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 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. 17-1263-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. 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 Ohio Adm.Code Chapter 4901:1-10.

Case No. 16-1602-EL-ESS

OPINION AND ORDER

Entered in the Journal on December 19, 2018

I. Summary

{¶ 1} The Commission approves and adopts the Stipulation filed by various parties.

II. Introduction

{¶ 2} This Opinion and Order considers a stipulation and recommendation that purports to resolve ten cases regarding four major proceedings, all involving Duke Energy Ohio, Inc. (Duke or the Company). Each of these cases, in isolation, is extremely intricate. Undoubtedly, distribution rate cases, standard service offers, and, recently, riders involving power purchase agreements are some of the most heavily litigated cases that appear before the Commission. Thus, when the proceedings merged, the complexity increased significantly. However, consolidation of these proceedings provided parties with unique opportunities for discussion that ultimately resulted in an agreement that the Commission determines will benefit ratepayers by offering stability, reasonable rates, and improved reliability.

III. Background

{¶ 3} Duke 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.

{¶ 4} On April 13, 2018, Duke and certain parties filed a stipulation and recommendation (Stipulation) that purports to resolve issues in four pending cases. The cases included in the Stipulation are:

- In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates, Case 17-32-EL-AIR, et al. (*Rate Case*);
- In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR, Case No. 17-872-EL-RDR, et al. (*PSR Case*);
- In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer, Case No. 17-1263-EL-SSO, et al. (*ESP Case*); and
- In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards, Case No. 16-1602-EL-ESS (*Standards Case*).

A. Summary of the Rate Case

{¶ 5} An application for an increase in rates is governed by and must meet the requirements of R.C. 4909.17 to 4909.19, and 4909.43. The Commission adopted Ohio Adm.Code 4901-7-01 and its Appendix (Standard Filing Requirements) pursuant to R.C. 4901.13, 4909.04(C), and 4909.18. The Standard Filing Requirements specify the format for filing all information required in an application for an increase in rates and define the information which the Commission requires, pursuant to R.C. 4909.18(E).

{¶ 6} In applying for a rate increase, R.C. 4909.15(C)(1) and (2) provide that a utility may propose a test period for determining the revenues and expenses that is any 12-month period beginning not more than six months prior to the date the application is filed and ending not more than nine months subsequent to the date the application is filed.

Unless otherwise ordered by the Commission, the test period shall be what is proposed by the utility. It is also required that the date certain be no later than the date of filing.

1. Procedural History

{¶ 7} On January 31, 2017, Duke filed a notice of intent to file an application for an increase in its electric distribution rates, pursuant to R.C. 4909.43(B) and in compliance with Ohio Adm.Code 4901-7-01, Appendix A, Chapter 1 of the Commission's Standard Filing Requirements. On the same day, the Company filed a motion to establish a date certain and test period and for waivers of certain standard filing requirements. By Entry issued February 23, 2017, and amended on March 1, 2017, the Commission approved Duke's proposed date certain of June 30, 2016, and the proposed test-year period of April 1, 2016, through March 31, 2017. The Entry also granted in part and denied in part the requested waivers.

{¶ 8} On March 2, 2017, Duke filed its application seeking Commission authority to increase its rates for electric distribution service, for accounting authority, and for approval of revised tariffs. Duke also filed direct testimony in support of the application. Thereafter, on March 21, 2017, as requested by Staff, Duke filed a revised Schedule B-2.2 and a revised Schedule B-3.1.

{¶ 9} By Entry dated April 26, 2017, the Commission found that the application met the requirements of R.C. 4909.17 and 4909.19 as well as the Standard Filing Requirements, and accepted the Company's application as of its filing date.

{¶ 10} On September 26, 2017, Staff filed a written report of investigation (Staff Report) pursuant to R.C. 4909.19. Staff filed a supplement to the Staff Report on October 12, 2017.

{¶ 11} On September 28, 2017, the attorney examiner issued an Entry directing that any objections to the Staff Report be filed in accordance with R.C. 4909.19 and Ohio Adm.Code 4901-1-28(B), with motions to strike objections and related memoranda contra motions to strike being due on or before November 6, 2017, and November 13, 2017, respectively.

{¶ 12} Objections to the Staff Report were timely filed by Industrial Energy Users-Ohio (IEU-Ohio); Ohio Partners for Affordable Energy (OPAE); Duke; the Ohio Consumers' Counsel (OCC); The Kroger Company (Kroger); The Ohio Manufacturers' Association Energy Group (OMAEG); The Environmental Defense Fund (EDF), Environmental Law & Policy Center (ELPC), the Sierra Club, Natural Resources Defense Council (NRDC), and Ohio Environmental Council (OEC) (collectively, the Conservation Groups); Cincinnati Clean Energy Foundation (CCEF); Ohio Hospital Association (OHA); Interstate Gas Supply, Inc. (IGS); and Retail Energy Supply Association (RESA).

{¶ 13} Pursuant to an October 16, 2017 Entry, two local public hearings were conducted. The first hearing occurred on October 30, 2017, at Butler Technology and Career Development Schools, at 6:00 p.m., and the second on November 2, 2017, at Cincinnati City Hall at 12:30 p.m.

2. Summary of the Application

{¶ 14} In its application, Duke requests to increase distribution rates by $15.4 million, or 3.18 percent, over current revenues. Duke states in its application that it seeks to generate sufficient revenues to pay its distribution-related operating expenses, including taxes and depreciation; to service its debt; and to provide an adequate rate of return (ROR) on its property used and useful in the rendition of electric distribution service to its customers. The Company proposed to establish a ROR of 7.82 percent. Duke states it has completed its deployment of SmartGrid and is requesting to incorporate the SmartGrid revenue requirement into base rates. Duke also requests an extension of its Distribution Capital Investment Rider (Rider DCI), to modify the costs recoverable thereunder, and adjust the basis for the rider's calculation. Duke indicates that it seeks Commission approval of proposals that will enable continued advances in technology that will allow the Company's customers more control over their energy usage and facilitate an exchange of information necessary for the implementation of programs and services for customers. Duke also seeks to establish or change several riders, including the following: Rate LED, LED Outdoor Lighting Electric Service, and Regulatory Mandates Rider (Rider RMR) that will be used to timely recover the costs of implementing laws and regulations requiring expenditures by the Company. Additionally, Duke seeks approval of all necessary and appropriate accounting authority to continue riders and implement new riders, including approval of the proposed depreciation rates and the proposal to continue the account treatment associated with the Company's storm deferral mechanism. Lastly, Duke proposes to increase the fixed customer charge while reducing the volumetric charge of the distribution rate. (Co. Ex. 1.)

3. Public Testimony

{¶ 15} At the local public hearings held on October 30, 2017, and November 2, 2017, nearly 50 individuals expressed their views regarding Duke's application. In addition to this testimony, numerous public comments were filed in this case. The majority of the public testimony and comments raised opposition to Duke's proposal in the application to increase rates.

4. Summary of the Staff Report

{¶ 16} Staff recommends a revenue decrease in the range of $18,357,786 to $(28,932,684). This represents a decrease of 3.77 percent to 5.94 percent over test year operating revenue. Staff made this determination based on the examination of the accounts and records of Duke for the 12 months ending March 31, 2017, including schedules which incorporate Staff's recommended ROR, rate base, and adjusted operating income. Additionally, as a result of Staff's investigation and review of the application, Staff recommends that adjustments be made to the Company's date certain plant investment for ratemaking purposes. Further, Staff recommends the Commission reject Duke's proposed modifications to Rider DCI. Staff states that the proposed modifications are unnecessary and are not germane to a distribution investment rider as has been adopted by the Commission in non-stipulated, previously contested cases in which it rendered a decision on each of the merits of such requests. With respect to the termination date for the Rider DCI, Staff recommends that Rider DCI end on May 31, 2024, provided that Duke files for a rate case by May 31, 2023. If Duke fails to file an application for a rate case by May 31, 2023, the Rider DCI rate should default to $0 on June 1, 2023. Additionally, Staff recommends the following revenue caps for the DCI Rider: $14 million for 2018 (full year), $28 million for 2019, $42 million for 2020, $56 million for 2021, $69 million for 2022, $83 million for 2023, and $41 million through May 31, 2024 (five months of 2024).

{¶ 17} Staff recommends a ROR in the range of 7.20 percent to 7.74 percent and the cost of common equity set at a range of 9.22 percent to 10.24 percent. Staff developed the recommended ROR using a cost of capital approach, which reflects a market-derived cost of equity and the Duke's embedded cost of long-term debt. Staff recommends that the current rate-design methodology be maintained until sufficient customer demand data is available and collected from the new metering capability. Once the data is collected and evaluated, Staff believes an appropriate rate design should be developed based on this data.

5. Summary of Objections to the Staff Report

{¶ 18} Of the various objections to the Staff Report, only the following were briefed and, therefore, relevant to our review. [1]

a. Green Button Connect

{¶ 19} The Conservation Groups argue that the Staff Report is unjust and unreasonable by failing to recommend that Duke implement Green Button Connect My Data (GBC). The Conservation Groups explain that GBC is the industry standard and that over 32 million United States utility customers already have access to their energy usage

[1] Pursuant to Ohio Adm.Code 4901-1-28(D), in rate case proceedings, an objection to a staff report is deemed withdrawn if a party fails to address the objection in its initial brief.

data via GBC. The Conservation Groups' witness Michael Murray testified that implementing GBC means that the "utility hosts an automated web service through which developers of energy management software can, with customer authorization, automatically and securely retrieve meter data in their software." (OEC/EDF Ex. 3 at 18.) This allows customers to pick and choose which energy service providers work best for their needs. Ensuring consistent, standardized access to this is imperative or, as Mr. Murray testified, Duke "could propose any number of technical methods for transmitting interval customer energy usage data that are idiosyncratic and that do not comply with nationally-recognized standards and best practices, resulting in increasing costs of processing such data to third parties." (OEC/EDF Ex. 3 at 22-23.) The Conservation Groups note that OCC witness Paul Alvarez also recognized the benefits of adopting a standardized platform for cost savings, and recommended the adoption of GBC as well. (OCC Ex. 18 at 6, 46.) The Conservation Groups argue that if the goal of the Commission is to ensure maximum benefits for customers, it should implement GBC, as well as the safeguards recommended by Mr. Murray, including ensuring compliance with the most current North American Energy Standards Board standard and documented best practices, and subjecting the utility's GBC implementation to periodic certifications by an independent third party.

{¶ 20} Staff and Duke disagree with the Conservation Groups' proposal regarding GBC. Staff witness Krystina Schaefer testified that Staff recognizes that providing access to customer energy usage data for retail customers and third parties, including competitive retail electric service (CRES) providers, is an important measure to ensure that the benefits associated with smart meters are maximized. However, Staff and Duke note that the Stipulation advances smart meter data access. Staff and Duke contend that the Stipulation, by establishing Rider PowerForward (Rider PF), will support the modernization of energy delivery infrastructure and develop innovative products and services for retail electric customers. Staff suggests the Conservation Groups provide input into the electric rider case once it is initiated. (Staff Ex. 11 at 3; Jt. Ex. 1 at 16-18.)

b. Supplier Tariff

{¶ 21} RESA objects to the continuation of certain fees charged by Duke to CRES suppliers in its Supplier Tariff, specifically its switching fee and its interval customer energy usage data (CEUD) fee. RESA contends that the Staff Report did not challenge these fees or question where or how costs are incurred that would justify such charges. RESA witness Ringenbach testified that Duke recovered nearly half a million dollars in switching fees in 2016 alone. RESA argues that the Stipulation did not address either fee and if approved the switching fee and CEUD fee will continue. RESA contends that these fees create disincentives for customers to switch because suppliers must drive up the prices charged to customers to account for the fees suppliers must pay. RESA maintains that competition will be hampered as long as these fees are in effect. RESA urges the Commission to strike these fees from the Supplier Tariff or require Duke to demonstrate the costs associated with the fees and determine the best method for recovery. (IGS Ex. 6 at 4.)

{¶ 22} Staff witness Rutherford testified that Staff reviews tariffs in a proposed application when the Company is proposing tariff modifications. Because the Company did not propose changing the current tariff, Staff did not review the cost related charge in its investigation of the Company's application and disagrees with RESA that it had an obligation to do so. (Staff Ex. 7 at 4.)

c. Time-Differentiated Rates

{¶ 23} IGS objects to the Staff Report's recommendation that Duke continue Time-of-Use (TOU) rates, despite Duke's proposal to discontinue these rates. IGS argues that default service should not be in the role of providing time-differentiated pricing, which would be better provided by the competitive market. Further, placing the utility in the role of providing time differentiated pricing will diminish customers' incentive to engage with the competitive marketplace. 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. (IGS Ex. 6 at 4-5.)

{¶ 24} Staff recommends that Duke offer TOU rates and Duke states it is amenable to doing so. Staff noted that it was not aware that any marketer is offering a time-of-day rate that reflects PJM wholesale electricity prices in the Company's service territory. Therefore, Staff provisionally recommended offering a time-differentiated rate to residential customers until such time the Commission has made a determination that time-of-day rates are available to customers in the retail market place. (Staff Ex. 1 at 21; Tr. Vol. III at 686.)

d. Rider DCI

{¶ 25} OCC argues the Staff Report is unreasonable because it recommends that Rider DCI be extended to May 31, 2024, to the detriment of customers who may be required to fund the rider. OCC witness Williams opined that Staff recommended continuing Rider DCI without any factual support for why the rider should be continued. Additionally, Mr. Williams testified that there is nothing in the record on whether the Staff examined any of the proposed programs included in Rider DCI to determine if the programs are expected to contribute to improved reliability. For those reasons, OCC argues Rider DCI should not be approved. (OCC Ex. 8 at 29, 33.)

{¶ 26} Duke and Staff disagree and argue that Rider DCI is supported in the record. Duke witness Hart testified about two new proposed programs Self-Optimizing Grid (SOG) and Targeted Undergrounding. Ms. Hart testified that the SOG proposal bears a relationship to and complements the Company's earlier investment in self-healing teams, although in an even more integrated and real-time approach. Targeted Undergrounding entails moving overhead lines to underground in specific problem areas, in order to harden the distribution system. (Co. Ex. 17 at 11-12, 15.) Duke contends that those programs allow for continuing improvement and maintaining the distribution system. Duke states that OCC's argument that the programs are not justified and the claims that Staff has not adequately explained why Rider DCI should continue do not recognize Duke's ongoing efforts to improve its distribution system and Staff's supervision. Staff witness Nicodemus explained that the terms of the Stipulation that include the Company's commitment to decrease the System Average Interruption Frequency Index (SAIFI) provides the assurance that the programs included for recovery under Rider DCI are well-justified. As Mr. Nicodemus testified, "The combination of Duke's Customer Average Interruption Duration Index (CAIDI) and SAIFI commitments results in a System Average Interruption Duration Index (SAIDI) that improves each of the next four years, and in 2022 through 2025 will be the lowest it has been since the EDUs began to report reliability performance in 2010." (Staff Ex. 3 at 12.) Duke argues that the SAIFI and CAIDI standards agreed to in the Stipulation align with spending on distribution capital investment.

e. ROR

{¶ 27} OCC argues that the Staff Report used an unduly high 4.45 percent risk-free return in the capital asset pricing model (CAPM) analysis. OCC witness Duann testified that the risk-free return of 4.45 percent used in the Staff Report was based on the forecasted (instead of actual) yields of 30-year Treasury bonds by the Congressional Budget Office and the Bureau of Labor Statistics. Mr. Duann opined that the estimated risk-free return of 4.45 percent is overstated and unreasonable. First, the risk free return was not supported by actual financial market conditions. Second, the yields of 30-year U.S. Treasury bonds were exclusively used, unnecessarily overstating the risk-free return to be used in the CAPM analysis. Third, explained OCC witness Duann, the forecasted yields of long-term government bonds are subjective and have frequently turned out to be wrong, especially over a longer forecasting period. OCC argues that a risk-free return used in a CAPM should be based on the actual market yields rather than any forecasted yields. Thus, the risk-free return used in the CAPM analysis should be no higher than three percent at this time. (OCC Ex. 7 at 6-12.)

{¶ 28} Additionally, OCC argues that the Staff Report used an unduly high seven percent risk premium in its cost of common equity calculation. OCC witness Duann testified that the equity risk premium of seven percent is overstated and should be reduced accordingly. Dr. Duann opined that if the error in the arithmetic was corrected, the resulting equity premium would be six percent. Additionally, more recent financial data regarding the long-term market returns of different classes of assets compiled in a similar report support a six percent equity risk premium. In summary, a reasonable estimate of the equity risk premium currently is likely to be six percent instead of seven percent. (OCC Ex. 7 at 11-15.)

{¶ 29} Staff witness Buckley testified that Staff made adjustments to its traditional CAPM analysis to achieve an appropriate risk premium that would result in a return on equity (ROE) that is more appropriate for setting long-term rates and keeps the Company competitive for attracting investment. Staff believes there are many ways to establish a reasonable ROR and does not believe altering an individual component is appropriate if it would create a return that is outside a reasonable range. (Staff Ex. 4 at 4.) Duke argues that it is appropriate to use forecast yields in a CAPM analysis. Duke witness Morin testified that CAPM is prospective in nature therefore must take into account current market expectations for the future because investors price securities on the basis of long-term expectations, including interest rates. As a result, according to Duke, in order to produce a meaningful estimate of investors' required ROR, the CAPM must be applied using data that reflects the expectations of actual investors in the market. While investors examine history as a guide to the future, it is the expectations of future events that influence security values and the cost of capital. (Duke Ex. 21 at 13-14, 37, 38.) Dr. Morin further testified that using 30 year Treasury bonds will more closely incorporate within their yields the inflation expectations that influence the prices of common stocks than do short-term or medium-term Treasury bonds. (Duke Ex. 21 at 35.) Additionally, Duke argues that the Commission should disregard OCC's flawed claims that the market risk premium is overstated. Duke contends that OCC's witness erroneously subtracted bond returns from stock returns rather than subtracting the income component of bond returns from stock returns. As discussed in Dr. Morin's testimony, the income component is a far better estimate of expected return than the total return because, over the long term, realized capital gains/losses are largely unanticipated by bond investors. (Duke Ex. 21 at 39.)

{¶ 30} OCC argues that the Staff Report inappropriately applied unequal weights to the CAPM and discounted cash flow (DCF) model. OCC witness Duann testified that the assignment of unequal weights to the CAPM and DCF results is a departure from the method used in the staff reports of many electric and gas distribution rate cases in the past. In other proceedings, the staff reports typically calculated the simple average of the CAPM and DCF results as the baseline ROE. OCC contends that the Staff Report has failed to provide an adequate and reasonable justification or explanation for this change in its method of analysis. (OCC Ex. 7 at 15-16.)

{¶ 31} Duke contends that OCC's argument is not supported in financial theory nor Commission precedent. Duke argues that regulatory financial theory holds that multiple cost of equity methodologies should be employed. Duke witness Morin testified that the weight accorded to any one method may vary depending on circumstances. Additionally, Duke contends that Commission precedent demonstrates that the Commission has used unequal weightings of cost of equity methodologies in order to determine an appropriate and reasonable ROE. (Co. Ex. 21 at 16.)

{¶ 32} OCC argues that the Staff Report made improper adjustments for equity issuance and other costs. OCC witness Duann testified that this adjustment is unnecessary and unreasonable. Dr. Duann stated that the addition of an equity issuance and other costs to a baseline ROE is contrary to established regulatory principles of setting a reasonable ROR for a regulated utility. The purpose of setting a reasonable ROE and a reasonable ROR for a regulated utility is not to authorize the regulated utility to collect from customers previously incurred costs associated with issuing equity. Additionally, even if an adjustment for equity issuance and other costs can be allowed, there is no actual cost basis for the proposed adjustment factor of 1.019. OCC contends that this adjustment was based on data from Duke's electric distribution rate case almost ten years ago, not data filed in this pending rate case. OCC argues that Staff used a 3.5 percent adder as a proxy for equity issuance and other costs that would unreasonably increase the cost of electric service to Duke's customers. (OCC Ex. 7 at 17-19.)

{¶ 33} Staff argues that an adjustment for issuance cost is necessary. Staff witness Buckley testified that the cost of issuance is properly spread over the life of the stock issue and that as long as stock has been issued, an equity adjustment is necessary. The investor requires a full return as long as the investor owns the stock. The company issuing new equity initially receives funds in the amount of the equity issued. The amount of equity issued less the issuance cost is the amount available to the company for investment, yet the investor is, as required, paid a return on the full amount of investment. (Staff Ex. 4 at 5.) Duke argues that reflecting issuance, or flotation, costs is necessary. Duke witness Morin testifies that the stock price does not change the fact that a portion of the capital contributed by equity investors is not available to earn a return because it is paid out in the form of flotation costs. The reality is that there are transaction costs associated with obtaining common equity capital. As a result, a portion of the capital contributed by equity investors is not available to earn a return because it is paid out as flotation costs. Duke contends that the Commission has previously recognized the need to reflect flotation costs in a utility's cost of equity. (Co. Ex. 21 at 54; *In re Cincinnati Bell Telephone Co.*, Case No. 96-899-TP-ALT, Supp. Opinion and Order (Nov. 9, 1999).)

{¶ 34} OCC argues that Staff's recommended ROR and ROE are unreasonable because they exceed the ROR and ROE authorized for electric distribution utilities nationwide that are similar to Duke. OCC argues that the average ROE and ROR authorized for delivery-only electric utilities in 2016 and 2017 are all below the midpoint ROE and ROR recommended in the Staff Report.

{¶ 35} OCC witness Duann testified that one of the fundamental principles in setting a reasonable ROE for a regulated utility is to ensure that an ordinary investor can earn a return from investing in the regulated utility comparable to the returns he or she expects to earn from other investments with similar risk. If such a comparable ROE is authorized by the regulatory agency, the regulated utility is afforded an opportunity to attract capital at reasonable terms, to maintain its financial integrity, and to have funds available to conduct its normal business of providing utility services. In this regard, the average ROE authorized nationwide in recent years can be viewed as a proxy for the opportunity cost to an investor considering investing in Duke Energy Corporation directly and Duke indirectly. Additionally, Dr. Duann testified that there is no evidence in the record that Duke is facing any unique circumstances to justify a much higher ROE as compared to the average or typical ROE authorized for electric utilities considered as a group. Instead, Duke has operated in a favorable (or credit-supportive) regulatory environment in Ohio where Duke is given a number of riders and stability charges unrelated to the costs of providing services. In short, it seems that Duke does not appear to exhibit any financial, operational, and regulatory risks that would make it riskier than the U.S. electric distribution utilities as a group. Thus, according to OCC witness Duann, there is no valid reason to give Duke a ROE or a ROR that is much higher than those recently authorized for electric distribution utilities in Ohio and other jurisdictions. (OCC Ex. 7 at 19-22.)

{¶ 36} Staff believes that the ROE range proposed in the Staff Report is reasonable because the average ROE nationwide over five years is 9.79 percent, well within the range of reasonableness Staff recommended. In fact, the mid-point of the Staff recommendation is 9.73 percent. Staff also believes that the ROR range proposed in the Staff Report is reasonable because the average rate of return nationwide during that same five-year period is 7.39 percent. When a range of reasonableness is applied to that average, the result is a ROR range of 6.89 percent to 7.89 percent. (Staff Ex. 4 at 6.) Duke argues that both Staff and the Company provided detailed analysis demonstrating a reasonable range for an electric distribution utility such as Duke and the negotiated and stipulated 9.84 percent ROE is within that range.

f. Purchase of Accounts Receivable Program

{¶ 37} RESA objects to Staff's recommendation to audit Duke's Purchase of Accounts Receivable (PAR) Program including CRES supplier receivables and books. RESA argues that the language in the Stipulation, while less invasive than the language in the Staff Report, still gives Staff authority to require an audit of CRES supplier books for excluded charges. RESA contends that there is no explanation of what types of excluded charges may deem a CRES supplier non-compliant with the PAR or what type of information CRES suppliers will need to provide. RESA proposes that this language be removed from the Stipulation or require that any audit be performed using the express language of the PAR Program agreement. (RESA Ex. 6 at 7.)

