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**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**



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| In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan | ) ) ) ) ) ) ) | Case No. 23-301-EL-SSO |

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**POST HEARING REPLY BRIEF OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY**

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# I. INTRODUCTION

The Companies[1] developed ESP V with feedback from stakeholders solicited in open collaborative meetings. ESP V supports reliable service, affordability for customers, and stewardship in the Companies' service territories. To meet these objectives, ESP V includes provisions familiar to the Commission and stakeholders and consistent with other approved ESPs. Working collaboratively with stakeholders and focusing on these key objectives culminated in a proposal that demonstrates how ESPs can be used to effect positive change.

To promote reliable service, ESP V proposes riders supporting investment in and maintenance of the distribution system. ESP V also includes numerous customer protections to minimize or increase certainty of customers' bills. In addition, ESP V includes EE/PDR proposals to empower customers to control their electric bills, and to protect the environment in the communities the Companies serve. Further, ESP V includes programs to support low-income customers and programs to support customers' transition to electric vehicles, all at no cost to customers. For these reasons, ESP V is more favorable in the aggregate than a market rate offer ("MRO"). At hearing, the Companies introduced ample evidence to meet their burden of proof.

The Companies appreciate the feedback provided in Staff and intervenors' initial briefs. Notably, there is relatively little opposition in initial briefs to the ESP passing the ESP vs. MRO test. Intervenors' challenges to ESP V largely do not take issue with the Companies' legal bases or record evidence supporting the plan's proposals. Rather, intervenors' criticisms appear largely motivated by expectations for the Companies' upcoming base rate case, different views on policy, or circumstances completely unrelated to ESP V.

Consistent with the Companies' continuing effort to listen and work collaboratively, this

[1] Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

Reply Brief identifies several proposed modifications to ESP V the Companies can accept, or not oppose. However, the Companies cannot accept certain proposed modifications to Riders DCR, AMI, SCR, and VMC (collectively, the "Distribution Riders").[2] As explained further below, intervenors' arguments that authorization for the Distribution Riders should be resolved in the Companies' upcoming base rate case are unreasonable, unlawful, and create risk and uncertainty for customers and the Companies. In addition, intervenors' proposal to reduce Rider DCR's revenue caps by $51 million annually until the next base rate case lacks sufficient reasoning, is inconsistent with Commission precedent including ESPs II, III, and IV, does not promote gradualism for customers, and would challenge the Companies' ability to continue investing in the system to maintain reliable service.

The parties' initial briefs collectively make many dozens of statements for and against ESP V, and the Companies cannot reply to them all individually. Where the Companies have not responded to a party's argument, it means the Companies stand by their proposals as set forth in their ESP V application ("Application") and explained in their testimony and Initial Brief. The Companies respectfully request the Commission find that ESP V is more favorable than an MRO, and that ESP V should be approved, subject to the modifications accepted in this Reply Brief.

## II. ARGUMENT

### A. ESP V, as a package, is more favorable in the aggregate than an MRO.

ESP V, as a package, satisfies the statutory "ESP vs. MRO test"[3] because it is more favorable in the aggregate than an MRO. While OCC[4] and OMAEG[5] contend an MRO could

[2] Delivery Capital Recovery Rider (Rider DCR), Automated Metering Infrastructure / Modern Grid Rider (Rider AMI), Storm Cost Recovery Rider (Rider SCR), and Vegetation Management Cost Recovery Rider (Rider VMC).
[3] R.C. 4928.143(C)(1).
[4] The Office of the Ohio Consumers' Counsel.
[5] Ohio Manufacturers' Association Energy Group.

provide ESP V's benefits,[6] the Companies' Initial Brief explains how ESP V has advantages an MRO cannot match.[7] For instance, ESP V includes EE/PDR programs. There is no authority outside of an ESP for the Companies to implement EE/PDR programs.[8] Also, ESP V proposes stewardship initiatives of $52 million over ESP V's eight-year term that would not be recovered from customers,[9] including support for low-income customers. Staff and OPAE[10] acknowledged these initiatives are unique to ESP V.[11] The Companies would not offer these initiatives outside of ESP V.[12]

In addition, ESP V's Distribution Riders support system reliability and include customer protections, providing qualitative benefits. The Distribution Riders reduce regulatory lag on recovery of the Companies' investments, incentivizing distribution system investment and maintenance. The Commission has recognized that "the benefit of [distribution] riders is a proactive approach to addressing distribution infrastructure" and that "[t]his focus on reliability is an asset to ratepayers, and thus a benefit of the ESP."[13] Further, the Commission has emphasized that "requiring a utility to be reactionary, and waiting for infrastructure to first deteriorate, [is] detrimental to the state's economy."[14] While the Companies have a strong track record of delivering reliable service, they face challenges in continuing to do so. The Distribution Riders will better position the Companies to address these challenges and continue providing reliable

[6] Direct Testimony of Greg R. Meyer (adopted by OCC Witness Brian C. Collins) ("Meyer/Collins Testimony") at 41 (Oct. 23, 2023), OCC Ex. 1; OMAEG Initial Brief at 51-52, 58-59.
[7] Companies Initial Brief at 62-64.
[8] Tr. Vol. XIII at 2246 (OCC Witness conceded there was no other authority outside of R.C. 4928.143 for EDUs to implement EE/PDR programs).
[9] Tr. Vol. I at 57-58.
[10] Ohio Partners for Affordable Energy.
[11] *See* Staff Initial Brief at 47; *see also* OPAE Initial Brief at 6-7.
[12] Tr. Vol. I at 99.
[13] *In the matter 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 Nos. 17-1263-EL-SSO, *et al.* ("Duke Energy Ohio ESP IV"), Opinion and Order at ¶290 (Dec. 19, 2018).
[14] *Id.* at ¶201.

service by facilitating investment in and maintenance of the Companies' delivery system.[15]

The Distribution Riders also provide rate certainty, predictability, and stability for customers, all of which are in the public interest.[16] These riders are subject to regular update and reconciliation, as well as revenue caps, ensuring customers pay only for the Companies' actual costs and facilitating more gradual rate impacts for customers than would occur through base rates, subject to the results of annual audits.[17] Indeed, the Commission has recognized that "the accelerated recovery of investments in reliability, with annual caps, will mitigate the amount of any subsequent increase in base distribution rates resulting from [a] distribution rate case."[18] Even OCC acknowledges that relying too heavily on the practice of deferring and recovering costs through base rates could lead to sudden increases in customers' rates.[19]

Other parties misapply the ESP vs. MRO test. For example, OCC, OMAEG, Kroger,[20] and RESA[21] argue that individual provisions of ESP V make ESP V less favorable in the aggregate than an MRO.[22] However, the law requires application of the ESP vs. MRO test to ESP V *as a package*. The Commission must consider whether the ESP, "*including its pricing and all other terms and conditions*... is more favorable *in the aggregate* as compared to the expected results [of

[15] Companies Initial Brief at 13-14.

[16] *See* Tr. Vol. III at 562-563 (Companies Witness McMillen testifying that adjustable-rate mechanisms promote rate certainty, predictability, and stability); *see also id.* at 446-447 (Companies Witness McMillen testifying that the proposed Rider VMC caps will promote certainty, predictability, and stability); *see also In the matter of the application of the Dayton Power and Light Company d/b/a AES Ohio for approval of its electric security plan,* Case Nos. 22-900-EL-SSO, *et al.* ("AES Ohio ESP IV Case"), Opinion and Order at ¶118 (Aug. 9, 2023) (finding that the proposed distribution rider promoted rate certainty, predictability, and stability, all of which are in the public interest).

[17] *See* Tr. Vol. XIV at 2610 (Staff Witness Healey agreeing that rider rates change more gradually via quarterly updates compared to rate changes authorized in base rate cases).

[18] AES Ohio ESP IV Case, Opinion and Order at ¶112 (Aug. 9, 2023).

[19] *See* Tr. Vol. XIII at 2223-2224 (cross-examination of OCC Witness Collins).

[20] Kroger Co.

[21] Retail Energy Supply Association.

[22] *See, e.g.*, OCC Initial Brief at 55-58 (EE/PDR plan and Rider EEC); Kroger Initial Brief at 5-6 (costs of distribution riders and EE/PDR plan); OMAEG Initial Brief at 52-53 (potential effect of the Companies' forthcoming 2024 base rate case) and at 54, 56 (costs of distribution riders); RESA Initial Brief at 15-16 (EE/PDR plan and Rider EEC).

an MRO]."[23] Therefore, analyses turning on individual provisions, without considering them in the context of the entire ESP, are incorrect.

Also, OMAEG and Kroger's assertion that the Distribution Riders' costs cause ESP V to fail the ESP vs. MRO test contradicts longstanding Commission precedent. The Commission has recognized that the "costs of [distribution] riders are equal under an MRO,"[24] and the Supreme Court of Ohio affirmed this conclusion.[25] Accordingly, the costs of these Distribution Riders and the costs of a distribution rate case are a "wash" in the ESP vs. MRO test.

Similarly, OMAEG's position that the Companies failed to consider the 2024 base rate case's impacts is incorrect. To the contrary, the Companies' Application accounts for the base rate case's effects on ESP V and explains exactly how new base rates will impact the Distribution Riders.[26] Moreover, the 2024 base rate case's impacts on the Companies' rates would be the same, whether the Companies had an ESP or an MRO.

OCC and RESA also claim the proposed EE/PDR plan causes ESP V to fail the ESP vs. MRO test. However, the record demonstrates that the EE/PDR plan will result in net benefits for all customers, as shown in the Companies' detailed cost/benefit analyses.[27]

No party has provided evidence that ESP V, as a package, is less favorable in the aggregate than an MRO. Therefore, the Commission should reject arguments to the contrary and find that ESP V—a comprehensive package designed to support reliability, affordability, and stewardship for the Companies' customers—is more favorable in the aggregate than an MRO.

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[23] R.C. 4928.143(C)(1) (emphasis added).

[24] *See, e.g.*, Duke Energy Ohio ESP IV, Opinion and Order at ¶290 (Dec. 19, 2018); *see also In the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for authority to provide for a standard service offer Pursuant to Section 4928.143, Revised Code, in the form of an electric security plan*, Case No. 12-1230-EL-SSO ("ESP III"), Opinion and Order at 55-56 (July 18, 2012).

[25] *See In re application of Ohio Edison Co.*, 146 Ohio St.3d 222 at ¶¶ 23-27 (May 18, 2016).

[26] *See* Companies' Application ("Application") at 8-9 (Apr. 5, 2023), Companies Ex. 1.

[27] Direct Testimony of Edward C. Miller ("Miller Testimony") at 26-31 (Apr. 5, 2023), Companies' Ex. 5.

### B. The Commission should reject Staff and other intervenors' proposals to defer ruling on the Companies' Distribution Riders until the 2024 base rate case.

Some parties, including Staff, recommend the Commission approve the Distribution Riders only until the effective date of new base rates (the "Bridge Period"),[28] while others recommend completely deferring review of the Distribution Riders until the 2024 base rate case.[29] These recommendations must be rejected. There is no precedent for the Commission to approve an ESP with a modification leaving open the question of whether the applicant's proposed distribution riders would continue for the full ESP term.[30] The Commission has adjudicated ESPs notwithstanding pending or imminent base rate cases. For instance, similar circumstances did not prevent the Commission from issuing a decision that addressed the proposed distribution riders for the full term of the Companies' first ESP[31] or of AES Ohio or Duke Energy Ohio's most recent ESPs.[32]

Approving the Distribution Riders for less than ESP V's full term would diminish ESP V's benefits. As explained above, the Commission has found that distribution riders support "a proactive approach to addressing distribution infrastructure" and that "[t]his focus on reliability is an asset to ratepayers, and thus a benefit of the ESP."[33] At hearing, Staff agreed that riders provide qualitative benefits.[34] Moreover, uncertainty about whether the Distribution Riders will continue

[28] Staff Initial Brief at 5, 7; *see also* OMAEG Initial Brief at 27, Kroger Initial Brief at 10 (supporting Staff's recommendation to only approve Rider DCR for the Bridge Period); *see also* Walmart Initial Brief at 8 (recommending that all four Distribution Riders only be approved for the Bridge Period).
[29] *See* OEC Initial Brief at 1, 5-7, Walmart Initial Brief at 7, OMAEG Initial Brief at 33, 34, 44, and CUB Initial Brief at 3-4.
[30] Tr. Vol. XIV at 2616 (confirmed by Staff Witness Healey).
[31] *See In the matter of the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for authority to establish a standard service offer pursuant to Section 4928.143, Revised Code, in the form of an electric security plan*, Case No. 08-935-EL-SSO ("ESP I"), Opinion and Order at 35 (Dec. 19, 2008) (in which the Commission approved the Companies' proposed ESP despite a pending rate case).
[32] *See* AES Ohio ESP IV, Opinion and Order at 27 (Aug. 9, 2023); *see also* Duke Energy Ohio ESP IV, Opinion and Order, at ¶104 (Dec. 19, 2018) (in which the Commission approved proposed ESPs that anticipated the respective utilities would file a base distribution rate case during the ESP term).
[33] Duke Energy Ohio ESP IV, Opinion and Order at ¶290 (Dec. 19, 2018).
[34] Tr. Vol. XIV at 2615 (cross-examination of Staff Witness Healey).

for ESP V's full term will prevent a comprehensive ESP vs. MRO analysis, whether by the parties, the Commission, or the Ohio Supreme Court.

