BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	)))	Case No. 17-32-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	))	Case No. 17-33-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 17-34-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR.	)))	Case No. 17-872-EL-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR.	)))	Case No. 17-873-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 17-874-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service.	)))))))	Case No. 17-1263-EL-SSO
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	)))	Case No. 17-1264-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Vegetation Management Costs.	)))	Case No. 17-1265-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards Pursuant to Chapter 4901:1-10, Ohio Administrative Code.	)))))	Case No. 16-1602-EL-ESS

DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA APPLICATIONS FOR REHEARING

I. INTRODUCTION

The Public Utilities Commission of Ohio (Commission) issued a well-reasoned Opinion and Order (Order), resolving numerous cases involving Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) in a manner that helps improve service reliability while keeping customers' rates relatively stable for several years into the future. Nevertheless, the statutory representative of the Company's residential ratepayers,[1] as well as certain entities with environmental[2] or competitive[3] issues, filed applications for rehearing of the Commission's commendable decision.

Duke Energy Ohio provides electric service in the southwestern Ohio area. The proceedings resolved by the Commission in the Order address issues including distribution rates, generation rates, reliability indices, and other matters. These issues are critical ones, both to customers and to the Company. The resolution was based on agreement among many parties with diverse interests, and is in the public interest.

The applications for rehearing must be denied.

II. ARGUMENT

A. The Commission Properly Applied the Three-Part Test.

In accordance with its own precedent and Supreme Court opinions, the Commission considered the Stipulation and Recommendation filed in these proceedings[4] as a whole package, evaluating whether it was the product of serious bargaining among capable, knowledgeable

[1] The Office of the Ohio Consumers' Counsel (OCC).
[2] The Sierra Club, the Environmental Law and Policy Center, the Ohio Environmental Council, the Environmental Defense Fund, and the Natural Resources Defense Council (collectively, the Conservation Groups).
[3] The Retail Energy Supply Association (RESA) and Interstate Gas Supply, Inc. (IGS).
[4] Stipulation and Recommendation, April 13, 2018 (Stipulation).

parties; whether, as a package, it would benefit ratepayers and the public interest; and whether the package would violate any important regulatory principle or practice.[5] The Commission concluded, on the basis of the record, that all three criteria had been met.

The Conservation Groups raise two assignments of error relating to the three-part test. Both should be denied.

1. The Commission properly evaluated the impact of Rider PSR on the Stipulation.

The Conservation Groups first argue that the Commission failed to appropriately evaluate the impact of the Price Stabilization Rider (Rider PSR) on the Stipulation. Their argument is primarily based upon the fact that future prices and markets are impossible to predict with any level of certainty, as the Commission itself admitted.

The Conservation Groups, looking for an analysis of the likely costs compared to the likely benefits of Rider PSR, say that, when the Commission concluded that forecasting the market is extremely difficult, it was simply "refusing to take a position on the validity of the record evidence . . .."[6] Thus, the Conservation Groups conclude that the Commission's Opinion and Order fails to comply with R.C. 4903.09.

The Conservation Groups are wrong in this conclusion; the Commission did take a position. The Commission acknowledged that Rider PSR is substantially similar to the OVEC-related riders approved for both AEP and DP&L.[7] The Commission further acknowledged that, in each instance, the OVEC-related riders were presented as part of distinguishable stipulations and considered based upon the record presented in each case.[8] Here, the Commission clearly

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[5] Opinion and Order, ¶¶ 165-167.
[6] Conservation Groups' Application for Rehearing, pg. 6.
[7] Opinion and Order, ¶ 269.
[8] *Id.*

found that Rider PSR was likely to represent a cost to consumers.[9] However, the Commission further found that Rider PSR has the potential to offer benefits.[10] The Commission's Opinion and Order listed those benefits in its discussion of the evidence preceding its determination and immediately following.[11] What the Commission did not attempt to resolve was the dollar value of such losses at given points in time. Rather, the Commission concluded that the benefits of Rider PSR outweighed those unpredictable costs.[12]

The Conservation Groups' first ground for rehearing should be denied.

2. The Commission did not place the burden of proof on intervenors.

For their second ground for rehearing, the Conservation Groups argue that, in its application of the three-part test, the Commission failed to hold the Company to its statutory burden of proof.[13] They claim that the Commission failed to adequately consider the impacts of Rider PSR and, instead, simply relied on the existence of the Stipulation. The Conservation Groups are wrong.

The Company presented substantial evidence concerning Rider PSR and the Commission did consider those impacts and discussed them in its Opinion and Order.[14] Duke Energy Ohio presented the testimony of Judah Rose, concerning the past and forecasted fluctuations in energy prices and a comparison of those fluctuations with the relatively stable costs of production from the Ohio Valley Energy Corporation (OVEC). As the Commission recounted, witness Rose

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[9] Opinion and Order ¶ 281.
[10] Opinion and Order ¶ 281.
[11] Opinion and Order ¶¶ 272, 274, 276, 278 and 282-283
[12] Opinion and Order, ¶¶ 281, *et seq.*
[13] Conservation Groups' Application for Rehearing, pp. 10, *et seq.*
[14] *Supra*, fn. 11.

concluded that electric market is five times more volatile than the OVEC production costs. Thus, it concluded, Rider PSR has "significant value as a hedge."[15]

The Commission also considered the downside of Rider PSR, noting that the Company's witness had also testified as to the rider's likely net cost to customers. However, the Commission also questioned the reliability of forecasting such costs, thereby casting doubt on the calculation of the net impact. Furthermore, the Commission distinguished the terms of the rider being approved in these proceedings from the similar rider that it had rejected in a previous case.

The Conservation Groups ask that the Commission reconsider its decision because the burden of proof in these cases must remain on the Company. The Commission has already considered the case in that light. As the Commission explained, the Company offered testimony on current market prices, market price forecasts, OVEC costs, and volatility comparisons, among other things. The Company met its burden of proof, allowing the Commission to properly apply the three-part test.

B. <u>The Commission Properly Evaluated and Approved Populating Rider PSR</u>.

OCC makes two arguments concerning the population of Rider PSR. First, it proposes that the Commission should "revisit" its opinion that any consideration of federal preemption of its jurisdiction to authorize Rider PSR should be left to judicial determination.[16] OCC claims that, by approving the Stipulation, the Commission effectively did decide the preemption argument, even though its language clearly recognizes the ability of the Ohio Supreme Court to overturn its order on this ground. The Commission did not decide the issue; it merely refused to address it, as a matter outside of its purview.

