

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

SECOND ENTRY ON REHEARING

Entered in the Journal on June 27, 2019

I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing of the December 19, 2018 Opinion and Order, filed by the Ohio Consumers' Counsel, Interstate Gas Supply, the Retail Energy Supply Association, and, collectively, the Environmental Law & Policy Center, Sierra Club, Ohio Environmental Council, Environmental Defense Fund, and Natural Resources Defense Council.

II. PROCEDURAL HISTORY

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

{¶ 3} On April 13, 2018, Duke and certain parties filed a stipulation and recommendation (Stipulation) that purported 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).

The parties that signed the Stipulation are: Duke, Staff, the City of Cincinnati, Ohio Partners for Affordable Energy, Ohio Energy Group, Ohio Hospital Association, and People Working Cooperatively, Inc. Non-opposing signatories are the Kroger Company, Industrial Energy Users-Ohio, Ohio Manufacturers' Association Energy Group, and Wal-Mart Stores East LP and Sam's East, Inc.

{¶ 4} On December 19, 2018, the Commission issued an Opinion and Order that approved the Stipulation and thus resolved the Rate Case, the PSR Case, the ESP Case and the Standards Case.

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

{¶ 6} On January 18, 2019, the Ohio Consumers' Counsel (OCC); the Environmental Law & Policy Center, Sierra Club, Ohio Environmental Council, Environmental Defense Fund, and Natural Resources Defense Council (collectively, the Conservation Groups); Interstate Gas Supply (IGS); and Retail Energy Supply Association (RESA) filed applications for rehearing of the December 19, 2018 Opinion and Order. Duke filed a memorandum contra OCC, the Conservation Groups, IGS, and RESA's applications for rehearing on January 28, 2019. OCC filed a memorandum contra IGS's application for rehearing on January 28, 2019.

{¶ 7} On February 6, 2019, the Commission granted the applications for rehearing filed by OCC, IGS, RESA, and the Conservation Groups for further consideration of the matters specified in the applications for rehearing.

III. DISCUSSION

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

A. PSR Case

{¶ 9} In their applications for rehearing, OCC and the Conservation Groups submit that, in approving the Stipulation, the Commission wrongfully authorized Duke to proceed in the PSR Case. Duke previously requested to establish the Price Stabilization Rider (Rider PSR), which would allow the Company to recover the net costs associated with Duke's contractual entitlement in the Ohio Valley Electric Company (OVEC) in *In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO, et al. (*ESP 3 Case*). However, at that time, Rider PSR was only established as a placeholder and Duke was not permitted to recover any costs. *ESP 3 Case*, Opinion and Order (Apr. 2, 2015). In these proceedings, we determined that Rider PSR has significant value as a hedge against volatile energy prices and, after considering the entire Stipulation as a package, authorized Duke to recover costs associated with Rider PSR. Opinion and Order at ¶ 282-283.

{¶ 10} In its first assignment of error, OCC argues that the Commission's Opinion and Order is unlawful and unreasonable because the Commission's jurisdiction is preempted by the Federal Power Act (FPA). OCC avers that the United States Supreme Court affirmed decisions finding that a state commission's order guaranteeing a "cost-based" wholesale price is preempted by the FPA, citing *Hughes v. Talen Energy Marketing LLC*, 136 S.Ct 1288 (2016). OCC states that the Opinion and Order only addresses the preemption issue to state that the matter is best reserved for judicial determination. According to OCC, however, when the Commission approved Rider PSR, the Commission effectively determined that it had jurisdiction. OCC asks that the Commission reconsider and find that Rider PSR is preempted by federal law.

{¶ 11} OCC next argues that the Commission's Opinion and Order wrongfully approved Rider PSR as a limitation on customer shopping without any record evidence, in violation of R.C. 4903.09 and Commission precedent. OCC states Rider PSR was approved in the *ESP 3 Case* under R.C. 4928.143(B)(2)(d) as a purported limitation on customer shopping, and Duke is not asserting any new statutory basis for Rider PSR in this case. According to OCC, the record in this case, as well as the record in the *ESP 3 Case*, is insufficient to authorize Rider PSR as a limitation on customer shopping. OCC contends Rider PSR does not relate to a limitation on customers shopping for electric supply because it is non-bypassable and all customers will pay for it. OCC argues that because there is no record evidence that Rider PSR is a limitation on customer shopping, in the *ESP 3 Case* or the record in this case, the Commission should abrogate and modify the Opinion and Order by disallowing Rider PSR.

