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 Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 16-776-EL-UNC
In the Matter of the Procurement of Standard Service Offer Generation for Customers of Dayton Power & Light Company.	)	Case No. 17-957-EL-UNC
In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Power Company.	)	Case No. 17-2391-EL-UNC
In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.	)	Case No. 18-6000-EL-UNC

VITOL INC.'S COMMENTS ON THE COMMISSION'S PROPOSED SSO AUCTION MODIFICATIONS

I. INTRODUCTION

Vitol Inc. ("Vitol") is an energy and commodities company engaged in the business of purchasing and selling electric capacity, energy, and ancillary services across North America. Among its North American activities, Vitol is a current supplier of capacity, energy, and ancillary services at wholesale to Ohio electric distribution utilities ("EDUs") in accordance with certain Standard Service Offer ("SSO") Supply Agreements it has entered into with those utilities. Vitol has been a regular bidder in the competitive bid procurement ("CBP") processes those utilities conduct to obtain supplies to meet their load obligations under the Ohio SSO and would like to continue in such a role if the stability of the SSO market can be maintained.

On January 3, 2023, the Commission filed an Entry in these matters which acknowledged that "SSO prices resulting from the EDUs' SSO procurement auctions have significantly increased" over the past year, and revealed that it "is investigating whether directing the EDUs to implement certain SSO auction modifications would help significantly reduce prices resulting from SSO auctions." Entry, ¶¶ 3-4 (Jan. 3, 2023). The Commission has proposed several modifications to the SSO auction processes including introducing six-month products to the auction and lowering credit requirements for bidders. *Id.* at ¶ 4. Vitol appreciates that the Commission is examining potential changes to Ohio's SSO auction process to address serious deficiencies in the current auction system. At the same time, as discussed in these comments, the Commission should consider additional changes to the SSO auction process to restore the proper functioning of SSO auctions in Ohio. In addition, Vitol respectfully submits that the Commission should consider larger market changes that may require a separate investigation by the Commission.

Before addressing proposed changes to the SSO auctions and Ohio market rules, these comments provide a detailed discussion of why SSO auction prices have increased so dramatically in the past several months for the June 1, 2023 - May 31, 2024 delivery year. Vitol hopes that this context will help the Commission consider that the current proposed changes are insufficient, and that additional and more structural changes will need to be made before Ohio's SSO auction market will function normally and return to market-based pricing.[1]

[1] Vitol included a similar background section in comments filed by Vitol in Case No(s). 22-1127-EL-ATA, 22-1129-EL-ATA, 22-1138-EL-ATA, 22-1140-EL-ATA, in which the Commission is considering implementing a 12-month minimum stay for governmental aggregators that elect to prematurely return customers to SSO.

II. BACKGROUND ON IMPACTS TO THE CURRENT SSO MARKET

While Ohio has experienced success with its SSO program over the years during times of relative market stability, the recent unprecedented levels of customer switching in a volatile energy price environment has alarmingly exposed infirmities with the SSO program design that signal a need for immediate, sensible reform. Since the beginning of the year, and for the first time since retail competition began in Ohio, over 2,000 MW of load have switched to SSO service in a short period of time in the AEP-OH and FE-OH service territories,[2] greatly and unreasonably exceeding the historical migration activity that informs SSO suppliers' risk evaluation for auction pricing purposes. A little over half of the migration volume is attributed to large industrial and commercial customers,[3] who are typically more sophisticated in monitoring and reacting to energy market price movements, while the rest resulted from a single municipal aggregation entity moving numerous customers *en masse* to SSO service after halting its existing contractual supply agreement.[4] Vitol estimates that the current economic loss for SSO suppliers caused by migration in the FE-OH and AEP-OH service territories exceeds $400 million for the period of June 1, 2022, through May 31, 2023.[5] Because of the unprecedented and rapid

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[2] Data sourced from the Public Utilities Commission of Ohio's Electric Choice Activity dashboard at https://app.powerbigov.us/view?r=eyJrIjoiZTliZDEzNGEtZjlhYi00YWEzLThjZjktMGZmNDg4OWE4ZDFkIiwidCI6IjUwZjhmY2M0LTk0ZDgtNGYwNy04NGViLTM2ZWQ1N2M3YzhhMiJ9

[3] *Id.*

[4] Data sourced from FirstEnergy Ohio CBP SSO Auction website at https://www.firstenergycbp.com/Documents/LoadandOtherData.aspx