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[15] Opinion and Order, ¶ 282.
[16] OCC's Application for Rehearing, pg. 3.

OCC did not attempt to make any new arguments concerning preemption. It simply pointed to its Initial Brief and told the Commission, in effect, to go re-read that document. Nonetheless, the Company's Reply Brief explained why OCC's preemption claims were flawed and that the Commission's jurisdiction was sound. As no new arguments were presented, OCC's first assignment of error must be denied.

Its second argument concerning Rider PSR, OCC renews its argument that Rider PSR does not function as a limitation on shopping, as set forth in R.C. 4928.143(B)(2)(d) and suggests that the Commission found the rider to be such a limitation without any record evidence to that effect.[17] Pointing back to the order approving the Company's previous electric security plan (ESP III), OCC claims that the Commission had no evidence in that proceeding to conclude that Rider PSR would function as a limitation on shopping. But ESP III is now supplanted by ESP IV. OCC's argument in respect of ESP III are of no relevance to this proceeding. And then, moving back to the present situation, the OCC argues that the Commission's reliance on its prior conclusion is similarly unsupported.

The flaw in OCC's reasoning is simple: The Commission did indeed rely on record evidence in its approval of ESP III. The Commission specifically pointed to the testimony of Alan S. Taylor, in which the witness explained that Rider "PSR would result in all customers paying a price for retail electric generation that is approximately 3 percent cost-based from OVEC and 97 percent market-based from the FERC-regulated PJM wholesale market."[18] The Commission also relied on the transcript from the hearing in its conclusion that the rider

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[17] OCC's Application for Rehearing, pp. 3, *et seq.*

[18] *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 14-841-EL-SSO, *et al.*, Opinion and Order (ESP III Order), pg. 19 (April 2, 2015).

constitutes a financial limitation on shopping.[19]

OCC makes much of the fact that Duke Energy Ohio itself did not argue for treating Rider PSR as a financial limitation on shopping, claiming that the Commission violated R.C. 4903.09 because it cited to an intervenor's brief to support its conclusion.[20] But that is not the standard in R.C. 4903.09. Just reviewing the precedent cited by OCC, it is clear that the Commission fulfills the requirements of the statute by relying on facts in the record. It is "record support" that the Court looks for.[21] This is precisely what the Commission did in ESP III. In the current proceedings, the Commission justifiably relied on that prior determination and, as additional support, explained the similarity with a case recently decided by the Ohio Supreme Court.[22] Moreover, the Ohio Supreme Court has recently confirmed that a rider substantially similar to Rider PSR that the Commission approved for AEP-Ohio acts as a financial limitation on shopping.[23] The Commission's interpretation in this regard has already been affirmed.

OCC's second ground for rehearing must be denied.

C. The Commission properly approved Duke Energy Ohio's plans to continue modernization of the electric grid and enhancements to retail competition and customer services.

In OCC's Assignments of Error Numbers 3, 4, and 5, it argues that the Commission improperly approved the continuation of Duke Energy Ohio's modernization of its electric grid. In making these arguments, OCC overlooks the extensive record upon which the Commission relied and the benefits to customers that will result. OCC attempts to make the case that costs were not properly justified but, in reality, OCC simply disagrees with the outcome, rather than

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[19] *Id.*, pg. 45.
[20] OCC's Application for Rehearing, pg. 4.
[21] *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2006-Ohio-5789, 111 Ohio St.3d 300, ¶¶ 22-23.
[22] Opinion and Order, ¶¶ 265-266.
[23] *In re Application of Ohio Power Co.*, Slip Opinion No. 2018-Ohio-4698.

identifying any legal infirmity. For these reasons, OCC's third, fourth, and fifth assignments of error have no merit.

1. The Echelon Meters Were Used and Useful

OCC argues that the Commission's Opinion and Order is unreasonable and unlawful because the Order does not cite any evidence that the Echelon metering system was "used and useful." OCC points to the fact that the Staff did not analyze the Echelon system for this purpose.

In fact, the Commission Staff did address the used and usefulness of all the Company's distribution rate base. In its Staff Report,[24] Commission Staff describes that its Scope of Investigation "verified the existence and used and useful nature of the assets through physical inspection."[25] In addition, the Staff Report states that "rate base represents [Duke Energy Ohio's] net investment in plant and other assets as of the date certain, June 30, 2016, which were used and useful in providing service to its customers and upon which its investors are entitled to the opportunity to receive a fair and reasonable rate of return."[26] The Echelon metering system at issue was part of the rate base on June 30, 2016, which Staff found to be used and useful. Although the Staff Report did not itemize every one of thousands of property types in its Staff Report, it did find that the June 30, 2016, rate base was used and useful. Therefore, OCC is simply wrong to suggest that the Staff and the Commission did not make a finding of used and usefulness related to the Company's SmartGrid investment as of June 30, 2016,

OCC invokes R.C. 4909.15(A)(1) to support its argument that expected deployment of new meters in a future period invalidates the value of rate base as of the date certain. A critical

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[24] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, *et al.*, Staff Report (Sept. 26, 2017).
[25] *Id.*, pg. 7.
[26] *Id.*, pg. 8.

provision of this statute is that the valuation must be "as of the date certain." Whether the Echelon meters are used and useful at any point after the date certain in the case is irrelevant; adjustments to rate base for changes after the date certain are not allowed for electric utilities. OCC's reading of R.C. 4909.15(A)(1) presumably would allow electric utilities to adjust rate base for changes in valuation after the date certain. While there are provisions in the Ohio Revised Code that permit certain post-date certain changes for gas and water utilities, there is no comparable provision for electric utilities.

Furthermore, OCC is ignoring the history of the SmartGrid deployment, which history includes OCC's agreement to continue deployment of the system over a period of seven years. Surely, if OCC believed that customers were paying for a system that was not "used and useful" in all that time, it would have raised the issue earlier.

In 2008, OCC agreed to details[27] regarding the way in which the Company would recover costs for SmartGrid deployment. The Stipulation that OCC agreed to included provisions for annual recovery of costs on a per meter basis, an allocation of costs, including an 85 percent allocation to residential customers, post-in-service carrying charges, and an annual review with due process. OCC further agreed to regulatory asset accounting treatment for replaced meters, including recovery through existing depreciation rates as such rate might be amended from time to time.