{¶ 12} In its memorandum contra applications for rehearing, Duke argues that OCC's assignments of error must be denied. First, Duke contends that, contrary to OCC's assertion, the Commission did not decide the issue of federal preemption. According to Duke, the Commission expressly did not make a ruling regarding jurisdiction and left the matter for a court to decide. Duke further submits that OCC's argument has already been discussed and addressed by the Commission and should therefore be denied, noting that OCC's application for rehearing refers back to its initial brief to make its argument regarding jurisdiction. Duke additionally asserts that OCC's arguments regarding the *ESP 3 Case* are not relevant in this proceeding and that the Commission's reliance on its prior conclusion was supported by record evidence, citing *ESP 3 Case*, Opinion and Order (Apr. 2, 2015) at 19, 45. According to Duke, the Commission properly relied on its prior determination in the *ESP 3 Case*, as well as a recent decision from the Supreme Court of Ohio that confirmed that a rider substantially similar to Rider PSR acts as a financial limitation on shopping, citing *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2006-Ohio-5789, 11 Ohio St.3d 300. Duke therefore asserts that OCC's arguments lacks merit and should be denied.

{¶ 13} With respect to OCC's first assignment of error, regarding federal preemption, we note that OCC presents no new arguments that were not already addressed by the Commission. The Commission thoroughly discussed those issues in the Opinion and Order and OCC, in referring back to its initial post-hearing brief, presents no new information. Opinion and Order at ¶¶ 93-94. However, we reiterate that the issue of federal preemption is a judicial determination and thus outside of our purview. In response to OCC's second assignment of error, the Commission rejects OCC's argument. In the *ESP 3 Case*, we authorized the creation of Rider PSR as a provision of Duke's ESP, pursuant to R.C. 4928.143(B)(2)(d), finding that the rider constitutes a rate stability charge related to limitations on customer shopping for retail electric generation service. *ESP 3 Case*, Opinion and Order (Apr. 2, 2015) at 48. Because we acknowledged in the Opinion and Order that Rider PSR was properly established in the *ESP 3 Case*, OCC therefore attempts to relitigate the *ESP 3 Case* here. As we discussed in our decision, the Supreme Court of Ohio upheld the Commission's approval, pursuant to R.C. 4928.143(B)(2)(d), of a nearly identical OVEC-related rider for AEP Ohio. Opinion and Order at ¶ 266, citing *In re Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698. Like AEP Ohio's rider, Rider PSR was authorized under R.C. 4928.143(B) as a limitation on customer shopping and the Supreme Court of Ohio held that R.C. 4928.143(B) provides that an ESP may include a charge "[n]otwithstanding any other provision of Title XLIX of the Revised Code to the contrary." *In re Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698 at ¶¶ 18-19. Accordingly, we affirm that Rider PSR is a valid provision of an ESP.

{¶ 14} In its application for rehearing, the Conservation Groups initially argue that the Commission failed to reasonably evaluate the impact of Rider PSR on the entire Stipulation package. According to the Conservation Groups, the Commission did not properly weigh the record evidence regarding the projected costs of Rider PSR for Duke's customers. The Conservation Groups maintain that, according to Duke's forecasts, Rider PSR projects to consistently be a cost to customers and to be a much higher cost to customers in the near-term, when forecasts are more reliable. The Conservation Groups assert that

pursuant to R.C. 4903.09 the Commission must explain and make findings regarding why the possibility of smaller losses for customers beyond 2022 is outweighed by the more-certain larger losses in the near-term years. Further, the Conservation Groups assert that the Commission's disregard of the negative forecasts is inconsistent with its own precedent, including cases in which the Commission has credited similar long-term forecasts as a viable basis for authorizing other major utility proposals.

{¶ 15} The Conservation Groups also argue that even if the Commission did give the cost forecasts regarding Rider PSR some weight, the Commission did not address other negative impacts that could increase OVEC costs. Specifically, the Conservation Groups aver that the pending bankruptcy proceedings regarding First Energy Solutions, which also has a contractual agreement with OVEC, could significantly affect the cost of Rider PSR. Further, the Conservation Groups state that regulatory requirements facing the OVEC units may drive Rider PSR's costs higher than the projections. In sum, the Conservation Groups contend that the Commission had an obligation to assess all the potential costs of Rider PSR in order to determine its impact on Duke's customers as part of the overall consideration of the merits of the Stipulation package. According to the Conservation Groups, the Commission did not conduct any baseline determination of Rider PSR's costs to customers and only referenced the Stipulation's limits on certain OVEC costs for recovery under the rider as providing protections for consumers. The Conservation Groups argue that because the Commission never carried out a full analysis of the costs, the Opinion and Order therefore provides no basis for any aggregate conclusion about the value of the Stipulation as a whole and is thus unreasonable and unlawful.