Deferring the ultimate disposition of ESP V's Distribution Riders to the 2024 rate case would also create uncertainty and instability for ratepayers, the Companies, and other interested stakeholders. At the conclusion of this ESP, no one would know whether any of the Distribution Riders would be in place for ESP V's entire term. Even Staff acknowledged that such a result would lead to less certainty compared to the Companies' ESP V proposal.[35]

Further, the Commission has a complete evidentiary record on which it can approve each Distribution Rider without delay, as demonstrated by the testimony, evidentiary hearing transcript, and voluminous written discovery.[36] Over twenty-five (25) different parties representing a diverse array of interests participated in a fourteen-day evidentiary hearing. Much of the hearing was spent on Rider DCR and the other Distribution Riders. At hearing, Staff acknowledged that parties had an opportunity to weigh in on the appropriateness of Rider DCR,[37] that "the Commission has a very robust record in this case, as many days of hearing and the many pieces of testimony filed demonstrate,"[38] and that the Commission has a sufficient basis to rule on the merits of the Companies' Rider DCR proposal.[39] Indeed, approving the Distribution Riders for less than ESP V's full term, or deferring approval until after the base rate case, would negate the Commission's and parties' time and resources spent litigating these issues in ESP V.

The Distribution Riders are critical ESP V components.[40] If the Commission were to

[35] *Id.*
[36] Over seven months, the Companies received and responded to over eight hundred (800) discovery requests from numerous intervenors in this ESP proceeding, not counting subparts. Tr. Vol. III at 575. There was only one motion to compel against the Companies, which the Attorney Examiners denied because the Companies had fully answered the discovery request. *Id.*
[37] Tr. Vol. XIV at 2606 (cross-examination of Staff Witness Healey).
[38] *Id.* at 2607
[39] *Id.*
[40] *See id.* at 2615 (Staff Witness Healey agreeing that the inclusion of Rider DCR in the ESP is a material issue).

approve these riders, or their continuation, or otherwise alter their terms, in the 2024 base rate case, the Commission's rate case decision would modify the ESP V application. However, Section 4928.143, Ohio Revised Code, requires the Commission to modify the Companies' ESP application in the ESP V proceeding, in the course of approving the ESP application.[41] There is no statutory authority for the Commission to modify the ESP application in a subsequent base rate case. In fact, a base rate case is subject to different legal standards that may preclude consideration of ESP programs such as the Distribution Riders.[42]

Also, deferring approval of the Distribution Riders to the Companies' 2024 rate case, or revisiting the riders' terms and conditions in that case, would impact the Companies' evaluation of whether they need to exercise their statutory right to withdraw an ESP approved with modifications.[43] If the Commission's ESP V decision does not decide the terms and conditions of the Distribution Riders for ESP V's full term, the Companies would have to factor that uncertainty into their determination of whether to withdraw the ESP V application.

### C. Claims that the Companies' distribution investments would be better recovered through base rates are meritless and not supported by the record.

OCC, Kroger, and OMAEG assert that the Companies have not justified the Distribution Riders as necessary and beneficial to customers, particularly because the expenses included in these riders could be recovered through base rates.[44] Staff, Kroger, Walmart,[45] OMAEG, CUB,[46]

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[41] *See* R.C. 4928.143(C)(1).
[42] For example, R.C. 4928.143(B)(2)(h) expressly permits a utility to include "provisions regarding single issue ratemaking" in ESP applications while the more traditional ratemaking principles applicable to base rate cases, which are filed pursuant to R.C. 4909.18, prohibit single-issue ratemaking.
[43] *See* R.C. 4928.143(C)(2)(a) ("If the commission modifies and approves an application under division (C)(1) of this section, the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section"); *see also In the matter of the Dayton Power and Light Company to establish a standard service offer in the form of an electric security plan*, Case Nos. 12-426-EL-SSO, Finding and Order at 4-6 (Aug. 26, 2016).
[44] *See* OCC Initial Brief at 32 (Rider SCR) and 35 (Rider VMC); Kroger Initial Brief at 6 (Riders DCR, VMC, and SCR); OMAEG Initial Brief at 17, 24-26 (Rider DCR) and 36 (Riders VMC and SCR).
[45] Walmart Inc.
[46] Citizens Utility Board of Ohio.

OEC,[47] and NOAC[48] contend that the investments to be included in the Distribution Riders should be considered in the context of a base rate case, suggesting base rate case review is superior to the review of ESP-approved riders.[49] OCC and NOAC contend that rider recovery mechanisms are more beneficial to shareholders than customers because they remove the incentive for utilities to control costs.[50] These arguments all overlook the advantages of riders.

1. ***The record demonstrates that the Distribution Riders will provide critical, necessary, and unique support to the reliability of the distribution grid.***

Riders provide greater support for reliability than base distribution rates. As explained above and in the Companies' Initial Brief, the Commission has recognized that riders reduce regulatory lag in recovery of distribution investments, enabling the Companies to manage the distribution system in a proactive manner.[51]

2. ***The Distribution Riders will be subject to frequent and thorough review by Staff, stakeholders, and the Commission.***

Riders include customer protections unavailable in base rate cases. Each rider is subject to regular updates and reconciliation, so it better aligns cost recovery with the Companies' actual costs. Each rider is also subject to comprehensive audits by Staff or independent third parties supervised by Staff. Staff is involved throughout this regulatory process.[52] Rider audits are thorough and review issues including, but not limited to, all expenses and in-service activity from the audit period, sample transactional testing, and the Companies' policies and practices, including

[47] Ohio Environmental Council.
[48] Northwest Ohio Aggregation Coalition.
[49] *See* Kroger Initial Brief at 17, Walmart Initial Brief at 7, OMAEG Initial Brief at 23, CUB Initial Brief at 4, OEC Initial Brief at 5-6; *see also* Direct Testimony of Christopher Healey ("Healey Testimony") at 5-6 (Oct. 30, 2023), Staff Ex. 10 (claiming that nothing is a substitute for the openness and thorough review of a base rate case); *see also* NOAC Initial Brief at 9-10, 12 (claiming that Rider SCR should be eliminated to improve accountability, supervision, and auditability).
[50] *See* NOAC Initial Brief at 13; *see also* OCC Initial Brief at 30-32.
[51] Duke Energy Ohio ESP IV, Opinion and Order at ¶290 (Dec. 19, 2018).
[52] Tr. Vol. XIV at 2604, 2605 (cross-examination of Staff Witness Mackey).

interviews with the Companies' personnel.[53] Interested parties have the opportunity to participate in audit proceedings, including through filing comments and issuing discovery.[54] As part of each audit, the Companies are required to demonstrate that the recovery sought is not unreasonable.[55] Similar to a base rate case, rider audits require a prudency review and used-and-useful analysis.[56] Moreover, the rider audit processes provide an opportunity to focus specifically on the costs included in the rider, without the administrative burden of having to review all other costs or other non-related information at the same time.

These riders' proposed revenue caps also limit the costs that customers would pay during ESP V. The record demonstrates that adjustable-rate mechanisms that include revenue caps promote rate certainty, stability, and predictability, all of which benefit customers.[57] In addition, the Companies propose that the applicable inputs for certain riders (*e.g.*, return on equity, cost of debt, capital structure, depreciation rates, revenue requirement allocations, and FirstEnergy Service Company allocation factors) will be updated and reset in the 2024 base rate case.

In contrast, in a base rate case, the Companies would recover a baseline level of costs that would not be subject to ongoing annual review, audit, and reconciliation, or revenue caps, regardless of whether the Companies' actual costs matched baseline amounts.[58]

No parties have presented evidence to the contrary, and OCC cites only two cases from the Missouri Public Service Commission ("PSC"),[59] even though the Missouri PSC regularly approves

[53] Tr. Vol. I at 104.
[54] Tr. Vol. XIV at 2604, 2605 (cross-examination of Staff Witness Mackey).
[55] Tr. Vol. XIII at 2219 (cross-examination of OCC Witness Collins); Tr. Vol. XIV at 2400 (admitted by Staff Witness Mackey).
[56] *See* Tr. Vol. XIV at 2610-2611 (cross-examination of Staff Witness Healey).
[57] Tr. Vol. III at 562-563.
[58] Tr. Vol. XIV at 2409-2410 (Staff Witness Mackey acknowledging that the investments would not be subject to annual audit or quarterly updates if recovered via base rates).
[59] OCC Initial Brief at 31; *see* Tr. Vol. XIII at 2210 (OCC Witness Collins admitting he cannot cite Ohio authority for his concerns regarding riders and a utility's incentive to control costs).

riders.[60] At hearing, Staff admitted they could not identify any type of review of the Companies' investments in a rate case that would not be completed as part of an annual Rider DCR audit.[61] OCC's witness was not aware the Commission conducted formal audits of riders.[62] He conceded that formal audits would allow the Commission to ensure that specific programs, such as the Distribution Riders, receive proper and thorough regulatory oversight and are operating within their Commission-approved parameters.[63] OCC further acknowledged that audits create risk of disallowance, which protects customers.[64] Not surprisingly, the Commission has previously dismissed claims that distribution riders like Rider DCR eliminate a utility's incentive to control costs or encourage a utility to make uneconomic choices.[65] At hearing, OCC agreed that riders "can be structured to be beneficial to both the utility and its customers" and admitted there is "no reason to believe the Commission has approved [riders] which are not beneficial for both a utility and its customers."[66] OCC also testified that it can be appropriate for the Commission to approve riders intended to address specific policy goals.[67]

The Commission has recognized the sufficiency of distribution rider audits and revenue caps. For instance, the Commission has found that "Rider DCR is subjected to annual audits which

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[60] Tr. Vol. XIII at 2210 (OCC Witness Collins acknowledging that the Missouri PSC has repeatedly approved rider mechanisms for Missouri utilities).
[61] Tr. Vol. XIV at 2611 (cross-examination of Staff Witness Healey).
[62] Tr. Vol XIII at 2217 (cross-examination of OCC Witness Collins).
[63] *Id.*
[64] *See id.* at 2220 (OCC Witness Collins agreeing that "even in the absence of a rate case, utilities are still at risk of disallowance for costs recovered via riders").
[65] *In the matter of the application of Ohio Power Company for authority to establish a standard service offer pursuant to R.C. 4928.143, in the form of an electric security plan,* Case No. 16-1852-EL-SSO, *et al.*, Opinion and Order at ¶191 (Apr. 25, 2018) ("We reject OCC's claims that the DIR provision of the Stipulation in these proceedings eliminates AEP Ohio's incentive to control costs and encourages uneconomic choices. Since the implementation of the DIR, the Commission has made it clear that the rider's recovery is subject to an annual review for prudency and accuracy and that DIR spending is incremental to projected capital expenditures, among other things. OCC and other interested parties may intervene in future DIR audit cases. We note that, in these DIR audit cases, the burden is on AEP Ohio to demonstrate that its expenditures are incremental, prudent, and consistent with the Commission's orders, rules, and Ohio statutes.").
[66] Tr. Vol. XIII at 2209-2210 (cross-examination of OCC Witness Collins).
[67] *See id.* at 2216.

require the Companies to demonstrate what they spent and why the recovery sought is not unreasonable" and that interested parties have, and will continue to have, "a full and fair opportunity to raise any issues regarding distribution investments to be recovered under Rider DCR during the audit process."[68] Similarly, the Commission found that annual spending caps on Duke Energy Ohio's distribution investment rider (which were tied to reliability) and annual audits provided sufficient oversight and consumer protection.[69]

Further, annual audits facilitate timelier review of distribution investments than would otherwise occur between base rate cases—a benefit OCC[70] and Staff[71] acknowledged. While the Companies' Application indicated the Companies may file a base rate case during the term of ESP V in addition to the 2024 case,[72] the Companies could not reasonably undergo base distribution rate cases as frequently as rider audits (*i.e.*, annually). Annual rate cases would be time-consuming for the Commission and other stakeholders, and costly for customers charged for rate case expense.[73] It would tax valuable Commission and stakeholder resources and potentially create a case backlog which could further cause customer confusion.

Again, the Companies are already proposing to update the inputs for Riders DCR, SCR, and VMC in the upcoming 2024 base rate case. This will ensure that, in addition to the rigorous annual audit described above, these riders will still be subject to the broader base rate case review desired by Staff and certain intervenors.

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[68] *In the matter of the application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for authority to provide for a standard service offer pursuant to R.C. 4928.143 in the form of an electric security plan*, Case No. 14-1297-EL-SSO ("ESP IV"), Opinion and Order at 111 (Mar. 31, 2016) (rejecting claims by parties that costs under Rider DCR fail to receive proper scrutiny).
[69] Duke Energy Ohio ESP IV, Opinion and Order at ¶202 (Dec. 19, 2018).
[70] Tr. Vol. XIII at 2222 (cross-examination of OCC Witness Collins).
[71] Tr. Vol. XIV at 2410 (cross-examination of Staff Witness Mackey).
[72] Application at 8.
[73] *See* Tr. Vol. XIV at 2619 (Staff Witness Healey acknowledging that the Companies would be able to recover their rate case expenses for each rate case filed).

3. ***There is no minimum cost threshold necessary to establish a rider.***

OCC claims the Companies' major storm expenses should be addressed in a base rate case because they are not "significant" enough to warrant a rider.[74] This proposal lacks sufficient support and is inconsistent with regulatory precedent, as the Companies are unaware of any such threshold being established by the Commission in authorizing riders in an ESP case. Nonetheless, OCC's analysis contains flaws and understates the significance of the Companies' historical storm expenses. At hearing, OCC's witness conceded that OCC had compared the Companies' major storm expense with *all* of the costs included in the Companies' FERC Form 1 (*i.e.*, generation, transmission, distribution, and other passthrough costs).[75] For an accurate assessment, OCC should have compared the Companies' storm costs to their total *distribution* expenses. As a result, OCC's analysis underestimates the magnitude of the Companies' major storm expenses. Moreover, OCC provides no authority requiring that such costs reach a certain percentage of overall expenses—distribution or otherwise—in order to be recoverable under a rider. For those reasons, the Commission should reject OCC's arguments.

