint Ex. 1 (Stipulation and Recommendation) at 16-17.

C. The Stipulation does not violate any important regulatory principle or practice.

The Stipulation complies with all relevant and important regulatory principles and practices.[57] As stated in Staff's initial post-hearing brief, the Stipulation advances this state policy in a number of ways. Opposing intervenors argue that the Stipulation violates important regulatory principles and practices. Those arguments are meritless as follows:

1. Rider ESRR properly enables Duke to comply with its vegetation management program.

OCC argues that the proposed changes to Duke's vegetation management program through Rider ESRR violates regulatory principles because Duke is not meeting reliability standards.[58] Duke's reliability commitments in this case, however, are aligned with the expectations of its customers. Duke has committed to a nearly 30% reduction in SAIFI, which translates to 30% fewer customers who will experience an outage at all. CAIDI is increasing about 12%, but this is not necessarily indicative of worsening reliability. The combination of Duke's SAIFI and CAIDI commitments results in SAIDI that improves each of the next four years. In years 2022 through 2025, Duke's customers system-wide will experience a 30% improvement in overall reliability when compared to

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[57] *Id.* at 9.

[58] OCC Brief at 119-122.

2017 performance.[59] Staff believes that Duke's commitment to improved reliability aligns the Company's and its customers' expectations.

Furthermore, Duke's reliability commitments in this case allow the Commission to ensure that Duke is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system. Duke has committed to reliability standards as part of a stipulated agreement negotiated in good faith. It is Staff's expectation that by doing so, Duke intends to place sufficient emphasis on and dedicate sufficient resources to meeting those standards for the duration of the ESP.[60]

The Stipulation provides that the Company can implement Rider ESRR to recover costs recorded in FERC Account 593 related to distribution vegetation management in excess of what will be recovered in base rates.[61] Vegetation management is an important activity of the Company in order to avoid outages.[62] The cost of tree trimming by third-party has spiked recently.[63] Rider ESRR will enable the Company to maintain its vegetation management requirements, while also ensuring that the funding is entirely directed to vegetation management as the annual audit of the ESRR will verify that all vegetation management dollars embedded in base rates are prudently expensed prior to

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[59] Staff Ex. 3 (Nicodemus Direct in Support of the Stipulation) at 11.

[60] *Id.* at 12.

[61] Joint Exhibit 1 (Stipulation and Recommendation) at 14-15.

[62] Staff Ex. 12 (Lipthratt Direct in Support of the Stipulation) at 3.

[63] *Id.*

recovery within the rider for incremental expenses up to a cost cap of $10 million annually.[64]

2. The ESP proposed is more favorable in the aggregate than an MRO.

As described in Staff's initial brief, the ESP proposed is more favorable in the aggregate than an MRO. Considering the ESP's pricing and all other terms and conditions, as proposed in the Stipulation, the ESP recommended by the Signatory Parties is more favorable in the aggregate than the expected results of an MRO under R.C. 4928.142.[65]

In Staff's quantitative analysis of the MRO versus ESP test, Staff reviewed past precedent with respect to which riders and costs should be included in the quantitative analysis of the MRO versus ESP test.[66] The quantitative costs and benefits of the ESP when compared to the MRO are difficult to forecast with a high level of accuracy and/or certainty due to the multiple variables that are in flux.[67] However, Staff does recognize that Company witness Rose's current forecast projects a negative result for Rider PSR, when sunk costs are included.[68] Since Rider PSR is the lone rider which would not be

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64 *Id.*

65 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 11-12.

66 *Id.* at 12

67 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 14.

68 *Id.*

allowable under an MRO, it would result in a negative outcome for the quantitative analysis of the ESP versus MRO test.[69] Staff believes that the negative quantitative results associated with Rider PSR are offset by the following qualitative benefits.

The qualitative benefits of the ESP should also be considered when reviewing the MRO versus ESP test.[70] The ESP proposed in this Stipulation provides Duke customers numerous benefits and advances many of the state policy objectives enumerated in R.C. 4928.02.[71] An ESP filing provides the most flexibility in order to achieve outcomes that are advantageous for all of the parties involved.[72] The qualitative benefits provided for in the Stipulation include provisions for enhancements to the retail competitive market, battery storage options, low income protections, promotion of innovative measures related to the PowerForward initiatives, and vegetation management flexibility.[73]

In the aggregate, the ESP is more beneficial than a hypothetical MRO, even if witness Rose's net impact is assumed with sunk costs included.[74] In the end, the qualitative benefits of the ESP when factored with the quantitative factors cause the ESP to be more beneficial than the MRO in the aggregate.