{¶ 16} The Conservation Groups next assert the Commission unreasonably placed the burden on opposing intervenors to demonstrate why the Stipulation should not be adopted. The Conservation Groups contend that the Commission relied on the existence of a stipulation in this case and ignored the undisputed evidence, and its own precedent, regarding the lack of value from Rider PSR. The Conservation Groups assert that the Commission may accept sub-optimal provisions as part of an overall beneficial package, but

it must hold parties to their burden of proof in showing the overall benefits. The Conservation Groups argue that the Commission cannot weigh the merits of the Stipulation as a package without holding Duke to its burden to demonstrate the value of its individual components.

{¶ 17} In its memorandum contra applications for rehearing, Duke argues that the Conservation Groups' assignments of error must be denied. First, Duke contends that, contrary to the Conservation Groups' assertion, the Commission did take a position on the validity of the record evidence. According to Duke, the Commission acknowledged that Rider PSR is substantially similar to the OVEC-related riders approved for other EDUs such as AEP Ohio and Dayton Power & Light, Co. Further, states Duke, the Commission acknowledged that the OVEC-related riders were presented as part of distinguishable stipulations and considered based upon the records in each case. Duke argues that even though the Commission found that Rider PSR was likely to represent a cost to consumers, it also has the potential to offer benefits. Duke avers that the Commission concluded that the benefits of Rider PSR outweighed the unpredictable costs. Second, Duke argues that the Commission did not place the burden of proof on the intervenors. Duke states that it met its burden of proof, allowing the Commission to properly conduct the three-part test applicable to stipulations. Duke contends that the Commission adequately considered the impacts of Rider PSR and did not simply rely on the existence of a stipulation. According to Duke, the Commission considered the testimony of Company witness Judah Rose which included testimony on current market prices, market price forecast, OVEC costs, and volatility comparisons, among other things. Further, Duke argues that the Commission also considered the downside of Rider PSR and distinguished the terms of the rider from a similar rider that was rejected in the *ESP 3 Case*. Duke asserts that the burden of proof remained on the Company and the Commission considered the case in that light.

{¶ 18} The Conservation Groups' initial assignment of error is denied. Their argument that the Commission did not properly consider the potential financial impact of Rider PSR is without merit. Throughout our analysis regarding the benefits of Rider PSR,

we recognized that the rider would likely serve as a financial cost to customers. Opinion and Order at ¶¶ 281-283. In doing so, we considered the forecasts presented by both Duke and OCC. Opinion and Order at ¶ 283. Further, we acknowledged that federal regulations could have significant impacts on future costs. Opinion and Order at ¶ 282, citing Staff Ex. 17 at 15. While the Commission considered the potential financial effects of Rider PSR, we note that cost is not the only factor considered by the Commission when weighing potential benefits. *See, In re Columbus Southern Power Company*, 129 Ohio St.3d 46, 61 (2011) ("while cost is surely a relevant concern to be balanced * * * it is not the only concern, and the commission is entitled to consider more.") In approving Rider PSR, as part of the Stipulation, we discussed that while the rider may serve as a charge for customers, there are benefits associated with the rider that mitigate those costs. This includes Rider PSR's ability to potentially serve as a hedge against more volatile markets prices, particularly in instances of extreme weather conditions. Opinion and Order at ¶ 282, citing Co. Ex. 8 at 13-14, 21. We also recognized the various consumer protections added to Rider PSR, including limitations related to forced outages at OVEC's generating plants; 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. Opinion and Order at ¶ 283.

{¶ 19} The Commission also notes that we evaluated the Stipulation as a package. In prior cases, the Commission has considered and approved stipulations that address a wide variety of issues, often resolving several pending proceedings at the same time, and specifically emphasized that the stipulation must be viewed as a package for purposes of the second part of the three-part test used by the Commission to evaluate stipulations. *See, e.g. In re Ohio Power Co.*, Case No. 94-996-EL-AIR, et al., Opinion and Order (Mar. 23, 1995) at 20-21; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 44; *In re the Dayton Power and Light Co.*, Case No. 02-2779-El-ATA, et al., Opinion and Order (Sept. 2, 2003) at 29. The Commission reiterates, as emphasized in the Opinion and Order, that an evaluation of the advantages or

disadvantages associated with a specific aspect of a settlement, in isolation, does not necessarily ensure that a stipulation will be approved or denied. Opinion and Order at ¶ 281. The Conservation Groups' argument that Rider PSR may not financially benefit ratepayers does not persuade the Commission that the Stipulation, as a package, fails to comply with the second part of the three-part test. *See, e.g. In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 42; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-5568-EL-POR, et al., Opinion and Order (Mar. 21, 2012) at 17.