4. ***Establishing new or different performance standards in a base rate case is unnecessary for approval of Rider VMC because the Commission already enforces standards for circuit performance and vegetation management.***

With respect to Rider VMC, OCC proposes that a base rate case would enable the parties to establish performance standards for the Companies' vegetation management practices.[76] However, the Commission's rules already require the Companies and other EDUs to develop minimum performance standards for distribution circuit performance.[77] In addition, the

[74] OCC Initial Brief at 32; Meyer/Collins Testimony at 13-15.
[75] *See* Meyer/Collins Testimony at 13-14; Tr. Vol. XIII at 2227 (cross-examination of OCC Witness Collins).
[76] Meyer/Collins Testimony at 19.
[77] *See* Ohio Adm. Code 4901:1-10-11.

Companies publicly submit annual system improvement plan reports to Staff that contain timetables and performance standards related to vegetation management, as well as other distribution system reliability data.[78] Also, the Companies and Staff's Service Monitoring and Enforcement Department collaborate on the Companies' vegetation management plan and vegetation management cycles, including periodically reviewing the Companies' work to ensure the Companies are on track with the plan.[79] Therefore, a rate case is unnecessary to establish or hold the Companies accountable for meeting distribution circuit performance standards.

**D. The Companies' Distribution Riders are authorized under R.C. 4928.143.**

OCC, OMAEG, and Kroger urge the Commission to reject the Distribution Riders because they amount to single-issue ratemaking.[80] The ESP statute, however, authorizes an ESP to include "without limitation...provisions regarding [a] utility's distribution service, including, without limitation...provisions regarding single issue ratemaking."[81] Pursuant to this statutory authority, the Commission has authorized distribution riders like Riders DCR, AMI, VMC, and SCR in the Companies' and other EDUs' ESPs.[82]

For the foregoing reasons, the Commission should reject OCC, OMAEG, and Kroger's arguments and approve the Companies' proposed Distribution Riders in accordance with R.C. 4928.143(B)(2)(h).

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[78] *See* Ohio Adm. Code 4901:1-10-26 and 4901:1-10-27.
[79] Tr. Vol. XI at 2061-2062 (cross-examination of Staff Witness Messenger).
[80] Kroger Initial Brief at 14-15; OMAEG Initial Brief at 22, 32, 36; *see* Meyer/Collins Testimony at 12, 16, 19, 38. This argument seems to contradict Kroger's and OMAEG's other argument that the Commission should reject the Distribution Riders because they do *not* qualify as single-issue ratemaking under R.C. 4928.143(B)(2)(h). Kroger Initial Brief at 15, 16; OMAEG Initial Brief at 20.
[81] R.C. 4928.143(B)(2)(h).
[82] *See, e.g.* AES Ohio ESP IV, Opinion and Order at ¶170 (Aug. 9, 2023) (holding that "expenses related to the provision of distribution service may be recovered through the provision of single-issue ratemaking expressly authorized by R.C. 4928.143(B)(2)(h)"); *See* Tr. Vol. XIII at 2218-2219 (OCC Witness Collins acknowledging the Commission approved single-issue ratemaking, including distribution riders, in the AEP Ohio, AES Ohio, and Duke Energy Ohio ESPs cited in his testimony).

## E. The Commission should reject the parties' proposed modifications to Rider DCR and approve the Companies' proposal.

### 1. *The Commission should reject Staff's proposal to limit the accounts eligible for recovery under Rider DCR.*

Staff, OCC, Kroger, and OMAEG recommend limiting Rider DCR to FERC Accounts 360 to 374 to align Rider DCR's calculation with that of other Ohio EDUs' similar mechanisms.[83] This recommendation would reduce Rider DCR's aggregate annual revenue caps by $51 million,[84] nearly 15% of the Companies' Rider DCR revenue,[85] with no opportunity to recover the costs of certain investments during a "Bridge Period" beginning at the start of ESP V on June 1, 2024, and continuing through the effective date of new base distribution rates.[86]

The Companies' Initial Brief anticipated this recommendation and explained in detail that, while the Companies appreciate the objective of aligning the calculation of similar riders among Ohio EDUs, this proposed limitation should be rejected for several reasons:

1. The recommendation would reverse the Companies' authorization to recover seventeen years of investments in the distribution system, contrary to Rider DCR's long-established terms and conditions and a decade of precedent.[87]

2. The recommendation would discontinue recovery of costs of investments that serve distribution customers.[88] Further, investments in these accounts are included in the

[83] Staff Initial Brief at 5-6, 8; *see also* OCC Initial Brief at 24-25, Kroger Initial Brief at 10, and OMAEG Initial Brief at 27-28 (supporting Staff's recommendation).
[84] Healey Testimony at 9-10; Mackey Testimony at 5. At hearing, Staff's witnesses testified that Staff did not conduct an analysis of this recommendation's financial effect on the Companies. *See* Tr. Vol. XIV at 2428-2429 (Staff Witness Mackey); *Id.* at 2622 (Staff Witness Healey).
[85] *See* Staff Initial Brief at 6. Staff's proposal "would lower the current $390 million cap by about $51 million...," which is a reduction of nearly 15%.
[86] *See* Companies Initial Brief at 16-17; *see also* Tr. Vol. XIV at 2396 (Staff Witness Mackey recognizing that, under Staff's proposal, the Companies would lose the opportunity to continue recovering costs of investments outside FERC Accounts 360 to 374); *see also id.* at 2612 (Staff Witness Healey acknowledging that the Companies would lose the ability to recover investments outside FERC Accounts 360 to 374 during the Bridge Period).
[87] Companies Initial Brief at 15.
[88] *Id.* at 15-16. At hearing, Staff's witness agreed that investments in Transmission Plant include substations, transformers, poles, and wires as well as assets that deliver electricity to retail customers served at transmission voltage. Tr. Vol. XIV at 2403 (cross-examination of Staff Witness Mackey); *see also* Tr. Vol. XIII at 2229 (cross-examination of OCC Witness Collins). Similarly, investments in General and Intangible Plant directly support the Companies' ability to manage and operate the distribution system. *See* Tr. Vol. XIII at 2227-2228 (OCC Witness Collins agreeing that costs included in General and Intangible plant support the provision of distribution service).

Companies' base distribution rates.[89]

3. The recommendation would discontinue recovery of costs of investments that have never been found to be unreasonable, throughout twelve years of rigorous annual audits.[90]

4. The recommendation prevents the Companies from recovering these costs for the duration of the Bridge Period, due to Commission-approved base distribution rate freezes in effect since 2009 and continuing until new base distribution rates take effect.[91]

5. The recommendation would result in costs of prudent investments being recovered for a sustained period, then being removed from rates during the Bridge Period, and then being moved back into rates in the base distribution rate case. The Companies are unaware of prior instances where similar treatment has been authorized, and it would be inconsistent with traditional utility regulation and the principle of gradualism.[92]

6. The recommendation would frustrate the Companies' ability to continue investing in their system to support the provision of reliable distribution service.[93]

A modification of the magnitude Staff recommends, which disallows continued recovery of 17 years of investments that have not been found to be unreasonable, is not something for which the Companies could plan, and would necessarily factor into the Companies' determination of whether to accept or withdraw ESP V.

As an alternative, the Companies recommended they be allowed to continue recovering the costs of investments outside FERC Accounts 360-374, with those balances frozen at May 31, 2024 levels, until the investments can be included in base distribution rates.[94] Any limitation of Rider DCR to FERC Accounts 360-374 would occur only after new base distribution rates' effective

[89] *See* Direct Testimony of Devin Mackey ("Mackey Testimony") at 7 (Oct. 30, 2023), Staff Ex. 8; *see also* Staff Initial Brief at 4-5.
[90] Companies Initial Brief at 15-16.
[91] *Id.* at 16-17; *see also* Tr. Vol. XIV at 2396 (Staff Witness Mackey acknowledging that, under Staff's proposal, the Companies would lose the opportunity to continue recovering costs of investments outside FERC Accounts 360 to 374); *see also id.* at 2612 (Staff Witness Healey recognizing that the Companies would lose the ability to recover investments outside FERC Accounts 360 to 374 during the Bridge Period).
[92] Companies Initial Brief at 18.
[93] *Id.* at 17-18.
[94] *Id.* at 18.

date.[95] This alternative promotes gradualism by maintaining recovery of these investments in Rider DCR through the Bridge Period, with more predictable, gradual, and modest rate impacts for customers.[96] As a further alternative, if the Commission deems it necessary to take further measures to reduce customer bills during the Bridge Period, the Companies proposed committing to work with Staff to identify other potential bill reductions that will not impact the Companies' ability to invest in the distribution system (such as cost-based revenue reductions).[97] These alternatives would enable the Companies to continue investing in their system to support the provision of reliable distribution service.

While the Companies appreciate the desire for consistency among Ohio EDUs, this recommendation alone will not achieve consistency. At hearing, Staff acknowledged differences among the Ohio EDUs' Commission-approved ESPs,[98] as well as other material differences that may justify treating EDUs differently.[99] The Companies differ from their peer utilities because the Companies have been operating under a Commission-authorized base rate freeze since 2009.[100] As a result of the base rate freeze, the Companies have not been able to seek recovery of investments outside FERC Accounts 360 to 374 through base rates. In contrast, other Ohio EDUs have been permitted to recover these expenses through base rates during the same period.[101] Also, the Companies' proposed annual increases in the Rider DCR revenue caps comprise a lower percentage of base distribution revenue than the annual increases recently approved for other Ohio

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[95] *Id.*
[96] *Id.*
[97] *Id.* at 18-19.
[98] Tr. Vol. XIV at 2414 (cross-examination of Staff Witness Mackey).
[99] *See id.* at 2425 (Staff Witness Mackey stating that consistency of distribution investment riders should apply for a majority of the aspects of those riders, but that there are differences in the EDUs).
[100] ESP I, Second Opinion and Order at 11 (Mar. 25, 2009) (imposing base rate freeze until December 31, 2011); ESP II, Opinion and Order at 25 (Aug. 25, 2010) (continuing rate freeze until June 1, 2014); ESP III, Opinion and Order at 9 (July 18, 2012) (extending base rate freeze until June 1, 2016); ESP IV, Opinion and Order at 92 (Mar. 31, 2016) (extending base rate freeze through May 31, 2024).
[101] While AES Ohio has had brief base rate freezes, it has still had several rate cases during those periods.

EDUs,[102] and further include a reliability performance band.[103] At hearing, Staff appreciated the differences in caps, but testified that standardization of the caps would depend on what each EDU proposed in its respective case.[104]

2. ***The Commission should reject parties' attempts to impose additional conditions on the Companies' ability to continue Rider DCR, as well as the Companies' other proposed Distribution Riders.***

Staff and intervenors recommend three penalties regarding Rider DCR:

1. If the Companies fail to file a quarterly Rider DCR update at least 60 days prior to the effective date, Rider DCR would reset to zero and remain there until the next timely filed quarterly update.[105] Revenues foregone while Rider DCR was set to zero could not be recovered later.[106]

2. If the Companies fail to file a rate case in May 2024, a requirement of their 2021 Settlement,[107] Rider DCR would reset to zero and remain there for the entire ESP V term.[108] Walmart recommends the same penalty for all four Distribution Riders.[109]

3. If the Commission's ESP V Order approves Rider DCR only for the Bridge Period, and its order in the Companies' upcoming base distribution rate case does not affirmatively set the terms of Rider DCR for the remainder of ESP V, Rider DCR would reset to zero and remain there for the duration of ESP V.[110]

These recommendations should be rejected. While the Companies never question the importance of timely filings, Staff's recommended lateness penalties are unprecedented and

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[102] *See* AES Ohio ESP IV, Opinion and Order at 26 (Aug. 9, 2023) (approving AES Ohio's DIR revenue caps equal to 3.3% to 3.6% of base distribution revenues). *See also* Direct Testimony of Staff Witness Mackey at 3, referencing the PUCO Entry on Rehearing in Case No. 13-2385-EL-SSO that acknowledged that AEP's Rider DIR "should reflect annual growth… as a percentage of customer base distribution charges, of three to four percent…"
[103] *See* Duke Energy Ohio ESP IV, Opinion and Order at ¶294 (Dec. 19, 2018) (finding "modifications to Rider DCI offer additional protections to customers by requiring spending caps and tying those caps to meeting reliability goals").
[104] Tr. Vol. XIV at 2426-2427 (cross-examination of Staff Witness Mackey).
[105] Staff Initial Brief at 10.
[106] *Id.*
[107] *See In the matter of the quadrennial review required by R.C. 4928.143(E) for the electric security plans of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case Nos. 20-1476-EL-UNC, *et al.* ("Global Stip. SEET Cases"), Opinion and Order at 11 (Dec. 1, 2021).
[108] Staff Initial Brief at 5-6; *see also* OMAEG Initial Brief at 27-29 (supporting Staff's recommendation).
[109] Walmart Initial Brief at 8 (supporting Staff's recommendation for Rider DCR and proposing similar conditions be imposed on Riders VMC, AMI, and SCR).
[110] Staff Initial Brief at 7; *see also* OMAEG Initial Brief at 27-29 (supporting Staff's recommendation); *see also* Walmart Initial Brief at 8 (supporting Staff's recommendation and proposing similar conditions be imposed on Riders VMC, AMI, and SCR).

excessive. The Commission's standard penalty for non-compliance with a Commission Order is $10,000.[111] For comparison, Staff's first recommended penalty above, equal to one quarter's Rider DCR revenues, would be nearly $100 million.[112] Lateness could result from human error, illness, IT problems, etc. And Staff has proposed no grace period or opportunity for the Companies to cure.