After the approval of SmartGrid in the Company's first electric security plan case (ESP I),[28] Duke Energy Ohio filed riders annually, to adjust the rider for the previous year's costs as

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[27] *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No.08-920-EL-SSO, *et al.*, Stipulation and Recommendation, pp. 13-14 (October 27, 2008).
[28] *Id.*, Opinion and Order (Dec. 17, 2008).

deployment continued.[29] In each of these rider proceedings, OCC submitted comments and then, in most of them, agreed to a stipulated settlement. At no time, in any of these proceedings, did OCC complain that the recovery of costs for investments in SmartGrid was not appropriate because the assets were not "used and useful." OCC mistakenly faults Staff for not considering whether Echelon meters were used and useful, despite this history and despite the fact that the Staff Report plainly does make a finding of the used and usefulness of the Company's investment in distribution plant. But Staff witness James Schweitzer explained that Staff did not need to do such an analysis because the issue was resolved in annual rider audits for Rider DR-IM.[30] The Staff was manifestly correct.

OCC's arguments with respect to whether the Company's SmartGrid deployment is "used and useful," coming ten years after the Company began deployment, represents a significant effort to rewrite history. The system was installed beginning in 2009 and was completed in 2015. The system was used to read customers' meters and support time-of-use pilot rate trials. If OCC did not believe that customers were getting value for their investment,

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[29] *In the Matter of the Application of Duke Energy Ohio to Adjust and Set Its Gas and Electric Recovery Rate for SmartGrid Deployment under Riders AU and Rider DR-IM,* Case No. 09-543-GE-UNC, *et al.*; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM for 2009 SmartGrid Costs,* Case No. 10-867-GA-UNC; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review,* Case No. 10-2326-GE-RDR; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider-AU for 2011 SmartGrid Costs,* Case No. 12-8111-GE-RDR; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider-AU for 2012 SmartGrid Grid Modernization Costs,* Case No. 13-1141-GE-RDR; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider-AU for 2013 SmartGrid Grid Modernization Costs,* Case No. 14-1051-GE-RDR; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider-AU for 2014 SmartGrid Grid Modernization Costs,* Case No. 15-883-GE-RDR; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider-AU for 2015 Gas Grid Modernization Costs,* Case No. 16-0794-GA-RDR; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM for 2015 Grid Modernization Costs,* Case No. 16-1404-EL-RDR; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider-AU for 2016 Gas Grid Modernization Costs,* Case No. 17-690-GA-RDR; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM for 2016 Grid Modernization Costs,* Case No. 17-1403-EL-RDR; *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM for 2017 Grid Modernization Costs,* Case No. 18-838-EL-RDR; and *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider AU for 2017 Gas Grid Modernization Costs,* Case No. 18-837-GA-RDR.

[30] Direct Testimony of James W. Schweitzer (Staff Ex.6), pg. 3.

they neglected to raise that argument at any of the times when it should have been raised. Duke Energy Ohio customers have received benefits from SmartGrid deployment since 2009. There can be no question now that the Company's investment has been and continues to be used and useful, a finding that is supported by the findings in the Staff Report that the Company's June 30, 2016 rate base, which included the Echelon meters, was used and useful. OCC's third ground for rehearing should be denied.

2. SmartGrid benefits were returned to customers during rider updates and are now shown in base rates.

OCC claims, in its fourth assignment of error, that the Opinion and Order is in violation of both R.C. 4903.09 and its own order in a prior SmartGrid case because there was no evidence that the Company included the value of SmartGrid customer benefits in its base rate revenue requirement. OCC is incorrect.

In the second year of deployment, the Commission opened an investigation to determine whether the deployment was achieving success and should continue.[31] As was the case in each of the Rider proceedings, OCC filed comments in the proceeding. OCC specifically commented that Duke Energy Ohio "should be required to levelize the projected savings resulting from SmartGrid operational benefits and to use them as an offset to the rider . . .."[32] OCC observed that "Customer dollars are currently flowing to Duke before customers realize any significant benefit in the form of expense savings."[33] To respond to OCC's arguments and to resolve the case, all of the intervening parties agreed (1) that the Company would reduce its revenue requirement each year by an amount equal to the operational benefits that were set forth in the

[31] *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust and Set its Gas and Electric Recovery Rate for 2010 Costs Under Riders AU and Rider DR-IM and Mid-Deployment Review of AMI/SmartGrid Program*, Case No. 10-2326-GE-RDR, Application (June 30, 2011).
[32] *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust and Set its Gas and Electric Recovery Rate for 2010 Costs Under Riders AU and Rider DR-IM and Mid-Deployment Review of AMI/SmartGrid Program*, Case No. 10-2326-GE-RDR, Comments by the Office of the Ohio Consumers' Counsel, pg. 6 (November 4, 2011).
[33] *Id.*

Smart Grid Audit and Assessment Report provided by MetaVu, Inc,[34] (2) that the savings returned through the rider would be back-loaded such that customers would pay for the rider at the same time that they received the full benefit of operational savings from SmartGrid, and (3) that the Company would file a rate case in the first year after full deployment "such that the revenue requirement requested in that case will reflect the level of benefits attributable to SmartGrid . . .."[35]

In the Application for Rehearing, Assignment of Error No. 4, OCC seems to argue that the Commission's Opinion and Order does not have any findings of fact with respect to this matter. But OCC neglects to recognize that there is no requirement to do so. The Company's commitment was to "reflect" the benefits achieved in the rate case revenue requirement. The Stipulation does not and could not impose any specific requirement upon the Commission.

Moreover, as a factual matter, OCC is simply incorrect. As discussed above, the benefits achieved through SmartGrid deployment were reflected in the rate case application and, importantly, contributed to the fact that the Company's operation and maintenance (O&M) expense declined significantly from what was approved in its 2012 rate to the amounts included in the 2017 rate case. OCC's witness simply neglected to look for them. OCC witness Barbara R. Alexander testified that Duke Energy Ohio "failed to comply with the PUCO order. It did not identify the benefits actually achieved by its SmartGrid investment . . .."[36] But on cross examination, Ms. Alexander admitted that she had not reviewed costs in any of the SmartGrid rider cases.[37] Nor did she understand that the rider cases included prudence reviews.[38] And,

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[34] *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust and Set its Gas and Electric Recovery Rate for 2010 Costs Under Riders AU and Rider DR-IM and Mid-Deployment Review of AMI/SmartGrid Program*, Case No.10-2326-GE-RDR, Stipulation and Recommendation, pg. 5 (February 24, 2012).
[35] *Id.*, pg. 7.
[36] Direct Testimony of Barbara R. Alexander (OCC Ex. 12), pg. 6.
[37] Transcript Vol. IX, pg. 1500.

finally, Ms. Alexander had not compared the revenue requirement in the Company's last base electric rate proceeding with the revenue requirement in this most recent rate proceeding.[39] It is a matter of record that the Company had significantly reduced its O&M expenses as a result of SmartGrid deployment, which reduction can be seen by simply comparing the approved O&M in the two applications. Staff understood the savings to have been included and they so didn't need to review further. And OCC's witness was ill-equipped to support OCC's argument. OCC simply failed to persuade the Commission to agree with its revisionist history of prior commitments.