{¶ 38} Staff argues that an independent audit of the PAR Program is necessary. Staff witness Smith testified that the purpose of the audit is to ensure that Duke is purchasing only those receivables it is authorized to purchase and recover through the PAR program and the sufficiency of internal processes and controls for monitoring CRES providers' compliance with Duke's PAR Program agreement. The Account Receivables Purchase Agreement, the Duke Supplier Retail Tariff, and the Sale and Assignment Agreements provides the Company with the authority to inspect the CRES accounting records, make inquiries into internal and external reports, and review individual transactions. Staff found that the Company did not actively review, inquire, or inspect any supplier receivable between 2014 and 2017. Furthermore, the Company did not review a single internal or external audit report regarding the CRES receivables. (Staff Ex. 14 at 3-4.) Duke argues that Staff's call for an audit of the Company's PAR Program is reasonable and should be approved. The intent of this audit is to ensure that only appropriate commodity-based charges are being included in the Company's PAR Program by CRES providers as is required under the Company's tariffs. Duke argues that RESA's opposition to the audit is unsupported; if the CRES providers are following the Company's tariffs there should be no issue or reason for concern. Duke contends that the proposed audit creates a forum where Duke and Staff can adequately manage the PAR Program. (Co. Ex. 5 at 9; Jt. Ex. 1 at 22.)

g. *SmartGrid*

{¶ 39} OCC argues that the Staff Report failed to address whether Duke's current SmartGrid infrastructure delivers all of the capabilities and functionality that Duke promised it would in past cases and in its application to the U.S. Department of Energy for federal funding. OCC witness Alexander testified that Duke promised many benefits to offset the cost of its smart grid investment and the smart grid system they installed has not delivered the vast majority of the promised benefits. OCC argues that Duke shareholders, not customers, should be responsible for the risk associated with the smart grid investment. For those reasons, OCC contends that the Stipulation should be rejected. (OCC Ex. 12 at 9.)

{¶ 40} Staff notes that in a stipulation filed in a previous proceeding, and approved by the Commission, the parties agreed that Duke would file a rate case in the year after full deployment and that the revenue requirement requested in that case will reflect the level of the benefits attributable to SmartGrid which have actually been achieved by the Company and all prudently incurred current costs associated with the program." (Staff Ex. 6 at 2-3; *In re Duke Energy Ohio, Inc.*, Case No. 10-2326-GE-RDR (*Mid-Deployment Review Case*), Stipulation and Recommendation (Feb. 24, 2012) at 7-8.) Duke argues that SmartGrid has provided value to customers and delivered on its promises. Duke contends that Ms. Alexander admitted that she had no technical or engineering understanding of the Duke SmartGrid deployment and that she did not do a complete review of the annual applications submitted to the Commission to document deployment and cost recovery, including the entailed prudence review with respect to the costs that had been incurred. Duke contends that Ms. Alexander was ill-informed to render any reliable opinion with respect to the value of the Duke SmartGrid deployment. (Tr. Vol. IX at 1497, 1500.)

{¶ 41} OCC argues that the Staff Report failed to address whether Duke's current SmartGrid infrastructure is capable of providing customers with safe, reliable, and reasonably priced electric service as required by R.C. 4928.02(A).

{¶ 42} Staff witness Schweitzer testified that this issue is outside the scope of the proceeding and will not be addressed (Staff Ex. 6 at 3.).

{¶ 43} OCC argues that the Staff Report failed to address the prudence of Duke's spending on SmartGrid infrastructure and whether Duke's current SmartGrid infrastructure is used and useful for consumers. OCC argues that neither Staff nor Duke have provided evidence that the current system is used and useful therefore the Commission should conclude that it is not used and useful under R.C. 4909.15(A)(1). OCC witness Alexander testified that the Commission should exclude from Duke's rate base the remaining book value of the current system because Duke's SmartGrid costs have not been prudently incurred and that customers should not be required to pay for those costs. (OCC Ex. 12 at 1, 25.)

{¶ 44} Staff argues that these objections are not valid. Staff witness Schweitzer testified that the assets and expenses associated with the smart grid that are included in this rate case have historically been recovered through Duke's Distribution Reliability Infrastructure Modernization Rider (Rider DR-IM) and the Commission has approved Rider DR-IM annually since 2010. Staff argues that since all smart grid costs in this rate case originated in Rider DR-IM that these expenses have already been reviewed and approved as prudent and used and useful. (Staff Ex. 6 at 3.)

{¶ 45} OCC argues that the Staff Report failed to address whether the revenue requirement in this case reflects the savings that have been achieved for customers from Duke's SmartGrid investments. OCC witness Alexander testified that Duke did not identify any benefits in its rate case application or testimony and does not know what the dollar value of those benefits are. Similarly, the Staff Report does not quantify the level of benefits attributable to smart grid in the test year. OCC argues that the Commission should require Duke to reduce the revenue requirement in its base rate case by $12.933 million (amount of agreed operation and maintenance (O&M) savings from the Mid-Deployment Review Case), unless Duke can identify the actual amount of test year savings to customers. (OCC Ex. 12 at 2-3, 6; *Mid-Deployment Review Case*, Opinion & Order (June 13, 2012) at 15.)

{¶ 46} Staff argues the level of expenses included in this rate case reflects the benefits of Duke's completed smart grid project. Staff witness Schweitzer testified that on October 22, 2015, Staff filed its Notice of Staff Determination in *Mid-Deployment Review Case* stating that Duke had achieved full deployment of its smart grid project and from that point forward, the benefits of SmartGrid would be reflected in Duke's operating expenses. Staff witness Donlon testified that expenses included in the test period have been impacted by the full deployment of Duke's smart grid project and therefore include the savings or benefits of the smart grid. (Staff Ex. 6 at 4; Staff Ex. 17 at 8; *Mid-Deployment Review Case*, Notice of Staff Determination (Oct. 22, 2015).) Duke argues that OCC witness Alexander is uninformed and did not review subsequent filings in the *Mid-Deployment Review Case* to ensure that the annual revenue requirement of SmartGrid deployment equalized the value of the operational benefits, levelized over four years. Duke notes that $12.933 million in savings has been netted against the revenue requirement in the Company's most recent rider application. (Tr. Vol. IX at 1503; *Mid-Deployment Review Case*, Stipulation and Recommendation (Feb. 24, 2012).) Duke contends that it has clearly achieved considerable savings since the inception of its SmartGrid deployment.

{¶ 47} OCC objects to the Staff Report stating that Staff should have verified that expenses included in the test year are not also being collected from customers through Rider DR-IM. OCC contends that customers should not be double-charged for costs by paying them both through base rates and through rider charges. OCC argues that Staff witness Lipthratt could not explain how Staff arrived at $29,466,269 to exclude for Rider DR-IM charges which proves that the Staff Report is unreliable on this issue. OCC maintains that customers are double paying in SmartGrid charges. (Tr. Vol. XI at 1859; 1865-1866.)

{¶ 48} Staff argues it did verify that the expenses in the test year were not also being collected from customers through Rider DR-IM. Staff witness Lipthratt testified that the DR-IM rates in effect during the test year were for smart grid related expenses associated with calendar year 2014 and these amounts were verified as part of Staff's audit in Case No. 15-883-GE-RDR. Staff contends that 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. (Staff Ex. 13 at 4, citing *In re Duke Energy Ohio, Inc.,* Case No.15-883-GE-RDR.)

{¶ 49} OCC argues that the Staff Report unreasonably recommends accelerated amortization of certain accounts related to Duke's current SmartGrid infrastructure. OCC witness Alvarez and OCC witness Alexander testified that allowing Duke to accelerate the depreciation of these assets is an unjust and unreasonable outcome for consumers. OCC contends that the Commission should not allow Duke to accelerate the depreciation of assets it is discarding long before the end of its useful life because it would be an unfair result for the consumers. (OCC Ex. 12 at 20; OCC Ex. 18 at 29.)

{¶ 50} Staff argues that it properly set the cost of the meters on an accelerated recovery schedule based on the Commission's decision to allow recovery of those costs. Staff witness McCarter testified that because the meters are being removed and that meter type would no longer be available for installation, Staff set the account as a dying account with an accelerated recovery period. (Staff Ex. 8 at 4.)

h. Customer Education Funds

{¶ 51} CCEF argues that the Commission should modify the Stipulation to incorporate customer education funds. CCEF contends that inclusion of the education funding specifically supports renewable energy and energy efficiency programs and technologies to small business owners and ratepayers. CCEF argues that ratepayers need access to information regarding renewable energy and energy efficiency options. CCEF urges the Commission to modify the Stipulation to provide for customer education funds.

{¶ 52} Staff explains that when Staff assesses whether costs are prudent to include in the test year expenses they look at (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. Staff witness Berringer testified that the amount proposed for customer education did not occur during the test year and 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. Therefore, Staff made its recommendation to remove the expense for the proposed customer education campaign. (Staff Ex. 2 at 2-3.) Duke argues that the Commission should disregard CCEF's objection. Duke contends that CCEF's objection does not argue the Stipulation is unreasonable or the exclusion of this funding results in the Stipulation failing the Commission's three-part test. Duke maintains that the Commission should not grant CCEF's funding request as the stipulating parties have agreed to an overall base rate revenue reduction as part of this settlement. Increasing the Company's costs results in a corresponding increase to its revenue requirement, thereby actually reducing the negotiated base rate revenue reduction.

i. Customer Information System

{¶ 53} IGS objects to the Staff Report's failure to provide a comprehensive evaluation of all matters and issues related to Duke's proposed customer information system (CIS). IGS argues that the Commission should require Duke to implement CIS-specific design parameters that contemplate a market-based option, supplier consolidated billing, and non-commodity billing. (IGS Ex. 11; IGS Ex. 5 at 15.) IGS's objections, and Duke's corresponding responses, are discussed in more detail below.

j. Market-Based Option

{¶ 54} IGS argues that the Commission should require Duke to evaluate the costs and benefits of transferring all billing responsibilities to CRES providers and SSO auction winners, and compare these costs and benefits to those expected from an enhanced CIS. Further, a market-based solution would place the risk of investment on suppliers rather than customers. (IGS Ex. 5 at 8.)

{¶ 55} Duke argues that IGS's market-based billing solution is not necessary because the Company's proposal for a new CIS is beneficial for all its customers. Duke contends that IGS's proposal will cause confusion for customers while likely eliminating competitors in Duke's supplier choice program. Duke maintains that it has no way to analyze which CRES providers have customer billing capabilities and there is no evidence that those CRES providers or auction winners that do have a billing system today, will have the functionality envisioned with the new CIS. Duke argues that IGS's recommendation does not consider that Duke must have a way to administer customer switching and transferring back to SSO service in the event of a supplier default because it is the provider of last resort. Duke notes that the Stipulation provides a forum to address and explore all issues with the new CIS. Duke contends that the Commission should disregard IGS's recommendation for a market-based solution as a substitute for Duke to implement a new CIS to communicate and provide service to customers.

k. Supplier Consolidated Billing

{¶ 56} IGS argues that the Commission should direct Duke to include in its infrastructure management plan a process that can, and will, enable supplier consolidated billing for CRES providers. IGS witness White explains that supplier consolidated billing is the inverse of the traditional utility billing model in that a customer's supplier, rather than the utility, issues a single bill that contains the customer's generation, supply, and distribution charges. IGS contends that Duke's billing system should reflect market conditions and incorporate supplier consolidated billing into its program design. IGS argues that supplier consolidated billing will enable CRES providers to offer products and services through direct billing options eliminating the need to utilize dual billing. That, IGS contends, would provide customers with bill formatting improvements that better serve their needs. (IGS Ex. 5 at 8-11; att. MW-1.)

{¶ 57} Duke argues that supplier consolidated billing is not beneficial to the Company's customers. Duke explains that the majority of its customers are combination electric and natural gas customers and receive a single bill for both services. These customers may shop independently for both their electric and natural gas commodity services and not be limited to a single supplier for both services. Duke contends that this is problematic because this would allow third party electric and natural gas suppliers to have access to one-another marketers' rate offerings for a combination customer. Duke argues that IGS's proposal would limit customer's shopping choices to suppliers that are willing to offer both gas and electric commodity service. Duke urges the Commission to reject IGS's proposal to implement supplier consolidated billing as it raises numerous concerns for Duke's customers.

I. Non- Commodity Billing

{¶ 58} IGS argues that the Commission should also direct Duke to include in its infrastructure management plan a CIS program design that can, and will, facilitate non-commodity billing for CRES providers. IGS witness White explains that non-commodity billing includes placing charges on the utility bill that are not retail electric service. IGS argues that, in order to ensure a level playing field in the design of Duke's new CIS the Commission should direct Duke to include in its infrastructure management plan a CIS program design that will enable non-commodity billing for CRES providers. IGS contends that this is important in order to ensure compliance with R.C. 4905.35(A) and 4928.17(A)(2)-(3). (IGS Ex. 5 at 11-15; att. MW-1.)

{¶ 59} Duke argues that because all customers must bear the costs of unpaid bills, and because Duke does not have the technology to separate commodity and non-commodity charges from third party suppliers, it is not reasonable to allow such charges to be added to bills. Duke contends that IGS's argument that non-commodity billing should be required for CRES providers because Duke allows its affiliate, Duke Energy One, to bill for its own non-commodity services on bills is unpersuasive because Duke Energy One does not provide retail electric service and is not analogous to a CRES provider. Duke argues that billing for third party non-commodity products and services adds additional complexity and confusion for customers, and creates the potential for CRES providers to commingle their commodity and non-commodity products, the former is eligible for inclusion in the Company's PAR program and the latter is not. Duke contends that if non-commodity products and services are essential to the CRES providers, they can choose to use their own billing processes as they are not required to participate in Duke's consolidated billing program and are not required to participate in the Company's PAR Program. Duke suggests that the Commission decide this issue in the infrastructure modernization proceeding and disregard IGS's proposal to implement non-commodity billing functionality at this time.

{¶ 60} Staff addresses all of IGS's objections at once. Staff believes that these issues have been resolved or additional direction has been provided by the Stipulation filed in the current case. Staff witness Schaefer testified that the Stipulation establishes a new non-bypassable rider, Rider PF, which includes three components. Ms. Schaefer testified that the third component of Rider PF is a placeholder for Duke to recover costs associated with an infrastructure modernization plan filed by the Company, including a proposal to upgrade the CIS. Staff explains that the cost recovery will be subject to a hearing in a separate proceeding and Staff recommends IGS provide input regarding the CIS in that proceeding. (Staff Ex. 11 at 7-9.)

m. Cost of Service Study

{¶ 61} IGS and RESA argue that the Staff Report fails to recommend that Duke unbundle from distribution rates costs related to the provision of the standard service offer (SSO). IGS and RESA assert that the cost of service study accepted by Staff failed to allocate certain costs to the SSO and that the Company charges competitive suppliers certain fees that it does not charge to SSO customers. RESA/IGS witness Edward Hess testified that Duke should unbundle the distribution costs required to process and administer the SSO and allocate those costs to SSO service directly rather than allocating those costs to the distribution service rates paid by all customers. In order to directly allocate these costs, Mr. Hess recommends the creation of two new riders: a credit for all customers allowing them to avoid distribution costs that support the SSO administrative processing costs and an avoidable rider that collects those costs directly from SSO customers. (RESA/IGS Ex. 1 at 10-14.)

{¶ 62} Additionally, IGS and RESA argue that the Commission lacks authority to authorize recovery of SSO costs through non-competitive distribution rates. IGS and RESA argue that SSO is a competitive retail electric service and that state law prohibits competitive costs to be collected through non-competitive rates. IGS and RESA assert that the Stipulation must be amended to unbundle the SSO-related costs to avoid an anticompetitive subsidy. (RESA/IGS Ex. 1.)

{¶ 63} Duke argues the Commission should reject IGS and RESA's proposal. Duke explains that while a CRES provider can choose to provide generation service to retail customers, the EDU is required by law to serve any customer. Duke contends that the availability of an SSO for retail electric service is a benefit provided under Ohio law to every customer of the EDU and is not a service provided only to customers actually taking the SSO. Duke witness Wathen testified that services, like calls to the call center, to administer the SSO are available to all customers regardless of whether or not they switch to a competitive provider. Duke asserts that because these services are provided by Duke to meet its legal obligation as a provider of last resort through an SSO under R.C. Chapter 4928, the costs to ensure that service is available to all customers should be borne by all customers. (Tr. Vol. V at 991.)

{¶ 64} Staff states it was not directed by the Commission to examine the Cost of Service Study regarding possible embedded administrative, operating, and non-operating costs associated with the provision of choice or SSO generation. Staff witness Smith testified that Choice customers do not pay costs associated with the provision of generation twice; all customers pay for the Company's distribution costs in distribution rates. Mr. Smith explained that Choice customers do not pay for the Company's distribution costs in the CRES supplier's charges. Rather, Choice customers do pay for generation service, once, through the CRES supplier's charges. Moreover, he testified that all customers (shoppers and non-shoppers) benefit from the SSO and all customers should share in the costs of providing and administering the SSO. (Staff Ex. 15 at 4-5.)

B. Summary of the PSR Case

{¶ 65} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a SSO of all competitive retail electric services 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.

{¶ 66} On April 2, 2015, the Commission modified and approved an application for an ESP filed by Duke for the period June 1, 2015, through May 31, 2018. *In re Duke Energy Ohio*, Case No. 14-841-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Apr. 2, 2015). Among other things, the Commission concluded that the Price Stabilization Rider (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 the *ESP 3 Case*, would not provide a sufficiently beneficial financial hedge, or other commensurate benefits, to Duke's customers to justify approval of the rider. 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 Case*, Opinion and Order (Apr. 2, 2015).

{¶ 67} On March 31, 2017, Duke filed an application to modify and amend the PSR and for approval to change its accounting methods.

{¶ 68} In its application, Duke explains that the Ohio Valley Electric Corporation (OVEC) was organized by investor owned utilities, including Duke's predecessor, for the purpose of meeting the power needs of uranium enrichment facilities operated by the Atomic Energy Commission (AEC). In 1952, OVEC and the AEC entered into a long-term agreement for the provision of power to these essential uranium enrichment facilities. In order to support this long term agreement, OVEC and OVEC's owners or affiliates, together with affiliates of rural electric cooperatives entered into the Inter-Company Power Agreement (ICPA). The AEC's successor, the Department of Energy (DOE) assumed and extended the contractual obligations. In 2003, the DOE cancelled the power agreement and all of the output of the OVEC-owned plants essentially reverted to the co-sponsors under the ICPA. The current ICPA, to which Duke is a counterparty, has a term through June 30, 2040, as approved by Federal Energy Regulatory Commission (FERC). Duke's entitlement approximates 200 megawatts of the total generating capacity of the OVEC-owned assets.

{¶ 69} Duke also proposes as part of its application to include in the PSR the net costs associated with its contractual entitlement in OVEC. The PSR would be updated on a quarterly basis with annual audits. Duke further proposes that capacity performance credits and charges to be included in the PSR. Duke states that this approach reconciles the rider with the economic realities of participating in PJM's capacity market as a Capacity Performance resource and thus properly aligns the interest of the Company and its customers. As a complement to the previous measure, Duke proposes to commit $1 million annually toward economic development initiatives in its southwest Ohio service territory beginning June 1, 2018, and ending with the termination of the PSR. Duke proposes a term for the rider that aligns with the terms of the ICPA. Duke also requests that the Commission authorize Duke to modify its current accounting procedures and allow Duke to defer income statement recognition of its net costs incurred under the ICPA effective April 1, 2017, and recover such costs via the PSR with the deferral amount included in the first rider adjustment. (Co. Ex. 3.)

C. Summary of ESP Case

{¶ 70} As noted earlier, the SSO may be either an MRO in accordance with R.C. 4928.142 or an ESP in accordance with R.C. 4928.143.

{¶ 71} If an EDU applies for an ESP, R.C. 4928.143(C)(1) requires the Commission to determine whether the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of the same, is more favorable in the aggregate as compared to the expected results that would otherwise apply for an MRO under R.C. 4928.142.

1. Procedural History

{¶ 72} On June 1, 2017, Duke filed an application and supporting testimony for an SSO pursuant to R.C. 4928.141. This application is for an ESP in accordance with R.C. 4928.143. Duke's current ESP was approved in the *ESP 3 Case*.

{¶ 73} On June 12, 2017, and July 20, 2017, Duke filed amendments to its application.

{¶ 74} On July 21, 2017, the attorney examiner established a procedural schedule, including deadlines for intervention, discovery, and testimony on behalf of intervenors and Staff. The Entry also scheduled the evidentiary hearing to begin on November 13, 2017.

{¶ 75} A technical conference regarding Duke's application was held on August 7, 2017.

{¶ 76} On September 28, 2017, the attorney examiner issued an Entry granting the motions to intervene filed by: IEU-Ohio; Ohio Energy Group (OEG); OCC; OMAEG; OPAE; ELPC; Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, Walmart);

Kroger; OHA; People Working Cooperatively, Inc. (PWC); EDF; Ohio Environmental Counsel (OEC); IGS; city of Cincinnati; Calpine Energy Solutions, LLC (Calpine); RESA; Direct Energy Business Services, LLC, Direct Energy Business, LLC, and Direct Energy Business Marketing, LLC (collectively, Direct Energy); Miami University; the University of Cincinnati; Constellation NewEnergy, Inc.; and Exelon Generation Company, LLC. The attorney examiner also scheduled two local public hearings.

{¶ 77} Two local public hearings were conducted. The first hearing occurred on October 23, 2017, at MidPointe Library Middletown, at 6:00 p.m., and the second on October 26, 2017, at Cincinnati City Hall at 12:30 p.m.

2. Application Summary

{¶ 78} In its application, Duke requests approval of an ESP that would begin on June 1, 2018, and continue through May 31, 2024. As part of the ESP, Duke proposes to continue or modify a number of established riders, as well as to continue the competitive bidding process (CBP) for supplying its SSO load and percentage of income payment plan (PIPP) load. Duke proposes continuation of existing bypassable riders, including the following: Retail Capacity Rider (Rider RC), Retail Energy Rider (Rider RE), Supplier Cost Reconciliation Rider (Rider SCR), and Alternative Energy Resource Rider (Rider AER-R). Additionally, the Company is proposing to modify Rider SCR to recover payments for excess generation to net metering customers. Duke proposes continuation or implementation of new nonbypassable distribution riders, including the following: continuation of Rider DCI, continuation of the Distribution Storm Rider (Rider DSR), continuation of Distribution Decoupling Rider (Rider DDR); implementation of PowerForward Rider (Rider PF) to establish new offerings designed to advance programs, services, and initiatives the Company believes reflect the current intent of PowerForward, implementation of the Electric Service Reliability Rider (Rider ESRR) to recover all O&M costs associated with its vegetation management activities incremental to the costs included in base rates, implementation of the Regulatory Mandates Rider (RMR) to properly and efficiently align the implementation of those processes and procedures necessary to comply with applicable law, regulation, or order with the timely recovery of related costs; implementation of the Incentive Ratemaking Mechanism (Rider IRM) to allow an adjustment mechanism to enable customers to benefit when the Company's earnings are above a certain threshold ROE and further positions Duke to attract capital when its earnings are below a certain ROE threshold; and continuation of the PSR. Further, Duke proposes a battery storage pilot project. Finally, Duke proposes modifications to its Corporate Separation Plan to allow the Company to offer customers products and services other than electric retail service. (Co. Ex. 2.)

3. PUBLIC TESTIMONY

{¶ 79} Two local public hearings were held to allow Duke's customers to have the opportunity to express their opinions regarding the issues in these proceedings. Numerous customers from Duke's service territory gave testimony. In addition to the public testimony, customers also filed letters expressing their concerns regarding the company's proposal. A majority of the testimony and letters were in opposition to Duke's proposed ESP.

D. Summary of the Standards Case

{¶ 80} Pursuant to Ohio Adm.Code 4901:1-10-10(B), each electric utility shall file an application to establish, and periodically update, company-specific minimum reliability performance standards. Further, Ohio Adm.Code 4901:1-10-10(B)(2) requires that the application include a proposed methodology for establishing reliability standards, a proposed company-specific reliability performance standard for each service reliability index based on the proposed methodology, and supporting justification for the proposed methodology and each resulting performance standard.