[5] The estimated loss is calculated using historical migration volumes for commercial and industrial load calculated based on the year-over-year increase in migration for FE-OH and AEP-OH from the Public Utilities Commission of Ohio's Electric Choice Activity dashboard (https://app.powerbigov.us/view), PJM's day-ahead LMP for the AEP-Dayton Hub for June 2022 through November 2022 (https://dataminer2.pjm.com/feed/da_hrl_lmps), Intercontinental Exchange's forward electricity day-ahead settlement prices for AEP-Dayton Hub for December

switching activity, SSO suppliers are now faced with the impossible task of confidently assessing and valuing the risk of future load migration in and out of SSO service, which has led to higher prices in recent SSO auctions for future delivery years[6] and will likely continue to do so until sensible reforms to the SSO program are implemented.

The two main shortcomings that have contributed to the current crisis in the SSO program are: 1) grouping all SSO customers (industrial, commercial, and residential) into a single-priced supply group, which leads to inequitable cross-subsidization between smaller customers with lower switching likelihood and larger customers with a higher switching likelihood, and 2) overly generous switching accommodations for all electricity customers (and their contracted suppliers), which creates an unreasonable "free option" for customers to move in and out of SSO service at the expense of the SSO program's stability. From Vitol's experienced perspective, these shortcomings have meaningfully influenced the phenomena observed from recent SSO auctions, including fewer participating suppliers, a higher concentration of tranches awarded, and a significant increase in risk premiums and overall auction prices.

A. The High Magnitude of Customer Switching Is Drastically Affecting SSO Auction Prices to the Detriment of Consumers.

The pricing of wholesale full-services supply for the SSO market is a complex construction of the values of many component products and services. While each participating supplier may utilize different valuation techniques in developing pricing, the component products and services of wholesale supply, including risk factors, are well-defined and standard in the energy industry. Although energy commodity prices and the underlying factors that cause

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2022 through May 2023 for November 18, 2022, and NOPEC migration volumes provided to SSO suppliers by FirstEnergy (https://www.firstenergycbp.com/Documents/LoadandOtherData.aspx).

[6] See discussion at Section II.A infra.

their movement—such as geopolitical events—certainly can influence SSO auction prices,[7] many other factors meaningfully influence pricing for wholesale, default service markets, like Ohio's SSO market.

One significant price component is auction participants' expectations regarding customer switching during the term in which participants will supply the SSO product.[8] Customer switching impacts the overall size of the SSO market and each SSO supplier's SSO obligation during the supply period. If customers switch from receiving supply from Competitive Retail Electric Service ("CRES") providers or municipal aggregators to receiving supply from the SSO market, each SSO supplier's supply obligation increases in quantity. Each SSO supplier is then short the incremental obligation and must procure additional supply at presumably higher market prices than the auction price at which the supplier agreed to serve SSO customers, leading to an economic loss. If customers switch from receiving supply from the SSO market to receiving supply from CRES providers or municipal aggregators, each SSO supplier's supply obligation decreases in quantity. Each SSO supplier is then long the amount of supply that is no longer needed for SSO customers and must liquidate that excess supply in the market at presumably lower prices than the auction price, again leading to an economic loss. Typically, suppliers will include a risk premium in their auction prices to cover anticipated economic costs due to customer switching during the supply period. If switching, no matter the direction, is expected to be low, auction participants generally assign a low premium to hedge switching risk. On the

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[7] *See Northeast Ohio Public Energy Council's Response to the September 7, 2022 Show Cause Order*, Case No. 00-2317-EL-GAG, at 19-21 (Sep. 28, 2022).

[8] *See In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO at 32 (Oct. 3, 2011) (finding that while all suppliers face a risk of lost revenues from customer switching, return risk is unique to SSO suppliers).

other hand, if switching is expected to be high, then auction participants will rationally assign a higher risk premium, if they participate at all.

Full-requirements contracts are common across the energy industry, including the use of such contracts to serve tranches of load remaining with the electric utility after a state's transition to retail choice. However, rational suppliers will be reluctant to enter into a fixed-price, full-requirements contract, or will price in an inflated risk premium for doing so, if the contract locks a supplier into selling at a fixed price but allows its load obligations to vastly expand during the term of the agreement by the addition of substantial numbers of new customers looking to reap windfall savings whenever market prices rise above the contract's fixed price. This unwillingness and risk premium will be even more extreme if those new customers are allowed to subsequently opt-out as soon as market prices drop back down, and the fixed price, full-requirements agreement is no longer advantageous to them, leaving the supplier stranded with above market price hedges.