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[69] *Id.*

[70] *Id.* at 15.

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

3. The Stipulation properly accounts for tax reductions.

OCC points out that Ohio law requires that all known changes in tax laws after the test year must be recognized in setting rates.[75] This is precisely what the Stipulation allows for in conjunction with Case No. 18-0047-AU-COI (Tax COI case) and Case No. 18-1185-EL-ATA (the ATA case). The Stipulation, the Tax COI case, and the ATA case reflect a reasonable and measured approach to the tax reductions. In the Stipulation, Duke agrees to incorporate the reduced federal income tax rate in the calculation of all riders for electric distribution service that include a return on equity component.[76] The reduced revenue requirement associated with the reduction to the federal income tax rate was captured in the DCI.[77] Accounting for the tax reduction in the DCI captures 75% of the value of what the reduction to the revenue requirement would have been had it instead been captured in base rates.[78]

To the extent which any effects of the tax reduction are not approved by the Commission in this case, the effects should be addressed in the Tax COI case or the ATA case.[79] The Stipulation, the Tax COI case and the ATA case viewed together form a

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75 OCC Brief at 107-109.

76 Joint Ex. 1 (Stipulation and Recommendation) at 25.

77 Staff Ex. 12 (Lipthratt Direct in Support of the Stipulation) at 4.

78 *Id.*

79 *Id.* at 5.

reasonable approach to the tax reductions. OCC's arguments to the contrary should be rejected.

4. The Commission should not adopt the proposal of RESA and IGS to charge SSO customers $23 million per year.

IGS and RESA argue that Duke be required to unbundle the distribution costs required to process and administer the SSO and allocate these costs only to SSO customers rather than to all distribution customers.[80] IGS also argues that the Commission lacks authority to authorize recovery of SSO costs through distribution rates and that the Stipulation violates state policy.[81] These arguments are unwarranted. All electric distribution utilities in Ohio are required by law to provide an SSO to customers.[82] The SSO benefits all customers including shopping customers. For a shopping customer, if the customer's supplier fails to provide service, the customer receives the SSO as a default service. The distribution utility is obligated to stand ready to serve in the event of a supplier default.[83] Therefore, the cost allocation recommended by RESA and IGS to shift SSO costs away from the shopping customers and reassign them only to non-shopping customers should not be adopted. All costs to provide

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80 IGS Brief at 15-27.

81 *Id.*

82 OCC Ex. 22 (Willis Rebuttal Testimony) at 6.

83 *Id.* at 6-7.

services to or on behalf of shopping and non-shopping customers are properly assigned to the distribution function.[84] The SSO benefits both shopping and non-shopping customers. Non-shopping customers receive electric generation that is competitively bid through the SSO and shopping customers have the SSO safety net in case their supplier defaults. The SSO also provides a price-to-compare that customers can use to evaluate competitive supplier offers. Because all customers benefit from the SSO, all customers should share in the costs of providing and administering the SSO.[85]

As pointed out in Staff's initial brief, Staff witness Smith testified that Choice customers do not pay the administrative, operating, and non-operating costs associated with the provision of generation twice.[86] All customers pay for the Company's distribution costs in distribution rates.[87] Choice customers do not pay for the Company's distribution costs in the CRES supplier's charges; rather, Choice customers pay for generation service through the CRES supplier's charges.[88] Also, Choice customers are not charged fees that SSO customers are not charged. Certain fees, such as switching fees, billing fees, and interval data fees, are not charged directly to the customer but to

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84 *Id.* at 7.

85 *Id.* at 8.