{¶ 81} On July 22, 2016, Duke filed an application to revise its reliability performance targets, namely its CAIDI and SAIFI, in accordance with Ohio Adm.Code 4901:1-10-10.

{¶ 82} In its application, Duke explains that, in accordance with the stipulation approved by the Commission in Duke's last reliability standards case, the Company agreed to file an application to update its reliability performance standards in 2016 and provide additional data that is included with this application. Duke states that it is engaged in the business of supplying electric transmission, distribution, and generation service to approximately 700,000 customers in southwestern Ohio. Duke proposes a CAIDI of 134.00 and a SAIFI of 1.12, based on five years of historical data to calculate the baseline for the proposed CAIDI and SAIFI and then applied two standard deviations to reflect unknown variations in future CAIDI and SAIFI values, and account for factors such as weather, system design, and system configuration. Duke states that the proposed use of two standard deviations improves the level of confidence, so that a failure to meet the standard is not just the result of a random variation. Further, Duke explains that using the last five years of data points is a better reflection of the Company's current system upgrades and operation, with the implementation of system automation and reliability improvement programs. The application also indicates that Duke completed a customer satisfaction survey, in compliance with Ohio Adm.Code 4901:1-10(B)(4)(b). (Co. Ex. 4.)

{¶ 83} By Entry issued January 4, 2017, a procedural schedule was established to assist the Commission with its review of Duke's proposed reliability standards. The Entry also granted OCC's motion to intervene.

{¶ 84} A technical conference was held on February 2, 2017.

{¶ 85} Pursuant to the procedural schedule, OCC filed comments on February 22, 2017, Staff filed a recommendation on March 6, 2017, and Duke and OCC filed reply comments on March 24, 2017.

{¶ 86} On August 3, 2017, the attorney examiner set the matter for hearing on September 26, 2017. On September 18, 2017, the attorney examiner granted Duke's September 8, 2017 motion for a continuance and extended the hearing date to December 7, 2017. The attorney examiner found that 2016 reliability standards should remain in effect until such time as the Commission orders otherwise. Since that time, the procedural schedule was extended multiple times. On March 5, 2018, the attorney examiner granted Staff's motion to suspend the procedural schedule and directed the parties to file a status update if a resolution was not reached by March 23, 2018. On March 9, 2018, Duke filed a status report stating that settlement discussions are still ongoing and would be concluded very soon.

E. Stipulation

{¶ 87} On April 13, 2018, Duke and certain parties filed the Stipulation and recommendation that purports to resolve issues in the *Rate Case*, the *PSR Case*, the *ESP Case*, and the *Standards Case*.

{¶ 88} The parties that signed the Stipulation are: Duke, Staff, the City of Cincinnati, OPAE, OEG, OHA, and PWC (collectively, the Signatory Parties). Non-opposing signatories are Kroger, IEU-Ohio, OMAEG, and Wal-Mart (collectively, the non-opposing parties).

{¶ 89} Concurrently with the Stipulation, Duke filed a motion to consolidate the cases included in the Stipulation.

{¶ 90} On May 9, 2018, the attorney examiner granted Duke's motion to consolidate the cases and set forth a procedural schedule. Additionally, the attorney examiner granted motions to intervene filed by OEG, OCC, IEU, OPAE, ELPC, Kroger, EDF andOEC, IGS, PWC, OHA, Calpine, Cincinnati, OMA, RESA, CCEF, NRDC, Direct Energy, the University of Cincinnati and Miami Universities (Universities), and Constellation New Energy Inc. and Exelon Generation Company LLC.

{¶ 91} The evidentiary hearing commenced on July 9, 2018, and concluded on July 24, 2018. Rebuttal testimony was heard on August 6, 2018.

{¶ 92} On September 11, 2018, OPAE, Staff, PWC, OCC, OHA, CCEF, the Conservation Groups, Duke, EDF/OEC, IGS, and RESA filed initial post-hearing briefs. On October 2, 2018, Staff, PWC, the Conservation Groups, OCC, IGS, Duke, and RESA filed reply briefs.

1. SUMMARY OF THE STIPULATION

{¶ 93} The Stipulation notes that it was intended by the Signatory Parties to resolve all of the issues raised in these proceedings (Jt. Ex. 1 at 2). The following is a summary of the Stipulation and is not intended to supersede or replace the Stipulation.

a. ESP Approval and Term

{¶ 94} The term of the ESP shall be from June 1, 2018, through May 31, 2025. The Signatory Parties recommend that the Commission find that the ESP application meets the SSO filing requirements and that the Commission find that the statutory MRO test, as set forth in R.C. 4928.143(C)(l), is fulfilled in respect of the Company's ESP. Further, the Signatory Parties recommend, consistent with the ESP application and all supporting testimony, that the Commission approve all necessary and appropriate accounting authority to implement the riders and rate mechanisms. (Jt. Ex. 1 at 4.)

b. Supply and Pricing of Generation Service

{¶ 95} Duke shall continue its existing plan to procure generation supply for SSO customers. Such procurements shall exclude the generation supply needed to serve the Company's PIPP customers. The CBP shall be governed by the documents attached as Attachments C, D, E, F, and G of the ESP application, subject to the following two amendments: (1) the words "in its sole discretion" contained in Attachment C of the ESP application, Section 2.4 have been replaced with the words "upon Commission approval may" (2) the confidentiality requirements for Staff shall be governed by R.C. 4901.16 and R.C. 143.49, rather than through the agreements referenced in Attachment F of the ESP application, Section 6.1. The auction schedule shall adhere to Attachment A of this Stipulation. (Jt. Ex. 1 at 4-5.)

{¶ 96} The Commission shall appoint an independent auditor to participate, on the Commission's behalf, in the competitive procurements of generation supply for SSO load and PIPP load. The costs of any independent audits billed to the Company shall be recovered through the mechanisms discussed in Paragraphs 5 and 6 of Stipulation Part III.B. (Jt. Ex. 1 at 5.)

{¶ 97} Duke's existing bypassable Rider RC and Rider RE shall continue and function to recover costs associated with serving the Company's SSO load and PIPP load. The aggregate sum of the revenues under said riders shall be equal to the clearing prices, as converted into retail rates as shown on Stipulation Attachment B. Rider RC shall recover the cost of capacity and Rider RE shall recover all remaining SSO costs, including energy, market-based transmission service, and market-based transmission ancillary services. (Jt. Ex. 1 at 5-6.)

{¶ 98} Duke's existing Rider SCR shall continue, as modified herein, and recover any difference between payments made to suppliers for SSO service and the amount of revenue collected from SSO customers via Riders RC and RE. Rider SCR will also be used to recover all costs associated with conducting the auctions for SSO load, costs resulting from supplier default, and costs incurred pursuant to Riders NM and NM-H, as described in Part III.E.11. Updates to Rider SCR will be filed quarterly and the rider shall be audited as provided for in Stipulation Attachment C. The monthly accumulated Rider SCR balance of over- or under-recovery will accrue a carrying charge equal to Duke's long-term cost of debt, as approved in the *Rate Case*. Rider SCR shall be modified to exclude costs associated with requests for proposals (RFPs) for PIPP load. Rider SCR shall initially be bypassable for non-SSO customers who purchase retail electric generation supply from a CRES provider, but may be modified to become nonbypassable upon an order by the Commission based upon an application by Duke. Duke shall not file such an application unless or until the Rider SCR balance is more than 10 percent of Duke's overall actual SSO revenue. (Jt. Ex. 1 at 6.)

{¶ 99} Duke's existing Uncollectible Expense – Electric Distribution Rider (Rider UE-ED) shall continue, as modified herein, and recover any difference between payments made to suppliers for PIPP service and the amount of revenue collected from PIPP customers via Riders RC and RE. Rider UE-ED will also be used to recover all costs associated with conducting the RFPs for PIPP service delivered during the period of this ESP, costs resulting from supplier default, and audit costs. Rider UE-ED shall be updated annually. (Jt. Ex. 1 at 6-7.)

c. Transmission Service

{¶ 100} Duke shall modify the Base Transmission Rider (Rider BTR) for all customers to use a one Coincident Peak (CP) factor for purposes of allocating transmission costs to individual rate schedules and for calculating demand-based charges (e.g., the same methodology utilized by PJM Interconnection to bill load serving entities for Network Integrated Transmission Service and Regional Transmission Expansion Plan). Such modification shall be included in the Company's first filing to adjust Rider BTR made after the Commission approves the Stipulation, without material modification, in these proceedings. Rider BTR shall be updated in accordance with R.C. 4928.06 and Ohio Adm.Code Chapter 4901: 1-36. (Jt. Ex. 1 at 7.)

d. Distribution Service

i. ROE/CAPITAL STRUCTURE

{¶ 101} Duke's capital structure, as of June 30, 2016, to be 50.75 percent equity and 49.25 percent long-term debt and approve a ROE of 9.84 percent until such time as new rates are effective with a new ROE as authorized by the Commission in the Company's next base electric distribution rate case. Duke's overall ROR shall be 7.54 percent and that such overall ROR on rate base be established as fair and reasonable. (Jt. Ex. 1 at 7.)

ii. Rate Base

{¶ 102} The Signatory Parties agree that Duke's rate base and revenue requirement related to distribution service is as detailed in the updated attached Schedules A-1 and B-1, Stipulation Attachment D. (Jt. Ex. 1 at 8, att. D.)

iii. Implementation of New Rates

{¶ 103} Duke shall implement new base distribution rates with the new ESP rates on June 1, 2018, or upon the issuance of a Commission order approving this Stipulation without material modification should that occur after June 1, 2018.

(1) Duke will use the depreciation rates and amortization rates proposed by Staff in its September 26, 2017, Staff Report filed in the *Rate Case*.

(2) Base distribution rates include recovery of $10,720,877 for contract labor related to vegetation management expenses recorded in Account 593.

(3) Base distribution rates include $4.3 million for expenses related to major events (as defined by Ohio Adm.Code 4901: 1-10-01(T).

(4) The customer charge for Rate DP shall be lowered from $229.92 to $100.00. The demand charges for Rate DP will be adjusted accordingly to allow the Company and other rate classes to remain revenue neutral.

{¶ 104} Staff withdraws its recommendation from the Staff Report that all energy efficiency labor expenses be included in rate base, rather than in the energy efficiency rider. Duke will file at least one base electric distribution rate case on or before May 31, 2024. Such rate case shall include a depreciation study completed in connection therewith. No additional depreciation studies are required so long as one is performed as part of a future base electric distribution rate case application. (Jt. Ex. 1 at 8.)

e. Billing Determinants

{¶ 105} Duke shall use the billing determinants in the direct testimony of James A. Riddle, filed on March 16, 2017, as adjusted by Staff, for purposes of recovering its base electric distribution revenue requirement. The base electric rates will be computed using the kilowatt hour (kWh), kilowatt (kW), and customer count numbers that appear on Stipulation Attachment E.

{¶ 106} Duke's monthly residential service customer charge remains at $6.00 per bill for rates RS, ORH, and CUR and that its monthly low-income residential service customer charge remains at $2.00 per bill for rate RSLI. Except as noted in Stipulation Part III.D.3, Duke agrees to keep the customer charge for all non-residential customer classes at their current rate. (Jt. Ex. 1 at 8-9.)

f. Capitalization Policy Accounting

{¶ 107} Duke shall not be required to modify its corporate parent's convention of capitalizing employee bonus expenses; however, so as not to include the value of the employee bonus expenses for incremental investment in Rider DCI and Rider PF in its Ohio jurisdictional rates going forward, Duke shall include a credit in Rider DCI or Rider PF, as applicable, for the estimated revenue requirement impact of capitalizing employee bonus expenses for incremental investment for its Ohio retail customers so as to net out the cost of the bonus expenses.

{¶ 108} Duke shall include in each application to adjust Rider DCI and Rider PF the calculation of the credit for incremental plant to be included in each such rider adjustment, which credit shall commence with the first rider filing made after the effective date of new base rates. (Jt. Ex. 1 at 9.)

g. *Individual Rider Provisions*

{¶ 109} The Signatory Parties agree to the renewal of 14 existing riders as listed on Stipulation Attachment C. In addition, the Signatory Parties agree to two new riders: Rider PF and Rider ESRR. (Jt. Ex. 1 at 9-10.)

{¶ 110} Automatically adjusting riders may temporarily go into effect but shall not be deemed final and shall be subject to reconciliation, 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.

{¶ 111} 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. (Jt. Ex. 1 at 10.)

i. Rider DR-IM

{¶ 112} Rider DR-IM has been updated to reflect the rates approved in Case No. 17-1403-EL-RDR. Once new base rates are implemented, Rider DR-IM shall be discontinued. (Jt. Ex. 1 at 10.)

ii. Rider DCI

{¶ 113} Duke's existing non-bypassable Rider DCI shall be extended through May 31, 2025, subject to the conditions below. Duke shall continue to make quarterly filings based on actual plant in service. Such filings shall be made on or about January 31, April 30, July 31, and October 31 of each year and the updated rates under Rider DCI will be temporarily approved 60 days after filing, subject to reconciliation, unless otherwise suspended by the Commission within that sixty-day period. Any new or impending changes to Duke's capitalization policy that affect its jurisdictional revenue requirement shall be identified in a quarterly filing, along with a quantification of the impact of such changes on the revenue requirement for Rider DCI. New or modified capitalization policies are subject to Commission approval, which approval shall occur sixty days after the quarterly filing in which they are identified, unless otherwise suspended by the Commission. Rider DCI shall continue to be subject to an annual audit, the costs of which will be recovered through Rider DCI.

(1) For 2018, the Rider DCI revenue cap will be $32 million.

(2) For 2019, the Rider DCI revenue cap will be $42.1 million. This amount may be increased to $46.8 million if, in 2018, Duke achieves both reliability standards.

(3) For 2020, the Rider DCI revenue cap will be increased by an additional $14 million, or up to $18.7 million, depending on whether the Company achieves both reliability standards.

(4) For years 2021 through 2024, the Rider DCI revenue cap will be increased by an additional $18.7 million, each year.

(5) For the period of January 1 through May 31, 2025, the Rider DCI revenue cap will be between the range of $62.4 million and $66.3 million depending on the Company's reliability performance in prior years.

{¶ 114} Capital costs included in Rider DCI shall be those recorded in FERC Accounts 360 through 374, provided such costs are not recovered elsewhere. Rider DCI shall be computed by comparing the current rate base associated exclusively with plant accounts recorded in the FERC accounts noted above to the rate base related to the same accounts as included in the overall rate base approved in the most recent base electric distribution rate case. The Rider DCI revenue requirement shall be limited to (i) a return on distribution rate base using the weighted average cost of capital approved in the most recent base electric distribution rate case, grossed up for prevailing tax rates; (ii) depreciation expense; and (iii) property taxes on the incremental rate base (i.e., net plant less Accumulated Deferred Income Taxes (ADIT)) accumulated since the date certain in the Rate Case, grossed up for commercial activity taxes. The pre-tax return of 8.94 percent on rate base is based on the after-tax weighted-average cost of capital, as shown on Schedule A-I of Stipulation Attachment D, grossed up for the current 21 percent federal income tax rate.

{¶ 115} The collection of the revenue requirement shall be based on a percentage of the customer's base distribution charge.

{¶ 116} The Company shall file at least one base electric distribution rate case application on or before May 31, 2024. If the Company files a base electric distribution rate case earlier than May 31, 2024, the revenue caps for Rider DCI will be adjusted to reflect the updated rate case and Rider DCI will continue until May 31, 2025, unless otherwise extended by the Commission. If the Company does not file a base electric distribution rate case application by May 31, 2024, the Rider DCI rate and associated revenue caps will be set to zero on June 1, 2024. Rider DCI shall be updated quarterly and subject to annual audit at the Commission's discretion. (Jt. Ex. 1 at 10-13.)

iii. Reliability Standards

{¶ 117} Duke's CAIDI and SAIFI performance for 2016 and 2017 will not be used to determine any penalty for non-compliance with Ohio Adm.Code 4901: 1-10-10I. The Signatory Parties agree that all matters related to the *Standards Case* are resolved via the terms of this Stipulation as set forth here and below. The CAIDI and SAIFI standards for 2018 through 2025 shall be as follows:

Reliability Standards		
Year	CAIDI	SAIFI
2018	134.4 minutes	1.12 interruptions
2019	134.34 minutes	1.00 interruptions
2020	134.34 minutes	0.91 interruptions
2021	135.52 minutes	0.83 interruptions
2022-2025	137.00 minutes	0.75 interruptions

(Jt. Ex. 1 at 13.)

{¶ 118} Duke may install a battery storage project(s) for the purpose of deferring circuit investments or addressing distribution reliability issues. During the term of the ESP, Duke shall invest no more than $20 million in such beneficial battery storage project(s) in its service territory, with such costs being eligible and recovered through Rider DCI. (Jt. Ex. 1 at 13.)

h. DCI Work Plan

{¶ 119} Duke shall work with Staff to develop an annual plan to emphasize proactive distribution maintenance that will focus spending on where it will have the greatest impact on maintaining and improving reliability for customers. The plan shall specifically include identification of those expenditures that will help reduce customers' minutes interrupted. The plan shall be submitted to Staff annually starting on December l, 2019. (Jt. Ex. 1 at 14.)

i. Rider ESRR

{¶ 120} Duke shall establish a Rider ESRR, which shall be updated annually. The purpose of Rider ESRR shall be to recover costs for actual expenditures for non-affiliated contractor vegetation management services which exceed the test year expenditure for non-affiliated contractor vegetation management services of $10,720,877. All contractor services for vegetation management must be obtained through a competitive bid solicitation.

{¶ 121} The Company shall be subject to an annual audit of its distribution vegetation management expenditures subject to recovery under Rider ESRR for the preceding year.

{¶ 122} Rider ESRR shall be subject to a cost cap of $10 million annually, effective beginning with calendar year 2018. The Company may petition the Commission to amend this cap for exigent circumstances that require additional contractor services; specifically, additional labor or higher rates, which in the aggregate exceed $20,720,877 per year.

{¶ 123} The annual reconciliation audit shall include a requirement that the amount recovered in Rider ESRR was prudently incurred; i.e., pursuant to a CBP which comports with industry standards. The Company's current trim cycle for purposes of vegetation management shall be changed from a four-year trim cycle to a five-year trim cycle. Upon approval of this Stipulation by the Commission without material modification, the Company shall file program changes.

{¶ 124} The Company shall not, through Rider ESRR, recover any rebates, deferrals, or retroactive payments for vegetation management services provided prior to 2018.

{¶ 125} Rates for Rider ESRR shall be allocated based on a percentage of base distribution revenue responsibility. (Jt. Ex. 1 at 14-15.)

j. Rider DSR

{¶ 126} Rider DSR shall be extended to track annual incremental major storm expense, as compared to the amount recovered in base rates. On an annual basis, the

Company shall apply for an adjustment to Rider DSR either to refund over collected amounts or recover under collected amounts as compared to the baseline of $4.3 million.

{¶ 127} Beginning March 31, 2019, and continuing annually thereafter, the Company will file an application to adjust Rider DSR to refund or recover the accumulated balance of the deferred storm cost deferral as of December 31, 2018. Rider DSR shall be billed using the current rate design. Following such a filing, Staff shall submit an audit report and the Company will implement the updated rates following the Commission's Order. To the extent that Staff recommends any disallowance, the Commission may set the matter for hearing before recovery begins. The Company will be allowed to include in Rider DSR any costs billed to it by auditors acting on behalf of Staff in auditing the Company's Rider DSR. Any over- or under-recovery of costs under Rider DSR is eligible for carrying costs at the Company's most recently approved long-term debt rate. (Jt. Ex. 1 at 15-16.)

k. Rider DDR

{¶ 128} Duke's existing Rider DDR shall continue as currently approved. However, Rider DDR shall be adjusted for the updated billing determinants in Stipulation Attachment E. Rider DDR shall be updated annually and subject to annual audit at the Commission's discretion. (Jt. Ex. 1 at 16.)

l. Rider PF

{¶ 129} Duke shall implement Rider PF to recover the costs of those programs, modifications, and offerings related to the continued evolution of the distribution grid and an enhanced customer experience, including programs, modifications, and offerings that may be engendered by the Commission's PowerForward review. Rider PF shall recover both capital and O&M costs not otherwise recovered in base rates or existing rider mechanisms. Rider PF shall have three components, as set forth in the following three paragraphs and as further detailed in Stipulation Attachment F. (Jt. Ex. 1 at 16.)

i. Component One-Commission Directive

{¶ 130} The first component of Rider PF shall be limited to those incremental costs, if any, the Company incurs as a result of a Commission directive issued upon the conclusion of the PowerForward initiative. The recovery of costs will be initiated through a separate proceeding and subject to a hearing. The Company shall be subject to an annual audit of its PowerForward expenditures related to Commission directives. (Jt. Ex. 1 at 16.)

ii. Component Two- Data Access

{¶ 131} The second component of Rider PF will be for the recovery of costs associated with advanced metering infrastructure (AMI) and data access, including the provision of interval CEUD to customers, CRES providers and third parties; the enablement of PJM settlement data transfer enhancements, as detailed in Stipulation Attachment F; and the communication infrastructure needed to support the AMI transition, but excluding the costs of the smart meters themselves. Costs associated with this second component shall be recovered consistent with the plan and cost caps detailed in Stipulation Attachment F. (Jt. Ex. 1 at 16-17.)

iii. Mechanics for Component two-Data Access

{¶ 132} Cost caps will be established for each of the five phases (Phases I through V) and recovery of the prudently incurred costs of each phase will not be available until the designated functionality has been achieved for each phase. Staff may elect to issue a RFP for services to conduct an operational audit on any of the deliverables to ensure that the functionality requirements are performing as expected, with the costs of such audits recovered via Rider PF.

{¶ 133} The first annual filing for the second component of Rider PF will be an application in an electric rider case, separate from the case established for the infrastructure modernization plan associated with component three. In that filing, the costs associated with the first twelve months of work on data access projects would be eligible for cost recovery, subject to a demonstration by the Company that the costs incurred were prudent and the functionality associated with each phase has been successfully implemented and subject to a Staff, and potentially third party, audit. For example, if the functionality associated with Phases I, II, and V.A. were successfully implemented, then the Company would be eligible to recover the prudently incurred costs associated with each phase: up to $1.5 million for Phase I, up to $1.0 million for Phase II, and up to $1.6625 million for Phase V.A.

{¶ 134} In this same initial application, the Company shall submit expenditures for the communications infrastructure investments needed to support the AMI transition and shall recover the prudently incurred costs through Rider PF, subject to the Staff's audit. Cost recovery of the communications system shall not exceed $28,625,000. If a third party other than a CRES provider expresses an interest in receiving CEUD, the Company shall develop a proposal for providing historical interval CEUD to third parties when authorized by customers. The Company may adjust the work plan proposed in Stipulation Attachment F, as needed to accommodate resource availability and manage cost controls, though the total cost caps will not change. (Jt. Ex. 1 at 17-18.)

iv. Component three-Infrastructure Modernization

{¶ 135} The third component of Rider PF will be for the recovery of costs related to an infrastructure modernization plan, which will be filed in a separate proceeding and subject to hearing. The plan will include a proposal to upgrade the Company's CIS. (Jt. Ex. 1 at 17.)

m. Rider PSR

{¶ 136} Duke shall adjust Rider PSR to recover or credit the net amount resulting from transactions, in the wholesale market, relating to Duke's entitlement under the ICPA with OVEC.

{¶ 137} Rider PSR shall be effective with energy and capacity delivered to Duke under the ICPA on and after January 1, 2018.