The recent unprecedented trend in customers switching back to SSO service, notably the return to the SSO of over 550,000 customers in Northeast Ohio, and the resulting uncertainty has already led to a reduction in the number of companies willing to bid in EDU CBP auction processes to serve SSO load and a substantially higher risk premium being demanded by those who continue to participate. Duke Energy Ohio Inc.'s ("Duke") SSO auction conducted in September 2022 failed to procure the desired number of tranches with only half the targeted number of tranches awarded (20 out of 40 tranches).[9] There were only 6 registered bidders (compared to 12 last year) and 4 winning bidders.[10] Furthermore, the clearing price was 11.575

[9] Notification of CBP Auction Results, Case No. 18-6000-EL-UNC (Oct. 12, 2022).

[10] *Compare* Notification of CBP Auction Results, Case No. 18-6000-EL-UNC (Feb. 23, 2022).

c/kWh,[11] representing a substantial premium above today's forward pricing curves.

FirstEnergy Ohio's ("FirstEnergy") October 2022 CBP process saw an alarming reduction in bidder competition and a substantial increase in risk premium as well. The auction attracted only 7 (compared to 11 in March 2022) registered bidders and 5 winning bidders, with 1 of the bidders alone winning 25 of the 33 tranches representing over 75% of the total load awarded.[12] The tranche-weighted average price of winning bids was 12.23 cents/kWh, representing an increase of 80 percent from its March 2022 SSO auction and a substantial premium above today's forward pricing curves.[13]

Similarly, the Ohio Power Company's ("AEP Ohio") CBP process conducted in November 2022 saw a troubling decline in bidders and significant increase in risk premium. The auction attracted only 7 registered bidders, 6 of whom ended up being winning bidders, and 1 of whom was the winner of 22 of the 45 tranches auctioned—nearly half of all tranches sold.[14] The clearing price was approximately 12 cents/kWh, representing an increase of 73 percent above the clearing price in AEP Ohio's March 2022 auction and a substantial premium above forward prices.[15]

Although the recent elevated switching activity seen in Ohio has not altered the SSO rates being charged to customers today (and customers switching back to SSO service may be reaping windfall savings), auction results this fall demonstrate that bidders in SSO CBP processes

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[11] *Id.*

[12] Notification of CBP Auction Results, Case No. 16-0776-EL-UNC (Oct. 26, 2022); *compare* Notification of CBP Auction Results, Case No. 16-0776-EL-UNC (Mar. 30, 2022).

[13] *Id.*

[14] Notification of Auction Results under AEP Ohio's CBP, Case No. 17-2391-EL-UNC (Nov. 23, 2022); *compare* Notification of CBP Results, Case No. 17-2391-EL-UNC (Mar. 30, 2022).

[15] *Id.*

already are pricing in a much higher risk exposure from switching in future contract years, and thus incorporating a substantially higher risk premium in their pricing for future supply or simply not participating in the SSO auctions at all.

Table 1 and Graph 1 below show a summary of the approximate cost build-up of auction clearing prices on the day of the auction from recent SSO CBP auctions conducted by FirstEnergy Ohio and AEP Ohio. As the table shows, the risk/margin premium jumped from $5.00-$15.00/MWh for planning year 2022-2023, when the switching rate was low and in line with historical trends, to approximately $55.00/MWh for planning year 2023-2024 in the auctions conducted in October and November 2022 after the massive increase in industrial load-switching throughout the year, coupled with the sudden switch to SSO service of over 550,000 municipal aggregation customers before their supply contract ended. In the most recent FirstEnergy Ohio auction of January 10, 2023, the risk/margin premium moderated slightly but remains highly elevated at $40.89 compared to historical premiums. A substantial portion of the drop in the auction clearing price is likely attributable to a decline in the forward market energy prices.

As also shown in Table 1, the portion of the risk premium that can be attributed to the war in Ukraine is significantly less than the risk premium that can be attributed to NOPEC's sudden drop of 550,000 of its aggregation customers to SSO. These changes in market fundamentals are reflected in the energy price component (WAEP) and were approximately $15.00/MWh (approximately $45/MWh after the war and approximately $60/MWh in the two auctions occurring immediately after the NOPEC drop), which means the risk premium incorporated into bids to account for the risk of switching reached $38/MWh and was caused chiefly by the NOPEC drop not the Ukraine War:

Table 1[16]