The Commission's Opinion and Order sets forth the arguments and counter-arguments of all the parties, in great detail.[40] After recognizing all the arguments, the Commission explained that it supported the AMI Transition, the accounting treatment of obsolete Echelon meters, and the inclusion of prior SmartGrid investments into rate base. With respect to the latter, the Commission explained that it has reviewed the Company's deployment on an annual basis, that the operation to date has been serviceable, and that it has provided benefits to customers. Spending has already been determined to be prudent and reasonable, and therefore OCC's arguments are without merit.[41]

Thus, although OCC has documented its opposition to the Company's continuation of SmartGrid and the AMI Transition plan, OCC's arguments were unpersuasive. The Commission considered the relevant issues and reached a conclusion with which OCC disagrees. Such disagreement does not form the basis for an argument that the Commission's Opinion and Order is "unreasonable and unlawful." OCC's Assignment of Error Number 4 is without merit.

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[38] *Id.*
[39] *Id.*, pg. 18.
[40] Opinion and Order, ¶¶ 209-217.
[41] *Id.*, ¶219.

3. The AMI Transition is well supported and was shown to be cost-effective.

For its fifth ground for rehearing, OCC complains that the Opinion and Order failed to find that the AMI Transition would be cost-effective.

Duke Energy Ohio witness Donald L. Schneider, Jr., is the General Manager of Advanced Metering Infrastructure (AMI) Program Management for the Company, and for Duke Energy, corporate-wide. Mr. Schneider managed the overall deployment of SmartGrid in Ohio, beginning in approximately 2008 and continuing through full deployment in 2015.[42]

Mr. Schneider provided an overview of the existing SmartGrid system in Ohio, including the meters that have been deployed, the way they communicate, the successes and failures experienced by Duke Energy Ohio as it led the way toward the utility of the future, and the challenges currently faced by the Company with respect to the overall deployment. Mr. Schneider also explained how data received from the meters is stored and how it is then processed for billing purposes.

After explaining the system in detail, Mr. Schneider discussed the fact that the manufacturer of the communications nodes, Ambient, was acquired by a different company, Ericsson, and Ericsson is no longer manufacturing communications nodes.[43] Additionally, the nodes are failing at a rate higher than anticipated.

Next, Mr. Schneider explained the reality that Verizon, the company that provides cellular service for SmartGrid communications, is discontinuing support for second generation (2G) and third generation (3G) cellular networks as of 2022.[44]

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[42] Direct Testimony of Donald L. Schneider, Jr. (Duke Energy Ohio Ex. 11), pg. 2.
[43] *Id.*, pg. 10.
[44] *Id.*, pg. 11.

In response to these significant business challenges, Mr. Schneider explained that the Company proposed to transition its meter environment from an AMI node communications environment to an AMI mesh environment.[45] The proposed transition offers a multitude of benefits that will be cost-effective and will provide ancillary benefits that add value for customers along the way. As Mr. Schneider discussed, it will be necessary for the Company to transition to 4G technology.[46] Once the meters are all transitioned from 3G to 4G, the Company will be able to more readily obtain billing quality AMI Customer Energy Usage Data (CEUD) for its customers and that data will immediately feed into the Company's new Meter Data Management (MDM) system. This is a more efficient design overall but, more importantly, this newer system design will allow the Company to provide CEUD to Competitive Retail Energy Service (CRES) providers.[47] Mr. Schneider also explained that the AMI transition will permit Duke Energy Ohio to offer a full suite of Enhanced Basic Services. Those services were detailed by Duke Energy Ohio witness Dr. Alexander J. Weintraub.[48]

In addition to the new services and operational efficiencies discussed by Mr. Schneider, there are also cost savings to be realized. Mr. Schneider presented a net present value analysis of the two scenarios. If the Company were to maintain the existing node environment, it would incur costs estimated at $190.2 million. On the other hand, pursuing the AMI Transition is estimated to cost $134.7 million.[49] The AMI Transition is cost-effective. OCC's fifth assignment of error must be denied.

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[45] *Id.*, pg. 13.
[46] *Id.*, pg. 11.
[47] *Id.*, pg. 15.
[48] *Id.*, pg. 14.
[49] *Id.*, pg. 17.

D. The Commission's Order properly provides approval for the Company to move forward with PowerForward Initiatives.

In Assignment of Error Number 6, OCC argues that the Commission improperly approved charges to customers under the Company's new PowerForward Rider (Rider PF) without any finding that the investments will be cost effective. OCC correctly notes that Rider PF approval was addressed in three parts, consistent with the terms of the Stipulation. The first component is anticipated to provide a recovery mechanism in case the Commission issues directives following the conclusion of the PowerForward initiative and directives resulting therefrom. OCC argues that the Stipulation provides no additional details about this component and that there is no evidence in the record in these proceedings regarding costs or benefits. This is all very true. The first component is anticipated to provide a mechanism for future applications. If the Commission orders the Company to take actions, as a result of its PowerForward Initiative, and if that order entails the Company incurring costs, then the Company will proceed as ordered by the Commission. However, as there are no costs to be required of customers at this juncture and, indeed, no information upon which to proceed, no further justification is needed or possible now. OCC can live to fight this fight, another day.

The second component of Rider PF was a part of the Stipulation that provides for many changes to systems to enable improved data management. More specifically, as explained by Duke Energy Ohio witness Scott B. Nicholson, these enhancements to the Company's Information Technology (IT) systems will allow the Company to provide CEUD to CRES providers so that those providers are better able to offer new services to customers, such as time-of-use rates.[50] The work done will also enable improvements to the PJM resettlement process, which will benefit CRES providers and in turn benefit customers. Mr. Nicholson explained in

[50] Direct Testimony of Scott B. Nicholson (Duke Energy Ohio Ex. 24), pp. 10-11.

great detail all of the changes needed and the benefits to be had from this comprehensive IT work. All of these changes will provide benefits that fit with the Commission's stated goals of moving the electric grid into the future. The methodology for recovery of costs associated with Rider PF was discussed by Duke Energy Ohio witness William Don Wathen Jr.[51] Mr. Nicholson provided further support for the costs associated with the work to be done.[52] Thus the proposal for this work was thoroughly explained and detailed in the Company's application and supporting testimony.

