

In the Matter of the Procurement of )  
Standard Service Offer Generation as Part ) Case No. 16-776-EL-UNC  
of the Fourth Electric Security Plan for )  
Customers of Ohio Edison Company, The )  
Cleveland Electric Illuminating Company, )  
and The Toledo Edison Company )

Pursuant to Section 4903.10, Ohio Revised Code (R.C.), and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“Companies”) respectfully file this Application for Rehearing of the Commission’s July 15, 2020 Finding and Order (Finding and Order). The Commission’s Finding and Order is unlawful and unreasonable in the following respects:

- A. The Commission's Finding and Order is unlawful because, under R.C. Chapters 4903 and 4928, the Commission lacks legal authority to unilaterally, and without the Companies' consent, reopen a prior order approving an electric security plan.
- B. The Commission's direction for the Companies to submit a plan for dual auctions for a period of four years is unlawful because the Commission lacks legal authority to impose SSO auction terms for the Companies' next ESP without the Companies' consent.
- C. The Finding and Order violates R.C. 4903.09 by failing to explain significant components of the dual auction concept.

Respectfully submitted

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## MEMORANDUM IN SUPPORT

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### I. BACKGROUND AND INTRODUCTION

On March 31, 2016, the Commission approved with modification the Companies' application for their fourth electric security plan ("ESP IV") through May 2024. Following the statutory guidance, the key provision of the Companies' approved ESP IV was the Competitive Bid Process ("CBP") to procure the supply of electricity for non-shopping customers, including a schedule for the auctions and associated documents and protocols. The duration of the auction products to be procured through the CBP coincided with the ESP IV term as it had done for the Companies' three previous ESPs, and similar to the design for other electric distribution utilities ("EDUs") as well. While the Commission subsequently issued entries on rehearing in the Companies' ESP IV case, there were no changes to the approved CBP.

Now, the Commission has unilaterally modified the Companies' SSO auction process "to mitigate the possible significant effects caused by recent uncertainty surrounding PJM Interconnection, LLC's base residual auction." Finding and Order ¶ 1 (July 15, 2020). The Commission has directed the Companies and the other EDUs to substitute 12-month products for the products they had planned for their Fall 2020 and Spring 2021 auctions. *Id.* ¶ 35.a. It also has directed the EDUs to submit plans by October 13, 2020, "for dual auctions for a period of four years, commencing with the June 2022 delivery year," which must include both "[a] full requirements product with a proxy price, using the June 2021 capacity price as the proxy, subject to true-up and reconciliation;" and "[a]n energy-only auction and a capacity-only hedge product \* \* offer[ed] \* \* \* at a fixed price for all years included in the auction product \* \* \* ." *Id.* ¶ 35.b. The Commission explained that it believes extending the SSO auction requirements "beyond the

terms of the EDUs' existing ESPs \* \* \* will provide stability to customers by taking action to lock-in historically low prices observed in recent auctions \* \* \*." *Id.* ¶ 37.

The Companies consent and plan to comply with Paragraph 35.a. of the Finding and Order by submitting a plan to provide for only 12-month products for the Companies' scheduled auctions for Fall 2020 and Spring 2021. However, the Companies herein exercise their right to challenge the Commission's Finding and Order on the three grounds discussed below.

## **II. ASSIGNMENTS OF ERROR**

### **A. The Commission's Finding and Order is unlawful because, under R.C. Chapters 4903 and 4928, the Commission lacks legal authority on its own motion to reopen a prior order modifying and approving an electric security plan.**

Ohio Revised Code Chapter 4928 establishes a bilateral process for establishing ESPs, under which no aspect of an ESP can go into effect unless an EDU either proposes it, accepts it as part of a stipulation, or accepts it as part of a Commission modification to the utility's application. And "provisions relating to the supply and pricing of electric generation service" are an integral component of any ESP. R.C. 4928.143(B)(1); *see also* Ohio Adm. Code 4901:1-35-02(A); *see also* R.C. 4928.141(A) (each electric distribution utility must provide its customers "a standard service offer of all competitive retail electric services necessary to maintain essential electric service \* \* \*, including a firm supply of electric generation service").

The Commission's rules permit any electric utility proposing an ESP to "propose a plan for a CBP". Ohio Adm. Code 4901:1-35-08(A). The rules impose numerous requirements for what a "CBP plan" must contain. Ohio Adm. Code 4901:1-35-03(B). The Commission's governing statutes require the Commission to follow a specific process when reviewing ESP applications. Under that statutory process, the Commission has only three options: "approve," "modify and approve," or "disapprove" the application. *In re Columbus S. Power Co.*, 128 Ohio

St.3d 512, 2011-Ohio-1788, ¶ 45 (quoting R.C. 4928.143(C)(2)(a)). Importantly, the statutory process does not permit the Commission to modify an electric distribution utility’s ESP without the utility’s consent. “If the Commission modifies and approves an [ESP] application \* \* \* , the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer” application. R.C. 4928.143(C)(2)(a).