Market Timing	Auction	Bid Date	% Procured	Delivery Year	Auction Clear	WAEP[17]	Ancillary Services[18]	Cap[19]	Risk/Margin[20]
Pre-Ukraine War	FE-OH	8/23/21	33%	22-23	$42.10	$ 34.12	$ 1.10	$ 5.74	$ 1.14
Pre-Ukraine War	FE-OH	10/4/21	33%	22-23	$50.21	$ 40.83	$ 1.10	$ 5.74	$ 2.53
Pre-Ukraine War	AEP	11/2/01	50%	22-23	$55.14	$ 43.59	$ 1.10	$ 5.74	$ 4.71
Post-Ukraine War	FE-OH	3/7/22	34%	22-23	$ 68.11	$ 45.98	$ 1.18	$ 5.74	$ 15.21
Post-Ukraine War	AEP	3/8/22	50%	22-23	$69.27	$ 45.50	$ 1.18	$ 5.74	$ 16.86
Post-NOPEC Drop	FE-OH	10/4/22	33%	23-24	$122.30	$ 63.63	$ 1.18	$ 3.83	$ 53.67
Post-NOPEC Drop	AEP	11/1/22	45%	23-24	$119.98	$ 59.63	$ 1.18	$ 3.83	$ 55.35
Post-NOPEC Drop	FE-OH	1/10/23	33%	23-24	$97.70	$ 51.81	$ 1.18	$ 3.83	$ 40.89

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[16] Table 1 and Graph 1 summarize auction prices by their cost components on the day of the auction. While each auction participant will have its own assumptions for auction pricing, this table and graph provide a reasonable, realistic break down of the cost components.

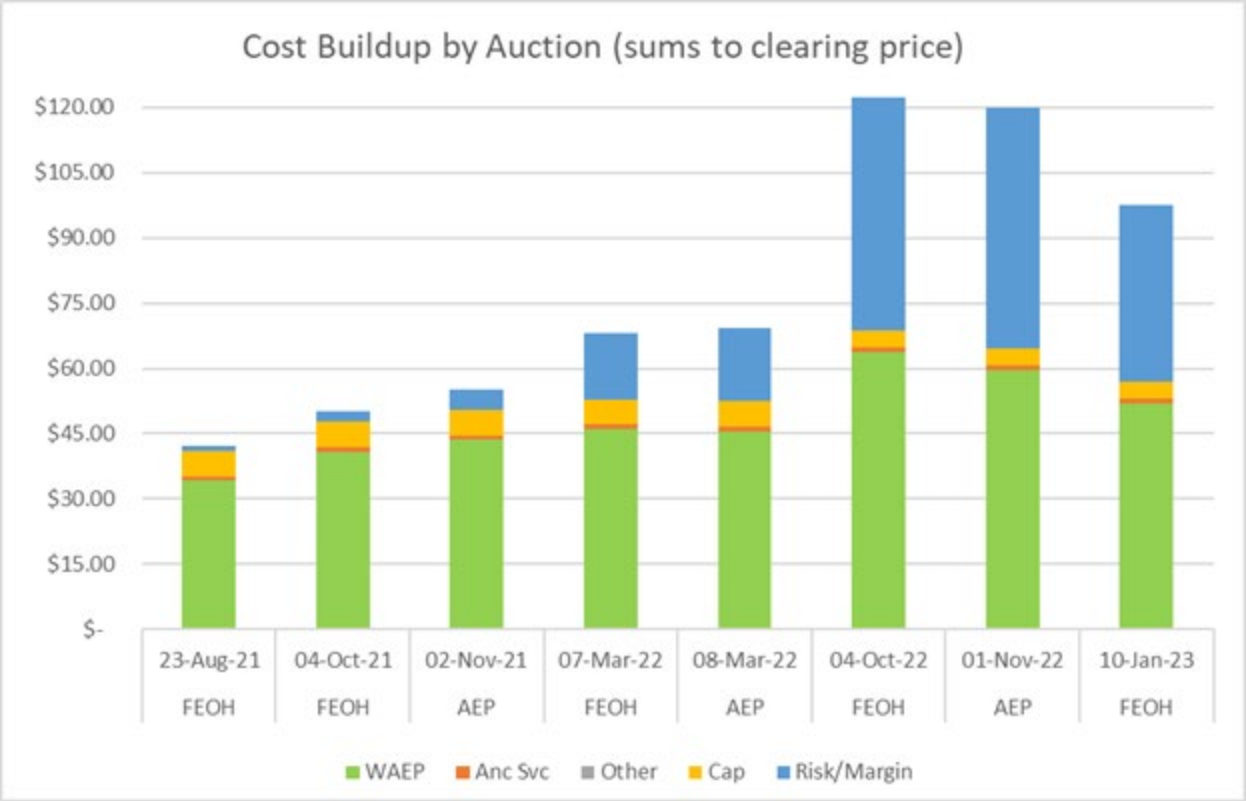
[17] WAEP is the weighted average energy price and is determined by taking a 5-year (2017-2021) average of AEP's SSO load and applying its peak/off-peak ratio and monthly load weightings to the forward energy prices from Intercontinental Exchange to approximate an around-the-clock, load-weighted market-based energy price.