Further, with regard to the base rate case order, the Companies explained above why Rider DCR's status for the full ESP V term must be determined in this proceeding, not the base rate case.

3. ***The Commission should reject Staff's and intervenors' proposed modifications to the Rider DCR annual revenue caps.***

a. *The Companies' proposed annual revenue cap increases are reasonable and modest compared to other Ohio EDUs.*

OCC and others challenge the Companies' proposed annual Rider DCR revenue cap increases.[113] OCC argues the Companies' proposed annual revenue cap increases are unjust and unreasonable because they result in "excessive" revenue caps and "link the amount of the annual revenue increases to enhanced reliability performance" when the Companies are already obligated to meet their reliability standards.[114]

OCC contradicts its own expert's testimony, which recommends the Companies' revenue caps be (1) limited to 3% increases and (2) tied to the Companies' reliability performance.[115] The Companies' proposed increases are approximately 1.5% to 2.1% of current base distribution

[111] R.C. 4905.54.
[112] *See* Staff Initial Brief at 6. The Companies' current annual Rider DCR revenue cap is $390 million, so three months' Rider DCR revenue would be nearly $100 million.
[113] OCC Initial Brief at 20-22; NOAC Initial Brief at 13; Kroger Initial Brief at 8; OMAEG Initial Brief at 58.
[114] OCC Initial Brief at 20-21.
[115] Meyer/Collins Testimony at 27.

revenues,[116] well below OCC's 3% threshold.[117] Once new base distribution rates take effect and Rider DCR re-sets to zero, the Companies expect the Rider DCR cap increase will further decline as a percentage of base distribution revenue.[118] Further, the Companies' proposal to reduce annual cap increases in years where they do not meet reliability performance standards provides additional protection for customers.[119]

The Companies' proposed revenue cap increases are also less than the revenue cap increases authorized in other EDUs' ESPs. The annual revenue cap increases authorized for AES Ohio and Duke Energy Ohio's distribution investment riders range from 3% to 4% of base distribution revenues.[120] At hearing, OCC revealed that it did not calculate the Companies' proposed revenue cap increases as a percentage of current base distribution revenues, nor compare the Companies' proposed increases to other EDUs' revenue cap increases.[121]

*b. The Companies' proposal to continue Rider DCR's current rollover mechanism is reasonable and will not harm customers.*

The Commission has consistently approved rollover in Rider DCR, authorizing it in the Companies' past three ESPs.[122] If the Companies' Rider DCR revenue requirement exceeds Rider

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[116] *See* Opinion & Order in Case No. 07-551-EL-AIR at 48 (Jan. 21, 2009); *see also* Direct Testimony of Staff Witness Mackey at 3.
[117] *See* Tr. Vol. XIV at 2418 (Staff Witness Mackey confirming that the Companies' proposed revenue caps are less than 3% of their base distribution revenue).
[118] *See* Tr. Vol. XIV at 2423 (Staff Witness Mackey agreeing that if amounts currently included in Rider DCR are included in base rates, then the annual increases as a percentage of base distribution revenue will decrease).
[119] *See* Duke Energy Ohio ESP IV, Opinion and Order at ¶294 (Dec. 19, 2018) (finding "modifications to Rider DCI offer additional protections to customers by requiring spending caps and tying those caps to meeting reliability goals").
[120] *See* AES Ohio ESP IV, Opinion and Order at 26 (Aug. 9, 2023) (approving AES Ohio's DIR revenue caps equal to 3.3% to 3.6% of base distribution revenues). *See* Duke Energy Ohio ESP IV, Opinion and Order at 38-39 (Dec. 19, 2018).
[121] Tr. Vol. XIII at 2234, 2235-2236 (cross-examination of OCC Witness Collins).
[122] *See* ESP II, Opinion and Order at 12 (Aug. 25, 2010) ("For any year that the Companies' spending would produce revenue in excess of that period's cap, the overage shall be recovered in the following cap period subject to such period's cap. For any year the revenue collected under the Companies' Rider DCR is less than the annual cap allowance, the difference between the revenue collected and the cap shall be applied to increase the level of the subsequent period's cap"); *see also* ESP III, Opinion and Order at 9 (July 18, 2012) (approving Rider DCR without modification to the annual revenue cap rollover provisions); *see also* ESP IV, Opinion and Order (Mar. 31, 2016) (approving Rider DCR without modification to the annual revenue cap rollover provisions).

DCR's revenue cap in a given year, the overage rolls over to the following year, when it may be recovered if there is room below that year's revenue cap.[123] If the Companies' Rider DCR revenue requirement is below Rider DCR's revenue cap in a given year, the difference between the revenue collected and the revenue cap increases rolls over to the following year, when it increases the level of the following year's revenue cap.[124]

Staff, OCC, and OMAEG recommend discontinuing rollover in Rider DCR, arguing that it reduces the Companies' incentive to control costs.[125] These arguments overlook the effect of Rider DCR's revenue cap, which provides a fixed limit on the amounts that can be recovered under Rider DCR on a cumulative basis. To the extent there are expenses for capital investments above what the revenue caps allow, the Companies are not seeking to defer them.[126] Accordingly, the Companies will not be able to recover more than the sum of the annual cap increases over the term of ESP V.[127] Because recovery is subject to this overall cap, and further subject to disallowance or refund, Rider DCR provides incentives for the Companies to control costs.

These arguments do not recognize that the annual revenue caps represent the maximum the Companies could collect through Rider DCR. The caps are not an amount the Companies are guaranteed to collect.[128] For the Companies to collect the amount of the revenue caps, the Companies must have actually spent at levels supporting a revenue requirement reaching the level of the cap. In other words, Rider DCR merely affords the Companies the opportunity to recover investments up to a certain amount. The proposed Rider DCR rollover provision, which preserves

[123] Direct Testimony of Brandon S. McMillen ("McMillen Testimony") at 5 (Apr. 5, 2023), Companies Ex. 3.
[124] *Id.*
[125] *See* Staff Initial Brief at 9; OMAEG Initial Brief at 27-28; OCC Initial Brief at 22-23.
[126] Tr. Vol. I at 94.
[127] *Id.* at 90.
[128] *See* ESP III, Opinion and Order at 34 (July 18, 2012) ("the Commission notes that the caps on Rider DCR do not establish certain amounts that the Companies will necessarily recover – thus, the Commission emphasizes that the $405 million figure discussed by NOPEC/NOAC and OSC is the maximum that could be collected under Rider DCR and is not a guaranteed amount.").

the overall, cumulative cap on recovery, is consistent with this purpose. Accordingly, the Commission should reject the proposal to discontinue Rider DCR's rollover provision.

4. ***The Commission should reject OCC's other proposed modifications to Rider DCR's terms and conditions.***

*a. The Commission should reject OCC's proposal to modify the treatment of property and income tax in Rider DCR.*

In testimony, OCC recommends adjusting the depreciation reserve used to calculate property taxes to eliminate the cumulative amortization of the excess depreciation reserve and the net plant to which the property tax is applied.[129] However, property tax is currently calculated based on gross plant, not net plant, consistent with the Companies' most recent base rate case and Rider DCR filings.[130]

OCC also proposes modifying the method of calculating pre-tax return on rate base to include the after-tax weighted-average cost of capital from the Companies' most recent base rate case, grossed up for the federal income tax rate.[131] However, the Companies are responsible for both federal and local income tax expenses, consistent with their most recent base rate case and Rider DCR filings.[132]

At hearing, OCC's witness agreed that OCC's proposals depart from current practice.[133] The witness testified that he was unfamiliar with the treatment of these issues in the Companies' prior Rider DCR filings or their last base rate case.[134] Because OCC's recommendations do not reflect Rider DCR as proposed in ESP V, they should be rejected.

[129] Meyer/Collins Testimony at 24 (citing the Commission's decision in Case No. 13-2385-EL-SSO for support).
[130] *See, e.g.*, Case No. 23-914.
[131] *Id.* at 26 (citing the settlements reached in Case Nos. 23-23-EL-SSO and 17-1263-EL-SSO for support).
[132] *See, e.g.*, Case No. 23-914.
[133] Tr. Vol. XIII at 2229-2230, 2232 (cross-examination of OCC Witness Collins).
[134] *Id.* at 2230, 2232-2233.

*b. The Commission should decline to adopt OCC's proposal to impose an annual work plan requirement on Rider DCR that stalls the Companies' ability to invest in their system.*

In testimony, OCC recommends the Commission direct the Companies to work with Staff and OCC to develop an annual work plan for Rider DCR.[135] While the Companies are open to providing more information about investments in their system, the Companies are not agreeable to a process requiring others' pre-approval of expenditures. The Companies have sole responsibility for operating their distribution system safely and reliably. An unprecedented process requiring others' pre-approval could interfere with the Companies' ability to make timely investments in their distribution system. Further, the prudency of Rider DCR investments is already evaluated through the annual audit process.

*c. The Commission should reject OCC's recommendations concerning the Companies' 2024 base distribution rate case.*

In testimony, OCC recommends requirements relating to the Companies' upcoming base distribution rate case. These include a directive that the Companies file the 2023 depreciation study from Case No. 16-481-EL-UNC[136] and that they adjust ADIT balances.[137] The Commission should reject OCC's recommendations related to the Companies' 2024 base distribution rate case.

**F. The Commission should approve the continuation of Rider AMI without modification.**

Several parties, including Staff, propose modifications to Rider AMI. While the Companies believe Staff's proposal to eliminate the use of projected plant from Rider AMI is reasonable, the Commission should reject the modifications recommended by other parties as unwarranted and unsupported by the record.

[135] Meyers/Collins Testimony at 31 (citing the Commission's decision in Case No. 17-1263-EL-SSO).
[136] *Id.* at 24.
[137] *Id.* at 25.

1. ***OCC's claim that Rider AMI is unreasonable is not supported by the rider's actual terms and conditions.***

OCC contends that the Companies' Rider AMI proposal is unreasonable because it lacks revenue caps.[138] To the contrary, Rider AMI is subject to caps on capital and O&M expense recovery.[139] These caps were established in the Companies' Grid Mod I proceeding.[140] ESP V does not propose to alter or eliminate Rider AMI's caps. Rather, ESP V proposes to continue Rider AMI under its current terms and conditions.[141] While Rider AMI will include recovery of subsequently approved grid modernization programs, the terms and conditions for recovery of these costs, including applicable revenue caps, will be determined in the proceedings where the Commission authorizes those programs, consistent with past practice.[142]

2. ***The Commission should decline to adopt OCC's proposal to eliminate stranded investments from Rider AMI.***

OCC argues that Rider AMI is inconsistent with R.C. 4909.15(A) because it enables the Companies to recover costs of retired meters.[143] However, ESP V does not include a proposal to recover costs of retired meters. The costs recovered through Rider AMI are decided in the Companies' grid modernization proceedings. For example, in the Companies' stipulated Grid Mod I proceeding, the Commission authorized recovery through Rider AMI of the costs associated with the net book value of retired meters.[144]

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[138] OCC Initial Brief at 28.
[139] The Companies' recovery of capital costs and incremental O&M expense is capped at $516 million and $139 million, respectively. *In the matter of the filing by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company of a grid modernization business plan,* Case Nos. 16-481-EL-UNC, *et al.* ("Grid Mod I"), Opinion and Order at ¶30, 32 (July 17, 2019).
[140] Tr. Vol. I at 89; *In the matter of the filing by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company of a grid modernization business plan,* Case Nos. 16-481-EL-UNC, *et al.* ("Grid Mod I"), Opinion and Order at ¶30, 32 (July 17, 2019).
[141] Companies Initial Brief at 19.
[142] *Id.* at 19.
[143] OCC Initial Brief at 29-30.
[144] *See* Grid Mod I, Opinion and Order at ¶32 (July 17, 2019) (approving a comprehensive stipulation which authorized recovery of the costs associated with the net book value of retired meters, without carrying costs). Through a

3. ***The Commission should reject Staff's proposal to limit recovery of Grid Mod I and Ohio Site Deployment Pilot costs via Rider AMI.***

Staff recommends that the Companies should not be able to recover any additional costs associated with the Ohio Site Deployment Pilot through Rider AMI.[145] Staff further recommends that, once new base rates become effective, the Companies' Ohio Site Deployment Pilot and Grid Mod I costs should be incorporated into base rates and disallowed for recovery under Rider AMI.[146]

In ESP IV, however, the Commission expressly authorized the Companies to continue recovery through Rider AMI until all costs of any approved portion of the Companies' grid modernization plan are fully recovered.[147] Pursuant to this authority, the Companies should be allowed to continue recovering Grid Mod I costs through Rider AMI, unless and until the Commission authorizes their recovery through base rates.

4. ***The Commission should not update the rate of return for Rider AMI prior to the 2024 rate case.***

Staff and OCC recommend the Commission adjust Rider AMI's rate of return.[148] While the Companies believe it is reasonable to adjust Rider AMI's rate of return following the 2024 base rate case, Rider AMI's current rate of return should remain in place until new base rates become effective. This timing would be consistent with the Companies' proposal to update the inputs for Riders DCR, SCR, and VMC with values determined in the upcoming base rate case.

In addition, the Commission should permit the Companies to continue using their actual

supplemental stipulation, OCC became a signatory party to all terms and conditions of the Grid Mod I stipulation except the terms and conditions of Sections V.B through V.I. related to grid modernization, which it agreed not to oppose. *See id.* at ¶ 9, 71. OCC's objection to the recovery of costs of retired meters is contrary to its duty not to oppose the stipulation's grid modernization provisions.

[145] Staff Initial Brief at 42.