{¶ 20} The Commission is additionally unpersuaded by the Conservation Groups' second assignment of error. The Conservation Groups argue that Duke failed to demonstrate the benefits of Rider PSR and by allowing Rider PSR to go forward, the Commission therefore shifted the burden to the intervenors to show why the rider is not beneficial. The Commission disagrees. As discussed above, and extensively in the Opinion and Order, we found that while Rider PSR projects to be a charge for customers, there are numerous benefits associated with the rider. We also recognized that forecasting energy markets can be unpredictable. Pointing to evidence presented by the Company, we noted that while wholesale market energy prices have fluctuated 49 percent over the past six years, OVEC production costs are significantly more stable. Opinion and Order at ¶ 282, citing Co. Ex. 8 at 13-14, 21. We determined that this contrast gives Rider PSR significant value as a hedge. We also acknowledged that various customer protections added by Duke to this version of Rider PSR differentiated it from the previous iteration. Opinion and Order at ¶ 283. Accordingly, the Commission appropriately found numerous benefits associated with Rider PSR that counterbalanced the projected financial costs. Combined with the entire Stipulation package, we concluded that the Stipulation was beneficial to ratepayers and the public interest.

B. AMI Transition and Rider PF

{¶ 21} A number of OCC's assignments of error surround Duke's advanced metering infrastructure (AMI) transition. As proposed in the Stipulation, Duke requested to phase out its current AMI and transition to new smart meters. OCC first asserts that, in the Rate

Case, Duke's current metering system was not determined to be used and useful and therefore should not have been included in base rates. According to OCC, Staff did not investigate whether the system was used and useful and instead relied on annual rider audits, approved by the Commission, where Staff found Duke's spending was prudent and reasonable. However, states OCC, "prudent and reasonable" is a different statutory standard than "used and useful." OCC therefore concludes there is no evidence that the current meters are used and useful and asserts the Commission wrongly authorized the Company to recover the costs of the meters. OCC further maintains that the Commission wrongfully approved the Stipulation without requiring Duke to quantify the benefits associated with its current AMI. OCC avers that Duke was directed by the Commission to evaluate the cost-effectiveness of the AMI in its next rate case in *In re Duke Energy Ohio, Inc.*, Case No. 10-2326-GE-RDR (*Mid-Deployment Review Case*). OCC states Duke failed to do so and the Commission failed to enforce its own order.

{¶ 22} Along those lines, regarding the AMI transition, OCC argues that the Commission wrongfully determined that the AMI transition would be cost-effective. OCC avers that the state policy espoused in R.C. 4928.02(D) provides that smart grid programs must be cost-effective. OCC submits that Duke did not do any cost-benefit analysis and the Commission's finding that the AMI transition is cost-effective was unsupported by the evidence. Additionally, OCC asserts the Commission erred in finding the AMI transition was the least-cost option to correct issues with the current meters. According to OCC, numerous cost-effective options to address various issues with the current meters were available, but were not considered by Duke or the Commission. Similarly, OCC contends the Commission unlawfully approved Duke's Rider PF without finding that investments would be cost-effective. OCC notes that the Rider PF contains three components; according to OCC, the costs and benefits associated with each component were vague and not quantified. OCC concludes it was inappropriate for the Commission to approve the rider without more detail and analysis to affirm the rider would be beneficial for rate-payers.

{¶ 23} Duke disputes OCC's contentions and asks that the applications for rehearing on these issues be denied. First, regarding whether the meters were used and useful, Duke states the Staff Report expressly states that Staff verified the existence and used and useful nature of the assets, as of the date certain. Thus, Duke avers there was an investigation and finding that the meters were used and useful and the Commission's approval of the Stipulation is therefore valid. Additionally, Duke submits OCC never disputed the Company's annual applications to recover AMI costs, which were regularly approved by the Commission. Duke expresses that, as of the date-certain determined by the Commission, the meters were ably used to read customers' usage and support time-of-use rates. According to Duke, it is irrelevant if the meters will cease being useful in the future. Duke also submits that OCC mistakenly presumes the Commission is obligated to make a finding concerning the benefits associated with Duke's AMI. The Company maintains there is no such requirement on the Commission and the benefits of the AMI were reflected in Duke's rate case application, which demonstrated significantly reduced operation and maintenance (O&M) expenses.