{¶ 138} The rate design as proposed by the Company in these proceedings shall be modified to provide for an allocation based on 50 percent demand (5 CP, as used in Rider RC) and 50 percent energy. Rider PSR will be charged to customers in all rate classes on a kWh basis. Rider PSR will be effective June 1, 2018, or upon the issuance of a Commission order approving this Stipulation without material modification should that occur after June 1, 2018, to flow through the net credits/charges described above, incurred on or after January 1, 2018, through May 31, 2025, subject to final reconciliation. Except for true-ups of credits or charges being flowed through Rider PSR, there will be no other deferrals (i.e., credits and charges incurred prior to January 1, 2018, will not be included in the rider). Recovery under Rider PSR shall be subject to the following conditions:

(1) Costs related to forced outages exceeding ninety consecutive days shall not be recovered via Rider PSR. Forced outages are those in which no kWhs are delivered by OVEC to the Company.

(2) Capacity performance assessments are excluded from Rider PSR.

(3) The Company shall be subject to an annual prudency review of its practices relating to liquidating its contractual entitlements under the ICPA in the wholesale market.

(4) The Company shall make reasonable efforts to transfer its contractual entitlement under the ICPA, with a status report filed annually.

(5) Credits or charges shall be based on the difference between prudently incurred costs and the revenues from liquidating Duke's OVEC entitlement in PJM's capacity, energy and ancillary services market.

(6) No carrying costs shall accrue to Rider PSR.

{¶ 139} The Signatory Parties recommend that the Commission approach the determination of prudently incurred costs and the reasonableness of the generation revenue for all three jurisdictional EDUs, Duke, the Dayton Power & Light Co., and AEP Ohio, in a uniform manner, pursuant to controlling law, which affords parties of interest with due process. However, the Signatory Parties further recommend that the

Commission resolve such issues relative to each jurisdictional EDU's recovery related to their respective entitlement under the ICPA in separating proceedings.

{¶ 140} Rider PSR shall be updated quarterly and, unless otherwise suspended by the Commission, temporarily approved thirty days after filing subject to subsequent reconciliation based upon an annual audit for which the Commission may order a hearing. (Jt. Ex. 1 at 18-20.)

n. Corporate Separation/Special Customer Services

{¶ 141} Duke agrees to withdraw from these proceedings its proposal that would allow it to offer those products and services other than retail electric service that are included in the proposed tariff language set forth in the entirety of "Part 6 - Special Customer Services," which is found in ESP Attachments JEZ-I and JEZ-2 to the direct testimony of James E. Ziolkowski, the clean and redlined versions, respectively, of the proposed tariffs, Sheet 23, Section IV - Customer's and Company's Installations (Co. Ex. 18, att. JEZ-1 and JEZ-2). Specifically, the following would be deleted from the ESP and Rate Case proceedings:

(1) In the direct testimony of Christian E. Whicker, page 7, revise the sentence starting on line 2 to read as follows: "As confirmed by the Commission's approval of the Third Amended CSP in Case No. 11-3549-EL-SSO, et al., such Third Amended CSP is consistent with state policies set forth in divisions (H) and (I) of R.C. 4928.02, as those policies have been explained to me by counsel. (See Case No. 11-3549-EL-SSO, et al., Opinion and Order, at page 46, wherein the Commission found that the Third Amended CSP is in compliance with R.C. 4928.17 and O.A.C. 490I:1-37 and should be approved.)"

(2) In the direct testimony of Christian E. Whicker, the sentence on page 7 that begins on line 7 and ends on line 11.

(3) In ESP Attachments CEW-2 and CEW-3 to the Direct Testimony of Christian E. Whicker, the redlined and clean versions, respectively, of the Sixth Amended Corporate Separation Plan, the proposed, new, second and third paragraphs under part XII, Section C ("A Detailed Listing of the Electric Utility's Electric Services and the Electric Utility's Transmission and Distribution Affiliates' Electric Services; Distribution").

(4) In ESP Attachments JEZ-I and JEZ-2 to the direct testimony of James E. Ziolkowski, the clean and redlined versions, respectively, of the proposed tariffs, Sheet 23, Section IV - Customer's and Company's Installations, the entirety of Part 6 -Special Customer Services

(5) In the Rate Case direct testimony of Sasha Weintraub, page 5, line 1, through page 10, line 5.

(6) In Rate Case Schedules E-1 and E 2, sponsored by James Riddle, Sheet 23, Section IV - Customer's and Company's Installations, the entirety of Part 6 - Special Customer Services.

(7) Any other provisions not listed herein that would allow the Company to provide products and services other than retail electric service.

{¶ 142} As modified, the Company's Sixth Amended Corporate Separation Plan shall be approved. Nothing herein prohibits Duke from seeking, in a subsequent proceeding, a revision to its Corporate Separation Plan and tariffs to enable the provision of Special Customer Services. (Jt. Ex. 1 at 20-21.)

o. Rider NM and Rider NM-H

{¶ 143} Duke's existing Rider NM and Rider NM-H shall continue, modified to be consistent with the Commission's regulations as have been or may be amended in Case No. 12-2050-EL-ORD (*Net Meter Rules Case*). Riders NM and NM-H shall be available to customers electing to shop with a CRES provider and the Company shall compensate customers for excess generation, only at the applicable prevailing Rider RE rates. Staff's net metering test year adjustment of $67,787 as part of the Staff Report is withdrawn and costs incurred for such compensation shall be recovered via Rider SCR. (Jt. Ex. 1 at 21-22.)

p. Rider UE-GEN and PAR Program

{¶ 144} Duke shall continue its PAR Program and related Rider UE-GEN, as proposed in the ESP application and the Company's supporting testimony, subject to the following modifications. Within six months of the Commission's order, Staff shall issue an RFP, subject to Commission approval, to hire an independent auditor to audit Duke's PAR Program. The scope of the audit shall be determined by Staff and shall include without limitation: the sufficiency of Duke's internal processes and controls for ensuring that Duke is purchasing only those receivables it is authorized to purchase and recover through the PAR Program; the sufficiency of internal processes and controls for monitoring CRES providers' compliance with Duke's PAR Program agreement; and findings and recommendations regarding the foregoing. If, and to the extent the audit includes information furnished to Duke by CRES providers, and such information is deemed "confidential" under the terms of the PAR program agreement or otherwise, the auditor and Staff shall observe such confidential designations; provided, however, that Staff may review such confidential information at the premises of the Company or the CRES provider. The cost of the external auditor incurred by Duke shall be recovered via Rider UE- GEN. (Jt.Ex. 1 at 22.)

q. Rider BDP

{¶ 145} After the issuance of an Order approving this Stipulation, Duke's Rider BDP shall be revised in three steps over a 24 month period beginning the latter of June 1, 2018, or the effective date of the ESP. For customers on Rate DS, the BDP rates will be $4.52 per kW-month in year one, $4.09 per kW-month in year two, and $3.23 per kW-month in year three, for contracted demand. For customers on Rate DP, the BDP rates will be $3.64 per kW- month in year one, $3.29 per kW-month in year two, and $2.60 per kW-month in year three, for contracted demand. (Jt. Ex. 1 at 23.)

r. Certified Supplier Tariff

{¶ 146} Duke's Certified Supplier Tariff (Sheet 20) shall be modified as proposed in the amended ESP application and supporting testimony of Scott Nicholson. The updates to the Supplier Tariff included changes approved in Case No. 11-3549-EL-SSO, et al., and other market enhancements. Those changes include: adding to the End-use Customer list a supplier indicator, providing a customer's electronic mail address, and provide future meter reading dates; Bulk indicator, account identifier (which is not the customer account number); peak load contribution values for current and future periods with start and end dates; and network service peak load values for current and future periods with start and end dates. In addition, Duke added new language for including supplier logos on its consolidated bills and language regarding unauthorized action to its Default section. Duke agrees to add "and customer account number" to the end of 19.1(i). (Jt. Ex. 1 at 23.)

s. Operational Support Plan

{¶ 147} The Signatory Parties agree and recommend that the Commission determine that Duke has fulfilled its Operational Support Plan (Jt. Ex. 1 at 23).

t. Withdrawal of Proposed Riders

{¶ 148} Duke withdraws its proposed Riders RMR and IRM (Jt. Ex. 1 at 24).

u. Significantly Excessive Earnings Test

{¶ 149} The Signatory Parties agree that the method for calculating the Company's ROE for purposes of the annual Significantly Excessive Earnings Test (SEET), as provided for under R.C. 4928.143(F), shall be administered to Duke pursuant to Duke's current methodology, unless otherwise, in accordance with due process, ordered by the Commission. Duke shall initiate a proceeding during the fourth year of its ESP, to address the applicable requirements prescribed under R.C. 4928.143(E). (Jt. Ex. 1 at 24.)

v. Advancement of State Policy

{¶ 150} The Signatory Parties acknowledge and agree that the ESP, as modified by the Stipulation, is consistent with state policy, as set forth in R.C. 4928.02 (Jt. Ex. 1 at 24).

w. Large Customer Interruptible Load Program

{¶ 151} The Signatory Parties agree and recommend that Duke's Large Customer Interruptible Load Program shall terminate effective May 31, 2018, subject to any final reconciliation. Rider DR-ECF shall continue to enable recovery, on a non-bypassable basis, for any costs associated with a reasonable arrangement proposed under R.C. 4905.31 and approved by the Commission. Collection of the Rider DR-ECF revenue requirement shall be based on a percentage of the customer's base distribution charge. (Jt. Ex. 1 at 24.)

x. Tax Cuts and Jobs Act of 2017

{¶ 152} The Signatory Parties agree that the Tax Cuts and Jobs Act of 2017 (TCJA) that took effect on January 1, 2018, reduced the federal tax rate to be applied to income earned by investor-owned utilities and also created liabilities for such utilities related to the return of revenue collected from customers through December 31, 2017, for federal income tax expense (i.e., excess ADITs). The Signatory Parties agree that Rider DCI shall be calculated using the lower federal tax rates established under the TCJA as reflected in the pre-tax return to be used in the Rider DCI calculation described in Paragraph 4(a) of Stipulation Part 111.E. The Signatory Parties understand that this Stipulation does not fully reflect the net savings realized by the Company as a result of the TCJA because certain matters, such as the refund of jurisdictional excess ADITs, remain unresolved. It is the intent of the Signatory Parties to resolve all remaining issues concerning the impact of the TCJA, through Case No. 18-47-AU-COI (*Tax COI*), a successor proceeding, or some other proceeding. The Signatory Parties understand that the Commission is reviewing the full impact on all jurisdictional utilities' rates resulting from the TCJA in the *Tax COI*, and an order in that proceeding, a successor proceeding, or some other proceeding may result in additional impacts to Duke's distribution rates and/or riders, including rates and riders addressed by this Stipulation. The Signatory Parties agree that nothing in this Stipulation shall limit or restrict in any manner, the rights of the Parties to make whatever arguments they deem appropriate in any other proceedings relevant to the TCJA, including the *Tax COI*. (Jt. Ex. 1 at 25.)

y. Hospital Working Group

{¶ 153} Duke shall establish an internal working group that shall be readily available to engage with active members of the OHA in respect of issues related to reliability, maintenance, and load growth as may affect such OHA members. The Hospital Working Group shall meet in person at least once per calendar year during the term of the ESP unless otherwise agreed to by the OHA and Duke. (Jt. Ex. 1 at 25-26.)

z. City of Cincinnati

{¶ 154} The City of Cincinnati and Duke have entered into an agreement relative to a pending complaint proceeding and that agreement provides for a level of cooperation with regard to matters of local concern (Jt. Ex. 1 at 26, att. G).

aa. Funding for Low Income Customers (At Risk Populations)

{¶ 155} Duke's base rates to be approved as part of this Stipulation includes $522,000 for weatherization programs administered by PWC. Said funding shall continue until new base rates are established in a subsequent proceeding.

{¶ 156} The Company shall include an additional $250,000 in electric rate base rates for programs administered by the City of Cincinnati, which programs shall include financial assistance in connection with electric disconnections for nonpayment and energy efficiency programs to assist customers at or below 200 percent of the federal poverty guidelines, with public service announcements about such funding options provided jointly by the Company and the City of Cincinnati. Such funding shall continue until new base rates are established in a subsequent proceeding, subject to the City of Cincinnati's fulfillment of the obligations set forth in Stipulation Attachment G. (Jt. Ex. 1 at 26.)

bb. Three-Part Test

{¶ 157} The Signatory Parties agree that the Stipulation satisfies the three-part test traditionally used by the Commission to consider stipulations (Jt. Ex. 1 at 28).

F. Procedural Issues

1. CONFIDENTIALITY OF OVEC FORECAST

{¶ 158} On August 9, 2018, a joint motion for reconsideration was filed by the Conservation Groups. The Conservation Groups note that on July 10, 2018, Duke witness Judah Rose provided testimony in support of the Stipulation. Specifically, the Conservation Groups state that Mr. Rose's testimony supported Duke's request to modify the PSR. As part of his testimony, Mr. Rose forecasted the projected costs of Duke's OVEC share. In a June 6, 2018 motion for protective order, Duke requested to maintain Mr. Rose's formulas and calculations as confidential. At the start of the hearing, Duke stated that it was no longer seeking protection for Mr. Rose's projection of Duke's total share of OVEC costs, for the seven year term of the rider, which was $77 million. In the hearing on July 10, 2018, Sierra Club asked that Mr. Rose's annual OVEC projections not be considered confidential. At that time, according the Conservation Groups, the attorney examiners denied Sierra Club's request. The Conservative Groups' August 9, 2018 motion asked the attorney examiners to reconsider the previous ruling from the hearing.

{¶ 159} Duke filed a memorandum contra the Conservation Groups' request on August 18, 2018. Thereafter, on September 6, 2018, the attorney examiner reaffirmed the initial ruling regarding the confidentiality of Mr. Rose's OVEC forecast.

{¶ 160} On brief, the Conservation Groups and OCC argue that the attorney examiners' ruling that annual PSR projections are a trade secret lacks evidentiary support. The Conservation Groups and OCC maintain that Duke failed to provide sufficient evidence to support the confidentiality of the numbers and, thus, the Conservation Groups and OCC assert that the numbers cannot be considered trade secrets because no competitive harm would take place nor would any proprietary information be released.

The Conservation Groups and OCC contend that the attorney examiner failed to reverse their mistake on reconsideration and asks the Commission to correct this error.

{¶ 161} R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000). Similarly, Ohio Adm.Code 4901-1-24 allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document "to the extent that state or federal law prohibits release of the information, including where the information is deemed * * * to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code." Ohio law defines a trade secret as "information * * * that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." R.C. 1333.61(D).

{¶ 162} The Commission finds the Conservation Groups and OCC's argument to be without merit and affirms the attorney examiners' rulings from July 10, 2018, and September 6, 2018. Consistent with our previous rulings, we find the annual projections constitute trade secrets and should remain confidential. See ESP 3 Case, Opinion and Order at 10-11 (Apr. 2, 2015) The annual numbers maintain independent economic value that demonstrate important specifics of what is going on at power plants participating in the wholesale market (Confidential Tr. Vol. II at 280). Thus, releasing such information could have a detrimental effect on both Duke and OVEC. Further, the numbers are derived from the proprietary formulas of Mr. Rose. As previously determined by the attorney examiners, some information necessarily should be made open to the public. This includes the total projected cost of the PSR, $77 million, as well as Mr. Rose's forecast that each year of the rider is likely to result in a cost to customers. Accordingly, the request of the Conservation Groups and OCC is denied.

2. Motions for Protective Order

{¶ 163} Motions for protective orders have been filed in the docket in these proceedings regarding documents filed under seal by the Conservation Groups, OCC, Sierra Club, Duke, and IEU-Ohio. No memorandum contra the motions for protective orders were filed. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by Supreme Court of Ohio in *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997), the Commission finds that the documents filed under seal in this docket contain trade secret information. Their release, therefore, is prohibited under state law. We also find that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, we note that the filings and documents have been redacted to remove the confidential information and the public versions of the pleadings and documents have been docketed in this proceeding. With respect to the pending motions for protective orders, we note that the Commission has previously granted protective treatment for portions of briefs filed underseal and testimony containing sensitive data, including information that appears to reveal matters relating to competitive business information. *ESP 3 Case,* Opinion and Order (Apr. 2, 2015) at 10-11. The Commission finds that the unopposed motions for protective treatment filed by the Conservation Groups, OCC, Sierra Club, Duke and IEU-Ohio are reasonable and should be granted.

{¶ 164} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. The Commission finds that confidential treatment shall be afforded to the information filed under seal for a period ending 60 months from the date of a final, appealable order in this proceeding. Until that time, the Docketing Division shall maintain, under seal, the information filed confidentially. Further, Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If a party wishes to extend its confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend the confidential treatment is filed, the Commission may release the information without prior notice.

IV. Discussion

{¶ 165} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123,125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

{¶ 166} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re the Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. 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?

{¶ 167} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

{¶ 168} The Signatory Parties contend that the Stipulation complies with the first criterion of the three-part test. Duke witness Spiller testified that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. In support of the Signatory Parties' position, Duke witness Spiller states that she participated in the negotiations that led to the Stipulation (Co. Ex. 5 at 26-27). Further, Duke witness Wathen states that he participated in the settlement discussions by attending several individual party meetings, as well as the settlement meetings held at the Commission's offices to which all parties were invited (Co. Ex. 30 at 2-3). Staff witness Donlon states that the Stipulation is the result of a lengthy process of negotiation, involving experienced, competent counsel representing members of many stakeholder groups and the parties involved in these proceedings also employ experts in the industry (Staff Ex. 17 at 11). Duke notes that OCC attempts to impose a diversity of interests element as a component of the first prong of the three-part test. Duke states that diversity of interests is not a prerequisite for validation of a settlement. Nonetheless, Duke notes that, besides the Company and Staff, the Signatory Parties include two low-income residential customer advocates (OPAE and PWC); the City of Cincinnati; industrial and commercial customer advocate (OEG); and a commercial customer (OHA). The Non-Opposing Parties include commercial customers (Kroger, Wal-Mart, and Sam's Club) and commercial customer advocates (OMAEG and IEU). Accordingly, the Signatory Parties reason that the Stipulation complies with the first prong of the three-part test. (Jt. Ex. 1 at 1)

{¶ 169} OCC argues that the support for the settlement is narrow and limited and lacks a diversity of interests. OCC witness Kahal states that the Commission should note the active opposition of OCC. OCC contends that because none of the signatory parties (other than Staff) have filed testimony supporting the Stipulation it makes it difficult to determine what their support is based on. (OCC Ex. 20 at 20.) In its brief, OCC argues there was not serious bargaining because parties were not aware of the negotiations in the reliability case and OCC was excluded from the settlement process. Additionally, OCC claims that the Stipulation is the product of a settlement process that gives the utility unfair bargaining power by virtue of its opportunity to veto any Commission modifications to the proposed ESP.

{¶ 170} The record conclusively demonstrates the participation of all parties in the settlement negotiations over several months. No class of customers was intentionally excluded from settlement discussions. *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). The Commission also notes that the vast majority of the parties in these cases are represented by experienced counsel familiar with Commission proceedings. Most of the parties in these matters regularly and actively participate in regulatory and rate matters before this Commission. Additionally, the Commission notes that the Stipulation is supported by many stakeholder groups. Accordingly, the Commission finds, based upon the record in these proceedings, the Stipulation is the product of serious bargaining among capable, knowledgeable parties. (Joint Ex. 1 at 1; Co. Ex. 5 at 26-27; Co. Ex. 30 at 2-3; Staff Ex. 17 at 11)

{¶ 171} Regarding OCC's disapproval of the settlement process, the Commission notes that it is a statutory provision, R.C. 4928.143(C)(2)(a), that permits an EDU to withdraw an ESP modified and approved by the Commission. As OCC is well aware, authority to eliminate ESPs rests with the legislature, not the Commission.

B. Does the settlement, as a package, benefit ratepayers and the public interest?

{¶ 172} Pursuant to the second criterion of the test, the Commission must determine whether the settlement, as a package, benefits ratepayers and the public interest.

{¶ 173} The Signatory Parties contend the Stipulation contains a multitude of benefits for ratepayers and the public interest. Duke and Staff submit that the Stipulation, as a package that resolves four complicated proceedings, provided for unique and constructive negotiations. The end result, according to Duke, is a package that offers ratepayers safe, reliable electric service at stable, affordable rates.

{¶ 174} A major benefit of the Stipulation, according to Duke and Staff, is a $19.17 million reduction in base distribution revenue. Duke states it originally applied for a $15.4 million increase, which it believes it is entitled to, so accepting the reduction is a significant concession and a benefit to ratepayers (Co. Ex. 1). Staff asserts that the reduction will be spread evenly across all rate classes. Duke contends that, because of the revenue reduction, once all riders are factored in, including Rider PSR, customers will experience very little change on their bills. (Co. Ex. 30 at 6.)

{¶ 175} Another benefit of the Stipulation, according to Duke and Staff, is the rate consistency offered by the ESP. Specifically, both Duke and Staff note that the ESP is for a seven-year term that expires on May 31, 2025. As previous ESPs were only three-year terms, this ESP provides SSO customers with stability and consistency and avoids reoccurring litigation, according to Duke. As part of the ESP, generation will continue to be provided via a CBP. Duke states this auction process is practical for both customers and suppliers and its continuation is a benefit of the Stipulation. Another benefit associated with the ESP and the Stipulation, as described by Duke and Staff, is the proposed adjustments to Rider DCI. The Stipulation provides caps on the amount of revenue the Company may collect each year under the rider and incentivizes Duke to hit specific reliability targets, among other parameters. (Jt. Ex. 1 at 4-5.) Staff asserts these additional parameters significantly improve Rider DCI.

{¶ 176} Duke and Staff also aver that Rider PF is a major benefit provided by the Stipulation. Duke notes the Commission's goal, via the PowerForward initiative, is to foster grid modernization and enhance the customer experience. Duke submits that Rider PF furthers that initiative. Specifically, the Company states that Rider PF will improve AMI to enable CRES providers to access CEUD. Duke contends this will allow CRES providers to offer more innovative and beneficial products to shopping customers. Staff agrees, stating that access to CEUD will give customers more control over the services they consume. Staff also notes that spending associated with Rider PF will be capped and subject to review (Jt. Ex. 1 at 11).

{¶ 177} Regarding Rider PSR, Duke maintains that it will benefit ratepayers by serving as a cyclical hedge against generation costs. According to Duke, when generation costs are high, Rider PSR will provide a rate reduction, and, conversely, when generation costs are low, Rider PSR will be an additional cost. The end result, per Duke, is a more consistent and balanced month-to-month bill for customers. (Co. Ex. 8 at 14.) Further, while the rider is projected as a cost to customers, the Company submits that it has the potential to reduce customers' rates. Duke additionally emphasizes that the inclusion of Rider PSR in the Stipulation was an important bargaining point that allowed the Company to make other, significant concessions in negotiations. Duke also states that Rider PSR is necessary for the Company to maintain credit quality. According to Duke, the Company maintaining a sufficient credit rating is important in order to access capital markets and make capital investments to ensure safe and reliable service for customers. (Co. Ex. 22 at 15.) Further, both Duke and Staff claim that Rider PSR is similar to riders authorized for other utilities in Ohio.

{¶ 178} Duke, Staff, PWC, and OPAE additionally point out that the Stipulation will directly benefit low-income customers. Specifically, the Stipulation directs Duke to provide $522,000 annually to fund programs administered by PWC to assist low-income customers with weatherization techniques. Further, the Stipulation also requires that the Company provide $250,000 annually to the City of Cincinnati to educate low-income customers regarding energy efficiency and to help those customers avoid disconnection. (Jt. Ex. 1 at 26.)

{¶ 179} In sum, the Signatory Parties assert that the adoption of the Stipulation is in the public interest. The parties maintain there are numerous benefits associated with resolving these four complex cases. As a package, according to Duke, the Stipulation provides customers with safe, affordable, and reliable service going forward and meets the second prong of the Commission's three-part test for stipulations.

C. *Does the settlement package violate any important regulatory principle or practice?*

{¶ 180} Duke, Staff, OPAE, and PWC all argue that the Stipulation does not violate any important regulatory principle or practice. The Company contends that the ESP established by the Stipulation is consistent with R.C. 4928.143. Further, Duke avers that the various riders included in the ESP are permissible provisions pursuant to R.C. 4928.143. Regarding Rider PF and Rider DCI specifically, Duke states that they are allowable incentives for distribution infrastructure and modernization. The Company notes that the Commission previously found Rider PSR to be permissible under R.C. 4928.143(B)(2)(d), as the rider serves as a financial limitation on customer shopping for retail electric generation.