[146] *Id.* at 42.

[147] ESP IV, Opinion and Order at 23 (Mar. 31, 2016).

[148] Staff Initial Brief at 42; OCC Initial Brief at 18-20.

cost of debt and capital structure for any investment under the Companies' grid modernization business plan recovered through Rider AMI. In ESP IV, the Commission directed that for purposes of Rider AMI, the cost of debt and capital structure applied to investments would be set at the embedded long-term cost of debt and capital structure "in existence at the time the rider is updated."[149] Continuing this practice will also afford the Companies flexibility to account for changes in market conditions.

### G. Although some of Staff's proposed modifications to Rider SCR are reasonable, most of Staff's proposed modifications should be rejected as unreasonable and contrary to the Companies' longstanding Commission-approved storm deferral authority.

Staff recommends the Commission approve Rider SCR with modifications.

#### 1. *The Commission should reject Staff's proposed modifications to the eligible expenses recovered via Rider SCR.*

##### *a. The Commission should reject Staff's proposal to limit the storm restoration expenses eligible for recovery in Rider SCR.*

Staff, Kroger and OMAEG recommend Rider SCR be limited to incremental, prudently incurred expenses related to storms that qualify as "Major Events," as defined by Ohio Adm. Code 4901:1-10-01(T), with all other storm expenses (*i.e.*, expenses incurred for non-Major Events) included in base rates.[150] Staff also proposes the Companies' existing storm deferral authority end on May 31, 2024, at the expiration of ESP IV.[151]

The Commission should reject this limitation in favor of the Companies' proposal to use "major storms," a broader term not limited to Major Events. The Commission has consistently approved the Companies' use of "major storms" for their storm deferral mechanism for fourteen (14) years.

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[149] ESP IV, Opinion and Order at 23 (Mar. 31, 2016).
[150] Direct Testimony of Jonathan J. Borer ("Borer Testimony") at 6-7 (Oct. 30, 2023), Staff Ex. 2; Staff Initial Brief at 12-13; *see also* Kroger Initial Brief at 14 and OMAEG Initial Brief at 35 (supporting Staff's recommendation).
[151] Staff Initial Brief at 12; Borer Testimony at 7; Kroger Initial Brief at 14 (supporting Staff's recommendation).

The Commission first approved the Companies' storm deferral mechanism in 2009, authorizing the Companies to defer expenses associated with storm damage.[152] The Commission did not limit the storm deferral to expenses to Major Events,[153] a decision Staff did not oppose.[154] In 2010, the Commission in ESP II reauthorized the Companies' storm deferral mechanism by approving a stipulation supported by Staff.[155] The ESP II stipulation required Staff and the Companies to develop mutually agreeable storm cost deferral criteria.[156] Staff and the Companies agreed that the Companies could defer expenses from "major storms," which they defined as an event that is anticipated to last longer than twelve (12) hours (using local crews only), including the time to pre-stage personnel for the event.[157] Although the regulatory definition of "Major Events" had been added to the Ohio Administrative Code two years earlier in 2008,[158] Staff and the Companies nonetheless agreed to the broader term "major storms," the same deferral criteria Staff now opposes.

The Commission approved the use of "major storms" twice more, in ESP III[159] and in ESP IV.[160] In each instance, the Commission approved a stipulation supported by Staff that recommended using the same deferral criteria Staff and the Companies had developed in ESP II.[161]

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[152] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals,* Case No. 07-551-EL-AIR *et al.* ("2007 Rate Case"), Opinion and Order at 42-43 (Jan. 21, 2009).

[153] *Id.*

[154] Tr. Vol. XIII at 2176 (cross-examination of Staff Witness Borer).

[155] ESP II, Opinion and Order at 39-46 (Aug. 25, 2010) (approving a Staff-supported Combined Stipulation and Recommendation authorizing the continuation of deferrals, including the storm deferral mechanism, previously approved in Case No. 07-551-EL-AIR and providing the Companies and Staff an opportunity to develop mutually agreeable "deferral criteria"); *See* Tr. Vol. XIII at 2176 (cross-examination of Staff Witness Borer).

[156] *Id.*; *see also* Tr. Vol. VI at 1286; *see also* Tr. Vol. XIII at 2176-2177 (cross-examination of Staff Witness Borer).

[157] Direct Testimony of Juliette Lawless ("Lawless Testimony") at 3 (Apr. 5, 2023), Companies Ex. 7.

[158] *See In Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code,* Case No. 06-653-EL-ORD, Finding and Order (Nov. 5, 2008).

[159] ESP III, Opinion and Order (July 18, 2012); Tr. Vol. XIII at 2177 (cross-examination of Staff Witness Borer).

[160] *See* ESP IV, Opinion and Order at 77-78, 93, 113 (Mar. 31, 2016).

[161] *See* Tr. Vol. XIII at 2177-2178 (Staff Witness Borer confirming that Staff joined the stipulations in ESP III and IV which authorized the continuance of the Companies' storm expense deferral).

Indeed, since 2010, Staff has supported and the Commission has authorized the storm deferral criteria proposed in ESP V.[162]

Additionally, there is no statutory requirement that the Companies use the Ohio Administrative Code's definition of "Major Event" for their recovery of major storm expenses. The Ohio Administrative Code's definition of "Major Event" does not reference storms or storm deferrals.[163] Further, neither Chapter 4901 of the Ohio Administrative Code nor Title 49 of the Ohio Revised Code uses "Major Event" in reference to storms, storm cost recovery, or storm deferrals.[164]

Storms classified as non-Major Events are just as unpredictable as storms meeting the definition of Major Events. Both are capable of damaging the distribution system and causing harm to the Companies. At hearing, Staff's witness testified that they never considered or analyzed whether Major Event type storms are as predictable as storms that do not meet the definition.[165] Staff's witness also testified that they had not considered the proposed modifications' financial impact on the Companies.[166]

Staff and OCC assert that the Companies' definition of "major storm" is "impossibly vague"[167] and "subject to manipulation."[168] However, the Companies have established specific guidelines for determining whether a storm qualifies as a "major storm" (as defined by Staff and the Companies), which the Companies provided to Staff and intervenors in discovery.[169] Over the course of fourteen years, Staff would not have developed and repeatedly supported, and the

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[162] *See* Tr. Vol. XIII at 2178 (Staff Witness Borer could not identify any instance in which Staff took its current position opposing the Companies' storm deferral criteria).
[163] *See* Ohio Adm. Code 4901:1-10-01(T).
[164] Tr. Vol. XIII at 2180-2181 (cross-examination of Staff Witness Borer).
[165] *Id.* at 2181-2182.
[166] *Id.* at 2182.
[167] Staff Initial Brief at 12.
[168] OCC Initial Brief at 33.
[169] Tr. Vol. VI at 1288-1289.

Commission would not have repeatedly approved, storm deferral criteria that is "impossibly vague" and "subject to manipulation."

Accordingly, there is no justification to modify the storm deferral criteria as Staff recommends. Consistent with fourteen years of Commission precedent and Staff support, ESP V should continue to use the same storm deferral criteria approved in the Companies' three prior ESPs.

b. *The Commission should reject Staff's proposal to eliminate carrying charges on major storm expense.*

Staff recommends the Companies not be compensated with carrying charges applied to Major Event expense,[170] "because there is minimal regulatory lag associated with the Companies' recovery of storm costs incurred during ESP V…."[171] Staff's recommendation, however, does not consider that storm cost spending occurs throughout the year, and there are financing costs associated with that spending. For instance, if there are less storm expenses incurred during the year, then customers should be credited with the carrying costs that were avoided by the decrease in spending and vice versa. While annual reconciliation helps mitigate regulatory lag, it does not eliminate it. Therefore, the Commission should decline to adopt Staff's recommendation.

2. ***The Companies do not object to Staff's recommendation to recover the existing storm deferral balance after an audit of the balance is completed in a separate proceeding.***

Staff, OMAEG, Kroger and NOAC recommend the Commission not allow recovery of the existing storm deferral balance in this proceeding but instead wait until after the audit of the deferral balance is completed in a separate proceeding.[172] The Companies do not oppose this recommendation and can agree to pursue recovery of the existing storm balance after the audit of

[170] Staff Initial Brief at 14; *see also* OMAEG Initial Brief at 35-36 (supporting Staff's recommendation).
[171] Staff Initial Brief at 14.
[172] *Id.* at 3, 11-12.; *see also* OMAEG Initial Brief at 35-36; Kroger Initial Brief at 14; NOAC Initial Brief at 11-12.

the deferral balance is completed in a separate audit proceeding.

### 3. *The Companies do not object to addressing Staff's concern about potential double recovery of straight-time labor costs and mutual assistance in Rider SCR.*

Staff proposes two modifications to Rider SCR to avoid potential double recovery. First, Staff recommends Rider SCR not include straight-time (*i.e.*, non-overtime) labor costs of Companies' employees, consistent with other EDUs.[173] Second, Staff recommends crediting straight-time labor costs incurred by the Companies when providing mutual assistance to Rider SCR.[174]

The Companies appreciate concerns with the potential for double recovery, which was not the Companies' intent. The Companies seek to recover only incremental costs, similar to AEP Ohio's storm rider (*i.e.*, Storm Damage Recovery Rider), which the Commission approved in Case No. 11-346-EL-SSO *et al.*[175] Like AEP Ohio, the Companies are agreeable to working with Staff in the annual Rider SCR audit so Staff can determine that only incremental costs are included in the storm deferral.

With the two qualifications identified above, the Commission should approve the Companies' Rider SCR proposal.

## H. The Commission should approve Rider VMC as proposed.

### 1. *Rider VMC and the Enhanced Program promote distribution system reliability, protect the environment, and provide cost savings.*

The Companies' Initial Brief explained how the proposed Rider VMC and Enhanced Vegetation Management Program will contribute to maintaining and enhancing distribution

[173] Staff Initial Brief at 13; Borer Testimony at 13-14.
[174] Mutual assistance refers to times when EDUs offer their resources, labor, and equipment to assist other EDUs in performing storm restoration in the service territories of other EDUs. Staff Initial Brief at 14.
[175] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO *et al.*, Opinion and Order at 68-69 (Aug. 8, 2012).

system reliability.[176] At hearing, Companies' witness Standish explained that the Enhanced Program will enable the Companies to proactively take important steps supporting distribution system reliability.[177] Proper and proactive vegetation maintenance work is a basic foundation of the Companies' goal of providing safe, reliable, and reasonably-priced power to customers.[178] The Enhanced Program is necessary to avoid increased vegetation management expense as the Companies' distribution system degrades.[179] Without the Enhanced Program, the volume of vegetation management work and costs will increase without improvements in reliability or safety.[180] The Companies' Initial Brief also explained how the Enhanced Program protects the environment.[181] The Enhanced Program will create diverse early successional plant communities beneficial to insects, birds, animals, etc., and help support ecological communities.[182]

OCC opposes Rider VMC, contending the Enhanced Program's estimated savings would not be passed on to customers.[183] To the contrary, the Enhanced Program will reduce the Companies' costs, and those cost reductions will flow to customers. Companies' witness Standish explained the savings associated with the Companies' proposed Enhanced Program. If the Companies adopt the Enhanced Program's more proactive approach to vegetation management, vegetation management costs are expected to decrease by 21%, or $22 million in year five, and by another 24%, or $22 million, starting in year nine.[184] Because the Enhanced Program consists of two four-year cycles, the reduction in vegetation management costs will start at the beginning of

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[176] Companies Initial Brief at 26-31.
[177] *See* Tr. Vol. VI at 1313-1314, 1336-1337 (emphasizing the importance of completing the proposed vegetation management work as soon as possible).
[178] *Id.* at 1326-1327.
[179] *Id.* at 1341-1343.
[180] *Id.*
[181] Companies Initial Brief at 30.
[182] Direct Testimony of Shawn T. Standish ("Standish Testimony") at 16 (Apr. 5, 2023), Companies Ex. 8; Tr. Vol. VI at 1347.
[183] Meyer/Collins Testimony at 17-18.
[184] Companies Initial Brief at 30-31.

the second cycle (*i.e.*, in year five), when there will be less vegetation, less overhang, and fewer priority trees as a result of enhanced vegetation management during the first cycle.[185]

Also, with the Enhanced Program, the Companies anticipate reductions in storm O&M expenses starting in year five, estimated at $2 million to $3 million per year.[186] Reduced costs for storms eligible for inclusion in the storm deferral would be passed on to customers through Rider SCR.

In addition, based on the United States Department of Energy's Interruption Cost Estimator ("ICE") tool, which estimates the economic value of improved reliability to customers, the Companies calculated savings of $963 million nominally and $574 million on a net present value basis over ten years.[187] It is not possible to pass these savings to customers since they merely represent the estimated reliability benefits associated with adopting a more proactive and efficient vegetation management approach through the Enhanced Program.

At hearing, OCC's witness explained that the "cost savings" discussed in his testimony[188] were solely from improvements in reliability performance and, that his analysis did not include reduced vegetation management costs or reduced storm O&M expense.[189] While acknowledging that the Enhanced Program is expected to reduce the level of vegetation management expenses recovered through Rider VMC, OCC's witness did not recognize that these savings would translate into lower Rider VMC rates.[190]

2. ***The Commission should reject Staff's proposed modifications to the Rider VMC revenue cap.***

Staff supports approval of Rider VMC as of June 1, 2024; however, Staff recommends that

[185] Tr. Vol. VI at 1317-1319.
[186] Companies Initial Brief at 30-31; Standish Testimony at 14-15.
[187] *Id.*
[188] *See* Meyer/Collins Testimony at 17-18 (Table GRM-2).
[189] Tr. Vol. XIII at 2238 (cross-examination of OCC Witness Collins).
[190] *Id.* at 2238-2239.

the Commission approve lower, annual Rider VMC caps designed to support only the Companies' base level of work and none of the estimated costs of the Enhanced Program.[191]

The Companies appreciate Staff's support for Rider VMC and the Companies' current important vegetation management activities. As explained above, the Companies anticipate significant benefits to customers from the Enhanced Program that would not be realized under Staff's proposal. If the Commission decides not to authorize the Enhanced Program and associated recovery of the costs in Rider VMC, the Companies would not object, as long as they are not prohibited from seeking to implement the Enhanced Program and recover the costs elsewhere. For example, if the baseline amount of vegetation management O&M expense increase in a future base rate case exceeds the amounts identified in Staff's proposal, the Companies would be able to recover the full amounts, subject to any terms and conditions authorized in that case.