86 Staff Ex. 15 (Smith Direct in Response to Objections to the Staff Report) at 6.

87 *Id.*

88 *Id.*

the generation provider by the Company.[89] Furthermore, switching fees and interval data charges are marginal expenses, and cost causation dictates the assets used individually shall be charged individually.[90]

RESA and IGS propose that: (i) SSO customers be charged an additional $23 million per year for distribution service and (ii) customers who shop for their generation with a CRES be charged $23 million less per year for distribution service.[91] The net effect is that millions of dollars per year would be shifted from shopping customers (lowering their electric bills) to SSO customers (raising their electric bills).[92]

The RESA and IGS proposal increases charges to SSO customers by over $23 million per year which harms customers and is not in the public interest.[93] The RESA and IGS proposal also includes an unjust and unreasonable cross-subsidization of the avoidable rider charged to the non-shopping residential customers that harms residential customers and violates the regulatory principle of cost causation.[94]

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[89] *Id.* at 7.

[90] *Id.*

[91] IGS/RESA Ex. 1 (Hess Direct in Opposition to the Stipulation) at 4, Exhibit JEH-1.

[92] Staff Ex. 15 (Smith Direct in Response to Objections to the Staff Report) at 5.

[93] *Id.* at 5.

[94] *Id.*

All costs that Duke incurs to provide services to or on behalf of shopping and non-shopping customers are appropriately assigned to the distribution function of Duke.[95] Duke's competitively bid standard service offer is a benefit to both shopping and non-shopping customers.[96] Non-shopping customers can receive electric service that is competitively bid (i.e., the standard service offer) without needing to engage in the time-consuming and sometimes confusing process of selecting an alternative supplier.[97] Shopping customers can receive that same benefit when they consider other choices and shopping customers benefit from the standard service offer because they have a safety net in case the supplier they have chosen defaults.[98] The SSO also provides the benefit of a competitive price-to-compare that customers can use to evaluate marketer offers when deciding whether to shop for their generation.[99] All customers (shoppers and non-shoppers) benefit from the SSO and all customers should share in the costs of providing and administering the standard.[100]

Therefore, the Commission should reject the proposal by IGS and RESA.

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95 *Id.* at 7.

96 *Id.*

97 *Id.*

98 *Id.*

99 *Id.* at 7-8.

100 *Id.* at 8.

5. The Stipulation properly addresses Time-Differentiated Rates and Duke's Customer Information System (CIS).

IGS argues that time-differentiated rates should be phased out or, in the alternative, that the rates should be based on wholesale market prices and not recovered through distribution rates.[101] Staff disagrees.[102] As stated in Staff's initial brief in this case, in Case No. 12-3151-EL-COI, the Commission stated that: "EDUs time-differentiated rate pilot programs should be made available to SSO customers until the market sufficiently develops for CRES providers to begin offering this service."[103] Staff is unaware of any CRES providers offering time-differentiated rates to residential customers in the Company's service territory.[104] The Stipulation adopted in the current case includes a number of provisions that will enable CRES providers to offer additional products and services in the future, including time-differentiated rates.[105] However, until the market sufficiently develops, Staff believes that the Company should continue to offer time-differentiated rates to residential customers.[106] Staff agrees that the rates for

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101 IGS Brief at 27-28.

102 Staff Ex. 11 (Schaefer Direct in Response to Objections to the Staff Report) at 6.

103 *Id.* citing *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding & Order at 38 (March 26, 2014).

104 *Id.* at 6.

105 *Id.*

106 *Id.*

time-differentiated generation service should reflect wholesale market prices and should not be recovered through distribution rates.[107]

IGS also argues that Commission should direct Duke to consider a market-based option for its proposed Customer Information System (CIS), including the ability of the proposed CIS to accommodate supplier consolidated billing and non-commodity billing.[108] The Stipulation establishes the three-component Rider PF. The third component of Rider PF is a placeholder to recover costs associated with an infrastructure modernization plan filed by the Company.[109] The plan will include a proposal to upgrade the CIS.[110] Cost recovery for component three will be subject to a hearing in a separate proceeding, following an application by the Company.[111] Staff recommends that IGS provide input regarding the CIS within that case.[112]

6. Staff's test-year conclusions regarding the customer education funds are proper.

Cincinnati Clean Energy Foundation (CCEF) argument against the removal of customer education funds based on the Staff's conclusion that the funds were not

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107 *Id.* at 6-7.

108 IGS Brief at 33.

109 Staff Ex. 11 (Schaefer Direct in Response to Objections to the Staff Report) at 9 citing Joint Ex. 1 (Stipulation and Recommendation) at 16-17.

110 *Id.* at 9.