{¶ 181} Duke and Staff also maintain that the ESP proposed in the Stipulation is more favorable in the aggregate than an MRO, which is a requirement of R.C. 4928.143(C)(1). Duke and Staff submit that the SSO rates under either form are effectively the same, but qualitative benefits associated with the proposed ESP make it more favorable. For example, according to Duke and Staff, Rider DCI allows the Company to be more flexible and respond proactively to address infrastructure needs. Additionally, Rider PF allows Duke to invest in grid modernization and make enhancements in line with the Commission's PowerForward directives.

{¶ 182} Duke and Staff conclude that the Stipulation does not violate any statutes or Commission rules. Duke additionally maintains that the ratemaking in the settlement is consistent with cost causation principles, as well as principles regarding gradualism and reasonable bill impacts. Therefore, according to Duke, Staff, OPAE, and PWC, the Stipulation satisfies the third portion of the test. The Signatory Parties thus request that the Commission approve the Stipulation without modification.

D. *Opposition to the Stipulation and Objections to the Staff Report*

{¶ 183} A number of parties opposed the Stipulation, on a variety of grounds. In general, opposing parties assert that the Stipulation, as a package, is not beneficial to ratepayers and violates Ohio statutes and other regulatory practices. Additionally, relevant objections to the Staff Report are addressed herein.

1. TARIFF LANGUAGE

{¶ 184} OCC avers that the tariffs for several riders should include language stating that the charges are subject to refund. OCC notes that the Supreme Court of Ohio has found that, unless there is explicit language allowing refund, a utility that imprudently collects costs is not obligated to return that money to customers, citing *In re Rev. of Alternative Energy Rider Contained in the Tariffs of Ohio Edison Co.*, 153 Ohio St.3d 289, 2018-Ohio-229, 106 N.E.3d 1 (*FirstEnergy Rider AER Case*). In order to protect customers against imprudent costs, OCC offers proposed language that should be included on all tariffs (OCC Br. at 24). Without such language, OCC submits that customers will be unprotected from unjust and unreasonable rates.

{¶ 185} Staff replies that the Stipulation provides language that contemplates potential refunds. Staff also asserts proper refund language is being added to all tariffs as they are updated. According to Staff, the process outlined in the Stipulation is compliant with the Supreme Court of Ohio's directives. Duke agrees and states the Commission has already approved reasonable tariff language addressing OCC's concerns. Duke avers that OCC's proposed language is unreasonable and overbroad and goes against precedent. Further, according to Duke, R.C. 4903.16 already provides parties a remedy to seek a stay of alleged unlawful rates.

{¶ 186} The Commission declines to adopt OCC's requested modifications to tariff language. Initially, we note that we have addressed OCC's concerns regarding refund language on multiple occasions.[2] In doing so, the Commission has approved language that allows a process for refunds and also comports with the Supreme Court's directives in the *FirstEnergy Rider AER Case*. Here, the Stipulation proposes similar language (Jt. Ex. 1 at 10) and we do not find any alterations are necessary.

2. TAXES

{¶ 187} According to OCC, the Stipulation does not properly consider the TCJA. OCC states that the TCJA reduced the corporate income tax rate from 35 percent to 21 percent. OCC witness David Effron testified that Duke's revenue requirement, as determined by the Stipulation, improperly uses the old 35 percent tax rate. Mr. Effron explained that over $39 million of the Company's revenue requirement is attributed to tax expenses. Mr. Effron continued, saying if the current 21 percent tax rate is used, instead of the previous 35 percent rate, the tax expenses should be reduced nearly $16 million. Mr. Effron acknowledged that there are ongoing proceedings for all utilities to address the TCJA in the *Tax COI*, but avers that it is prudent and reasonable to address the current tax implications now. Mr. Effron additionally stated that, while the Stipulation attempts to

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[2] *See, e.g., In re Duke Energy Ohio, Inc.,* Case No. 17-2088-EL-RDR, et al., Finding and Order (Mar. 28, 2018) ; 14-1693-EL-RDR *In the Matter of the Application of Ohio Power Company for Approval Of Certain Accounting Authority,* Opinion and Order (Apr. 4, 2018).

address the TCJA by modifying the ROR used in Rider DCI, the rider only addresses distribution plant and not other components that factor into the distribution rate base. (OCC Ex. 9 at 5-10.)

{¶ 188} Staff asserts that all implications from the TCJA are either addressed explicitly in the Stipulation, the *Tax COI*, or Case No. 18-1185-EL-ATA (*Rider TCJA Case*). Staff states that, per the terms of the Stipulation, Duke agree to incorporate the new tax rate into all applicable riders (Staff Ex. 8 at 4). The Company agrees, and acknowledges that the Stipulation specifically discusses the pending *Tax COI* and does not limit any party's rights in the *Tax COI* proceeding. Duke further maintains that it intends to ensure all its customers receive the benefits of the TJCA through the *Rider TCJA Case*. (Co. Ex. 30 at 12-13.) Thus, Duke and Staff insist that the Stipulation properly considers the ramifications of the TCJA and that no modifications are necessary.

{¶ 189} The Commission agrees with Staff and Duke that the Stipulation sufficiently acknowledges the implications of the TCJA. The Stipulation appears to recognize that not all of the tax savings from the TCJA appear within the settlement, as the *Tax COI* and the *Rider TCJA Case* were still ongoing when the settlement was filed (Jt. Ex. 1 at 25). The Commission is committed to ensuring that all benefits from the TCJA be returned to customers. *See Tax COI*, Finding and Order (Oct. 24, 2018) at ¶ 27. Subject to our decision in the *Tax COI*, and the resolution of the *Rider TCJA Case*, we find the language in the Stipulation properly considers the impacts of the TCJA and ensures that ratepayers will receive all associated benefits.

3. RELIABILITY STANDARDS

{¶ 190} As discussed, one of the proceedings resolved by the proposed Stipulation is the *Standards Case*. Ohio Adm.Code 4901:1-10-10 requires the Commission to establish minimum reliability standards for each EDU. The standards used are CAIDI, which represents the average duration of outages, and SAIFI, which represents the average number of outages per customer. The standards proposed in the Stipulation are as follows:

Reliability Standards		
Year	CAIDI	SAIFI
2018	134.4 minutes	1.12 interruptions
2019	134.34 minutes	1.00 interruptions
2020	134.34 minutes	0.91 interruptions
2021	135.52 minutes	0.83 interruptions
2022-2025	137.00 minutes	0.75 interruptions

(Jt. Ex. 1 at 13.)

{¶ 191} OCC submits that the proposed standards do not benefit customers and were developed improperly. According to OCC, the proposed CAIDI standards are less stringent then the previous standard of 122.81 minutes per interruption that was in place in 2015, 2016 and 2017. OCC notes that Duke failed to meet that benchmark in 2016 and 2017. Similarly, OCC states that the SAIFI standards are also less stringent then the previous standards. The standard in 2015, 2016, and 2017 was 1.05 interruptions per customer and, per OCC, Duke did not meet that standard in 2017. OCC witness Peter Lanzalotta testified that there is no reason to relax the standards for Duke when the Company is failing to comply with the current standards. OCC additionally asserts that Ohio Adm.Code 4901:1-10-10(B) creates guidelines directing how the reliability standards should be created. However, Mr. Lanzalotta contends Duke and Staff did not disclose their methods and it is unknown whether those guidelines were followed. Mr. Lanzalotta concludes that permitting Duke to offer less reliable service is not in the public interest and thus the standards, and the Stipulation, should be rejected. (OCC Ex. 19 at 9-12.)

{¶ 192} Duke and Staff contend that OCC's concerns are unfounded. Initially, regarding the guidelines outlined in Ohio Adm.Code 4901:1-10-10(B), Duke asserts that it complied with the rule. According to the Company, the requirement of the rule is that the utility's application comply with the guidelines; Duke states that the application it filed on July 22, 2016, complies with those guidelines and that OCC does not assert otherwise. Regarding the reliability standards, Duke and Staff highlight Staff witness Jacob Nicodemus' testimony, where he avers that CAIDI can increase as the result of fewer customers experiencing an outage. Mr. Nicodemus further testified that Duke is committing to reduce its SAIFI standard by 30 percent, which will equate to 30 percent fewer customers experiencing an outage. Duke and Staff support Mr. Nicodemus' conclusion that Duke customers will experience improved reliability and that the Commission should adopt the reliability standards proposed in the Stipulation. (Staff Ex. 3 at 12-13.)

{¶ 193} The Commission finds that the reliability standards proposed in the Stipulation are reasonable. In establishing reliability standards, Ohio Adm.Code 4901:1-10-10(B) requires an EDU to conduct a customer perception survey. This provides insight to the Commission as to whether the standards comport with the expectations of ratepayers. Duke most recently conducted a survey in 2015 and the results indicate that the Company is currently meeting the reliability expectations of customers. Further, the survey showed that customers expect reliability to continuously improve. (Staff Ex. 3 at 10-11, att. JN-1 and JN-2.) The proposed standards align with those expectations. Over the course of the ESP, Duke is committed to a 30 percent reduction in SAIFI, which correlates to 30 percent fewer customers experiencing outages (Staff Ex. 3 at 13). Although the Stipulation calls for the CAIDI standard to slightly increase, where the average duration of an outage may be longer, the Commission is persuaded by the testimony of Mr. Nicodemus that this is a natural result of significantly fewer outages occurring. With the reduction in total outages, the average outage duration for each customer will decrease. (Staff Ex. 3 at 12-13.) Therefore, we find that the proposed standards comply with customer expectations and result in increased reliability. We additionally find OCC's argument regarding Duke's compliance with Ohio Adm.Code 4901:1-10-10(B) is misplaced. The rule pertains to the utility's application to establish reliability standards and we find no evidence that the Company's application failed to comply with the requirements (Co. Ex. 4).

4. Rider DCI

{¶ 194} As part of the Stipulation, the Signatory Parties request to continue Rider DCI, which was originally created in the *ESP 3 Case*. The purpose of Rider DCI was to allow Duke to invest in capital infrastructure and take a proactive approach to address reliability. In seeking to continue Rider DCI, the Signatory Parties submit that the rider will still be subject to an annual audit and a yearly revenue cap. The cap will start at $32 million for 2018 and increase each year. In 2019 and 2020, the cap will increase an additional $4.7 million if Duke achieves both its reliability standards. (Jt. Ex. 1 at 10-12.)

{¶ 195} OCC contends that the continuation of Rider DCI does not benefit ratepayers. OCC points out that, prior to the approval of Rider DCI in the *ESP 3 Case*, Duke was consistently meeting its reliability standards. However, notes OCC, the Company has routinely failed to meet reliability standards since Rider DCI was established. OCC thus submits that the rider has no positive effect on system reliability and only serves as an unnecessary cost for ratepayers. OCC witness James D. Williams testified that it is unreasonable for customers to continue to pay for Rider DCI if Duke continues to not meet its reliability standards (OCC Ex. 8 at 39). OCC additionally maintains that approval of Rider DCI should be supported by evidence that the rider will strengthen reliability. Here, OCC asserts Staff failed to properly scrutinize Duke's application before making its recommendation. Specifically, OCC notes that the Stipulation proposes to create two new programs that would be funded by Rider DCI, including the Self-Optimizing Grid program. Mr. Williams states Staff failed to examine whether this new program will have a positive effect on reliability. According to Mr. Williams, previous, similar self-healing teams operated by Duke were not successful.

(OCC Ex. 8 at 34.) Thus, according to OCC, it is imprudent to approve Rider DCI without a proper analysis of its costs and benefits.

{¶ 196} Duke maintains that Rider DCI will be beneficial to customers by having a positive impact on reliability and that OCC's arguments lack merit. Duke states it is counterintuitive for OCC to insist that, because Duke did not meet reliability standards Duke should not invest in its distribution system to improve reliability. According to the Company, the recoverable programs under Rider DCI allow Duke to proactively address aging infrastructure. Duke witness Dr. Richard E. Brown testified that the Company's investment into the distribution system is reasonable and prudent, but not necessarily focused on specifically meeting the performance standards. Dr. Brown states that, with aging infrastructure, failure rates increase and reactive maintenance costs correspondingly increase. Thus, per Dr. Brown, distribution investments are necessary but may not immediately be evident through the performance indices. (Co. Ex. 12 at 10.) Further, while OCC contends that new programs funded by Rider DCI lack sufficient examination and justification, Duke avers that its commitment to decrease SAIFI demonstrates the Company's expectations for the programs.

{¶ 197} OCC additionally contends that Rider DCI should not be approved without further review and stakeholder input. OCC explains that the rider is only subject to a financial audit and there is no requirement for the plan to verify Rider DCI's impact on reliability on a regular basis. While the Stipulation requires Duke to work with Staff to develop an annual plan, OCC argues that other invested stakeholders should be included in that development to ensure spending and planning is reasonable.

{¶ 198} Duke replies that the Stipulation ensures there is sufficient oversight. Duke first notes that the Company must meet reliability standards in order to receive compensation for its investments. Further, according to Duke, the Company must submit annual reports with the Commission that detail all of the programs funded by Rider DCI.

Duke states that this is in addition to the spending caps and regular financial audits. The Company thus contends that OCC's argument is misplaced and should be ignored.

{¶ 199} Finally, OCC submits that Rider DCI should not be approved pursuant to R.C. 4928.143(B)(2)(h) because Duke's expectations and its customers' expectations concerning reliability were not aligned. R.C. 4928.143 permits a utility's ESP to include provisions regarding distribution service, provided customers' and the utility's reliability expectations are aligned and the utility is placing sufficient emphasis on and dedicating sufficient resources to reliability of the distribution system. OCC explains that the Opinion and Order approving ESP 3 and Rider DCI found that the expectations were aligned, noting that Duke was consistently meeting reliability standards. As Duke has not met the reliability standards of late, OCC avers that the Company's reliability expectations are not aligned with its customers. Thus, OCC argues that Rider DCI does not comply with R.C. 4928.143(B)(2)(h) and should not be approved.

{¶ 200} Duke states that OCC's argument is without merit. Duke avers that the reliability standards are unrelated as to whether interests are aligned. According to Duke witness Cicely Hart, recent surveys indicate that both residential and commercial customers highly value reliability (Co. Ex 17 at 16, att. CMH-2). The Company insists that the investments from Rider DCI will prevent further deterioration of the distribution grid and will result in significant improvements to reliability. Thus, Duke avers that its focus on reliability is in alignment with customers' expectations.

{¶ 201} The Commission finds that Rider DCI should continue. In originally approving the rider, in the last ESP, we discussed the prudency of a proactive maintenance program. The Commission noted that requiring a utility to be reactionary, and waiting for infrastructure to first deteriorate, was detrimental to the state's economy. *ESP 3 Case*, Opinion and Order (Apr. 2, 2015) at 71. That same understanding continues to apply. The continuation of Rider DCI puts a sufficient focus on the importance of reliability and allows the Company to maintain, improve, or replace aging infrastructure. Customers have indicated to Duke the importance of reliability and their desire for reliability to improve (Staff Ex. 4, JN-1 and JN-2). OCC's assertion, that because Duke did not meet previous reliability standards, the Company's expectations are not aligned with its customers' expectations is misplaced. The Company has made substantial investments in its distribution infrastructure, through, for example, underground cable replacement and pole replacement programs, and demonstrates a continued focus on reliability (Co. Ex. 17 at 7-8). Addressing infrastructure that is actively deteriorating may only prevent reliability from worsening and may not be reflected in performance indices (Co. Ex. 12 at 10). Accordingly, the Commission finds that, pursuant to R.C. 4928.143(B)(2)(h), Duke's expectations are sufficiently aligned with those of its customers.

{¶ 202} The Commission additionally finds that the Stipulation provides appropriate oversight and consumer protections for Rider DCI. We note that the agreement creates annual spending caps, some of which are expressly tied to whether the Company satisfies its reliability standards. Additionally, in order to confirm proper spending, the Stipulation provides that Rider DCI will be subject to annual audits, at the Commission's discretion. Finally, the proposed agreement requires that Staff and Duke develop an annual plan to focus spending in areas that will have the greatest impact on reliability. (Jt. Ex. 1 at 10-14.) Contrary to OCC's contention, we find these provisions grant sufficient oversight to ensure spending is efficient and purposeful.

5. Battery Storage Project

{¶ 203} Under the proposed Stipulation, Duke may establish a battery storage project. The purpose of the project would be to defer circuit investments and/or address distribution reliability issues. The agreement allows the Company to invest up to $20 million, which would be recovered through Rider DCI. (Jt. Ex. 1 at 13.)

{¶ 204} According to OCC, the battery storage project would not benefit ratepayers and is not in the public interest. Initially, OCC notes there are too many unknowns to justify going forward with the project. OCC states the design, location, and number of projects is not discussed. As discussed by OCC witness Barbara Alexander, no cost-benefit analysis was completed to compare the project to a more traditional investment and there is no specific criteria to examine whether the project is accomplishing its directives. Ms. Alexander testified that the project might be worthwhile if Duke was expending shareholder funds, but the project as proposed is not justified without significantly more information. (OCC Ex. 12 at 33-36.)

{¶ 205} The Conservation Groups do not oppose a non-wires approach to address distribution concerns, but they submit the project is not in the public interest unless it is modified. The Conservation Groups agree with OCC that more information and a formal plan submitted for pre-approval is necessary. ELPC witness Mark Higgins testified that Duke should consider the utility's distribution needs, consider both traditional and non-wires solutions, and solicit non-wires solutions from third parties. According to Mr. Higgins, this ensures the project is cost-effective and able to meet the needs and expectations of customers. (ELPC Ex. 3 at 29-32.)

{¶ 206} IGS argues that Duke's intentions with the battery storage program go beyond the limitations of the Stipulation. IGS explains that the Stipulation permits a battery storage system for deferring circuit investments or addressing distribution reliability issues; further, recoverable costs must qualify as distribution equipment as defined by the FERC uniform system of accounts. According to IGS, however, Duke intends to use the batteries to enter the frequency regulation (FR) market, which is a PJM wholesale market. RESA/IGS witness Joseph Haugen testified that this creates multiple problems. First, he submits that entering the FR market is not allowable under the parameters of the Stipulation. Mr. Haugen further states that if the batteries are used for FR, they would not qualify as a distribution resource under FERC's accounting system and thus would not be eligible for recovery through Rider DCI. Additionally, according to Mr. Haugen, the project violates R.C. 4928.02, as ratepayers would be subsidizing Duke's entry into the competitive FR market. Mr. Haugen maintains that Duke would receive an unfair advantage in the FR marketplace if the Company can recoup its capital investments from ratepayers. (RESA/IGS Ex. 4 at 5-8.) For these reasons, IGS asks that Duke's proposed battery projects be prohibited from participating in wholesale markets.

{¶ 207} Duke responds that the battery storage project is legal and beneficial to customers. Duke maintains that projects such as this will provide distribution system operational flexibility and efficiencies. The Company avers that the battery storage project is consistent with the Commission's PowerForward initiative and that the project needs to be built and tested before the value of the project can be demonstrated. Duke also dismisses IGS's argument that the battery storage project would be an illegal and anticompetitive subsidy. According to Duke, it does not provide competitive retail energy service and is thus not a competitor of retailers such as IGS. Duke additionally states the Commission can gain more information from the utility's operation of the project, as opposed to an unregulated business, as the Commission can gain financial and operational knowledge to guide future policy. Further, asserts Duke, any revenue obtained in the PJM marketplace from the project would offset costs to customers. The Company contends this is a common industry practice and a benefit to ratepayers. As to IGS's assertion that the project is outside the bounds of the Stipulation, Duke explains that, while the battery project may not qualify as distribution resource under FERC's accounting methods, the Commission has the authority to approve the project and cost recovery. Finally, Duke asks that the Conservations Groups' request for modification be denied. The Company states the request is overly burdensome and would delay the project by years.

{¶ 208} The Commission will allow the battery storage project to go forward, as a pilot project. We find this project is consistent with the state policy espoused in R.C. 4928.02 to encourage innovation and to facilitate the state's effectiveness in the global economy. As a pilot project, the purpose of any such initiative is to explore innovative concepts in order to gather information. As stated by the Company, a project run through a regulated utility grants the Commission financial and operational data it would not otherwise be privy to. In order to obtain such information, we find the project should be subject to pre-approval from the Commission and ongoing monitoring. Duke should file its application detailing its proposed battery storage project in a separate proceeding. The application should be consistent with the Commission's PowerForward roadmap. As stated in the Stipulation, cost recovery of the project will be eligible and recoverable through Rider DCI. (Jt. Ex. 1 at 13.)

6. AMI TRANSITION

{¶ 209} As discussed, Duke proposes to replace the AMI infrastructure for residential customers. Currently, residential customers have meters, made by Echelon, that communicate via a node environment. Nonresidential customers have meters made by Itron that use a mesh environment. The difference between the two environments was described by Duke witness Donald Schneider. Duke maintains that there were various unforeseen issues with the Echelon meters, such that it would be exceedingly expensive to repair or upgrade the meters. Thus, Duke seeks to replace the Echelon with Itron meters. The cost to replace the meters would be around $143 million. (Co. Ex. 11 at 8-13.) As proposed, capital investments for the new meters would be recovered through Rider DCI and O&M costs would be recovered in Rider PF. (Jt. Ex. 1)

{¶ 210} OCC first argues that Duke should be held accountable for a series of imprudent decisions involved in the initial installation of the Echelon meters. OCC notes that Duke first began installing the meters in 2007 and achieved full deployment in 2015. OCC states that, prior to installation, Duke promised that the new infrastructure would provide innumerable benefits including real-time data, billing system functionality for marketers, and billing-quality data. According to OCC, during the course of the rollout, the Company learned that the node system would not operate with nonresidential customers and another system would need to be put in place for those customers. OCC asserts that Duke also discovered that the node system would not produce billing quality interval data. OCC submits that the Company could have and should have addressed these issues as they arose. Instead, OCC contends that Duke continued to install AMI that the Company knew would not deliver its promised benefits. (OCC Ex. 12 at 26-31.) Because the current meters cannot meet their deliverables, and because Duke should have addressed that immediately, OCC asks that the Commission exclude the remaining book value of the system from Duke's rate base. According to OCC, when setting rates, R.C. 4909.15(A)(1) requires the Commission to determine the value of utility property that is used and useful. OCC contends the meters do not qualify as used and useful and that Staff has failed to make a determination as to whether the meters are used and useful. Thus, reasons OCC, the $68.7 million book value of the Echelon, meter should be disallowed.

{¶ 211} OCC further maintains that is imprudent for Duke to seek a complete replacement of all Echelon meters. OCC initially notes that the Echelon meters have a useful life of 20 years and the communication nodes have a useful life of ten years. OCC explains that, as Duke started installation of the meters in 2008 and finished installation three years ago, most of the meters should still have years of useful life. OCC contends it is unreasonable for the Company to dispose of the meters that customers already paid for and install new meters, also at the expense of the customers. According to OCC, Duke should have explored upgrades or repairs before committing to new meters and that replacing all of the meters is not a cost-effective solution. OCC further asserts it is inappropriate for Duke to be permitted to accelerate the depreciation of the meters when the meters still have a useful life. OCC witness Barb Alexander testified that, because of Duke's decision-making, the Company's shareholders should be responsible for bettering Duke's AMI infrastructure. She stated that allowing Duke to recover these costs rewards the utility for making poor choices. (OCC Ex. 12 at 26-31.)