3. ***The Commission should also reject Staff's proposal to exclude carrying costs from Rider VMC.***

Staff and OMAEG contend that the Companies should not recover carrying charges through Rider VMC, explaining that such costs are unnecessary in light of the annual reconciliation and update process.[192] While more frequent recovery will limit these additional costs, it will not eliminate them. Neither Staff nor OMAEG argue that the Companies will not incur financing costs associated with their vegetation management expenses. In addition, the Companies will not receive any return on the investments recovered through Rider VMC. Staff's proposal would deny the Companies the opportunity to earn adequate compensation for the costs incurred. Rider VMC's carrying charges are symmetrical, so if the Companies over-recover, customers are credited for carrying costs on the balance. The Commission should reject Staff's proposal to

[191] Staff Initial Brief at 15-16.
[192] Staff Initial Brief at 16-17; OMAEG Initial Brief at 34.

remove Rider VMC's carrying charges.

### I. The Commission should approve the Companies' competitive bidding process (CBP), including the proposed modifications.

The Companies' proposed CBP maintains established procurement practices that have been consistently and successfully used in Ohio since the inception of ESPs, along with enhancements designed to address specific Commission and stakeholder concerns.

#### 1. *The Companies' proposed volumetric risk cap and capacity proxy price mechanisms allow the Commission to address concerns with SSO auctions.*

The Companies proposed a volumetric risk cap ("VRC") to mitigate a potential source of supplier risk – unexpectedly high migration of customers to SSO service at a time of high market prices.[193] This risk has the potential to reduce supplier participation in auctions, resulting in less competitive pricing for customers.[194] It also can lead suppliers to build additional premiums into their bids.[195] VRC mechanisms similar to the one proposed by the Companies have been successfully used in other jurisdictions, to the benefit of customers.[196] The Companies' proposed VRC mechanism provides a reasonable way for the Commission to address these issues, should it choose to do so.

In response to continued concerns about disruptions in the timing of base residual auctions ("BRAs"),[197] the Companies also proposed a capacity proxy price ("CPP") mechanism to be used in situations where there is no BRA price available at the time of an SSO auction.[198] The

[193] Direct Testimony of Robert J. Lee ("Lee Testimony") at 7-8 (Apr. 5, 2023), Companies Ex. 6. *See also*, Constellation Initial Brief at 13-14.
[194] *See* Tr. Vol. IV at 706-707; *see also* Tr. Vol. XI at 1951-1952; *see also* Tr. Vol. XIII at 2364; *see also* Constellation Initial Brief at 10, 15-16.
[195] *See id.*
[196] Companies Initial Brief at 34-35; *see also* Constellation Initial Brief at 25-26.
[197] *See In the matter of the proposed modifications to the electric distribution utilities' standard service offer procurement auctions*, Case No. 23-781-EL-UNC, Finding and Order at ¶¶ 4-9 (Dec. 13, 2023).
[198] Companies Initial Brief at 35-37; Lee Testimony at 11-13.

Companies' proposed CPP mechanism is reasonable, was developed in consultation with their independent auction manager, and is consistent with the Commission's directives in Case No. 23-781-EL-UNC.[199] The Companies' CPP should be approved as proposed.

For the reasons discussed above, and in the Companies' Initial Brief,[200] the Commission should adopt the Companies' proposed VRC and CPP mechanisms as reasonable solutions to material concerns affecting the Ohio market.

2. ***A class-based auction format could be detrimental to customers.***

OCC and Constellation[201] recommend replacing the current slice-of-system auction format with a class-based format.[202] No other Ohio EDU conducts SSO procurements this way. The Commission should decline to adopt this proposal, as it recently did in AES Ohio's ESP.[203] There, the Commission explained that it was "not persuaded that separating the auctions into auctions for residential customers and non-residential customers will result in aggregate savings to consumers in this state."[204] The Companies are concerned that class-based auctions will be detrimental to customers. Given the historically high levels of shopping in some customer classes, some products or customer classes may garner limited or no bidder interest, and some tranches may go unserved.[205] The Companies ask the Commission to maintain the tried-and-true slice-of-system auction format that the Companies and other EDUs have successfully used since 2008.

**J. The Companies' proposal to continue Rider NMB and implement a Rider NMB 2 rate strikes a balance among diverging views about transmission service cost recovery.**

The Companies recognize that the allocation and assignment of non-market-based services

[199] *See* Case No. 23-781-EL-UNC, Finding and Order at ¶35 (Dec. 13, 2023).
[200] Companies Initial Brief at 33-37.
[201] "Constellation" refers to both Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.
[202] OCC Initial Brief at 8-11; Constellation Initial Brief at 28-34.
[203] *See* AES Ohio ESP IV, Opinion and Order at ¶247 (Aug. 9, 2023).
[204] *Id.*
[205] Lee Testimony at 36.

costs is an important issue to the parties, and that there is range of different views on this topic. The Companies' proposal attempts to address the concerns raised by stakeholders during pre-filing meetings and provides a reasonable resolution for the Commission's consideration. Continuing Rider NMB with the Companies' recommended modifications will minimize risks for customers, better match costs with cost causers, and provide customers an opportunity to better manage their charges. The Commission should approve the Companies' Rider NMB proposal.

1. ***Continuing Rider NMB is reasonable, beneficial to customers, and consistent with prior regulatory treatment.***

As explained in the Companies' Initial Brief, continuing Rider NMB as a non-bypassable pass-through mechanism ensures that customers are only paying for actual costs incurred without any additional mark-up.[206] Further, eliminating the current Rider NMB Pilot and establishing the new proposed Rider NMB 2 rate design better supports the principle of cost causation and empowers customers to manage their costs.[207] This approach is consistent with the transmission cost recovery mechanisms approved for other Ohio EDUs. For example, as OEG[208] and OMAEG note, the Companies' proposal is similar to AES Ohio's recently approved Transmission Cost Recovery Rider,[209] under which certain non-residential customers will be assessed transmission charges based on their NSPL values.[210] The Companies' Rider NMB proposal also aligns with the recommendation from the audit report filed in Case No. 22-391-EL-RDR (the "Exeter Audit Report") to improve cost causation.[211] The Companies' proposal strikes a practical balance

[206] *See* Tr. Vol. XIV at 2470 (Staff Witness Baas explaining that Staff avoided eliminating Rider NMB entirely because they felt there would be risk premiums added to transmission charges if costs were solely through suppliers).
[207] Companies Initial Brief at 40-44.
[208] Ohio Energy Group.
[209] Direct Testimony of Stephen J. Baron ("Baron Testimony") at 4 (Oct. 23, 2023), OEG Ex. 1; Direct Testimony of Ryan Schuessler ("Schuessler Testimony") at 11 (Oct. 23, 2023), OMAEG Ex. 2.
[210] AES Ohio ESP IV, Opinion and Order at 40 (Aug. 9, 2023).
[211] *See In the matter of the review of the non-market-based services rider pilot program established by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 22-391-EL-

between the concerns raised in the Exeter Audit Report and those raised by interested stakeholders.

### 2. *The Rider NMB 2 rate presents a feasible alternative to expanding the NMB Pilot.*

The Rider NMB 2 rate is designed to replace the Rider NMB Pilot, and if Rider NMB 2 is adopted, the Pilot will become unnecessary.[212] Rider NMB 2 will eliminate cost shifting between customer groups and will better align recovery with cost causation.[213] Some intervenors have suggested the NMB Pilot should instead be continued on an expanded basis,[214] but those arguments do not consider whether the Companies have the ability to implement the necessary changes.[215] The Companies anticipate administrative challenges associated with expanding the NMB Pilot, particularly in light of the recent requirement to offer a manual billing option for customers who wish to participate in the NMB Pilot while still receiving transmission service from the Companies.[216] Consistent with the terms of the NMB Pilot established in ESP IV, the Commission should consider "whether the administrative burden to the Companies" would render any of the intervenors' proposals "impractical."[217]

### 3. *All customers with advanced or interval meters can benefit from NSPL-based billing.*

OELC[218] argues that the proposed NMB 2 rate is discriminatory, benefitting customers

RDR, Audit Report at 44-45 (July 17, 2009), OELC Ex. 27 (identifying the potential drivers of cost shifts related to the current structure of Rider NMB).

[212] *See* Staff Initial Brief at 39.

[213] *See* Companies Initial Brief at 40-44; *see also* Nucor Initial Brief at 33.

[214] IGS Initial Brief at 13-14; OELC Initial Brief at 26-27; *see also* Staff Initial Brief at 40-41 (proposing that the NMB Pilot continue on an expanded basis if Staff's five Rider NMB recommendations are not adopted).

[215] For example, Staff Witness Baas acknowledged that she had not conducted any analysis of the Companies' ability to implement an expansion of the NMB Pilot, nor did she consider or analyze whether the Companies' billing system could accommodate such a change. Tr. Vol. XIV 2501-2502.

[216] *See* Tr. Vol. VI at 1227 (Companies Witness Lawless explaining that expansion of the NMB Pilot would be administratively burdensome, and that the Companies' proposal would be the most effective way to address this issue); *see also* Tr. Vol. VII at 1458-1459 (Companies Witness Stein explaining that the Companies do not currently have the resources available to expand the NMB Pilot).

[217] *See* ESP IV, Opinion and Order at 18-19 (Mar. 31, 2016).

[218] Ohio Energy Leadership Council.

who have the "operational flexibility" to manage their loads and harming others that do not meet this criteria.[219] This analysis does not recognize that *all* customers have similar opportunities to reduce their electric load during peak hours, through a variety of methods.[220] For example, customers can implement behind-the-meter generation, such as renewable resources, generators, and batteries, to manage their load.[221] Customers also have the option of investing in management practices and technologies that will help them reduce their power consumption during peak periods.[222] At hearing, OELC's witness acknowledged that customers have already started adopting new strategies to help them predict peak periods and manage their loads and will continue to do so.[223] In addition, customers will have ample opportunity to manage their NSPLs in advance of the transition to the NMB 2 rate, which will not become effective until April 1, 2025.[224] Moreover, if a customer determines that it could benefit from NSPL-based billing under the NMB 2 rate, that customer has the option to request an advanced meter at its own expense.[225]

### 4. *Other proposed modifications to the Rider NMB rate design should be rejected.*

While Staff supports the Companies' proposal to continue Rider NMB and implement a secondary rate mechanism for certain non-residential customers, they also propose modifications, including (1) modifying the current allocation method to more closely follow PJM's approach, (2) giving certain customers the option to opt into the NMB 2 rate, and (3) switching customers to the NMB 2 rate annually at the time of the annual rider audits in April.[226]

Similar to the above arguments against expanding the current Rider NMB Pilot, the

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[219] OELC Initial Brief at 10-11.
[220] Tr. Vol. VII at 1549-1551.
[221] Tr. Vol. IX at 1744-1745 (acknowledged by OELC Witness Brakey).
[222] *Id.* at 1745.
[223] *Id.* at 1753.
[224] Tr. Vol. VI at 1239-1240.
[225] Tr. Vol. XIV at 2514 (cross-examination of Staff Witness Baas).
[226] Staff Initial Brief at 38-41.

practicality of implementing these proposed modifications, and their potential impacts to customers, need to be analyzed and considered. Factors requiring further analysis could include (1) whether the Companies have access to the data necessary to allocate transmission charges in accordance with all of the methodologies used by PJM, (2) whether the Companies' current billing system could accommodate the modifications, and (3) the estimated impact on customers' bills.[227] In addition, requiring the Companies to employ the various methodologies used by PJM in allocating and collecting transmission charges could lead to customer confusion as customers could be charged multiple different ways under Rider NMB. Further, Staff's proposal would enable customers to select, on a monthly basis, the lowest cost version of the NMB 1 or NMB 2 rate, thereby creating a shortfall that would effectively shift costs to other customers and increase the Companies' administrative burden.[228] The Commission should decline to adopt Staff's proposed modifications to the Rider NMB rate design until these factors can be further analyzed and reviewed.

### K. The Commission should approve the continuation of Rider ELR subject to the modifications proposed in the Companies' Application.