{¶ 24} As to the AMI transition, Duke asserts the Commission properly concluded that the AMI transition is cost effective. According to the Company, it is not necessary for the Commission to evaluate every possible alternative solution, as OCC insists. Duke avers that the AMI transition proposed by the Company is a significantly cheaper route than maintaining the current AMI environment. Thus, Duke contends the Commission's ruling was proper and OCC's request should be denied. Duke also asks that OCC's applications for rehearing concerning the Rider PF be dismissed. Initially, the Company submits that two of the three components of the rider provide mechanisms for Duke to file future applications. Therefore, Duke avers that no recovery was actually approved and OCC will be provided an opportunity to dispute any recovery when those applications are filed. As to the other component of Rider PF, Duke maintains this allows the Company to upgrade its technology such that, among other things, CRES providers will be able to access customer energy usage data (CEUD). Duke submits that in approving the Stipulation the Commission

discussed the various advantages associated with Rider PF and thus determined that the rider would be beneficial to customers. Accordingly, Duke asserts that OCC's contention that the Commission did not properly analyze Rider PF is without merit.

{¶ 25} The Commission declines to grant OCC's application for rehearing regarding Duke's AMI. As we discussed in the Opinion and Order, the Commission has continuously reviewed Duke's AMI deployment through annual audits as well as through the *Mid-Deployment Review Case*. Opinion and Order at ¶ 219. While OCC contends Staff did not evaluate whether the meters were used and useful, Staff expressed that, in those audits, only used and useful assets were approved to be included in the riders (Staff Ex. 6 at 4). Further, the Staff Report explains that Staff "verified the existence and used and useful nature of the assets." Staff Report at 7. Finally, while the future usefulness of Duke's current meters was discussed in these proceedings, OCC presented no persuasive evidence that the AMI was not used and useful as of the prescribed date certain. We additionally find no merit in OCC's argument that the decision should be abrogated because Duke did not provide a sufficient explanation of cost savings associated with its AMI. We note that we previously asserted that Duke's next rate case should reflect benefits associated with AMI. *Mid-Deployment Review Case*, Opinion and Order (June 13, 2012) at 15. We agree with Duke that the savings attributable to Duke's AMI can be ascertained by examining the O&M expenses included in Duke's application in this case and the expenses described in Duke's 2012 case, *In re Duke Energy Ohio, Inc.*, Case No. 12-1682-EL-AIR, et al.

{¶ 26} Regarding the AMI transition, the Commission affirms the finding that the proposal approved in the Stipulation is reasonable. OCC's argument that the Commission did no analysis to determine whether the new smart grid system is cost-effective is unsupported. First, the Commission considered the myriad of issues that will eventually undermine Duke's current metering environment. Opinion and Order at ¶ 218. Additionally, the Commission considered the estimates of upgrading the current environment versus replacing the meters and found that replacing the meters would be more economical and was the least-cost option of the two presented. Opinion and Order at

¶ 218, citing Duke Ex. 11 at 13, att. DSL-1. In our evaluation, we also noted the additional benefits associated with the AMI transition, including the availability of CEUD for CRES providers (Staff Ex. 11 at 5). We therefore conclude our finding was reasonable and supported by the evidence on record. We similarly affirm our approval of the Rider PF. As discussed by Duke, the first component of Rider PF permits the Company to recover costs incurred as a result of a Commission directive after the conclusion of the PowerForward initiative. As no such directives have been issued, any recovery amount is naturally unquantifiable at this juncture. Any future recovery will be the result of a separate application and subject to hearing and OCC, and any other interested parties, can address their concerns at that time. Opinion and Order at ¶ 130. The third component of Rider PF requires Duke to file an infrastructure modernization plan that includes an upgraded customer information system. Similarly, this will also require a separate application and proceeding. Opinion and Order at ¶ 134. Regarding the second component of Rider PF, the Commission explained the various benefits associated with the rider. Specifically, we explained that CRES providers will gain access to CEUD and be able to offer more innovative products. Opinion and Order at ¶ 291. Additionally, there are safeguards to ensure spending is reasonable. This includes recovery caps, Staff audits, and requirements by Duke to demonstrate that the spending is prudent. Opinion and Order at ¶ 133-134. As the rider encourages innovation and more efficient access to information, in a cost-effective manor, we thus affirm that our approval of Rider PF is consistent with the state policies set forth in R.C. 4928.02.