{¶ 212} According to OCC, Duke's rate case application, and the subsequent Stipulation, violates a previous stipulation. OCC points out that Duke filed its rate case pursuant to an agreement in the *Mid-Deployment Review Case*. As part of that stipulation, the rate case was to be filed within one year of Duke reaching full SmartGrid deployment. OCC states that, pursuant to that stipulation, the test year in that rate case was to reflect benefits attributable to SmartGrid. OCC asserts that Duke and Staff have not identified a monetary value to demonstrate those benefits. Thus, OCC requests that the revenue requirement be reduced by $12.944 million, which is the amount of agreed upon savings from SmartGrid in the stipulation in the *Mid-Deployment Review Case*. OCC also avers that the state policy espoused in R.C. 4928.02 requires the Commission to ensure that smart grid programs are cost effective. OCC maintains that neither Duke nor Staff has demonstrated that the replacement of the Echelon meters is a cost effective measure. As described by OCC, the cost of the AMI transition would be significant. OCC avers that the settlement allows for up to $41 million of recovery for smart grid proposals. However, OCC expresses that the smart grid proposals are the basis for the AMI transition, which Duke projects to cost $169 million. OCC continues, stating that Duke's estimate ignores, among other things, carrying charges for retiring equipment and the book value of the retiring equipment, and that the actual cost of the AMI transition is $486 million. (OCC Ex. 12 at 26-31.) OCC concludes that Duke's smart grid plan and the AMI transition are not cost effective, violate state policy, and should be denied by the Commission.

{¶ 213} In sum, OCC contends that any sort of AMI transition should be completed carefully and cost-effectively. According to OCC, multiple mistakes were made in Duke's first smart grid installation, and, as proposed, OCC claims that the Company's AMI transition plan will not be economical. Many other states, explains OCC, are taking measured, slow approaches towards a smart grid to ensure the infrastructure will be functional and cost effective. OCC asks that the Commission take the same approach.

{¶ 214} In reply, Duke disputes OCC's contentions regarding the initial deployment. Duke notes that OCC was a signatory to the stipulation that authorized SmartGrid deployment, and that OCC was involved in the *Mid-Deployment Review Case* proceedings as well as SmartGrid collaborative meetings. According to Duke, OCC actively participated in these and other related proceedings and never called for the program to be discontinued. Duke further avers that the Company filed rider cases every year that were subject to prudency reviews. Duke contends that SmartGrid deployment has delivered numerous benefits to customers as the Company has reduced O&M expenses by about 10 percent, saving ratepayers almost $16 million. Duke also insists that the Echelon meters provide billing quality data and that customers are able to access "real time" energy usage. Regarding depreciation of the current meters, the Company argues that such treatment is fair and consistent with Staff's recommendations and also previous cases. As customers benefited from the original system, and will continue to benefit until the transition is complete, Duke disagrees with OCC's assertion that customers will be double paying.

{¶ 215} Duke further submits that the AMI transition proposed in the Stipulation is a reasonable and necessary recourse that will serve as a benefit to ratepayers. Duke first contends that new meters are necessary due to circumstances outside of the Company's control. According to Duke, the communication nodes designed for the Echelon meters are no longer being produced. Additionally, Duke's cellular provider will soon stop supporting the 2G and 3G technology that the nodes currently operate on. The Company maintains it examined only upgrading its AMI and determined an upgrade would cost approximately $91 million more than a full transition. (Co. Ex. 11 at 3-10.) Duke also submits that by converting completely to the Itron meters there will be additional, previously unavailable benefits for ratepayers. Specifically, the Company notes that CRES providers will now have the ability to seek access to customer CEUD and to offer innovative products. Therefore, Duke states major changes to its current AMI environment are necessary, and transitioning to new meters is not only the least-cost solution but also offers additional advantages.

{¶ 216} OEC and EDF submit that, if the AMI transition goes forward, the Stipulation should be modified to ensure customers receive all benefits associated with the AMI. Specifically, according to OEC /EDF witness Michael Murray, customers should have full access to CEUD. Mr. Murray testified that the Stipulation, as submitted, does not provide additional benefits to third parties that are not CRES providers. Mr. Murray contends that, with greater access to CEUD, customers can better understand their usage and find more ways to conserve energy and save money. OEC and EDF assert that such benefits are in line with the Commission's PowerForward initiative. Mr. Murray advocates for the Commission to direct Duke to implement GBC, which is a web-based software where developers can retrieve meter data, as authorized by customers. Mr. Murray says GBC is a widely-used platform that would allow customers to choose various energy services that fit their needs. (OEC/EDF Ex. 3 at 23-25.) According to OEC and EDF, as customers are responsible for the cost of the AMI transition, they should be able to realize all of the benefits.

{¶ 217} Duke replies that there is no need to modify the Stipulation to accommodate OEC and EDF, as the Stipulation already permits third parties to access CEUD. Duke notes that the Stipulation provides that, if a third party expresses interest, the Company will create a proposal for providing CEUD. Duke asserts the proposal from OEC and OED is unnecessary micromanaging and asks that their request be denied. Staff also maintains that OEC and OED's recommended modifications are not necessary. Staff contends that through Rider PF there are significant advancements in smart meter data access. Staff recommends that OEC and OED pursue GBC, or similar initiatives, when Duke files its application to recover costs associated with data enhancements.

{¶ 218} After consideration, the Commission finds that the AMI transition proposed by Duke and included in the Stipulation is reasonable. The transition allows the Company to cost-effectively address the unexpected issues to its current system and to continue to make advancements to its infrastructure that will benefit ratepayers. The concerns regarding Duke's current smart grid system are well documented. The need to transition away from the Echelon meters was not caused by a single issue, but rather a multitude of challenges. For example, not only did the nodes fail at a higher rate than expected, but now the nodes are no longer being produced. Further, the cellular service provider is upgrading to a 4G network and will no longer support the nodes. (Duke Ex. 11 at 8, 11.) All of these issues, largely out of Duke's control, justify a transition to a superior approach. Other alternatives, including upgrades to the current system, were not demonstrated to be economical options (Duke Ex. 11 at 13, att. DSL-1). The transition is not only the least-cost option, but also will enable Duke to provide additional enhancements to the customer experience. As discussed by Staff, CEUD will be more readily available to CRES providers and others who can utilize the data and offer more innovative products (Staff Ex. 11 at 5). This is consistent with state policy as well as the Commission's PowerForward initiative. We find that the AMI transition is a practical decision that mitigates costs and offers customers additional benefits.

{¶ 219} We are not persuaded by OCC's argument that the book value of the current smart meter system should be disallowed. Initially, we note that the deployment of Duke's smart grid system has been subject to continuous review by the Commission, in open proceedings, through, among other things, the *Mid-Deployment Review Case* as well as annual rider updates.[3] Although the future functionality of Duke's infrastructure is in doubt, the present operation has been serviceable and benefits customers. Staff has reviewed Duke's smart grid expenses on an annual basis and determined whether spending was prudent and reasonable and the Commission has considered and approved those recommendations (Staff Ex. 6 at 3-4). Thus, we find OCC's contention to be without merit. Similarly, we decline OCC's request to modify the depreciation of the current smart grid assets. As we previously approved recovery for the meters in the *Mid-Deployment Review Case*, we agree with Staff that it is appropriate to accelerate the depreciation of the meters now that they will be removed and consistent with previous actions (Staff Ex. 1 at 11, citing *In re Duke Energy Ohio, Inc.*, Case No. 08-709-EL-AIR, et al., Staff Report (Jan. 27, 2009)). As the meters are no longer being installed and are set for removal, it is prudent to treat the meters as dying accounts and consistent with prior actions (Staff Ex. 8 at 4-5).

{¶ 220} Finally, we decline to adopt the specific recommendations from OEC and EDF. The Stipulation already provides accommodations to permit third party access to CEUD and we do not find additional requirements are necessary at this time (Jt. Ex. 1 at 16-17). The particulars regarding the capabilities of Duke's AMI can be addressed in the Company's application.

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[3] *See, e.g., In re Duke Energy Ohio, Inc.*, Case No. 17-1403-EL-RDR, and *In re Duke Energy Ohio, Inc.*, Case No. 16-1404-EL-RDR.

7. NET METERING/SCR RIDER

{¶ 221} As part of the Stipulation, Duke would modify the way it credits net metering. Based upon the November 8, 2017 Finding and Order the *Net Metering Rules Case*, net metering customers would receive a credit for the energy-only component of the excess energy sent back to the grid, but will not also receive the capacity payment that they previously received. OEC and EDF oppose this change and initially submit that this adjustment is premature. OEC and EDF note that the *Net Metering Rules Case* is still subject to rehearing, and that rules have not yet been finalized or filed. OEC and EDF, along with OCC, contend that removing the capacity component is harmful to customers as it does not compensate customers for the generation they provide to the electrical grid.

{¶ 222} OCC also opposes the net metering component of Rider SCR. According to OCC, through Rider SCR and the SSO rates, Duke is seeking to recover the payment the Company makes to net metering customers for excess generation. OCC asserts that the rider could result in SSO customers paying double for the excess generation: once to Duke and again to the CRES suppliers.

{¶ 223} Duke replies that OCC, OEC, and EDF previously made similar arguments in the *Net Metering Rules Case*. According to Duke, the Stipulation specifically states that Rider NM will be modified to be consistent with the Commission's directives in the *Net Metering Rules Case*. (Jt. Ex. 1 at 21-22.)

{¶ 224} IGS submits additional opposition to Rider SCR. According to IGS, the rider would initially be bypassable, but Duke could apply to convert Rider SCR to a non-bypassable rider. According to IGS, the Commission has previously determined that if a rider such as Rider SCR was non-bypassable, it would violate state policy by allowing the utility to recover an anticompetitive subsidy, citing *In re Duke Energy Ohio, Inc.*, Case No. 10-2586-EL-SSO, Opinion and Order (Feb. 23, 2011) at 63. Thus, IGS requests that the Stipulation be modified to prevent Rider SCR from becoming non-bypassable.

{¶ 225} Duke avers that Rider SCR has been in place for almost eight years and remains largely unchanged. According to Duke, Rider SCR does not become non-bypassable until the balance of the rider is more than 10 percent of Duke's overall actual SSO revenue for the most recent quarter. The Company asserts this conditional component provides necessary protections for SSO customers and for Duke. Duke states that Rider SCR essentially recovers the costs associated with providing an SSO. As the Company is obligated to provide an SSO no matter what, even if there are zero SSO customers, this ensures Duke is able to recover its costs. For SSO customers, Duke states this provision protects the few customers who cannot shop or cannot switch quickly enough and would otherwise be left with the entire obligation. According to the Company, the Commission has consistently rejected IGS's argument.

{¶ 226} The Stipulation expressly provides that issues regarding net metering will be modified to be consistent with our decision in the *Net Metering Rules Case* (Jt. Ex. 1 at 21-22). Accordingly, the arguments of OCC, OEC, and EDF are best suited for that venue. Further, we clarify that whether the mechanism for recovering net metering costs is bypassable or non-bypassable is an issue for the *Net Metering Rules Case*, and Duke should conform its mechanism to the ultimate outcome of that case, when the final rules take effect.

8. UNBUNDLING OF SSO

{¶ 227} IGS and RESA submit that SSO-related costs must be unbundled from distribution rates. According to RESA/IGS witness Edward Hess, the Stipulation would unreasonably permit Duke to recover costs associated with the SSO through distribution rates. As stated by Mr. Hess, SSO-related costs such as those associated with information technology, the call center, and assessments are wrongfully recoverable under distribution rates, pursuant to the Stipulation. Mr. Hess testified that SSO rates are thus artificially low because the Company is able to recover SSO costs elsewhere. Mr. Hess claims this gives Duke an unfair competitive advantage over CRES providers, who must recover such costs through their rates. (RESA/IGS Ex. 1 at 9-10.)

{¶ 228} IGS and RESA maintain that, by allowing the Company to recover these costs through distribution rates, Duke's SSO costs are being unfairly and unlawfully subsidized. IGS avers that R.C. 4928.143(B)(2)(h) requires all SSO costs to be recovered through SSO rates. Further, IGS contends it is state policy for the Commission to foster retail competition and ensure the availability of unbundled retail electric service.

{¶ 229} IGS and RESA additionally state that the Stipulation, as proposed, is unlawful, and instead should be modified. Mr. Hess proposes the settlement be changed to allow a non-bypassable credit and avoidable charge rider to unbundle SSO-related costs. Mr. Hess's proposal provides a credit to all customers and a charge to all non-shopping customers. According to Mr. Hess, this provides a fair and competitive environment by ensuring non-shopping (i.e., SSO) customers pay for all services they receive and that shopping customers are not charged for services they do not receive. (RESA/IGS Ex. 1 at 10-17.)

{¶ 230} In response, Duke, Staff, and OCC ask that the arguments of IGS and RESA be rejected. Duke disputes that SSO prices are subsidized and artificially low. The Company points out that a majority of customers in Duke's territory choose to shop and that Duke has a higher rate of shopping customers than other EDUs in Ohio. Duke maintains that the Company is obligated to provide the SSO to all customers and needs to be prepared to do so. According to Duke, this results in unavoidable costs, including call center infrastructure, regulatory assessments, and various business operations. Duke further argues that the Company spends considerable resources catering to CRES customers. Duke asserts that many calls that come into the call center are associated with shopping customers (Tr. Vol. V at 991). Thus, Duke asks that IGS and RESA's rider proposal be rejected. The Company contends this would only benefit CRES providers and would unfairly cost SSO customers over $23 million. Staff argues similarly. Staff states that the SSO benefits both shopping and non-shopping customers and, further, that incurred costs are appropriately assigned to the distribution function of Duke. OCC argues that IGS and RESA's proposal would artificially increase the SSO price and would harm consumers.

{¶ 231} At this time, the Commission will not adopt IGS and RESA's request to unbundle SSO specific costs from distribution rates. As we have expressed, separating SSO-specific costs from distribution rates would likewise necessitate separating any costs specifically related to the customer choice program. *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO (*AEP Ohio SSO Case*), Opinion and Order (Apr. 25, 2018) at ¶ 215. Thus, as we determined in the *AEP Ohio SSO Case,* we direct Duke to include in its next rate case application a detailed cost of service study to determine whether, and to what extent, the SSO default service and/or CRES competitive offers are subsidized through base rates. The Commission will decide at that point whether, and to what extent, the costs of the investigation should be recovered from Duke, CRES providers, or customers. Along those lines, we additionally find that IGS and RESA's proposal to create two riders in order to unbundle SSO costs should not be adopted. As we have previously expressed, separating SSO-specific costs from distribution rates would likewise necessitate separating any costs related specifically to the customer choice program.[4] Until both costs are determined and evaluated, the Commission cannot evaluate whether it is appropriate to reallocate costs.

9. Rider ESSR

{¶ 232} As part of the Stipulation, Duke will transition from a four-year tree-trimming schedule to a five-year tree trimming schedule. To operate its tree-trimming program, Duke would be permitted to recover $10.7 million through base rates and $10 million through Rider ESSR. (Jt. Ex 1 at 14-15.) OCC witness Peter J. Lanzalotta testified that the transition to the five-year cycle is too expensive and not aligned with customer expectations. Specifically, Mr. Lanzalotta asserts that a five-year cycle requires trees to be cut back 25 percent further than under a four-year cycle and that customers are sensitive about the trimming of trees near their homes. OCC asserts Duke has not demonstrated a

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[4] See, e.g., *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, Opinion and Order (Apr. 25, 2018) at ¶ 215; *In re Dayton Power & Light Co.*, 15-1830-EL-AIR, et al., Opinion and Order (Sep. 26, 2018) at ¶ 28.

five-year cycle is necessary. Further, OCC states that allowing Duke to alter its vegetation management program and providing the Company with additional recovery is inappropriate because Duke is not currently meeting reliability standards. Mr. Lanzalotta contends that tree-related outages are the top cause of customer interruption in Duke's territory. Furthermore, according to Mr. Lanzalotta, Duke is not on pace to complete its four-year tree-trimming cycle on time. (OCC Ex. 19 at 14-17.) Because of this, OCC asserts it is inappropriate to allow Duke to recover additional funds for vegetation management.

{¶ 233} Duke states that switching from a four-year cycle to a five-year cycle is a prudent and reasonable solution to a complicated problem. Duke witness Karen Hayden testified that Duke typically issues requests for proposals to find companies that will provide sufficient services at the least cost. She further stated that the market for such work has become difficult to find at a reasonable price. By switching to a five-year cycle, Duke contends it is mitigating the rising costs of vegetation management, which is a benefit to customers. (Co. Ex. 13 at 4-7.) Staff agrees with Duke and emphasizes the importance of vegetation management towards preventing outages. Staff notes that this focus on reliability is consistent with customer expectations (Staff Ex. 3 at 10-11, att. JN-1 and JN-2.). Moreover, the Company further points out that Rider ESSR will be audited by Staff. Regarding the audit, Staff states this will ensure that vegetation management dollars are prudently expensed. Concisely, Duke submits that the new five-year cycle is a practical solution to rising costs and limited resources associated with vegetation management; thus, Duke asks that OCC's argument be rejected.

{¶ 234} Upon review, the Commission agrees with Duke and Staff that the adjustments to Duke's vegetation management program are prudent and will benefit ratepayers. As confirmed by Staff, contract prices for third party vegetation management recently spiked (Staff Ex. 12 at 3; Duke Ex. 12 at 5). In opposition to the change, OCC affirms that Duke is currently behind schedule on its vegetation management and that tree-related outages are the largest source of customer interruption minutes in Duke's territory (OCC Ex. 19 at 13-14, 15). The solution offered in the Stipulation is a judicious response to the rising costs and limited resources of the current environment. Ideally, a five-year cycle will permit Duke to stay on schedule with its vegetation management program. This should result in fewer outages and thus improved reliability (Duke Ex. 12 at 5-6). A focus on improved reliability is consistent with customer expectations (Staff Ex. 3 at 11). Further, the audit provides sufficient oversight to ensure expenses are prudently incurred (Staff Ex. 12 at 5).

10. RIDER PF

{¶ 235} The Stipulation provides that Duke will establish Rider PF to recover costs associated with the "evolution of the distribution grid and an enhanced customer experience." The proposed rider has three components, the third of which is regarding the recovery of costs related to an infrastructure modernization plan. The plan will be filed in a separate proceeding and will include plans to upgrade Duke's CIS. (Jt. Ex. 1 at 16-18.) First, before putting forth a plan regarding CIS, IGS asserts Duke should explore transferring all billing responsibilities to CRES providers. According to IGS, this may result in significant savings and would be beneficial to customers. Regarding a plan proposed by Duke, RESA and IGS suggest specifications are necessary before anything is approved. RESA first implies that there should be stakeholder input before Duke files the plan. According to RESA, this would make the process more efficient and collaborative. RESA and IGS further ask that any CIS plan permit supplier consolidated billing. Supplier consolidated billing would allow a CRES provider to issue a single bill that contains generation, supply, and distribution charges, and the CRES provider would be responsible for collecting the receivables for the EDU. According to RESA and IGS, Duke intends to spend over $40 million implementing its CIS plan and CRES providers serve a majority of the customers in Duke's territory. Thus, RESA and IGS state it is logical to give CRES providers a platform to provide improved bill formatting with enhanced options. RESA and IGS also request that non-commodity billing be made a requirement of any CIS plan submitted by Duke. According to RESA and IGS, CRES providers are able to offer a number of innovative projects, but without the ability to bill for those services, they are severely limited. RESA submits that, for smaller CRES providers, consolidated billing will not be a practical option and non-commodity billing will be essential. (RESA/IGS Ex. 5 at 8-16.) Finally, RESA also seeks that any CIS plan permit a streamlined enrollment process. Because Duke already collects certain identifying information from customers, RESA asserts customers should be able to use that information to verify account data, and hasten the enrollment process. (RESA/IGS Ex. 6 at 5.)

{¶ 236} In regards to supplier consolidated billing, Duke submits that such a service would not benefit ratepayers in the Company's territory. Duke states the Company is uniquely situated compared to other EDUs. According to Duke, a majority of its customers are both electric and natural gas customers that receive a single bill for both services. As Duke offers utility consolidated billing, the Company affirms customers can shop for a CRES provider, as well as competitive retail natural gas suppliers, and still just receive one bill. If supplier consolidated billing is required, customers could start receiving multiple bills, which, according to Duke, could be confusing and overly complex for customers, and not necessarily what the customers want. The Company further states that, while CRES providers state supplier consolidated billing will allow them to offer innovative services, CRES providers are not prohibited from currently offering these services and billing customers separately.

{¶ 237} Duke similarly argues that IGS and RESA's request for non-commodity billing should be rejected. The Company maintains that the Commission previously addressed this issue in Duke's last ESP. Initially, Duke avers it does not have the technology to separate commodity and non-commodity charges. Because non-commodity charges are not eligible for the PAR program, Duke asserts it would be inappropriate to commingle both charges. According to Duke, CRES providers are not prevented from offering various services and products to customers, provided they are billed separately. Finally, Duke notes that the Company's CIS plan will be a separate proceeding and it would be more appropriate for IGS and RESA to raise these issues in that forum.

{¶ 238} Duke also asks that RESA's enrollment proposal be denied. The Company contends that the current enrollment process does not restrict customers from signing up with a CRES supplier. Duke states customers are able to sign up almost immediately, without needing an account number. According to the Company, the current process provides sufficient consumer protection without making enrollment overly complex. As with RESA's request for non-commodity billing, Duke avers the Commission has previously rejected this proposal.

{¶ 239} Initially, we acknowledge Duke's concerns regarding the proposals from IGS and RESA. Namely, that consolidated billing is complicated by Duke's unique status serving both electric and gas customers, and that non-commodity billing is complicated by the PAR program. At the same time, we recognize that the stated purpose of Rider PF is to continue the "evolution of the distribution grid and an enhanced customer experience * * * that may be engendered by the Commission's PowerForward review." (Jt. Ex. 1 at 16.) The proposal submitted by RESA and IGS have the potential to serve that purpose. However, we will not require that Duke's CIS plan include non-commodity billing or a specific components; nor we will require stakeholder input before Duke submits its filing. However, the Commission is persuaded that there are benefits associated with supplier consolidated billing and Duke's CIS plan should accommodate that service. Finally, as the Company's CIS plan is to be filed in a separate proceeding and be subject to a hearing, we determine that is the proper forum in which to explore these issues fully.

11. SUPPLIER FEES

{¶ 240} RESA asserts that specific fees charged to CRES providers by Duke should be removed. According to RESA, providers are assessed a switching fee and CEUD fee by Duke in its supplier tariff. RESA contends this was originally established in Duke's previous ESP and was included in Duke's rate case application without any supporting evidence. RESA further alleges that Staff failed to investigate these charges. RESA argues these charges are unjustified and allows Duke to unfairly recover millions of dollars (RESA/IGS Ex. 6 at 3-4). According to RESA, the Stipulation should be modified to exclude these fees. Staff replies that the fees are marginal and the principle of cost causation dictates that assets used individually should be charged individually.

{¶ 241} After consideration, the Commission is not persuaded by RESA's argument. As stated by RESA, the fees in question were last adjusted in Duke's second ESP in 2011. *In re Duke Energy Ohio, Inc.,* Case No. 11-3549-EL-SSO, et al., Opinion and Order (Nov. 22, 2011) at 39-40. Pursuant to Supreme Court directives, before altering a lawful order, the Commission is required to provide an explanation for the change. *Consumers' Counsel v. Pub. Util. Comm.,* 10 Ohio St.3d 49, 50-51, 461 N.E.2d 303 (1984). Here, RESA has not presented sufficient evidence that circumstances have changed since the fees were last altered in 2011 in order to justify discontinuing the fees. Accordingly, RESA's request is denied.

12. PAR PROGRAM

{¶ 242} Pursuant to the Stipulation, Duke will continue its PAR Program. As part of the PAR Program, Duke purchases the receivables of CRES providers at no discount. Under the terms of the settlement, an independent audit of the program will be initiated within six months of the Stipulation's approval. RESA submits that the scope of the audit is vague and would permit Duke to require CRES suppliers to open up their books and be subject to unnecessary and unfair examination. (RESA/IGS Ex. 7 at 7-9.) RESA requests that the Stipulation be modified to either exclude this provision or limit the scope of the audit as to what is expressly determined in the PAR Program agreement.

{¶ 243} Duke responds that the purpose of the audit is to ensure that the Company is only purchasing appropriate, commodity-based receivables that it is authorized to purchase. Part of the audit, according to Duke, is confirming that the Company is properly monitoring the compliance of CRES providers with the PAR program agreement. Duke insists the oversight provided by the audit is beneficial and necessary and should remain a part of the Stipulation.