Parties argue that Rider ELR should be eliminated because it is not beneficial in the aggregate.[229] The Companies disagree. As set forth in more detail in the Companies' Initial Brief, Rider ELR is consistent with Ohio policy, provides significant reliability benefits, helps promote economic development and job retention in Ohio, and promotes gradualism for customers.[230]

Notwithstanding these important benefits, several parties oppose the Companies' proposal to transition away from its role as a curtailment service provider ("CSP") for all Rider ELR

[227] *See* Tr. Vol. XIV at 2504, 2509, 2512.
[228] *See* Baron Testimony at 7.
[229] *See* OMAEG Initial Brief at 45-50; NOAC Initial Brief at 7-8; OCC Initial Brief at 37-46.
[230] Companies Initial Brief at 2-5, 45-49.

participants.[231] The Companies stand by their proposal. The Companies' proposal will enable participants to keep all PJM revenues associated with participating in Rider ELR[232]—an important benefit identified by Staff.[233] Also, the Companies' proposal promotes market competition and customer choice. By ceasing to operate as the exclusive CSP for all Rider ELR participants, the Companies give Rider ELR participants the ability to contract with a CSP that best suits their unique business interests and energy needs.[234] In so doing, Rider ELR customers can more efficiently operate in multiple PJM markets (*e.g.*, ancillary service market)[235] and use a single CSP for all their market activities.[236] The Companies' Rider ELR proposal also considers rate impacts on non-participating customers through a gradual reduction in the level of credits available to Rider ELR participants and paid for by other customers.[237] The reduced credits better align with market clearing prices while still supporting economic development and demand response within the Companies' service territories.[238]

In sum, the Commission should adopt the modified Rider ELR proposed by the Companies.

### L. The Companies' EE/PDR plan presents a statutorily authorized and cost-beneficial proposal designed to empower customers to control their electric bills and protect the environment.

#### 1. *The Companies' proposal will empower customers to control their electric bills, while also protecting the environment.*

Several parties oppose the Companies' EE/PDR plan, either in whole or in part.[239] These

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[231] OELC Initial Brief at 38-39; Healey Testimony at 21-22; Nucor Initial Brief at 4, 23-27, 28; OEG Initial Brief at 21-22.
[232] Companies Initial Brief at 47.
[233] Staff Initial Brief at 19, 22-23; *see also* Healey Testimony at 21.
[234] Companies Initial Brief at 47; Tr. Vol. VII at 1398-1399.
[235] *Id.*; Direct Testimony of Edward B. Stein ("Stein Testimony") at 5 (Apr. 5, 2023), Companies Ex. 10.
[236] *Id.*
[237] Companies Initial Brief at 46-48.
[238] *Id.*
[239] Kroger Initial Brief at 3, 17-19, NRG Initial Brief at 12, IGS Initial Brief at 15-16, and OMAEG Initial Brief at 40-41 (opposing the Companies' proposal in its entirety); Staff Initial Brief at 23, NOAC Initial Brief at 8-10, OCC Initial Brief at 50-51 (opposing certain components of the Companies' proposal).

arguments do not recognize the merits, and need, for the proposed programs in the Companies' service territories. As discussed in their Initial Brief, the Companies fully support energy efficiency and the numerous benefits that energy efficiency and demand response programs can create for both customers and the environment.[240] The Companies also support competitive markets and their ability to offer EE/PDR solutions. However, some intervenors argue in their initial briefs that the current market does not afford customers adequate opportunities to fully take advantage of these types of programs.[241]

As operators of the electric distribution system, the Companies are uniquely situated to educate customers about EE/PDR and promote and provide the proposed EE/PDR programs. Moreover, the Companies have both the legal authority (under R.C. 4928.143(B)(2)(h) and (i))[242] and state policy support (as outlined in R.C. 4905.70) to offer energy efficiency and demand response programs to their customers.[243] The Companies' proposed programs are specifically designed to benefit customers and the environment in ways unique to EDUs. For example, the proposed energy efficiency programs will reduce demand on the distribution system and will lower the costs necessary for the Companies to build and maintain the grid, creating community-wide benefits.[244] Similarly, the Companies' demand response program will reduce stress on the grid during periods of peak demand, which favorably impacts all customers.[245] The Companies'

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[240] Companies Initial Brief at 49.
[241] *See* ELPC Initial Brief at 7-8, CUB Initial Brief at 8-11, and OEC Initial Brief at 9-11.
[242] An ESP may include "without limitation," "provisions regarding the utility's distribution service" and "provisions under which the electric distribution utility may implement...energy efficiency programs," respectively.
[243] "The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs."
[244] *See* Tr. Vol. IX at 1699-1700, 1701-1702 (OCC Witness Shutrump agreeing that energy efficiency programs can reduce demand on the grid and benefit grid infrastructure, which can benefit the community); *see also* Tr. Vol. XIII at 2162 (RESA Witness Smith agreeing that energy efficiency products can reduce usage, which lead to lower costs to build and maintain the grid).
[245] *See* Tr. Vol. IX at 1697 (OCC Witness Shutrump agreeing that demand response programs have the ability to reduce stress on the grid at peak times, which can benefit more customers than just the participants of the program).

proposal will also empower customers to control their usage and save money on their bills.[246] Finally, by reducing energy consumption, the proposed EE/PDR programs will reduce carbon emissions, combating climate change and keeping the air we breathe clean.[247]

An ESP presents a rare opportunity under Ohio law for an EDU to empower all customers to control their electricity usage and protect the environment through widespread EE/PDR programs. If Ohio is interested in pursuing this opportunity, ESP V's EE/PDR programs provide a ready vehicle.

### 2. *The Companies' proposal is specifically designed to achieve its stated benefits while controlling costs for customers.*

The Companies' proposed programs are designed to achieve their identified benefits in a cost-effective manner. The proposed EE/PDR plan will also be subject to frequent opportunities for evaluation and review to ensure that (1) the programs' intended benefits are realized, and (2) the costs recovered from customers are within approved budgets, reasonable and prudent. As discussed in greater detail in the Companies' Initial Brief, the EE/PDR programs will be subject to multiple opportunities for the Companies, the Commission, and interested shareholders to track and evaluate the programs' success.[248] These opportunities will be valuable to all parties in determining whether the programs are beneficial and should be continued.[249] Similarly, through Rider EEC, all costs associated with the EE/PDR programs will be subject to annual review, audit, and reconciliation to ensure customers are only paying for the Companies' actual reasonably incurred costs.[250]

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[246] *See* Tr. Vol. XIII at 2308 (Staff Witness Braun agreeing that, if customers use less energy, it drives down market prices paid by customers); *see also id.* at 2162 (RESA Witness Smith agreeing that energy efficiency products can help customers save money on their bills).
[247] *See* Miller Testimony at 5; Companies Initial Brief at 54.
[248] *Companies Initial Brief at 54-55.*
[249] *See* Tr. Vol. XIII at 2294 (Staff Witness Braun explaining that some level of tracking or reporting is valuable to determine whether the programs are beneficial and should be continued).
[250] Companies Initial Brief at 52, 55-56.

These built-in safeguards will confirm that customers receive the full benefits of the Companies' EE/PDR proposal at a reasonable cost.

### 3. *Rider EEC would spread out recovery, with carrying charges, over an eight-year period and limit rate impacts to customers.*

Staff disagrees with the Companies' proposal to spread out cost-recovery for the EE/PDR programs over an eight-year period, instead recommending costs be recovered over the term of the plan.[251] Staff also suggests the Companies should be prohibited from recovering carrying charges through Rider EEC.[252] The Commission should decline to adopt these proposals due to their negative impact on customers.

Shortening the period of cost recovery would be inconsistent with the principle of gradualism, because it would impose higher rate impacts on customers than would occur under the Companies' proposal, which recovers costs over a period of time that more closely aligns with the timeframe of the programs' benefits. As the Companies' Initial Brief explained, Staff's proposal would lead to significant bill impacts to customers that are five to six times greater than under the Companies' proposal. [253] Additionally, Staff's recommendation to remove carrying costs from Rider EEC does not address how, or if, the Companies should be permitted to recover costs associated with this regulatory lag caused by the delay between when the Companies incur the costs and when the Companies can recover them.[254] This lag is exacerbated if the Companies are not allowed to project costs for recovery in Rider EEC. Allowing the Companies to recover carrying costs will address this problem and afford the Companies a full and fair opportunity to recover the costs associated with implementing the EE/PDR proposed programs. For these

[251] Staff Initial Brief at 23-24; *see also* OCC Initial Brief at 49-50 and OMAEG Initial Brief at 41-42 (arguing against 8-year recovery).
[252] Staff Initial Brief at 24; *see also* OMAEG Initial Brief at 42 (supporting Staff's recommendation).
[253] Companies Initial Brief at 56.
[254] Tr. Vol. XIV at 2436 (cross-examination of Staff Witness Mackey).

reasons, Staff's proposed modifications should not be adopted.

### M. The Companies' proposed shareholder initiatives will provide critical support to the Companies' customers, their communities, and the environment.

The Companies propose to spend $52 million over ESP V's 8-year term (*i.e.*, $6.5 million per year) to support low-income customers and enhance customers' experience with the adoption of electric vehicles, without cost recovery from customers. Specifically, to assist customers in paying their electric bills, the Companies commit to providing $2.5 million per year for two Fuel Fund programs and $2 million per year per year for a low-income senior citizen discount program during the term of ESP V.[255] As explained in the Companies' Initial Brief, these initiatives are intended to positively impact customers and their communities by protecting the Companies' most at-risk customers and facilitating the transition to newer technologies, without customers having to bear any of the costs.[256]

Staff and other parties have recommended modifications or alternatives to certain aspects of these initiatives, such as eliminating the proposed Senior Citizen Discount program, or changing the eligibility criteria for the low-income bill payment assistance programs.[257] While the Companies believe their proposed voluntary programs are reasonable and will benefit customers, they welcome feedback from Staff and other interested parties on how to optimize the effectiveness of the proposed programs, provided that (1) the Companies retain the ability to make the final decision on program design, and (2) such feedback does not impede the Companies' ability to meet their commitments.

Additionally, Staff recommends that the Companies credit to ratepayers any unused funds committed to energy conservation programs and economic development as part of ESP IV through

[255] Companies Initial Brief at 57.
[256] *Id.* at 57-59.
[257] *See* Staff Initial Brief at 34-36; *see also* CC/UFA Initial Brief at 7, 10-11; *see also* OCC Initial Brief at 53-54.

its next Economic Development Rider or Consumer Rate Credit Rider rate adjustment filing.[258] The Companies agree with this proposal, believing it to be consistent with their commitment to act as good stewards of the community, promote affordability of rates for customers, and ensure that customers receive the full value of the ESP IV commitment.

### N. The Companies' proposal to eliminate 18 riders is reasonable and beneficial to customers.

While ESP V proposes to eliminate eighteen riders, OCC and Walmart argue the Companies still have too many riders.[259] These arguments do not account for important considerations that explain the Companies' portfolio of riders: (1) not all of the Companies' riders are currently active,[260] (2) a number of the Companies' riders are bypassable,[261] (3) many of the Companies' riders are optional,[262] and (4) many of the Companies' riders are mandated under Ohio law.[263] The Companies' proposal to eliminate eighteen inactive riders is a significant reduction that will improve clarity for customers.[264] Therefore, the Companies' ESP V proposal is a reasonable step toward accomplishing OCC's and Walmart's objective.

### O. The Commission should reject parties' arguments for a shortened ESP term and approve ESP V for a term of eight years.

Based on pre-filing feedback from stakeholders, the Companies proposed an eight-year term for ESP V. Staff and other parties recommend shortening the ESP term.[265] These recommendations are not supported by Ohio law, Commission precedent, or the record in this case.

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[258] Direct Testimony of Krystina Schaefer ("Schaefer Testimony") at 9 (Oct. 30, 2023), Staff Ex. 4.
[259] OCC Initial Brief at 31-32; Walmart Initial Brief at 3-5.
[260] *See* McMillen Testimony at 15-16.
[261] For example, Riders GEN, GCR, AER, and NDU are all bypassable.
[262] For example, Riders HLF, CPP, RTP, RCP, AMO, HNM, and NEM are all optional.
[263] For example, Riders AMO, LGR, SGF, SKT, and USF are all required under Ohio law.
[264] Tr. Vol. I at 155.
[265] Staff Initial Brief at 30-31, OEG Initial Brief at 26, and OELC Initial Brief at 5-7 (arguing for a 6-year ESP term); OMAEG Initial Brief at 50-51, Kroger Initial Brief at 3, 19-21, and OCC Initial Brief at 7-8 (arguing for a 4-year ESP term).

1. ***R.C. 4928.143 neither prescribes nor prohibits any particular ESP length.***

Staff and intervenors have not identified legal authority to support their contention that ESP V should be approved for less than an eight-year term. Rather, the statutory framework for ESPs, as well as Commission precedent, support the Commission's authority to approve a longer ESP term like the Companies propose.

Section 4928.143 of the Revised Code contemplates that ESP terms may be longer than three years—potentially much longer.[266] Importantly, Ohio EDUs have proposed, and the Commission has approved, ESP terms over six years. For example, the Companies' current ESP was authorized for a term of eight years.[267] Likewise, Duke Energy Ohio's most recent ESP was approved for a seven-year period.[268] Staff and other parties provide no justification to treat the Companies' ESP V proposal differently.

2. ***ESPs with extended terms are subject to the same rigorous review as those with shorter terms.***

In support of their positions, both OCC and OEG contend that an eight-year ESP would be subject to fewer consumer protections and less frequent Commission review than a shorter-term ESP.[269] These arguments should be rejected because they disregard the consumer protections in Section 4928.143 of the Revised Code.

In addition to undergoing annual significantly excessive earnings test ("SEET") assessment under R.C. 4928.143(F), ESPs longer than three years are subject to a separate, rigorous interim review every four years.[270] This quadrennial review is comprehensive, requiring the Commission to consider (1) whether the ESP, including its then-existing pricing and all other terms and

[266] *See* R.C. 4928.143(E) (providing for interim review "every fourth year" for an ESP over 3 years in length); *see also* R.C. 4928.143(B)(1) (identifying additional provisions that apply if an ESP lasts longer than 3 years).
[267] ESP IV, Opinion and Order at 20 (Mar. 31, 2016).
[268] Duke Energy Ohio ESP IV, Opinion and Order at 33 (Dec. 19, 2018).
[269] *See* OCC Initial Brief at 7-8; *see also* OEG Initial Brief at 26.
[270] R.C. 4928.143(E).

conditions, continues to be more favorable in the aggregate as compared to an MRO (and will continue to be so for the remainder of the term) and (2) whether the prospective effect of the ESP is substantially more likely to provide the EDU with a return on equity that is significantly in excess of that earned by publicly traded utilities.[271] If the Commission finds that the ESP fails either of the above tests, the Commission may terminate the ESP and impose conditions as it deems reasonable and necessary to accommodate the transition to a more advantageous alternative.[272]

Given that R.C. 4928.143 permits an eight-year term ESP (as the Commission has approved previously) and mandates a thorough and rigorous quadrennial review, the Commission should approve the Companies' proposed ESP V term consistent with R.C. 4928.143 and its prior orders approving longer-term ESPs.