C. *Standards Case*

{¶ 27} OCC additionally argues several points of error regarding reliability standards. OCC notes that Duke failed to meet its reliability standards in 2016 and 2017 and pursuant to the Stipulation no associated penalties will be pursued by Staff. OCC contends it is unlawful and unreasonable for Staff not to pursue enforcement of the Commission's rules and such inaction will serve as a disincentive for EDUs to provide reliable service. OCC next argues the Stipulation was wrongfully approved because OCC was excluded

from negotiations in the Standards Case. OCC asserts that Duke, Staff, and OCC were the only parties involved in the Standards Case and once Duke determined OCC would not be a signatory of the global Stipulation, OCC was excluded from further discussion concerning the reliability standards. According to OCC, this violates the first prong of the three-part test to approve stipulations and, therefore, the approval of the Stipulation should be overturned. Finally, OCC expresses that it was unreasonable for the approved Stipulation to continue Duke's Distribution Capital Investment Rider (DCI Rider) when Duke failed to meet reliability standards. As explained by OCC, pursuant to R.C. 4928.143(B)(2)(h), the DCI Rider was initially approved after a finding that Duke and its customers' expectations for reliability were aligned. OCC maintains that Duke's inability to meet the reliability standards in 2016 and 2017 is proof that Duke's expectations for reliability are not aligned with its customers. Thus, OCC states the DCI Rider should not be permitted to continue.

{¶ 28} In reply, Duke submits that the new reliability standards are aggressive and beneficial to customers and OCC's concerns about a lack of enforcement are misplaced. Duke avers that the new reliability standards will provide customers with about a one-third reduction in interruptions and interruption minutes. According to Duke, the negotiated standards approved by the Commission will provide customers with significantly improved reliability. Regarding negotiations, Duke states OCC's arguments lack merit. The Company maintains that OCC consistently participated in discussions relating to the Standards Case once the application was filed in 2016. Thereafter, once the case was consolidated with the other cases, Duke submits that OCC attended every settlement discussion. Duke therefore concludes that OCC was in no way excluded from negotiations. As to the DCI Rider, Duke maintains that its expectations regarding reliability are aligned with its customers. As Duke explains, OCC misunderstands the reliability performance indices. Additionally, the Company points out that Rider DCI was modified to offer customers protections such as spending caps related to meeting reliability goals.

{¶ 29} Initially, the Commission rejects OCC's argument that it was excluded from negotiations in the *Standards Case*. Prior to consolidation, the proceedings were continued

numerous times as the attorney examiner granted unopposed motions to delay proceedings due to ongoing negotiations. After consolidation, proceedings were again continued for further settlement discussion, without objection from OCC. As to the resolution of the *Standards Case*, we uphold our finding that the proposed standards are reasonable. With the adoption of the new standards, we determined that 30 percent fewer customers are expected to experience outages and the average duration of each outage is expected to decrease. Opinion and Order at ¶ 193, citing Staff Ex. 3 at 12-13. OCC is concerned that if Duke's 2016 and 2017 performances do not result in any enforcement actions, this will serve as a disincentive for other EDUs to comply with the standards. However, the Commission finds that the reliability standards that were agreed to are aggressive and more proactively address the issues going forward. This is expected to result in increasingly improved reliability, which is what Duke's customers expect (Staff Ex. 3 at 10-11, att. JN-1 and JN-2). Finally, regarding Rider DCI, we are not persuaded that, because Duke did not meet certain reliability standards, the Company's expectations regarding reliability are not aligned with its customers. As we discussed in the Opinion and Order, Duke made substantial investments in its distribution infrastructure to improve reliability. Opinion and Order at ¶ 201, citing Co. Ex. 12 at 10. Further, in addition to annual spending caps, the Company is required to work with Staff to ensure Rider DCI spending is focused on areas that will have a maximum impact on reliability. Opinion and Order at ¶ 202. We therefore affirm our finding that Duke's expectations and its customers' expectations are aligned and Rider DCI should continue.