The Commission's Opinion and Order provides a detailed overview of the terms of the Stipulation related to Rider PF and the various arguments of the parties with respect to the Rider PF proposal.[53] After consideration of the facts in the record, the Commission explicitly found that "[t]he establishment of Rider PF pursues a modernization of the electric grid that will provide benefits to all customers." Likewise, the Commission recognized that Rider PF will allow CRES providers, and potentially other third parties, access to CEUD, thus enhancing their ability to more easily offer innovative products.[54] Thus, the Commission is specifically calling out the value proposition for customers, contrary to OCC's assertion. OCC may, of course, disagree with the Commission on this point, but there is nothing unreasonable or unlawful in the Commission's Opinion and Order.

The third component of Rider PF provides only for a future proceeding to be filed. In that future proceeding, the Company will propose a new customer information system (CIS) as part of an infrastructure modernization plan. Until such time as that new proceeding is initiated, there is nothing to be considered in this case. Again, this is an argument that OCC may offer in

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[51] Direct Testimony of William Don Wathen Jr. (Duke Energy Ohio Ex. 26), pg. 3.
[52] Direct Testimony of Scott B. Nicholson (Duke Energy Ohio Ex. 24), pg. 13.
[53] Opinion and Order, pg. 84.
[54] *Id.*, pg. 107.

that future case. There will be no charge or change in rates associated with this component of the Stipulation until an application is filed and due process occurs. OCC's arguments here are premature and there are no issues of cost effectiveness to be considered in respect of this third component of Rider PF in the Stipulation.

As a final matter, OCC argues that the Commission simply neglected to consider cost effectiveness with respect to Rider PF and SmartGrid investments.[55] But the known cost elements associated with Rider PF are attached to the Stipulation (Attachment F). Likewise, costs associated with the AMI Transition were detailed in Mr. Schneider's testimony and considered by the Commission. And, as the Commission described the provisions set forth in the Stipulation, the Commission recognized Attachment F, along with the proposals for cost recovery associated with Component Two of Rider PF, which is, after all, the only component of the Rider that has any costs presently associated with it. The Stipulation, as recognized by the Commission, provides that the annual filing for cost recovery for the second component of Rider PF will be an application in a rider proceeding, where only the work done in the first twelve months will be eligible for recovery and will be subject to the demonstration by the Company that the costs were prudently incurred and that the functionality associated with each phase of the project has been successfully implemented and subject to audit.[56] The Stipulation itself calls out all the details. The Commission recognized these details and approved them. There is nothing more required of the Commission to lawfully approve Rider PF. The Ohio Supreme Court recognized this only recently. The Court explained that there can be no harm from a charge that recovers no revenue from consumers.[57] OCC's arguments are without merit.

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[55] OCC's Application for Rehearing, pg. 15.
[56] Stipulation, pg. 17; Opinion and Order, pg. 45.
[57] *Re Application of Ohio Power Co.*, Slip Opinion No.2018-Ohio-4697 at ¶13.

E. The Commission properly approved the AMI Transition as being cost effective and least cost.

R.C. 4903.09 states generally that the Commission must file findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact. In OCC's Assignment of Error No.7, OCC criticizes the Commission's Opinion and Order because "it finds, contrary to all available evidence, that the Ohio AMI Transition is the 'least cost option' and that 'other alternatives were not demonstrated to be economical options.'" But OCC is incorrect. The Commission did base its decision upon relevant facts that it noted in the record and there were abundant reasons to find that the AMI Transition proposed by Duke Energy Ohio was, in fact, the least cost option.

There is no requirement, nor could there be, that the Company examine every possible option available to it in any given circumstance. The Company's subject matter experts are skilled and experienced with respect to their areas of responsibility. With respect to AMI Transition, as noted above, Duke Energy Ohio witness Donald L. Schneider, Jr., has been with the Company for more than 30 years.[58] Mr. Schneider had significant overall responsibility for the AMI deployment in Ohio since its inception.[59] He is likewise the person who will oversee the AMI Transition. Mr. Schneider's testimony provided a comprehensive discussion of the current state of the Duke Energy Ohio SmartGrid system.[60] He then went on to detail the challenges the Company has faced in the process of completing deployment and as the first utility in Ohio to fully deploy a SmartGrid.[61]

After ensuring that the proper groundwork for understanding was provided, Mr. Schneider then went on to explain the Company's proposal for moving forward. Mr. Schneider

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[58] Direct Testimony of Donald L. Schneider, Jr. (Duke Energy Ohio Ex. 11), pg. 1.
[59] *Id.*, pg. 2
[60] *Id.*, pp. 3-8.
[61] *Id.*, pg. 9.

explained the need to change from a node to a mesh environment, the need to switch from 2G and 3G technology to 4G technology, and the need to provide data to the Company's billing systems. Mr. Schneider's discussion was complemented by Duke Energy Ohio witness Nicholson who also discussed why having the data in the proper meter data management system matters to billing.[62] Mr. Schneider then went on to explain how the Company evaluated the costs of the proposal and why it believed that the plan for the AMI Transition was the best alternative and least cost option.[63]

The Commission's Order detailed the AMI Transition in a number of different places. The Commission, after laying out the facts, described its reasoning.[64] The Commission explained its belief that the proposal would be cost-effective and that the Company would continue to make advancements to its infrastructure that would benefit ratepayers. The Commission found "that the AMI transition is a practical decision that mitigates costs and offers customers additional benefits."[65] The Commission's statement that the AMI Transition would be "least cost" is in reference to the options considered by the Company. There is no statutory requirement that any plan be the least cost of every possible plan that could be considered. The Commission stated that this plan was the "least-cost" option proposed by the Company. This is factually correct and represents a rational choice on the part of the Company and the Commission. OCC merely disagrees with the Commission's decision. There is no merit in OCC's argument.

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[62] Direct Testimony of Scott B. Nicholson (Duke Energy Ohio Ex. 24), pg. 9-10.
[63] Direct Testimony of Donald L. Schneider, Jr. (Duke Energy Ohio Ex. 11), pg. 17.
[64] Opinion and Order, pp.45, 73, and 77.
[65] *Id.*, pg. 78.

F. The Commission approved continuation of Duke Energy Ohio's Distribution Capital Investment Rider to maintain and enhance reliability and safety.