3. ***A longer-duration ESP V will benefit customers in ways a shorter ESP would not.***

While Staff contends that shorter-term ESPs allow for greater flexibility to account for changes in market conditions,[273] Staff and intervenors discount the significant benefits of longer-term ESPs, as well as the specific provisions of ESP V that address these concerns.

The primary benefit of a longer-term ESP is that it provides enhanced rate certainty and stability for the utility, ratepayers, and other stakeholders. In fact, Staff supported Duke Energy Ohio's current seven-year ESP term on this exact basis.[274] Here, neither Staff nor OCC have provided any justification as to why the Companies' proposed ESP V will not afford customers these same benefits. Moreover, the Companies' CBP proposal accounts for changes in market conditions by insulating customers from drastic increases in market prices through a staggered and

[271] *Id.*
[272] *Id.*
[273] Staff Initial Brief at 31.
[274] *See* Duke Energy Ohio ESP IV, Opinion and Order at ¶175 (Dec. 19, 2018) (in which Staff argued that longer term ESPs provide SSO customers with rate stability and consistency).

laddered CBP auction process.[275]

In addition, the Companies' $52 million commitment of shareholder funds to support at-risk customers and EV adoption contemplates an eight-year ESP V term, *i.e.*, $6.5 million per year at no cost to customers. A shorter ESP term reduces the commitment's total dollar value.

In sum, the Companies' proposed eight-year ESP V fosters rate certainty and rate stability and ensures customers receive the full benefits of the Companies' $52 million stewardship commitment. The SEET test, quadrennial review, and CBP process provide consumer protections and enable Commission review. For these reasons, the Commission should decline to shorten the proposed ESP term.

### P. The Commission should reject OCC's proposal to modify the Companies' rate of return.

OCC, NOAC and CUB-Ohio take issue with the Companies' current rate of return (8.48%), cost of debt (6.54%), and return on equity (10.5%),[276] which OCC describes as "unreasonably high."[277] OCC recommends modifying the Companies' ROR through ESP V.[278] As explained below, this position is inconsistent with regulatory precedent, and the underlying analysis is incorrect and unsupported by record evidence.

OCC's recommendation to reset the Companies' ROR, ROE, and cost of debt in this ESP would violate Ohio Supreme Court precedent and longstanding Commission practice. Both the Commission and the Ohio Supreme Court have consistently rejected OCC's arguments that an ROR should be recalculated in between base rate cases to reflect current market conditions.[279] The

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[275] Lee Testimony at 10-12, 33-35.
[276] *See* 2007 Rate Case, Opinion and Order at 21-23 (Jan. 21, 2009).
[277] *See* OCC Initial Brief at 12-18; Direct Testimony of Joseph Buckley ("Buckley Testimony") at 3 (Oct. 23, 2023), OCC Ex. 5; NOAC Initial Brief at 4, 13-14; CUB Initial Brief at 5-6.
[278] *See* OCC Initial Brief at 12-18; *see also* Buckley Testimony at 3.
[279] *See In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 79. (Dec. 30, 2020).

Commission recently observed, in the case of Dominion Energy Ohio, that "it has been the Commission's long-standing practice to utilize the last approved rate of return in a utility's rate case in subsequent alternative regulation and rider proceedings....The Commission is obligated to follow its precedent."[280] When OCC appealed the Commission's decision to use the ROR from Dominion Energy Ohio's most recent rate case, which was in 2008, the Ohio Supreme Court affirmed the Commission's order, finding OCC's argument that the ROR should be updated to reflect current market conditions "unavailing."[281] OCC's proposal should be rejected based on these prior rulings.

Further, OCC's analysis is not a good reference point for resetting the Companies' ROR, because it lacks sufficient support and contains inaccuracies. At hearing, OCC's witness could not support or justify calculation of his recommended ROE,[282] recommended cost of debt,[283] or recommended overall ROR.[284] OCC's witness admitted that the calculations in support of adjusting the Companies' ROR were inaccurate in several respects, which ultimately rendered the testimony "not exactly accurate."[285]

Moreover, OCC's methodology contradicts longstanding Commission practice. OCC did not use any of the traditional models in its analysis (*e.g.*, discounted cash flow model, risk premium model, capital asset pricing model, and comparative earnings model).[286] This is also inconsistent with OCC's approach to use the more traditional "discounted cash flow model" in AEP Ohio's

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[280] *Id.*
[281] *In re Application of East Ohio Gas Co.*, 2023-Ohio-3289, 2023 WL 6131618 at ¶ 22 (Sept. 20, 2023).
[282] *See* Tr. Vol. XI at 1979-1988 (cross-examination of OCC Witness Buckley).
[283] *See id.* at 1996, 1998-2000.
[284] *See id.* at 1998.
[285] Tr. Vol. XI at 1998. OCC's Initial Brief does not acknowledge any of the material inaccuracies. *See* OCC Initial Brief at 12-18.
[286] Buckley Testimony, Attachment JPB-1 at 15; Tr. Vol. XI at 1973-1974 (cross-examination of OCC Witness Buckley).

pending ESP case (Case No. 23-0023-EL-SSO),[287] the same model Commission Staff has predominantly used over the last twenty-five years.[288]

Because OCC's alternative proposals are contrary to Ohio Supreme Court precedent and longstanding Commission practice, contain material errors, and are unsupported by record evidence, the Commission should reject OCC's proposal to modify the Companies' rate of return, ROE, and cost of debt in this proceeding.

**Q. The Commission should uphold the Attorney Examiners' evidentiary rulings.**

OCC and OMAEG reiterate arguments that the Commission should consider HB6 when evaluating the merits of ESP V.[289] Once again, the Commission should reject these arguments and uphold the Attorney Examiners' evidentiary rulings. Less than four months ago, the Commission made abundantly clear that ESP V is "completely unrelated to H.B. 6...."[290] The Attorney Examiner's evidentiary rulings are consistent with the Commission's decision and should be upheld.

The Commission should also reject RESA's third attempt to strike portions of Companies' Witness Miller's testimony.[291] At hearing, the Attorney Examiner properly denied RESA's motion to disqualify Mr. Miller as an expert witness and RESA's motions to strike portions of Mr. Miller's testimony concerning avoided energy and capacity market prices.[292] In its Initial Brief, RESA repeats its arguments, and calls on the Commission to either "reverse" the Attorney Examiner's ruling and strike the testimony, or, in the alternative, give the price forecasts offered

[287] Tr. Vol. XI at 1961-1962 (cross-examination of OCC Witness Buckley).
[288] *Id.* at 1962-1963.
[289] OMAEG Initial Brief at 6-16; OCC Initial Brief at 1-3, 44-46..
[290] *In the Matter of the Review of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case Nos. 17-974-EL-UNC *et al.*, Entry on Rehearing at ¶ 19. (Oct. 18, 2023).
[291] *See* RESA Initial Brief at 13; *see also* Tr. Vol. III at 635-655; *see also* Tr. Vol. IV at 866-870.
[292] Tr. Vol. III at 654-655; Tr. Vol. IV at 870.

by Mr. Miller "no weight."[293] The Commission should affirm the Attorney Examiner's rulings denying RESA's motion to disqualify and motions to strike.

As the Attorney Examiner observed, Mr. Miller's education and experience are consistent with the education and experience of many people who qualify as experts before the Commission.[294] Indeed, Mr. Miller has been involved with energy efficiency program development for fifteen (15) years, during which time he oversaw the completion of the cost/benefit analysis of energy efficiency programs, including the development of avoided energy and capacity price projections used to estimate the benefits of programs in multiple states, including Ohio, Maryland, New Jersey, Pennsylvania, and West Virginia.[295] Further, Mr. Miller has ample experience with the Companies' prior -POR filings (*i.e.*, EE/PDR program portfolio plans), each of which included a projection of future energy prices, as well as avoidable energy cost projections.[296]

The analysis in Mr. Miller's testimony that RESA seeks to strike is based on publicly available data that any intervening party, including RESA, can access to verify its accuracy.[297] In particular, Mr. Miller's forecasts are based on the United States Energy Information Administration ("EIA"), which is a public source from a well-regarded governmental entity[298] that the Commission has previously used and even referenced as reliable.[299]

## III. CONCLUSION

In developing their proposals, the Companies solicited, earnestly considered, and

[293] RESA Initial Brief at 12-13.
[294] Tr. Vol. III at 654.
[295] *Id.* at 636, 646; Miller Testimony at 1-3.
[296] Tr. Vol. III at 647-648.
[297] *See* Tr. Vol. III at 653-654.
[298] *Id.* at 642, 646-647.
[299] *See In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Finding and Order at ¶ 27 (Oct. 15, 2009).

incorporated feedback from a diverse array of interested stakeholders. As a result of these inclusive, collaborative efforts, the Companies designed their ESP V proposal to achieve three objectives: (1) support reliability of the Companies' distribution system, (2) promote affordability in rates and charges for customers, and (3) demonstrate and advance the Companies' commitment to stewardship.

Over fourteen days of hearing, the Companies, Staff, and over twenty-five intervenors developed an ample evidentiary record upon which the Commission can render an informed decision. That evidentiary record shows that ESP V supports investment in and maintenance of the Companies' distribution system, which will positively impact reliability while also ensuring more efficient, gradual, and accurate recovery of the Companies' costs. ESP V also includes CBP enhancements, rate design changes and other provisions to minimize risk and mitigate bill impacts to customers. In addition, ESP V includes energy efficiency and demand response programs that enable customers to better manage their electric bills and mitigate the electric industry's environmental impact in the Companies' service territories, all at a reasonable cost to customers. Further, the Companies' proposal includes $52 million in initiatives to protect the Companies' most at-risk customers and to facilitate customers' transition to electric vehicles, at no cost to the Companies' customers.

The Companies' acceptance of several modifications through this Reply Brief demonstrates their willingness to listen to others' positions and be reasonable. For the reasons set forth in the Companies' Initial Brief and this Reply Brief, the Companies respectfully request that the Commission: (1) find that the Companies have met their burden of proof that ESP V, as a package, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO; and (2) approve ESP V as proposed, subject to the modifications explicitly accepted in this Reply Brief.

Respectfully submitted,


/s/ N. Trevor Alexander

Brian J. Knipe (0090299)
Counsel of Record
Christine E. Watchorn (0075919)
FirstEnergy Service Company
100 E. Broad Street, Suite 2225
Columbus, Ohio 43215
Telephone: (614) 437-0183
bknipe@firstenergycorp.com
cwatchorn@firstenergycorp.com

(will accept service via email)

N. Trevor Alexander (0080713)
Mark T. Keaney (0095318)
Kari D. Hehmeyer (0096284)
Benesch, Friedlander, Coplan & Aronoff LLP
41 South High Street, Suite 2600
Columbus, Ohio 43215-6164
Telephone: (614) 223-9300
talexander@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com

*Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio ("PUCO") on this 9th day of February 2024. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

mkurtz@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
trhayslaw@gmail.com
Leslie.kovacik@toledo.oh.gov
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com
junger@spilmanlaw.com
slee@spilmanlaw.com
bojko@carpenterlipps.com
Easley@carpenterlipps.com
Paul@carpenterlipps.com
dstinson@brickergraydon.com
gkrassen@nopec.orgk
dparram@brickergraydon.com
rmains@brickergraydon.com
glpetrucci@vorys.com
mjsettineri@vorys.com
aasanyal@vorys.com
eowoyt@vorys.com
Brian.gibbs@nationwideenergypartners.com
dromig@nationwideenergypartners.com
trent@hubaydougherty.com
knordstrom@theOEC.org
ctavenor@theOEC.org
Thomas.Lindgren@OhioAGO.gov
Amy.BotschnerOBrien@OhioAGO.gov
Rhiannon.Howard@OhioAGO.gov
tamara.turkenton@puco.ohio.gov
jlang@calfee.com
mbarbara@calfee.com

Stacie.Cathcart@igs.com
Michael.nugent@igs.com
Evan.betterton@igs.com
dproano@bakerlaw.com
ahaque@bakerlaw.com
eprouty@bakerlaw.com
pwillison@bakerlaw.com
john.finnigan@occ.ohio.gov
Robert.eubanks@occ.ohio.gov
William.michael@occ.ohio.gov
Alex.hickey@occ.ohio.gov
Thomas.zuehlke@occ.ohio.gov
nbobb@keglerbrown.com
rdove@keglerbrown.com
meissnerjoseph@yahoo.com
little@litohio.com
hogan@litohio.com
jdunn@oneenergyllc.com
ktreadway@oneenergyllc.com
todd.schafer@outlook.com
jpetroff@lawforlabor.com
jrb@smxblaw.com
mkl@smxblaw.com
emcconnell@elpc.org
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
kshimp@dickinsonwright.com
mpritchard@mcneeslaw.com
awalke@mcneeslaw.com
tlong@mcneeslaw.com
whitt@whitt-sturtevant.com

*/s/ Mark T. Keaney*

*Attorney for Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*