111 *Id.*

112 *Id.*

expended during the test year is without merit.[113] Staff assesses whether costs are prudent to include in test-year expenses by applying two key criteria: (1) whether the cost is known and measurable; and (2) whether the cost is related to something that is used and useful in providing utility service to customers.[114] The approximately $2 million in question pertains to a proposed customer education campaign that did not occur during the test year, nor was it planned to occur during the test year.[115] Furthermore, since the campaign was not implemented during the test year, it could not be considered used and useful in the provision of service to customers, thereby making the associated costs for the program inappropriate to include in test year expenses.[116] Therefore, Staff made its recommendation to remove the expense for the proposed customer education campaign.[117]

7. Duke customers are not double-paying for generation related net-metering costs under the Stipulation.

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113 CCEF Brief at 3-4.

114 Staff Ex. 2 (Berringer Direct in Response to Objections to the Staff Report) at 2-3.

115 *Id.* at 3.

116 *Id.*

117 *Id.*

OCC claims the customers are double-paying $25.5 million in smart grid charges.[118] On cross examination, Staff witness Lipthratt was unable to explain how Staff arrived at $29,466,269 because the exhibits provided to him lacked the associated workpapers that accounted for the discrepancy. Staff, however, did verify that the expenses in the test year were not also being collected from customers through Rider DR-IM.[119] The DR-IM rates in effect during the test year were for smart grid related expenses associated with calendar year 2014. These amounts were verified as part of Staff's audit in Case No. 15-883-GE-RDR.[120] Once base rates go into effect, Rider DR-IM rates will be set to zero and the rider eliminated in order to roll smart grid costs into base rates.[121]

8. Smart Grid Issues

OCC argues that Duke made imprudent decisions in its smart grid deployment and that customers should not have to pay for investments that do not benefit them. As Staff explained in its initial brief, however, these issues are outside the scope of this proceeding. The prudency of these investments was addressed in prior proceeding to

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118 OCC Brief at 133-134.

119 Staff Ex. 13 (Lipthratt Direct in Response to Objections to the Staff Report) at 4.

120 *Id.* citing *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider AU for 2014 Grid Modernization Costs*, Case No. 15-883-GE-RDR, Staff Review and Recommendation (Nov. 13, 2015).

121 Staff Ex. 13 (Lipthratt Direct in Response to Objections to the Staff Report) at 4.

which OCC was a party.[122] Duke's smart grid expenses were audited annually and only reasonable and prudent expenses were approved for recovery.[123]

9. Reliability Standards

OCC argues that the settlement should be rejected because it recommends less stringent reliability standards that were developed behind closed doors. As Staff demonstrated in its initial brief, however, Duke has committed to significantly improve its reliability performance as measured by the relevant indices. As a result of these commitments, customers can expect a 30% improvement in overall reliability by the year 2025.[124] While OCC focuses on Duke's performance in the past, the Stipulation offers a forward-looking approach that will significantly benefit customers.

Nor is there any merit to OCC's allegations that the new standards were improperly developed behind closed doors. The new standards recommended in the stipulation were part of a settlement package that was negotiated over several months. All parties were invited to participate in this process.[125] There is nothing nefarious or even unusual about negotiated standards. Reliability standards are commonly established through a settlement. In fact, the current standards were set through a stipulation to

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122 *In the Matter of the Application of Duke Energy Ohio to Adjust and Set its Gas and Electric Recovery Rate for Smart Grid Deployment under Rider AU and Rider DR-IM,* Case No. 09-543-GE-UNC.

123 Staff Ex. 6 (Schweitzer Direct in Response to Objections to the Staff Report) at 4.

124 Staff Ex. 3 (Nicodemus Direct in Support of the Stipulation) at 3.

125 Staff Ex. 17 (Donlon Direct in Support of the Stipulation) at 9.

which OCC was a party.[126] In short, there was nothing improper in the way the proposed standards were developed.

CONCLUSION

The Stipulation meets all prongs of the three-part test. The Commission should adopt the Stipulation as its order in this case.

Respectfully submitted,

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126 *In the Matter of the Application of Duke Energy, Ohio Inc. for Approval of Proposed Reliability Standards*, Case No. 13-1539-EL-ESS (Opinion and Order) (Sept. 17, 2014).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Reply Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named counsel via electronic mail, this 2nd day of October, 2018.

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