D. SSO Unbundling

{¶ 30} In its application for rehearing, IGS submits several points of error associated with the unbundling of SSO costs from distribution rates. According to IGS, the Stipulation permits Duke to recover, through distribution rates, incremental overhead and administrative costs associated with the SSO. IGS argues that the SSO is a competitive retail electric service and, pursuant to R.C. 4928.05(A), the Commission is prohibited from regulating competitive retail electric services. By allowing Duke to recover SSO costs

through distribution rates, IGS asserts the Commission is unlawfully subsidizing the SSO and discriminating against customers that shop for generation. IGS further maintains that this recovery goes against state policies that require the Commission to ensure the availability of unbundled and comparable retail electric service and to foster competition in the retail electric market. In approving the Stipulation, IGS reasons the Commission failed to properly consider IGS's arguments regarding SSO costs and additionally erred by not adopting IGS's recommendation to unbundle SSO costs by establishing a non-bypassable credit and a bypassable charge. IGS further argues the Commission's reasoning for refusing to unbundle SSO costs was unlawful and an abuse of discretion. According to IGS, the Commission determined that distribution services such as Duke's call center may incur costs related to both the SSO as well as costs related to the customer choice program and that separating out the SSO-specific costs would also require sifting out costs associated with the customer choice program. IGS asserts this exceeds the Commission's authority and ignores that CRES providers already compensate Duke for these services. In declining to separate SSO costs from distribution rates, IGS contends the Commission's determination conflicted with recent precedent. IGS explains that in a recent rate case for another electric utility the Commission required that assessment expenses for OCC and the Commission be removed from distribution rates, citing *In re Dayton Power & Light, Co.*, Case No. 15-1830-EL-AIR, et al., Opinion and Order (Sept. 26, 2018) (*DP&L Rate Case Order*). IGS states it is improper for the Commission to ignore precedent and issue inconsistent orders.

{¶ 31} Duke and OCC ask that IGS's application for rehearing be denied. Duke and OCC both assert that IGS wrongly labels the SSO as a competitive electric service. Duke states that the SSO, as determined by R.C. 4928.141, is necessary to maintain essential electric service to customers. Continuing, the Company avers that the SSO is the default service that Duke, as the EDU, has a legal obligation to provide to any customer. OCC contends all customers benefit from the SSO, including shopping customers who could, by need or choice, revert to the SSO at any time. Duke argues that, regardless of how many customers shop, the Company has a consistent amount of unavoidable expenses associated with

administering the SSO for all customers and it is therefore proper for such costs to be recovered through distribution rates. Duke and OCC further discount IGS's methodology for determining that the distribution rates for SSO administration are exclusively attributable to non-shopping customers. According to OCC, IGS's determination of an SSO subsidy was based on speculation and anecdotal evidence. Thus, OCC argues IGS's request to establish riders for a non-bypassable credit and a bypassable charge lacks merit.

{¶ 32} The Commission denies IGS's application for rehearing on these issues. Initially, while there may be differential cost implications associated with the provision of competitive electric commodity service when compared to that of regulated default service, these differentials do not, on their face, constitute discriminatory treatment nor an unlawful subsidy. Thus, we reject IGS's argument in this regard. We similarly reject IGS's assertion that the Commission's ability to authorize such recovery is outside the bounds of our jurisdiction. Pursuant to R.C. 4928.141, all EDUs are required to offer an SSO that is available for all customers as the default service. Further, as described in R.C. 4928.14, customers will default to the SSO if a CRES supplier fails to provide service. Duke is thus statutorily required to be able to provide service to all customers in its service territory and the expenses are unavoidable, regardless of how many customers choose to shop. Accordingly, all customers benefit from Duke's ability to provide the SSO. The recovery of costs attributable to the SSO is consistent with previous Commission decisions. *See, In re Ohio Power Company*, Case No. 16-1852-EL-SSO, et al., Opinion and Order (Apr. 26, 2018) at ¶ 215; *DP&L Rate Case Order* at ¶ 28. As we discussed in those cases, and in our decision in this proceeding, expenses that IGS attributes solely to the SSO, such as Duke's call center, include costs that are exclusively related to the customer choice program and promoting competition. Opinion and Order at ¶ 232. Thus, IGS's contention that allowing such recovery is discriminatory is without merit. As the expenses are non-discriminatory, assist all customers, and promote the customer choice program, we find that allowing this recovery is consistent with the state policy espoused in R.C. 4928.02(H) to ensure the availability of unbundled and comparable electric service. The Commission further affirms

the decision not to adopt IGS's proposed riders. We are unpersuaded that the calculation provided by IGS fully encapsulates costs directly attributed to either the SSO or the customer choice program. RESA/IGS Ex. 1. However, we note that our Opinion and Order directed Duke to conduct a cost-of-service study analyzing the extent to which expenses are allocated specifically towards the SSO and specifically towards customer choice programs before it files its next rate case. Opinion and Order at ¶ 232. We additionally are unpersuaded by in IGS's argument that Commission precedent from the *DP&L Rate Case Order* dictates that OCC and Commission assessment expenses are unrecoverable through distribution rates. We point out that decision was the result of a negotiated stipulation. In discussing the assessment expenses, we expressly said "our treatment of this issue in this case results from the specific procedural circumstances discussed above and should not bind Staff or the Commission to the same result in future proceedings." *DP&L Rate Case Order* at ¶ 32. IGS's application for rehearing on these issues is denied.