{¶ 244} RESA's request for modification is denied. The audit is beneficial to customers and ensures ratepayers are only paying for appropriate expenses. We emphasize that the audit is independent and do not find that the provision will be overly burdensome to suppliers.

13. TOU Rates

{¶ 245} IGS maintains that the Stipulation wrongfully permits Duke to offer TOU rates. IGS submits that the SSO provider should not be able to provide time-differentiated pricing. Rather, asserts IGS, such pricing should be provided by the competitive market and CRES suppliers. Further, if Duke is permitted to offer TOU rates, the Company should be prohibited from subsidizing them and the rates should be subject to the competitive market. According to IGS, Duke has not made interval data available to CRES suppliers; consequently only Duke is able to offerTOU rates via the SSO. IGS requests that the Company be required to phase out TOU rates and, until that is completed, Duke should be prohibited from subsidizing those rates.

{¶ 246} Staff replies that it is appropriate for Duke to offer time-differentiated rates until the market develops to allow CRES providers to begin offering that service. Staff affirms it is not aware of any supplier offering TOU rates in the Company's territory. Staff maintains that the Stipulation provides opportunities for CRES providers to offer numerous additional products and services, including TOU rates. (Staff Ex. 11 at 5-6.) Duke agrees, noting that the Stipulation does not expressly discuss time-differentiated rates, but it was recommended by Staff in the Staff Report (Jt. Ex. 1 at 21).

{¶ 247} We affirm our previous ruling that EDUs should offer time-differentiated rates until the market develops to the point that a reasonable number of CRES providers are offering the service.[5] Staff averred that it was unaware of any CRES provider that offered TOU rates that reflect PJM wholesale electricity prices in Duke's territory (Staff Ex.

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[5] *See In re Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding and Order (Mar. 26, 2014) at 38.

1 at 21). Until the market develops further, the Commission will not restrict Duke from offering TOU rates. Now that smart meters are fully deployed in Duke's territory, we will not hinder ratepayers being able to realize all possible benefits of the meters. While Duke is not restricted from offering time-differentiated rates, neither is IGS or other CRES providers. Further, to promote maximum customer benefits through potential competitive alternative offers, Duke is instructed to make interval data available, in a manner consistent with any relevant Commission order, at the earliest practical opportunity to CRES providers and other applicable third parties.

14. CUSTOMER EDUCATION FUNDS

{¶ 248} CCEF objects that customer education funds were not included as part of Duke's expenses in the Staff Report. CCEF asserts that Staff did not include the funds because they were not expended during the test year. However, CCEF avers that Staff can include items not expended during the test year. CCEF is concerned this will result in the Company not committing future funds towards customer education regarding energy efficiency, conservation, and clean energy.

{¶ 249} In response, Staff states that, when determining test year expenses, it analyzes whether the cost is known and measurable and whether the cost is related to something used and useful towards providing utility service. According to Staff, the education campaign discussed by CCEF did not occur during the test year and it would therefore be inappropriate to include those funds in test year expenses. Duke replies that CCEF's request is outside the scope of the Stipulation. The Company states that, if CCEF's request is approved, Duke's revenue requirement should increase correspondingly.

{¶ 250} The request of CCEF is denied. As the funding request from CCEF did not occur during the test year, it would be inappropriate to include the funds as part of the revenue requirement. As CCEF expresses concern regarding customer education, we note the Stipulation provides $522,000 for weatherization programs and $250,000 to City of Cincinnati for programs involving energy efficiency and financial assistance.

15. ROE AND ROR

{¶ 251} OCC submits that the Stipulation's proposed ROE and ROR are unreasonable. The Stipulation proposes a ROE of 9.84 percent and a ROR of 7.54 percent, with a gross revenue conversion factor (GRCF) of 1.5613731. OCC first states that the GRCF was calculated using the wrong tax rate. Dr. Daniel Duann testified on behalf of OCC that Duke's proposed GRCF was determined using the old 35 percent corporate income tax rate. According to Dr. Duann, using the current rate of 21 percent provides a GRCF 1.2846742. Dr. Duann further states the 7.54 percent ROR is excessive and a reasonable ROR would be 6.75 percent. Similarly, OCC also avers that the 9.85 percent ROE proposed in the Stipulation is unreasonable and a ROE of 8.28 percent is more appropriate. OCC examined ROEs approved by state commissions for other electric utilities in 2017 and states the average ROE was 9.68 percent. (OCC Ex. 7 at 23-30.)

{¶ 252} OCC further disputes how Staff calculated the ROR that was ultimately used in the Stipulation. OCC avers that Staff completed a CAPM analysis to determine the ROR. In completing the CAPM analysis, Dr. Duann testified that Staff improperly used a risk-free return that was based on forecasted yields of 30-year United States Treasury bonds by the Congressional Budget Office and the Bureau of Labor Statistics. According to OCC, it is typical, and more appropriate, to use actual yields of long-term notes and bonds from the United States Treasury. OCC indicates that using the forecasted yields is a flawed methodology for several reasons. Particularly, OCC asserts that projected yields are unknown and often incorrect. Additionally, OCC also maintains that Staff erred in calculating the equity risk premium in its CAPM analysis. OCC contends Staff used the wrong long-term government bond return number which resulted in an equity premium of seven percent instead of the proper six percent; OCC asks that the error be corrected. OCC next asserts that Staff wrongly applied unequal weights to the results of the CAPM and DCF analyses when determining the baseline ROE. OCC indicates that Staff typically applies equal weights to each analysis and that Staff did not properly justify deviating from its normal calculation. OCC also argues that Staff wrongly adjusted the ROE by a factor of 1.019. (OCC Ex. 7 at 6-30.) According to OCC, this was improper as there was no cost basis for the proposed adjustment and it was based on data from a previous Duke rate case, not the pending application.

{¶ 253} OCC concludes that the Stipulation's ROE and ROR, combined with the proposed GRCF, is excessively high and will result in a detrimental impact on ratepayers. OCC maintains the rates are much higher than the national average of similar utilities. According to OCC, this will increase the cost distribution service to customers and negatively effect all customers, but especially low-income households. OCC avers the increased utility costs will reduce the spending income of Duke customers while also driving up the cost of commercial goods produced in Duke's territory.

{¶ 254} According to Duke, the ROE in the Stipulation is reasonable and is supported by independent analysis. Duke insists the 9.84 ROE proposed in the Stipulation is within the range offered by Staff, through witness Joseph Buckley, and by the Company's witness, Dr. Roger Morin. Duke notes Dr. Morin conducted multiple analyses and used a variety of methodologies to develop his range. (Co. Ex. 21.) Additionally, Duke refutes OCC's claim that the proposed ROE is inconsistent with approved ROEs in other states. The Company thus concludes that the ROE and the corresponding ROR are reasonable, without negatively affecting Duke's creditworthiness or financial integrity. Regarding OCC's proposed ROE of 8.28 percent, Duke avers it is unrealistic and not supported by independent analysis. Further, the Company asserts OCC's proposed ROE is not consistent with those approved for other utilities. Duke also disputes OCC's calculation of the GRCF. Duke contends it is inappropriate and unlawful to consider factors outside of the test year, such as the implications from the TCJA. Instead, the Company submits it is already addressing the effect of the TCJA through Rider DCI and a separate application.

{¶ 255} Staff also contends that the 9.84 percent ROE proposed in the Stipulation is appropriate. Staff affirms that the ROE is within the range recommended by Staff and would allow Duke to attract investment. Similarly, Staff maintains the proposed ROR is within the acceptable range calculated by Staff after examining RORs nationwide over the past five years. (Staff Ex. 4 at 4-6.)

{¶ 256} Duke and Staff also dispute OCC's arguments regarding the CAPM analysis. First, Duke replies that the use of forecasted fields is appropriate. Duke avers that cost of capital models such as CAPM and DCF are prospective and, as Dr. Morin testified, it is logical to use information that reflects expectations of actual investors in the market (Co. Ex. 21 at 37). The Company further submits that OCC is misplaced in arguing that equity risk premium was wrongly calculated. Duke contends that OCC incorrectly used bond returns instead of the income component of bond returns to subtract from stock returns to calculate the equity risk premium. Regarding the proper weight to assign to CAPM and DCF, both Duke and Staff submit that Staff's determination was proper. Staff states that adjustments to the weighting is necessary when a reasonable ROE cannot otherwise be obtained (Staff Ex. 4 at 4). According to Duke, this is consistent with prior Commission decisions.

{¶ 257} The Commission concludes that the ROR of 7.54 percent and the ROE of 9.84 proposed in the Stipulation are reasonable and should be accepted. We initially note that the proposed ROR and ROE are squarely within the range recommended by Staff (Staff Ex. 1 at 18-19). Although not determinative for our purposes, when examining rates established by state commissions nationwide over the past five years, we agree the rates submitted in the Stipulation are comparable (Staff Ex. 4 at 6). We acknowledge there are multiple ways to compute an ROE, but find the method used by Staff to create an acceptable range is reasonable. We do not take issue with Staff's use of forecasted yields and long term bond yields. We are persuaded by Dr. Morin's testimony that the use of yields from 30-year Treasury bonds to estimate the risk-free rate in the CAPM model is more appropriate than more volatile short-term rates (Co. Ex. 21 at 34). We also find the issuance factor applied by Staff was reasonable, as doing so properly accounts for the need to reflect flotation costs in the cost of equity (Staff Ex. 4 at 5; Co. Ex. 21 at 54). We additionally hold that Staff's GRCF was properly applied, and note that, as discussed above, the impacts of the TCJA are being managed in other proceedings (*See, e.g., Rider TCJA Case*). Finally, we also determine that Staff's weighting of CAPM and DCF, in response to a low beta on the CAPM estimate, was appropriate in order to obtain a reasonable ROE (Staff Ex. 1 at 18-19). In summation, Staff's process to determine a reasonable range of appropriate rates appears to be based on sound regulatory principles. As a result, the ROR and the ROE submitted in the Stipulation appears to be sufficient to allow Duke to maintain its credit and to attract capital.

16. PSR

{¶ 258} Multiple parties argue that the PSR is neither beneficial to ratepayers nor lawful. Duke submits that the PSR is a legal provision that will benefit customers by serving as a countercyclical hedge against volatile energy prices. Duke continues, stating the PSR will allow the Company to maintain its financial integrity and permit Duke to make sufficient investment in its infrastructure to ensure safe and reliable service to its customers. Multiple parties, including Sierra Club, OEC, ELPC, EDF, and NRDC (collectively, Conservation Groups), as well as IGS and OCC, dispute the legality of the proposed rider. They further assert that the PSR will harm customers and serve as an unreasonable charge to ratepayers.

a. Whether the Commission has jurisdiction to consider the PSR

{¶ 259} OCC initially asserts that the Commission lacks jurisdiction to consider the PSR. According to OCC, the Federal Power Act precludes the Commission from approving the PSR, and, instead, the decision rests with FERC. OCC contends that, if a contract approved by a state commission guarantees a rate for a PJM market participant that is different than the PJM clearing price, the U.S. Supreme Court has determined the commission's actions would be interfering with the authority of FERC by establishing an interstate wholesale rate, citing *Hughes v. Talen Energy Marketing LLC*, 136 S.Ct 1288 (2016). Here, OCC suggests that the PSR, which is revenue neutral for Duke, provides a fixed rate to the Company that is distinct from the FERC approved wholesale rate. Thus, OCC concludes the Commission is field preempted from approving the PSR.

{¶ 260} In response, Duke avers the Commission has authority to approve the PSR. Duke states that federal courts have determined that the effect of state actions cannot depend on a utility's participation in the wholesale market, but it is permissible for state laws to have an effect on auctions. Along those lines, the Company insists that the PSR is not reliant upon participation in the PJM market. With the PSR, Duke submits the Commission would not be attempting to procure generation or trying to incentivize new generation. Thus, per Duke, federal preemption does not apply to the PSR.

{¶ 261} We will not address the federal constitutional issues put forth by OCC, as we conclude such arguments are best reserved for judicial determination, which is consistent with our determination in the *ESP 3 Case*, Opinion and Order (Apr. 2, 2015) at 48.

b. Whether the PSR is permissible under the Ohio Revised Code

{¶ 262} OCC, the Conservation Groups, and IGS submit that the PSR is transition revenue that is barred pursuant to R.C. 4928.38. As Ohio transitioned into a competitive energy market, OCC avers that R.C. 4928.38 permitted EDUs to receive transition revenues for a limited amount of time. OCC and IGS aver that after December 31, 2005, EDUs were to be fully on their own in the competitive market. IGS contends that the PSR would authorize Duke to collect the investment costs of generation assets from all distribution customers; according to IGS this constitutes an illegal transition charge.

{¶ 263} Duke replies that the arguments of the Conservation Groups, OCC, and IGS should be rejected. According to the Company, the Commission has consistently found that OVEC-related riders do not constitute transition costs. Duke states the parties do not submit any arguments that have not been already addressed by the Commission.

{¶ 264} IGS argues that the PSR does not qualify under either of the two provisions under R.C. 4928.143 that would otherwise permit a non-bypassable generation-related rider. Duke responds that the PSR is not a generation-related charge. Duke further states that the Company's entitlement in OVEC has never been used to provide retail electric generation to Duke customers. As OVEC is a separate legal entity, Duke avers that IGS's argument is without merit.

{¶ 265} The Commission disagrees that the PSR would permit Duke to collect untimely transition costs in violation of R.C. 4928.38. As we determined in the *ESP 3 Case*, the PSR constitutes a rate stability charge related to limitations on customer shopping for retail electric generation service and may, therefore, be authorized pursuant to R.C 4928.143(B)(2)(d). *ESP 3 Case*, Opinion and Order (Apr. 2, 2015) at 48.

{¶ 266} Additionally, we also take note of the recent ruling by the Supreme Court of Ohio regarding AEP Ohio's similar OVEC-related rider. *In re Application of Ohio Power Co.*, Slip Opinion No. 2018-Ohio-4698 (*OVEC Supreme Court Case*). In its decision, the Court observes that the rider was authorized pursuant to R.C. 4928.143(B), which provides that an ESP may include a charge "[n]otwithstanding any other provision of Title XLIX of the Revised Code to the contrary." The Court determined that the statute's "notwithstanding" clause permits an ESP to include provisions that R.C. Title 49 would otherwise prohibit, including transition charges typically barred under R.C. 4928.38. *OVEC Supreme Court Case* at ¶ 18-19. Similarly, here, the Stipulation proposes a rider that is nearly identical to AEP Ohio's rider. Like AEP Ohio's rider, the PSR was authorized, in the *ESP 3 Case*, pursuant to R.C. 4928.143(B) as a limitation on customer shopping. Further, both riders propose to credit or charge customers based on the EDU's net costs associated with its contractual entitlement in OVEC.

c. Whether the PSR is consistent with Commission precedent

{¶ 267} While Duke maintains that the Commission approved similar riders for Ohio's other EDUs, the Conservation Groups and OCC insist those decisions are not comparable. The Conservation Groups contend that the riders approved for Ohio Power Company (*AEP Ohio Case*) and Dayton Power & Light Company (*DP&L Case*) were, like Duke, the result of Stipulations connected to ESP applications.[6] According to the Conservation Groups, the Commission treated those Stipulations as a package and did not specifically isolate the OVEC PPA riders to determine if they were beneficial to ratepayers. Further, the Conservation Groups affirm the facts of each of those cases were substantially different than the pending proceeding. Specifically, the Conservation Groups note that, in the *AEP Ohio Case*, AEP Ohio was projecting that the rider would provide a net benefit of $110 million to customers, and, if the forecasts fell short of expectation, AEP Ohio was committed to providing ratepayers credits of $15 million. In the *DP&L Case*, the Conservation Groups point out that the utility was in a significantly more dire financial situation. OCC agrees, affirming that, here, all forecasts of the rider project a net loss and that Duke is in a very stable financial position.

{¶ 268} Duke notes that the PSR is very similar to riders approved for both AEP Ohio and DP&L. Duke maintains that those riders involve the same costs and revenues as the PSR. According to Duke, all three riders involve an Ohio EDU bidding its OVEC-share in the PJM market, and subject to the same tariffs. Duke states the only difference is the timing of the rider proposals.

{¶ 269} The Commission does not disagree with either argument. The PSR is substantially similar to the OVEC-related riders approved for AEP Ohio and DP&L. However, the riders in each case have been presented as part of distinguishable stipulations and the Commission has and will consider them correspondingly based upon the record presented in each case.

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[6] *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 3, 2016) and *In re Dayton Power & Light Co.*, 16-395-EL-SSO, et al., Opinion and Order (Oct. 20, 2017), respectively.

d. Whether the PSR would benefit customers

{¶ 270} The opposing parties submit that the PSR will not benefit customers and will only serve as a charge to customers. Further, they state that while even Duke admits that the PSR will constitute a charge for customers, they contend that the amount that customers will be charged is significantly greater than what Duke projects.

{¶ 271} OCC notes that Duke projects the cost of the PSR to be around $77 million over the course of the ESP, based upon forecasts from its witness, Judah Rose. Although a significant projected cost, OCC and the Conservation Groups contend that Mr. Rose's forecast is flawed and overly optimistic. First, OCC asserts that Duke's projection regarding a lower reserve margin is misplaced. According to OCC, Mr. Rose's forecasted capacity prices are based on lower reserve margins caused by, among other things, load growth, retirements, and higher cost of new plant construction. OCC explains the market has experienced stability with the level of capacity and energy prices and that there is a significant amount of new generation entering the market. According to OCC, Mr. Rose fails to account for this, which skews his forecasts. OCC additionally maintains that Duke wrongly considers the penalty rate of the Reliability Pricing Model to be too low. OCC avers Duke's assertion is not supported by evidence that the rate is likely to rise and, even if it does, the impact on capacity prices is unknown. Similarly, OCC also disputes Mr. Rose's assumptions regarding buy-side market power mitigation, OVEC utilization rates, and OVEC dispatch and margins. (OCC Ex. 11 at 15-22.) The Conservation Groups point out that Mr. Rose's forecast is more reliable in the initial years of the projection, as it is based on known PJM capacity prices and other prices actually being offered and paid by market participants. The Conservation Groups contend the latter half of Mr. Rose's forecast is thus substantially more unreliable. Furthermore, the Conservation Groups submit that Mr. Rose's forecast fails to account for additional and substantial expenses such as increased borrowing costs for OVEC and environmental requirements. (Sierra Club Ex. 4 at 9-13.) Additionally, both IGS and the Conservation Groups point out that Mr. Rose previously forecasted OVEC costs for another stakeholder in OVEC, FirstEnergy

Solutions (FES). They explain that, in that forecast, Mr. Rose projected larger losses for OVEC. (Sierra Club Ex. 1.) According to the Conservation Groups, applying Mr. Rose's FES estimation toward Duke's OVEC share, it would result in a $110 million loss over the first five years of the ESP. Finally, OCC states the Commission should accept the forecast prepared by its witness, James Wilson, who estimated a $119 million loss (OCC Ex. 11 at 25).

{¶ 272} Duke counters that all forecasts, including the one completed by Mr. Rose, are subject to the unpredictability of the PJM wholesale market, which is particularly volatile. The Company states that OVEC costs are significantly less volatile than the wholesale markets and Mr. Rose used the best information available at the time for his analysis. In its reply, Duke rejects OCC's contentions with Mr. Rose's projection. Duke asserts that, for a majority of the proposed ESP term, the capacity prices are already determined and, thus, to that extent are not subject to any volatility. Further, according to Duke, FERC has expressed concern regarding suppressive pricing in the PJM market.[7] Regarding the penalty rate, Duke contends that Mr. Rose's analysis is directly based on historical data from PJM as well as information from the market. Duke also points to recent actions by both FERC and PJM regarding the resiliency within the market and suggests these actions support Mr. Rose's statement that capacity pricing is likely to increase (Co. Ex. 8 at 65).

{¶ 273} The parties opposing the Stipulation also disagree with Duke's assertion that the PSR will serve as a hedge. OCC states that the rates paid by SSO customers are the result of competitive auctions that produce one- to three-year full requirements. According to OCC, this results in stable rates that avoid any day-to-day volatility. Further, according to OCC, the costs or credits from the PSR have a lag of at least three months. Because of the time difference, OCC suggests that the PSR may not be countercyclical to the market, and thus would not serve as any sort of hedge. The Conservation Groups note

[7] Citing *Order Rejecting Proposed Tariff Revisions, Granting in Part and Denying in Part Complaint, and Instituting Proceedings Under Section 206 of the Federal Power Act*, 163 FERC ¶ 61,236 (June 29, 2018).

that the PSR is projected to be a loss for the entirety of the ESP, and Duke wrongfully contends that the PSR will still serve as hedge. The Conservation Groups assert it is improper to consider the PSR a hedge because of the theoretical, though highly unlikely, prospect that the PSR would balance out volatile energy prices. IGS argues that the impact of the PSR is so minimal, on a per customer basis, that it would not counteract any instability in the market. According to IGS, based on the projections of Mr. Rose, the PSR would cost an average residential ratepayer $0.60 to $0.80 per month. IGS avers this is a de minimis amount that would not provide any sort of hedge.

{¶ 274} Duke insists that the PSR will act as a hedge. Although projections indicate that the PSR will produce negative returns, Duke asserts the function of a hedge is to protect against unexpected market changes. The Company avers that OVEC's costs are relatively stable, which is an advantage over the more unpredictable nature of generation such as natural gas or renewables. Further, Mr. Rose quantifies the PJM market as five times more volatile than expected OVEC costs (Co. Ex. 8 at 14).

{¶ 275} The Conservation Groups and OCC also maintain that the Commission should reject Duke's assertion that the Company's financial integrity is tied to the PSR. Initially, the Conservation Groups note that Duke did not make this argument in its original application for the PSR. The Conservation Groups contend Duke has failed to demonstrate that the denial of the PSR would actually impact the Company's credit rating. Further, they assert Duke did not show how, even if its credit rating was negatively affected, that would actually result in increased borrowing costs. Finally, according to the Conservation Groups, the Company provided no evidence to establish whether any increased borrowing costs exceed the projected costs of the PSR. OCC agrees and asserts that Duke's credit rating is actually very strong and the PSR is not necessary to support the Company's financial integrity. OCC continues, stating that, even if the PSR is rejected, it would not negatively affect Duke's credit rating. (OCC Ex. 20 at 39-40; Sierra Club Ex. 4 at 38-39.)

{¶ 276} Duke states that the Conservation Groups and OCC undervalue the need to support Duke's financial integrity. Duke contends that maintaining its current credit value is necessary of late, as the Company has near-term financing needs of roughly $2.5 billion over the next five years. The Company contends that Duke's present credit rating is contingent on approval of the PSR. Duke further avers that credit rating agencies examine whether Commissions offer utilities favorable and consistent rulings. As other EDUs received favorable rulings from the Commission for OVEC-related riders, Duke submits that the credit rating of the Company and other utilities would be negatively affected if the Commission made inconsistent rulings.

{¶ 277} OCC and the Conservation Groups contend that Duke's proposed PSR is less beneficial to ratepayers then the one previously denied by the Commission. According to the Conservation Groups, the Commission rejected the previous request for a PSR because the Company did not demonstrate that the rider would benefit ratepayers. The Conservation Groups maintain that the projections for the original PSR were significantly better than the current forecasts. They state that the original PSR was projected to start out as a cost to customers but eventually would become a credit; conversely, the current forecast is estimated to result in a net cost to customers every year of the ESP. The Conservative Groups conclude that this application is clearly less beneficial to ratepayers than the previous application, and thus should also be rejected by the Commission.

{¶ 278} In reply, Duke insists that the Company's current PSR proposal is superior to its previous version. Initially, Duke outlines the consumer protections now factored in to the PSR. This includes: limitations related to forced outages; limitations related to capacity performance assessments from PJM; Staff audits; and a lack of carrying costs (Jt. Ex. 1 at 19). Duke contends that these material additions are significant improvements over its previous PSR application.