In the Company's ESP III proceeding, the Commission approved a rider that enabled investment by the Company to proactively maintain its distribution grid.[66] The Distribution Capital Investment Rider (Rider DCI) was proposed to maintain safety and reliability and also to replace aging infrastructure proactively. The Commission recognized the stated purpose of the rider and found that the Company was "correct to aspire to move from a reactive to a more proactive maintenance program."[67] The Commission further stated that it believed it would be detrimental to the state's economy to require the utility to be reactionary or to allow its performance standards to take a negative turn.[68] The Commission's logic in approving Rider DCI in the earlier case is equally applicable in this case.

In its eighth assignment of error, OCC argues that the Commission should not have approved the continuation of Rider DCI because the Company's reliability standards were not met in 2016 and 2017. But OCC's discussion in respect of the standards is uninformed. Duke Energy Ohio witness Dr. Richard E. Brown explained the terms of the Stipulation as they related to proposed reliability index targets and why the Stipulation was designed to support enhanced safety and reliability.

Mr. Brown's discussion regarding the Customer Average Interruption Duration Index (CAIDI) is of relevancy here. OCC incorrectly argues that customers "suffered through much longer outages in 2016."[69] This argument illustrates OCC's misunderstanding and misapplication of the performance indices in general. As explained by Dr. Brown, an increase in CAIDI does

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[66] ESP III Order.
[67] *Id.*, pg. 72.
[68] *Id.*
[69] OCC's Application for Rehearing, pg. 20.

not necessarily mean that reliability is getting worse; if SAIFI[70] and SAIDI[71] are both going down, but SAIFI is going down faster than SAIDI, then CAIDI will go up even though reliability is getting much better.[72] OCC's misunderstanding of these fundamental applications of the indices demonstrates an overall lack of foundation for the argument. Customers did not experience longer outages. Rather, fewer customer experienced outages of the same duration.

Because of OCC's failure to understand the simple math behind the indices, it incorrectly argues that the Commission was silent as to why it "neglected to protect consumers by enforcing the reliability performance standards . . .."[73] OCC appears not to comprehend that, if the denominator in a fraction changes downward faster than the numerator, the result appears to be an increase.

OCC's characterization of the facts is also incorrect. The Commission did not fail to enforce its reliability standards. Rather, the Commission approved a Stipulation that has new reliability standards included. Indeed, those reliability standards are quite aggressive. As explained by Dr. Brown, the reliability targets in the Stipulation reflect a significant improvement in reliability. From 2018 through 2022, the targets in the Stipulation reflect a 33 percent reduction in SAIFI and a 32 percent reduction in SAIDI. This means that customers will experience about a one-third reduction in interruptions and about a one-third reduction in interruption minutes.[74]

The Commission explained its rationale for approving the Stipulation, including Rider DCI, in several different ways. The Commission noted that the Company will be required to

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[70] System Average Interruption Frequency Index.
[71] System Average Interruption Duration Index.
[72] Direct Testimony of Richard E. Brown (Duke Energy Ohio Ex. 12), pg. 6.
[73] OCC's Application for Rehearing, pg. 20.
[74] Direct Testimony of Richard E. Brown (Duke Energy Ohio Ex. 12), pg. 9.

work with Staff to ensure that investments are purposeful and focused on reliability.[75] The Commission also explained that the continuation of distribution-related provisions, such as Riders DCI, DSR, and ESRR, allow Duke to initiate work on its distribution infrastructure with a renewed focus on reliability.[76] Additionally, the Commission noted that modifications to Rider DCI included in the Stipulation offer protections to customers by requiring spending caps and tying those caps to meeting reliability goals.[77]

There was abundant support in the record for the terms of the Stipulation that include continuation of Rider DCI. The Commission properly reviewed the record and explained why it supported those particular terms in the Stipulation. OCC misunderstands the discipline imposed by the Stipulation, and even the application of the indices in determining reliability. There is no merit in this assignment of error.

G. The OCC was included in all settlement discussions.

OCC claims that the Commission failed to address its contention that it was excluded from settlement negotiations as new Duke Energy Ohio reliability standards were being discussed. In making this argument, OCC relies upon the representation that only OCC, Staff and Duke Energy Ohio were parties in Case No. 16-1602-EL-ESS, where the reliability standards were being established. But as OCC points out in its Application for Rehearing, that is only true prior to when that case was included into the discussions leading to the Stipulation. Until the reliability proceeding was consolidated with the other cases herein, Mr. Williams, testifying on behalf of OCC, readily admitted that OCC had participated in "open and transparent settlement discussions.[78] Consequently, OCC was not excluded from any settlement discussion

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[75] Opinion and Order, ¶ 290.
[76] *Id.*, ¶ 294.
[77] *Id.*
[78] Transcript Vol. VI, pg. 1270.

in the reliability standards case. Additionally, once the case was combined with the rate proceedings, OCC was invited to, and, in fact, did attend, every settlement discussion that was held. As discussed by Duke Energy Ohio witness Wathen, the Stipulation was negotiated and is the product of serious bargaining, among capable, knowledgeable parties. It took nearly six months to negotiate the settlement.[79]

The Commission has stated on more than one occasion that, although a diversity of interests among signatory parties is helpful, it is not necessary for any stipulation.[80]

The reliability standards case was also pending since as early as 2016. At any time beginning with the filing of the application therein, OCC had an opportunity to engage in discovery and settlement. For OCC to now suggest that it was excluded from settlement simply makes no sense. The Commission correctly found that all parties participated in the settlement negotiations over several months and that no class of customers was intentionally excluded from settlement discussions.

H. Duke Energy Ohio's reliability standards are aligned with customer expectations as required by R.C.4928.143(B)(2)(h).

In its tenth assignment of error, OCC continues to display its lack of knowledge or expertise regarding reliability indices. By insisting, contrary to all the evidence, that the reliability standards in the Stipulation do not align with customer expectations, OCC ignores the facts and the evidence.

OCC likewise believes that the reliability standards were based upon "random numbers."[81] In order to support such a claim, OCC must completely ignore the testimony of Company witness Brown, who described in detail how the standards are calculated, what they

[79] Supplemental Testimony of William Don Wathen Jr. (Duke Energy Ohio Ex.30), pg. 32.
[80] 16-395 at p.18
[81] OCC's Application for Rehearing, pg. 22.

portend, and what improvement may be expected. Likewise, OCC is incorrect in its recitation of the Commission's rules. OCC would have been able to refer back to the original application of Duke Energy Ohio in the standards case to determine what the Company had originally proposed. The Stipulation represents an ultimate compromise. But the original application standards were based upon specific methodology exactly as required by O.A.C. Rule 4901:1-10-10(B)(3). Although there is a well-explained rationale to arrive at what ultimately became the compromise standards, the regulatory requirement is only that the Company propose standards based upon a specified methodology. As is true in all the stipulations in standards proceedings, the resulting settlement evolves from each application, through negotiations, to an ultimate compromise.