In this case, the Companies’ ESP IV is still in effect. But the Finding and Order frustrates the proper working of R.C. 4928.143 because it modifies the Companies’ approved ESP IV CBP process after a final Commission order was issued. For this reason, the Commission’s Finding and Order is unjust, unreasonable, and contrary to R.C. 4928.143.

**B. The Commission’s direction to submit a plan for dual auctions for a period of four years is unlawful because the Commission lacks legal authority to impose SSO auction terms for the Companies’ next ESP without the Companies’ consent.**

The term of an ESP is another central feature of an ESP subject to the Commission’s three alternatives to approve, modify and approve, or disapprove an ESP application. The Companies have been authorized, through the Commission’s approval of their CBP auction plans for the term of ESP IV, to enter into contracts with electric generation suppliers, and to recover from customers the costs incurred under those contracts.

The Finding and Order, however, would require the Companies to plan and hold “dual auctions for a period of four years commencing with the June 2022 delivery year” (Finding and Order ¶ 35.b.) – beyond the term of the current ESP, and into the term of an ESP for which the Companies have not yet filed an application. To the extent that the Finding and Order extends the Companies’ CBP auctions beyond the term of ESP IV, the Commission imposes requirements for the Companies’ *next* ESP – the ESP that will go into effect after May 31, 2024, and does so without clarifying the Companies’ cost recovery.

The Commission has no authority to impose such a requirement on an EDU unilaterally and without the Companies' consent. Nothing in R.C. 4928.143 or Ohio Adm. Code Chapter 4901:1-35 authorizes the Commission to impose requirements on an EDU's ESP before the EDU has filed its ESP application. For this reason, Paragraph 35.b. of the Finding and Order is unreasonable and unlawful to the extent it purports to impose obligations on the Companies regarding the structure and function of its future SSO auctions, and does not clarify the Companies' cost recovery.

**C. The Finding and Order violates R.C. 4903.09 by failing to explain significant components of the dual auction concept**

In addition to being unlawful as explained above, the Finding and Order's directives regarding the dual auction concept are unnecessary and impractical because they lack the details necessary to achieve successful CBP outcomes, which could harm the competitiveness of the auction process and result in higher prices for customers. To the extent the Commission did not explain its rationale and record supporting the issues discussed below as part of the Paragraph 35 directive, the Finding and Order violates R.C. 4903.09 requirements to set forth the reasons prompting the decisions arrived at based upon findings of fact.. *Indus. Energy Users-Ohio v. PUC*, 117 Ohio St. 3d 486, 493 quoting *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337; *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St. 3d 87, 90, 1999 Ohio 206, 706 N.E.2d 1255; *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St. 3d 163, 166, 1996 Ohio 296, 666 N.E.2d 1372. Some of these gaps fall outside of the Companies' control and may hinder their ability to conduct a successful auction.

As a preliminary matter, modifications to the Companies' auction plans other than those addressing the upcoming Fall 2020 and Spring 2021 auctions may not be necessary. In the Companies' view, the situation of unknown market-based capacity prices may be fully resolved

before the Companies' Fall 2021 CBP auction. While the Companies appreciate the Commission's stated intent to mitigate possible effects caused by the uncertainty surrounding PJM's BRA, the Companies should continue utilizing their current approved auction process unless otherwise agreed to by the Companies. Otherwise, uncertainty and disruption of the Companies' well-known and well-understood CBP auction rules could unnecessarily negatively impact auction results.

Further, the Finding and Order lacks details regarding the dual auction plans, including but not limited to, how the Commission will evaluate the dual auction results, any impacts on credit or security terms for winning bidders, increased risk of exceeding existing tranche caps, and impacts on the overall competitiveness of the auctions. These same concerns would carry over to the Companies' separate solicitations to procure generation supply for PIPP customers.

This lack of transparency makes it difficult for the Companies to fully understand the Finding and Order and impractical to implement. With the exception of changing the Fall 2020 and Spring 2021 auctions to 12-month products, the Companies should continue utilizing their current approved auction plans unless otherwise consented to by the Companies.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should grant rehearing to reverse the directives in its July 15, 2020 Finding and Order that would unlawfully modify the Companies' approved ESP IV or impose provisions beyond the term of ESP IV. Instead, the Commission should direct the Companies to continue utilizing their existing auction plans approved in ESP IV, unless otherwise agreed to by the Companies, and only if necessary, implement plans that minimize any modifications to their current auction plan as part of their approved ESP.

Respectfully submitted

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### **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing Application for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 14<sup>th</sup> day of August 2020. The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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**This foregoing document was electronically filed with the Public Utilities**

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Summary: App for Rehearing Application for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company electronically filed by Mr Robert M Endris on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company