{¶ 279} OCC also disputes any notion that the PSR is justified in order to preserve OVEC. OCC states that, while OVEC was created over half a century ago to serve the needs to the Department of Energy (DOE), the DOE contract ended in 2003 and, around that time, the generation plants were over 90 percent depreciated and fixed operating costs were relatively modest. Since that time, according to OCC, there has been over $1.7 billion of capital investment into the OVEC plants to install catalytic reduction controls and flue gas desulfurization equipment (IGS Ex. 12). OCC submits that Duke's argument that OVEC plants are a legacy obligation is insincere, as the Company and other OVEC co-owners have willingly invested in the plants and extended the OVEC operating agreement.

{¶ 280} The Commission originally approved the PSR in the *ESP 3 Case*, in accordance with the requirements of R.C. 4928.143(B)(2)(d), but did not approve the recovery of any costs. After concluding the PSR could be a provision of an ESP, the Commission ultimately determined that Duke's proposal would not provide retail customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit commensurate with the rider's potential cost. *ESP 3 Case*, Opinion and Order (Apr. 2, 2015) at 46-48. Thereafter, we established the PSR as a placeholder at an initial rate of zero and expressed that implementation details would be determined in a future proceeding. The Commission thus finds that Duke's current PSR application, as modified by the Stipulation, is an outcome of the *ESP 3 Case* and an opportunity to conduct a more in-depth review of the Company's PSR proposal, and, if approved by the Commission, to populate a rate. This process is consistent with other ESP proceedings where the Commission has approved zero placeholder riders and subsequently populated the rate of the rider.[8]

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[8] *See, e.g., In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug. 8, 2012) at 24-25; *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) at 17; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 3, 2016) at 93.

{¶ 281} To begin, we recognize that the Commission's examination into whether a stipulation is beneficial to ratepayers, and should be approved, considers the package as a whole. The advantages or disadvantages associated with a specific aspect of a settlement, in isolation, do not necessarily ensure that a Stipulation will be approved or denied. Thus, here, whether the PSR on its own is beneficial to ratepayers or not is not necessarily the deciding factor on whether the Stipulation meets the second prong of the Commission's three prong test; what matters is the rider's impact on the total package presented in the Stipulation. We acknowledge that the PSR is forecasted to be a cost to customers. However, we also find that these projections are not necessarily reliable and the rider has the potential to offer benefits.

{¶ 282} As we have found with previous OVEC-related riders, the PSR has the potential to act as a hedge against volatile rates.[9] Pursuant to Duke witness Rose's testimony, wholesale electric prices have been especially volatile. He testified that energy prices fluctuated over the past six years by a range of 49 percent, which he attributed to, among other things, variations in weather conditions, natural gas price volatility, and regulatory changes. He asserts that OVEC production is significantly more stable, describing the market as five times more volatile. The lower volatility allows the PSR to act as a hedge. (Co. Ex. 8 at 13-14, 21.) Staff witness Donlon confirmed the volatility of the markets and commented that such fluctuations make forecasting especially difficult. He also indicated that various policy discussions have taken place at the federal level that could significantly impact pricing and thus negate current forecasts. (Staff Ex. 17 at 15.) The Supreme Court of Ohio has affirmed the Commission's finding that an OVEC-related PPA has worth as a financial hedge in the *OVEC Supreme Court Case* at ¶ 59. Although the PSR currently projects to be a loss, the volatility of the markets, particularly in times of extreme weather conditions, contrasted with the stability of OVEC's operating costs gives the PSR significant value as a hedge.

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[9] *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 3, 2016) and *In re Dayton Power & Light Co.*, 16-395-EL-SSO, et al., Opinion and Order (Oct. 20, 2017).

{¶ 283} A primary concern of the non-signatory parties is the projected rate impact of the proposed PSR. By Duke's estimate, via Mr. Rose's analysis, the rider will be a net cost to customers of $77 million over the term of the ESP. Duke projected an impact on customer rates of $18 million per year. OCC estimates the net cost to be $119 million. Although the Commission finds that rate stability is an important consideration, we agree that a rate stability proposal must not impose unreasonable costs on customers. While we concede that the rider may likely be a cost to customers, we reiterate that the evidence demonstrates that forecasting the market, particularly more than three years out, is extremely difficult. OCC and the Conservation Groups state that, because the Commission did not approve the PSR in the *ESP 3 Case*, which projected a smaller cost, the Commission should similarly reject the revised PSR in this proceeding. However, the Stipulation provides additional protections for consumers that were not available in ESP 3. This includes: limitations related to forced outages at OVEC's generating plants; limitations related to capacity performance assessments from PJM; provisions for annual prudency reviews; a requirement to continue to pursue transferring the Company's entitlement in OVEC; and a requirement that no carrying costs shall be included in the rider. Further, and importantly, the application for ESP 3, and thus the original PSR, was not the result of a stipulation and each aspect of the application was fully litigated before the Commission. Thereafter, the Commission considered, and made separate determinations, regarding each aspect of the application. Presently, the PSR is a major component of an inimitable and comprehensive stipulation. As discussed, stipulations are subject to a specific standard of review, and are given substantial weight by the Commission. While we indeed review every aspect of a proposed stipulation, our ultimate consideration is the settlement as a total package.

E. ESP/MRO Test

{¶ 284} Pursuant to R.C. 4928.143(C)(1), the Commission should approve, or modify and approve, an application for an ESP if it finds that the ESP, 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, pursuant to R.C. 4928.142.

{¶ 285} Duke insists that the proposed ESP is more favorable than an MRO. According to Duke, in comparing the ESP to an MRO, the Commission has considered both qualitative and quantitative benefits. Duke contends that its original application presented an ESP that was more favorable and that the ESP as modified by the Stipulation incorporates additional benefits. First, Duke highlights several riders that provide advantages that would not be offered under an MRO. Specifically, the continuation of Riders DCI, DSR, DDR, and ESRR allow the Company to proactively address its distribution system and improve reliability. Likewise, states Duke, the introduction of Rider PF also focuses on distribution and incentivizes the Company to modernize its system. Duke avers that another benefit of the proposed ESP is the seven year term. Duke submits that this offers known, stable rates and is consistent with Commission goals. Additionally, according to Duke, Rider PSR, as determined by Staff, has the potential to be a benefit. Duke underscores the testimony of Staff witness Patrick Donlon who explained that, while Rider PSR forecasts to be a loss, projecting the market is increasingly difficult. Thus, according to Mr. Donlon, Rider PSR has a greater chance to serve as a hedge against volatile prices and also has an increased opportunity to provide a credit to customers. Finally, Duke asks that the Commission consider concessions made by parties in reaching the Stipulation. Duke submits that, in reaching a settlement, specific riders were removed from its original application. More, the Company asserts that because this Stipulation resolves several significant cases, the compromises agreed to by Duke in the associated cases should be considered as a benefit, as they would not have occurred without the global settlement. In particular, Duke notes that it was originally seeking a $15 million rate increase in the *Rate Case*, and ultimately agreed to a rate decrease.

{¶ 286} Staff agrees with Duke that the ESP would be more favorable in the aggregate than an MRO. Staff first points out that, through the CBP, generation rates will be equivalent to those under an MRO. Staff also maintains that the distribution riders would also be recoverable through an MRO and should not be a quantifiable factor in the balancing test. Regarding Rider PSR, which would not be recoverable under an MRO, Staff admits that the rider would be a quantifiable negative based on forecasts from Duke witness Rose. However, Staff first maintains that forecasting the market is especially difficult currently and potential policy changes only add to that difficulty. Given that, Staff still contends that the qualitative benefits of the ESP outweigh any quantitative deficits. Staff explains that provisions in the ESP will allow CRES providers access to CEUD which will allow them to offer innovative services to customers. Staff also agrees with Duke that the distribution-related riders benefits customers by allowing the Company to proactively take steps to improve reliability. Additional qualitative benefits include weatherization programs for low-income ratepayers and assistance with disconnections for nonpayment, energy efficiency, and public service announcements for customers in Cincinnati below the poverty line. Staff also advocates for the benefits provided by Rider PF. Staff maintains the rider advances the Commission's goals outlined in the PowerForward initiative and modernizes the Company's infrastructure.

{¶ 287} OCC disagrees and contends that the Stipulation fails the ESP versus MRO test. OCC begins by stating that Duke wrongly applies the test by considering withdrawn riders from its original application a benefit of the ESP before the Commission. It is also incorrect, per OCC, to consider the reduction from the original rates proposed in the *Rate Case* as a benefit. OCC submits that because Duke has the burden of proof in an ESP, aspects from another case should not be considered, and, further, OCC insists the rate reduction should be significantly greater. OCC counters the arguments of Duke and Staff by stating that any qualitative advantages of the settlement do not supersede the quantifiable negatives of Rider PSR. OCC submits that Duke and Staff overrates any benefit associated with the various distribution riders and that, further, those riders would be available under either an ESP or an MRO. As even Staff quantifies Rider PSR as a quantifiable loss, OCC argues the Commission should find that the proposed ESP is less favorable in the aggregate than an MRO.

{¶ 288} Pursuant to R.C. 4928.143(C)(1), 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 R.C. 4928.142. The Supreme Court of Ohio has 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. *Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501. Therefore, we must 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 find that the proposed ESP is, in fact, more favorable in the aggregate than the expected results under R.C. 4928.142.

{¶ 289} Initially, the generation rates under an ESP, which will be set via a CBP, would be the same as the rates established under an MRO. Additionally, regarding the distribution riders, and Rider DCI in particular, the Commission has consistently found that, to the extent that Duke made capital investments, those investments would be recovered to an equal extent through either the riders or through distribution rates, provided that the property is used and useful in the provision of distribution service. Accordingly, Duke would recover the equivalent of the same costs, and, for purposes of the ESP versus MRO test, the costs of the distribution riders should be considered substantially equal. Regarding Rider PSR, the exact quantifiable cost of the provision is unknown; undoubtedly, however, all forecasts project that the rider will be a consistent net loss for ratepayers. Testimony from Staff witness Donlon indicates that pricing in the market has been particularly difficult of late to predict, noting that capacity payment results nearly doubled from the 2020/2021 PJM delivery year to 2021/2022. He further suggested that upcoming policy changes could further impact pricing. (Staff Ex. 17 at 14-15.) Thus, while we will quantify the ESP as a loss, we accept the difficulty in creating an accurate projection of pricing. Nonetheless, the statutory test is not a strict price comparison. *AEP Ohio SSO Case,* Opinion and Order (Apr. 25, 2018) at ¶ 266.

{¶ 290} In comparing the ESP to an MRO, there are significant qualitative advantages associated with the ESP. First, we acknowledge the benefits of the distribution riders such as Riders DCI, DSR, and ESSR. While the costs of the riders are equal under an MRO, the benefit of the riders is a proactive approach to addressing distribution infrastructure. This focus on reliability is an asset to ratepayers, and thus a benefit of the ESP. Through Rider ESSR, particularly, Duke will be provided flexibility to manage vegetation effectively and economically. Furthermore, regarding Rider DCI, the Company will be required to work with Staff to ensure investments are purposeful and focused on reliability (Jt. Ex. 1 at 14). We also consider the potential qualitative benefits of Rider PSR. The volatility of the market, particularly in extreme weather conditions, can allow Rider PSR to serve as hedge and provide customers with more rate stability (Co. Ex. 8 at 14). Another positive associated with the ESP is dedicated costs for low income residential customers towards weatherization programs, energy efficiency programs, and assistance with disconnection due to nonpayment (Jr. Ex. 1 at 26).

{¶ 291} Another significant advantage of the ESP is Rider PF. Rider PF centers on modernizing distribution infrastructure. Through the PowerForward initiative, the Commission consistently expressed the importance of grid modernization and the numerous enhancements for customers that come with it. This rider allows Duke to further that process. This includes improved AMI that will give CRES providers, and potentially other third parties, access to CEUD thus enhancing their ability to more easily offer innovative products. (Jt. Ex. 1 at 16-18.)

{¶ 292} Therefore, based upon the evidence in the record in this proceeding, the Commission concludes that the ESP, as proposed in the Stipulation, 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 pursuant to R.C. 4928.142. While the ESP forecasts to quantify as a net loss for ratepayers, due to Rider PSR, we find that the numerous qualitative benefits that would not otherwise be available through a hypothetical MRO make the ESP more favorable.

V. CONCLUSION

{¶ 293} In our consideration of the evidence on record, and in addition to our determinations above, we find that the settlement will benefit ratepayers and the public interest. Foremost, we note this Stipulation represents the resolution of four major, complex cases. Rate case proceedings, SSO proceedings, and, recently, OVEC-related riders are typically some of the most heavily litigated cases before the Commission. A singular settlement allows parties unique negotiation advantages that would otherwise not be available.

{¶ 294} The resolution of the ESP as provided by the Stipulation provides long term stability and a focus on reliability. The establishment of Rider PF pursues a modernization of the electric grid that will provide benefits to all customers. Particularly, we find the AMI transition will give more customers more access and control to CEUD and allow CRES providers to offer more innovative services. The continuation of distribution-related provisions such as Riders DCI, DSR, and ESSR allow Duke to initiate work on its distribution infrastructure, with a renewed focus on reliability. The changes to Rider ESSR, involving Duke's vegetation management program, are also in the public interest. The adjustment to a five-year program allows Duke to economically counter a changing market and reach management goals (Staff Ex. 12 at 3). Moreover, we find modifications to Rider DCI offer additional protections to customers by requiring spending caps and tying those caps to meeting reliability goals (Jt. Ex. 1 at 10-14). Regarding reliability goals, the reliability standards established by the Stipulation require continued improvement from Duke. Notably, the Company is committed to reducing the number of customers who experience outages by 30 percent. (Staff Ex. 2 at 12-13.) Other benefits resulting from the settlement of the ESP include provisions for low-income residential customers that fund programs for energy efficiency, weatherization, and assistance with disconnection due to nonpayment (Jt. Ex. 1 at 26). Additionally, as discussed, Rider PSR, while projected to be a cost to customers, will benefit customers by acting as a hedge against volatile energy prices (Co. Ex. 8 at 14). Finally, and perhaps most importantly, a major benefit of the Stipulation is a reduction in base distribution revenue of over $19 million (Jt. Ex. 1, att. D).

{¶ 295} Finally, in conclusion, the Commission finds that the record demonstrates that the Stipulation does not violate any important regulatory principles or practice. The discussions above address the myriad concerns from the non-signatory parties, and, based on the evidence, we found they lacked merit. Instead, we find that the Stipulation advances state policies espoused in 4928.02. Specifically, we note that the Stipulation ensures the availability of adequate, reliable, safe, and reasonably priced electric service. Further, the agreement promotes the availability of unbundled and comparable retail electric service. Thus, we conclude the third prong of the Commission's three-part test to evaluate the Stipulation is met.

{¶ 296} Based on the foregoing, we determine that the Stipulation is reasonable and should be approved. As part of its investigation in this matter, Staff reviewed the various rates, charges, and provisions governing terms and conditions of service contained in Duke's proposed tariffs. Upon review, the Commission finds the proposed tariffs to be reasonable, subject to any modifications set forth in the Stipulation. Consequently, the Company shall file final tariffs, subject to final review by the Commission. The new tariffs will become effective for all services rendered on or after the effective date of the tariffs.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 297} Duke is an electric light company and public utility as defined by R.C. 4905.03(C) and R.C. 4905.02, respectively. As such, the Company is subject to the Commission's jurisdiction pursuant to R.C. 4905.04, 4905.05, and 4905.06.

A. Rate Case

{¶ 298} On January 31, 2017, Duke filed a notice of intent to file an application for an increase in its electric distribution rates.

{¶ 299} On March 2, 2017, Duke filed its application seeking Commission authority to increase its rates for electric distribution service, for accounting authority, and for approval of revised tariffs.

{¶ 300} By Entry dated April 26, 2017, the Commission found that the application met the requirements of R.C. 4909.17 and 4909.19 as well as the Standard Filing Requirements, and accepted the Company's application as of its filing date.

{¶ 301} On September 26, 2017, Staff filed its Staff Report, which was supplemented on October 12, 2017.

{¶ 302} Local hearings were held on October 30, 2017 and November 2, 2017.

{¶ 303} Objections to the Staff Report were filed on November 6, 2017, by IEU-Ohio, OPAE, Duke, OCC, Kroger, OMAEG, the Conservation Groups, CCEF, and OHA.

B. ESP Case

{¶ 304} On June 1, 2017, Duke filed an application and supporting testimony for an ESP pursuant to R.C. 4928.141, which was amended on June 12, 2017, and July 20, 2017.

{¶ 305} A technical conference regarding Duke's application was held on August 7, 2017.

{¶ 306} On September 28, 2017, intervention was granted to IEU-Ohio, OEG, OCC, OMAEG, OPAE, ELPC, Wal-Mart, Kroger, OHA, PWC, EDF, OEC, IGS, Cincinnati, Calpine, RESA, Direct, the Universities, and Constellation NewEnergy, Inc. and Exelon Generation Company, LLC.

{¶ 307} Local public hearings were held on October 23, 2017, and October 26, 2017.

C. ***Standards Case***

{¶ 308} On July 22, 2016, Duke filed an application to revise its reliability performance targets in accordance with Ohio Adm.Code 4901:1-10-10.

{¶ 309} Intervention was granted to OCC on January 4, 2017.

{¶ 310} A technical conference was held on February 2, 2017.

{¶ 311} On February 22, 2017, comments were filed by the OCC. Staff filed a report on March 6, 2017, and Duke and OCC filed reply comments on March 24, 2017.

D. *PSR Case*

{¶ 312} On March 31, 2017, Duke filed an application to modify and amend its Rider PSR and for approval to change its accounting methods.

E. ***Stipulation***

{¶ 313} On April 13, 2018, a Stipulation was filed that purports to resolve issues in all four pending cases. The Stipulation was signed by Duke, Staff, Cincinnati, OPAE, OEG, OHA, and PWC. Non-opposing signatories include Kroger, IEU-Ohio, OMAEG, and Wal-Mart.

{¶ 314} Also on April 13, 2018, Duke filed a motion to consolidate the cases included in the Stipulation.

{¶ 315} The motion to consolidate the *Rate Case*, the *ESP Case*, the *Standards Case*, and the *PSR Case* was granted on May 9, 2018.

{¶ 316} Intervention was granted to OEG, OCC, IEU-Ohio, OPAE, the Conservation Groups, Kroger, IGS, PWC, OHA, Calpine, Cincinnati, OMAEG, RESA, CCEF, Direct, the Universities, and Exelon.

{¶ 317} The evidentiary hearing commenced on July 9, 2018 and concluded on July 24, 2018. Rebuttal testimony was heard on August 6, 2018.

{¶ 318} Initial briefs were filed on September 11, 2018. Reply briefs were filed on October 2, 2018.

{¶ 319} The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted, as modified by the Commission.

{¶ 320} The ESP, 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 R.C. 4928.142.

{¶ 321} The value of Duke's property which is used and useful in the rendition of electric distribution service, or the rate base, is $1,302,465,298.

{¶ 322} Given Duke's current rates, the Company has a stipulated operating income of $110,488,130 and a stipulated rate base of $1,302,465,298, which yields an 8.48 percent earned ROR. (Jt. Ex. 1 at 7, Schedule A-1.)

{¶ 323} The negotiated ROR recommended by the Stipulation is 7.54 percent. In order to realize the stipulated ROR on the stipulated rate base of $1,302,465,298, Duke requires net operating income of $98,205,883. Thus, the stipulated revenue decrease amounts to $19,177,171 and a total Stipulated revenue requirement of $467,775,683. (Jt. Ex. 1 at 7, Schedule A-1.)

{¶ 324} A ROR of 7.54 percent is fair and reasonable under the circumstances of this proceeding and is sufficient to provide Duke just compensation and return on its property used and useful in the provision of electric distribution services.

{¶ 325} A just and reasonable decrease to Duke's revenue requirement is $19,177,171.

{¶ 326} As part of its investigation in this matter, Staff reviewed the various rates, charges, and provisions governing terms and conditions of service contained in Duke's proposed tariffs. Upon review, the Commission finds the proposed tariffs to be reasonable, subject to the modifications set forth in the Stipulations. Consequently, Duke shall file final tariffs, subject to final review by the Commission. The new tariffs will become effective for all services rendered on or after the effective date of the tariffs.

VII. ORDER

{¶ 327} It is, therefore,

{¶ 328} ORDERED, That the Stipulation be approved and adopted. It is, further,

{¶ 329} ORDERED, That Duke is authorized to file in final form two complete copies of tariffs consistent with this Opinion and Order and to cancel and withdraw its superseded tariffs upon the effective date of the final tariffs. One copy shall be filed with these case dockets, and one copy shall be filed in the Company's TRF docket. The Company shall also update its tariffs previously filed with the Commission's docketing division. It is, further,

{¶ 330} ORDERED, That Duke shall notify all affected customers of the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

{¶ 331} ORDERED, That the effective date of the revised tariffs shall be a date not earlier than the date of this Opinion and Order and the date upon which two complete copies of the final tariffs are filed with the Commission. It is, further,

{¶ 332} ORDERED, That the pending motions for protective order are granted, as set forth herein. It is, further,

{¶ 333} ORDERED, That nothing in this Opinion and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 334} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

NJW/SEC/hac

Entered in the Journal

DEC 19 2018

Barcy F. McNeal

Barcy F. McNeal
Secretary

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 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. 17-1263-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. 17-1264-EL-ATA
IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO, INC., FOR	CASE NO. 17-1265-EL-AAM

AUTHORITY TO DEFER VEGETATION MANAGEMENT COSTS.

IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO, INC., TO ESTABLISH MINIMUM RELIABILITY PERFORMANCE STANDARDS PURSUANT TO OHIO ADM.CODE CHAPTER 4901:1-10.

CASE NO. 16-1602-EL-ESS

CONCURRING OPINION OF COMMISSIONER LAWRENCE K. FRIEDEMAN

As a prefatory comment I applaud the efforts of the interested parties in achieving a global resolution of many open matters. Additionally, I support the decision of the Commission in this Order. However, I would like to offer comment on certain aspects of the stipulation.

First, I offer comments on the issue of battery storage. I believe the PowerFoward Initiative yielded a broad consensus that we are entering an era of accelerated technological development that will drive innovation and modernization to the grid constrained only by the limitations on our collective imagination. I believe we must remain mindful of the implications of current decisions on future realities. Battery storage is but one example of evolving capabilities which will impact traditional notions of the grid and, potentially, competitive evolution. By way of example, battery storage can simultaneously play a role as a pure distribution asset with systemic purpose while functioning in the frequency regulation market. Simply put, a battery can have attributes of both a competitive and distributive asset. The dual nature of batteries may impact market dynamics, including the inhibition of evolving competitive services offered by non-utilities.

I do not advocate for the sub-optimal utilization of electric distribution utility (EDU) assets. However, the potential benefits of this broader storage application must be balanced against the potential deleterious impact on market development which ultimately may yield even greater consumer benefit. A possible solution to this dilemma may rest in a process by which the EDU bids out the storage-related capacity to suppliers participating in the capacity market with revenues generated by the bid procedure distributed to ratepayers. This suggestion represents only one possible approach and is exemplary of the myriad issues which will arise as we move forward in an era of technologically driven grid reconfiguration, the merits and implications of which are best debated in the forum provided by the PowerFoward Collaborative. Thus, while I believe a pilot program as recited is a reasonable undertaking within the context of the Stipulation, I would suggest that broader storage proposals be addressed through the construct of the PowerForward Roadmap.

Second, I offer comment on the duration of the ESP. Initially, I acknowledge the value of predictability and certainty derived by the duration of the ESP. However, as is evidenced by Staff witness testimony, future electric price and market forecasts beyond the short term are at best challenging given the vagaries and vicissitudes of the market. To date the auction procedures pursuant to which generation prices are determined have yielded very positive results for ratepayers. However, at some future date volatility or other market conditions may present circumstances in which other competitive procurement processes may yield even greater ratepayer value. I believe the Commission should remain vigilant of market dynamics and cognizant of the circumstances in which the ESP could be revisited to ensure maximum customer benefit.

Again, these observations are intended merely as comments. I fully support the decision reached today.

Lawrence K. Friedeman

LKF/rm/hac

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Barcy F. McNeal

Barcy F. McNeal

Secretary