As support for its argument, OCC asserts that the majority of Duke Energy Ohio's customers consider an acceptable duration for non-storm related outages to be less than two hours. But OCC is incorrect. As explained by Staff witness Jacob Nicodemus, on average, customers state that restoration time of less than approximately four hours is acceptable. The CAIDI performance in each of the last five years was less than four hours.[82] More importantly, Duke Energy Ohio's customers expect increasing reliability. The Stipulation provides for exactly that. And again, OCC misunderstands the relevance of the CAIDI index. As shown by Staff witness Nicodemus, an increasing CAIDI number is not necessarily indicative of decreasing reliability.[83]

In its Opinion and Order, the Commission refers to the Company's substantial investment in distribution infrastructure and notes that such investment may only prevent reliability from worsening and may not be reflected in performance standards. The Commission states that the

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[82] Direct Testimony of Jacob Nicodemus (Staff Ex. 3) (no page number provided).
[83] *Id.*

continuation of Rider DCI puts sufficient focus on the importance of reliability and allows the Company to maintain, improve, or replace aging infrastructure. [84] With these observations, the Commission found that the Company had established that its plans and expectations were aligned with those of its customers.

The Commission's finding is supported by the record. This represents just another point with which OCC disagrees. But OCC's failure to concur does not make the Commission's decision unreasonable or unlawful.

I. The Commission Considered and Addressed Issues Raised by Competitive Retail Energy Service Providers.

1. The Commission's Opinion and Order does not exceed its authority.

IGS and RESA reiterate the same issues raised in their initial and reply briefs in these cases. Indeed, IGS raises the same argument in no less than five different ways, all of which are legally defective. But in these cases, the Commission appropriately determined that the Stipulation was the product of serious bargaining among knowledgeable parties, that it would benefit customers, and that it did not violate any important regulatory principle. The record provides abundant support for the Commission's findings. The Commission's Opinion and Order is reasonable and lawful, especially in respect of competitive matters raised by IGS and RESA. As set forth below, the Commission should reject IGS and RESA's arguments and deny their Applications for Rehearing.

IGS argues that the Commission exceeded its authority because, according to IGS, Duke Energy Ohio will recover costs associated with competitive retail service through non-competitive service rates.[85] IGS would like to characterize standard service offer (SSO) service

[84] Opinion and Order, pp. 70-71.
[85] IGS's Application for Rehearing, pg. 25.

as akin to a competitive service offering.[86] Indeed, throughout its argument, IGS juxtaposes Revised Code sections in curious ways to support an inherently unsupportable argument. The first problem with IGS's argument is that, in quoting statute, IGS emphasizes the wrong words. R.C. 4928.141 explains that the SSO is "necessary to maintain essential electric service to consumers." As is known to all involved in Ohio energy policy, the SSO is the default service that must be available as needed and that electric distribution utilities (EDUs) stand ready to provide. Indeed, it is substantially different from competitive retail electric service in which a CRES provider can choose to provide service to a customer or, for any reason, can choose not to provide service to a customer. That option is starkly different for the EDU, which has a legal obligation provide SSO service to any customer. IGS argues that the Commission may only set rates pursuant to R.C.4928.141 to 4928.143. IGS mystifyingly ignores the Commission's authority under R.C. 4909.18. The argument in its application for rehearing is perplexing at best. These cases necessarily involved matters related to the Company's application for an increase in rates. Such applications are necessarily governed by R.C. 4909.18. IGS's effort to ignore this part of the combined cases is inexplicable. So, from the outset, IGS' fundamental argument is flawed. The SSO is not a competitive service and, therefore, it is entirely appropriate and legal for the Commission to set rates for electric distribution service consistent with the requirements of R.C.4909.18.

More importantly, IGS claims that the Commission's Order permits Duke Energy Ohio to recover incremental overhead and administrative costs, associated with SSO service, through distribution rates. IGS' witness Hess attempted to support this argument. But the Commission's

[86] *Id.* at 26.

Order clearly rejected this view.[87] IGS request for rehearing is simply an attempt to ask the Commission to reconsider the same arguments that it has already considered.

And IGS claims this alleged allocation is in violation of R.C. 4909.18. This is so, according to IGS because these costs, according to IGS, are akin to generation costs. But IGS has not and cannot prove this to be true. IGS failed to meet its burden of proof.

2. The Commission properly determined that it could not unbundle rates and create additional riders.

IGS argues that R.C. 4928.05 and R.C. 4909.18 are in conflict. But this is true only in IGS's creative writing. Again, IGS wishes to establish that Duke Energy Ohio's distribution rates, which are indeed set by and governed by R.C. 4909.18, improperly include charges that should be unbundled. IGS's witness for this argument was unable to convincingly make this case. IGS witness J. Edward Hess proposed a "credit rider for all customers allowing them to avoid distribution costs that support the administrative and processing costs."[88] To successfully make this case, however, Mr. Hess needed to establish that there are distribution costs that support SSO administrative and processing costs exclusively attributable to those customers who do not take service from CRES providers. Mr. Hess was unable to successfully do so. And as explained in the Company's Initial Post-Hearing Brief, IGS witness Hess himself acknowledged that the Commission has never accepted this argument and that no other Ohio EDU is subject to such an allocation.[89] And, indeed, it would be inappropriate to allocate such costs only to SSO customers, as the SSO is available to all customers.

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[87] Opinion and Order, pg. 82.
[88] Direct Testimony of J. Edward Hess on Behalf of The Retail Energy Supply Association and Interstate Gas Supply, Inc., RESA-IGS Ex. 1, at pg. 4.
[89] Trans. Vol VI, pp. 1115-1116.

In its argument, IGS refers to the Elyria Foundry Co. case to support the claim that SSO costs are subsidized.[90] But, again, IGS misreads the law. IGS asserts that core distribution-related costs should be reallocated under the guise of "unbundling." However, IGS's reliance on that case is misplaced, as that case involved a finite issue related to the allocation of fuel cost, which the Court expressly found to be "an incremental cost component of generation service."[91] Certainly, the cost of fuel to provide generation service is not a distribution function comparable to general support services required to support the distribution company, such as maintaining a call center, infrastructure, assessments, etc. Fuel, or purchased power expense, in the current model is also an expense that is completely avoidable to a utility if a customer takes power from a CRES provider. Indeed, any customer who chooses to take service from a CRES provider avoids 100 percent of the Company's SSO generation price. The administrative costs associated with making SSO service available to ALL customers is not avoidable to the Company. The extent to which customers shop has no relationship to the number of call center employees, lawyers, accounting staff, etc., required to provide SSO service. The Elyria Foundry case provides no support for IGS's legally unsupportable argument.

