

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**CONSTELLATION ENERGY GENERATION, LLC’S
MEMORANDUM CONTRA TO
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL’S
APPLICATION FOR REHEARING**

I. INTRODUCTION

Constellation Energy Generation, LLC (“Constellation”)¹ submits this memorandum contra to the Office of the Ohio Consumers’ Counsel’s (“OCC”) November 4, 2022 application for rehearing because the arguments OCC raises are moot. The Public Utilities Commission of Ohio (“Commission”) has recently rejected OCC’s proposal to combine the electricity procurement auction process for Percentage of Income Payment Plan (“PIPP”) customers with Standard Service Offer (“SSO”) customers twice (September 2022 and October 2022). OCC reasserts the same arguments in this proceeding. Since the Commission has already settled this issue in two similar auction proceedings and OCC raises nothing new, the Commission should follow its prior decisions here. Further, to the extent any changes to the SSO auction are contemplated by the Commission, they should not affect contracts already executed by the winning SSO bidders and Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, “FirstEnergy”).

¹ Constellation Energy Generation, LLC was formerly known as Exelon Generation Company, LLC.

II. ARGUMENT

A. The Commission has recently considered and rejected OCC's concerns in two other proceedings.

This case is not the first time OCC has argued that the SSO and PIPP auctions should be combined and, because the Commission has rejected OCC's argument in two other SSO auction proceedings, it should do the same here. In Case No. 17-957-EL-UNC, OCC filed objections urging the Commission to combine AES Ohio's SSO auction and its auction for PIPP procurement. In its September 21, 2022 Finding and Order, the Commission concluded that OCC's "proposed solution is untenable" because "it is clear from the plain language of the statute [R.C. 4928.54] that the General Assembly intended that PIPP program loads be aggregated and procured from a competitive bidding process separate from the SSO customers." *In re the Procurement of Standard Service Offer Generation for Customers of The Dayton Power and Light Company*, Case No. 17-957-EL-UNC, Finding and Order (Sept. 21, 2022), at ¶ 18 (*AES Ohio SSO Case*).

Further, in rejecting OCC's objections, the Commission also upheld the current PIPP procurement process originally established in Case No. 16-247-EL-UNC. The Commission noted that while electricity prices resulting from the PIPP auctions "may occasionally result in the PIPP load being served at a price higher than the blended SSO price, the RFP auction has been established to reduce the cost of the PIPP program to the otherwise applicable SSO over the long-term, in compliance with R.C. 4928.542(B)." *AES Ohio SSO Case* at ¶ 18, quoting *In re the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC, Finding and Order (Mar. 2, 2016), at 5. Therefore, the Commission found no issue with the AES Ohio PIPP price under that specific auction being higher than the blended SSO price, and it affirmed the existing PIPP program auction format.

Similarly, in Case No. 18-6000-EL-UNC, OCC filed an application for rehearing raising the same arguments relative to Duke Energy Ohio, Inc.'s SSO auction format, which the Commission

rejected via an Entry on Rehearing issued last month. *In re the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 18-6000-EL-UNC, Entry on Rehearing (Oct. 5, 2022) (“*Duke SSO Case*”). Once again, in the *Duke SSO Case*, the Commission determined that R.C. 4928.54 directs the PIPP program loads be aggregated and procured from a competitive bidding process separate from the SSO customers and OCC’s proposed solution was “unteneable.” And once again, the Commission reaffirmed its previous determination that the existing PIPP program auction format is required under law. *Id.* at ¶ 13.

In this FirstEnergy SSO auction proceeding, OCC does not raise any new arguments. Rather, most of its application for rehearing repeats previous arguments made in Case Nos. 17-957-EL-UNC and 18-6000-EL-UNC. And, once again, OCC urges the Commission to “include PIPP consumers in the standard offer auction instead of holding a separate, PIPP-specific auction.” OCC App. for Rehearing at 6. But, the Commission has clearly indicated, in two identical proceedings, that SSO auctions cannot be combined with PIPP auctions. Consequently, the Commission should reaffirm its prior decisions in Case Nos. 17-957-EL-UNC and 18-6000-EL-UNC and deny OCC’s arguments as moot.

B. The Commission should not disturb contracts FirstEnergy has already entered into with winning SSO suppliers under approved auctions.

If the Commission nevertheless is now convinced by OCC’s arguments (although it should not be convinced since it previously rejected them), the Commission should take into account that FirstEnergy has entered into master SSO supply contracts with the successful bidders for the June 1, 2022 – May 31, 2023 and the June 1, 2023 – May 31, 2024 delivery periods. Disturbing such contracts already executed by FirstEnergy and the successful bidders following the Commission approving the results of the auctions would lead to inefficiencies, waste of resources, and confusion. *See, e.g., In re Youngstown Thermal Limited Partnership*, Case No. 93-1408-EL-CSS, Opinion and Order (Aug. 31, 1995), at 43 (Commission did not disturb the terms of an executed contract following a competitive

bid that was later found to not comply with Ohio law). Additionally, and more importantly, materially altering contract terms after the auctions have concluded, the winning bidders have been notified, the Commission has approved the results, and the contracts have been executed creates uncertainty and risk for bidders in all future Ohio auctions, which would be expected to negatively impact both participation and bids. Consequently, to the extent the Commission intends to change the PIPP auction process as a result of OCC's application for rehearing in this proceeding, any such changes should not apply to auctions that have been conducted for the June 1, 2022 – May 31, 2023 and the June 1, 2023 – May 31, 2024 delivery periods.

III. CONCLUSION

This proceeding concerns a procurement of SSO electric generation service. It is not related to PIPP customers, despite OCC's attempts to introduce PIPP reform measures into the SSO auction proceedings. The Commission should refrain from making any changes to the current PIPP auction process through this SSO auction proceeding. Additionally, because the Commission has already fully addressed OCC's arguments in two other proceedings, it should deny OCC's application for rehearing in this proceeding as moot.

Respectfully Submitted,

/s/ Gretchen L. Petrucci

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail on November 14, 2022.

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Summary: Memorandum Contra to the Office of the Ohio Consumers' Counsel's
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