{¶ 33} IGS, along with RESA, also avers the Commission erred by continuing to authorize Duke to impose switching fees and historical usage fees on CRES providers. IGS and RESA maintain that the fees are recovered through distribution rates and Duke has an obligation to justify the costs. IGS and RESA contend it is irrelevant that the fees were previously approved and that Duke was not proposing to alter the fees. According to IGS, the fees unfairly discriminate against CRES providers and, at the least, the Commission should authorize similar charges when customers switch from a CRES to the SSO. RESA submits that Staff should have investigated the actual costs associated with switching and the Commission did not properly address RESA's request.

{¶ 34} In reply, Duke argues that the fees were previously approved by the Commission and thus considered lawful rates. Duke states it did not seek to alter either the switching fees or the historical usage fees in its application or in the Stipulation. According to Duke, RESA and IGS bear the burden to demonstrate that the fees are unreasonable or unlawful and they failed to do so.

{¶ 35} The Commission is not persuaded by the arguments of IGS and RESA. As we determined in our order, the fees were most recently adjusted in the Company's second ESP case, 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. In the order, we explained that the Commission has the authority to modify prior orders but such authority is not unlimited. Opinion and Order at ¶ 24. Specifically, the Supreme Court of Ohio has held that when the Commission has made a lawful order, the Commission is bound by certain institutional constraints to provide an explanation before such order may be changed or modified. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 10 Ohio St.3d 49, 50-51, 461 N.E.2d 303 (1984). Here, while Duke carries the burden to support its application, IGS and RESA bear the burden to support their objections. The parties did not present sufficient evidence to demonstrate how the fees became unreasonable after they were determined to be lawful in *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (Nov. 22, 2011) at 39-40. The testimony presented by IGS and RESA did not offer any change in circumstances that would justify altering our previous decision. IGS/RESA Ex. 4 at 2-4. We additionally do not find it unreasonable that Staff did not investigate whether the fees are cost-justified. Here, Duke was not requesting to modify the fees in any way and, generally, tariffs which are not proposed to be modified in a rate increase application are not subject to Commission review and modification during a rate case. *DP&L Rate Case Order* at ¶ 36. However, as we have previously explained, the Commission may revisit these concerns in the future. *DP&L Rate Case Order* at ¶ 42.

{¶ 36} In IGS's final assignment of error, IGS states that the approved Stipulation wrongfully permits Duke to provide non-commodity billing to an affiliate. IGS avers that Duke does not permit IGS to put non-commodities on the electric bill. In doing so, IGS argues that Duke is unlawfully providing an advantage to an affiliate and thus discriminating against CRES providers such as IGS. IGS asks that Duke be directed to include non-commodity billing for CRES providers in infrastructure management plan.

{¶ 37} Duke maintains that the Commission properly determined the issue of non-commodity billing should be resolved after Duke files an application for a customer information system. According to Duke, non-commodity billing is complicated by multiple factors, including Duke's natural gas services and Duke's purchase of receivables program. According to the Company, a separate proceeding will permit a more robust dialogue about the feasibility of non-commodity billing.

{¶ 38} The Commission denies IGS's application for rehearing on this issue. In the Opinion and Order, we declined to require the Company to permit non-commodity billing for CRES providers. We determined that the purchase of receivables program and Duke's status as a distributor of both electric and gas significantly restricted Duke's ability to provide non-commodity billing to CRES providers. However, we also found that the issue will be explored again after Duke files its application for a customer information system plan. Opinion and Order at ¶ 239.

IV. ORDER

{¶ 39} It is, therefore,

{¶ 40} ORDERED, That the applications for rehearing filed by OCC, the Conservation Groups, IGS, and RESA be denied. It is, further,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

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Summary: Entry that the Commission denies the applications for rehearing of the December 19, 2018 Opinion and Order, filed by the Ohio Consumers' Counsel, Interstate Gas Supply, the Retail Energy Supply Association, and, collectively, the Environmental Law & Policy Center, Sierra Club, Ohio Environmental Council, Environmental Defense Fund, and Natural Resources Defense Council. electronically filed by Docketing Staff on behalf of Docketing