Finally, IGS should be gratified by the fact that the Commission did not reject this illogical argument out of hand. The Commission acknowledged the IGS position by explaining that separating SSO-specific costs from distribution rates would likewise necessitate separating any costs specifically related to the customer choice program.[92] So the Commission directed Duke Energy Ohio to provide 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

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[90] *Elyria Foundry Co. v. Pub. Util. Comm.*, 2007-Ohio-4164, 114 Ohio St.3d 305.
[91] *Id.*, ¶ 50.
[92] Opinion and Order, ¶ 231.

rates.[93] The Commission correctly reasoned that it could not evaluate whether a cost re-allocation was appropriate until all costs are determined and evaluated.

IGS likewise argues that the Commission's Order is in violation of state policy in that it failed to unbundle costs that IGS believes are improperly included in SSO rates. But this argument also fails for the reasons set forth above. IGS was unable to persuade the Commission that such costs are in fact improperly included. As explained above, such costs cannot be determined absent a cost-of-service study and there was none in this case. The Commission did not exceed its authority and its Order was based upon the record before it. IGS's motion should be denied.

3. Fees charged to CRES providers are embedded in Commission-approved tariffs that IGS has failed to demonstrate as other than cost-based.

Duke Energy Ohio, the Staff, and OCC have all explained how and why the Company necessarily incurs costs to provide SSO services. These explanations were detailed in the Commission's Order where the Commission refers to costs associated with call-center infrastructure, regulatory assessments, business operations, and the need to respond to calls in the Company's call center that cater to CRES customers.[94] Among the costs incurred by the Company are those that are charged to CRES providers for services provided in managing interactions between and among the CRES providers. IGS and RESA specifically refer to switching fees and historical usage fees that, as IGS admits, were approved in a prior order. Given IGS's admission, the argument ends there. Rates approved by the Commission are by definition, lawful rates.[95] As the rates in question were previously approved by the Commission, IGS's argument about who bears the burden of proof is simply incorrect. It was incumbent upon

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[93] *Id.*
[94] Opinion and Order, pg. 82.
[95] R.C. 4905.32 and 4905.33 (under the filed-rate doctrine, a utility may only charge rates fixed by the Commission).

IGS to demonstrate that the rates charged by Duke Energy Ohio were unlawful or unreasonable. And IGS failed to do so.

The Commission referred to Duke Energy Ohio's and Staff's arguments and recognized that shifting costs as recommended by IGS would unfairly burden only non-shopping customers for services that benefit all customers. The Commission understood and resolved the issue correctly.[96]

In the end, IGS seeks to convince the Commission that it is faced with impediments to competition in Duke Energy Ohio's service territory. However, as explained by Duke Energy Ohio President Amy B. Spiller, Duke Energy Ohio currently has more than eighty registered CRES providers in its service territory.[97] It is obvious to all that competition is robust. Any claim that the Company's current pricing structure is adversely impacting IGS or any other CRES provider, or competition in general, is simply incorrect.

4. Duke Energy Ohio cannot include CRES provider's non-commodity charges on its bills.

In its application for rehearing, IGS argues that the Commission should direct Duke Energy Ohio to include, in its application for approval of a customer information system (CIS), a program design that will enable non-commodity billing for CRES providers.[98]

In response, the Commission recognized that Duke Energy Ohio is, unlike other Ohio EDUs, also a provider of natural gas services. The issue of non-commodity billing is complicated by that fact alone and by the considerations regarding the Company's Purchase of Receivables program. Also, the Commission declined to require that the Company's plan to include any specific components. Thereafter the Commission deferred this issue to the yet-to-be-

[96] Opinion and Order, ¶ 231.
[97] Trans. Vol. I, pg. 63.
[98] IGS's Application for Rehearing, pg. 39.

filed application for the CIS. This is the best outcome for all interested parties, and this will allow a more robust discussion of these issues. The Commission's reasoning is supported by the record, it is well within the Commission's discretion, and it is reasonable and lawful. IGS may take up this issue another day.

J. Supplier Fees.

RESA and IGS argue about two supplier fees: charges to CRES providers for CEUD and a $5.00 switching fee. Duke Energy Ohio's application in the electric distribution rate case did not include a proposal to alter either of these fees.

It should be noted that this is an issue that only RESA raised in its objections to the Staff Report in the Company's electric distribution rate case. So only RESA has a legal basis for raising this issue on rehearing. RESA contends that the Commission, in fulfilling its statutory obligation to "review costs to the utility of rendering the public utility service for the test period," is obligated to review every fee or charge. R.C.4909.15(A)(4). But this is not at all what is stated in Ohio law. And in support of the argument, RESA asserts that the cost of a service dictates the just and reasonable charge for that service.[99]

But, contrary to RESA and IGS' contention, the Commission's Opinion and Order did not ignore or overlook this issue. Rather, the Commission stated that RESA had not met its burden of proof, which would have required that RESA and/or IGS establish that the fees charged were unreasonable or unlawful.[100] Neither IGS nor RESA successfully did so.

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[99] RESA's Application for Rehearing, pg. 4.

[100] *See AT&T Communs. of Ohio v. Pub. Util. Comm.*, 51 Ohio St.3d 150, 555 N.E.2d 288 (1990) (when the Commission fixes the rates or charges that may be collected by a public utility, a presumption exists that such rates or charges are fair and reasonable, and a party who contends otherwise has the burden on appeal to the Supreme Court of showing that they are unjust, unreasonable or unlawful).

Accordingly, the Commission was unpersuaded.[101] This is a decision well within the Commission's discretion and one that is reasonable and lawful.

III. CONCLUSION

The Parties' applications for rehearing fail to identify valid reasons why the Commission's Order is unreasonable or unlawful. Likewise, the applications for rehearing fail to raise any new argument that the Commission has not already fully considered and rejected in this case. For the reasons set forth above, Duke Energy Ohio respectfully requests that the Commission deny rehearing.

Respectfully submitted,

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[101] Opinion and Order, pg. 87.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing was served on the following parties of record by electronic service, this 28th day of January 2019.

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Summary: Memorandum Duke Energy Ohio, Inc.'s Memorandum Contra Applications for Rehearing electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco O. Mr. and Watts, Elizabeth H and Kingery, Jeanne W