[18] Ancillary Services values are a 5-year (2017-2021) average as reported by Monitoring Analytics, LLC, PJM's Internal Market Monitor, State of the Market Report. For simplicity, additional ancillary charges and credits are assumed to offset each other.

[19] Cap is the price of capacity and utilizes PJM's Reliability Pricing Model Base Residual Auctions for planning years 2022-2023 and 2023-2024, forecast pool reserve and zonal scaling factor multipliers, and an assumed 45% load factor to account for Ohio SSO load's mixed composition of residential, commercial, and industrial customers.

[20] Risk/Margin is the premium after all other costs are applied.

Graph 1



B. The Current SSO Program Is Defective Because It Prioritizes the Ability of Customers to Switch Back and Forth Between SSO and CRES Over the Need for Stability and Prices That Are Fair to Both SSO Consumers and Suppliers.

The objectives of default service programs are to serve as 1) a base of stability for establishing healthy retail competition for electricity customers, 2) an alternative for consumers not wishing to shop for a competitive energy supplier, and 3) a fallback option in the event a CRES provider exits the market suddenly due to bankruptcy or other causes.[21] The switching rules were designed to promote the development of the CRES market by allowing SSO customers to shift to CRES when ready to do so. They were not designed to provide CRES

[21] *See, e.g., In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-EL-ETP, at 16-18, 69 (July 19, 2000); Ohio Revised Code § 4928.14.

customers with a free option to return to SSO service *en masse* whenever market prices rise well above the level of SSO prices, let alone to allow aggregation entities to prematurely end existing contractual obligations with a CRES leaving suppliers of SSO with the impossible task of guessing when and how such risk could occur again in the future.[22] Such high levels of customer switching raise the risk for SSO suppliers—a risk that SSO suppliers, if forced to bear, will incorporate into their bids at SSO auctions, should they choose to continue to participate in the auctions at all. The result is drastically higher prices for consumers, most notably for those who do not wish to shop for a competitive energy supplier.

In prior orders, the Commission has emphasized the importance of CBP processes for SSO service minimizing uncertainty and rate volatility for SSO customers and that there be predictability for all interested parties. For example, in accepting but ordering modifications to AEP Ohio's initial CBP process for SSO customers, the Commission stated, "The CBP process, including the products offered and the timing of the auctions, should be designed to minimize uncertainty and potential rate volatility for SSO customers." *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. 13-2385-EL-SSO, at 31 (Feb. 25,

[22] *See, e.g.,* Ohio Revised Code § 4928.20(J) (providing that if a municipal aggregator opts not to be billed for EDU standby service. any customer of that aggregator "that returns to the utility for competitive retail electric service shall pay the market price of power incurred by the utility to serve that consumer plus any amount attributable to the utility's cost of compliance with the renewable energy resource provisions of section 4928.64 of the Revised Code to serve the consumer"); Ohio Administrative Code, Rule 4901:1-21-17(A)(6), (7), and (8) (requiring municipal aggregators to notify their customers that if they switch back to EDU service, "the may not be served under the same rates, terms, and conditions that apply to other [EDU] customers" and that if the municipal aggregator elects not to pay for standby service from the EDU, they will have to pay the market-price of power the EDU incurs to serve them); *In the Matter of the Application of Duke Energy Ohio, hic, for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, at 14-16, 21, 24-27 (Dec. 17, 2008).

2015). The Commission found that AEP's initial proposal relied too heavily on 12-month products in later auctions, which in the Commission's view "may have the adverse effect of higher prices and greater rate volatility." *Id.*

While some may benefit when there are minimal restrictions on switching, *en masse* switching not only increases prices for consumers, it compels less nimble customers to subsidize the opportunistic ones, as it is the less nimble SSO customers that will be left footing the bill for the higher risk premiums SSO suppliers are required to impose, while the opportunistic customers will shift back to CRES service to escape those inflated SSO prices that their own higher migration/switch risk profile caused. And it's quite possible that CRES prices would increase as well because they will no longer be disciplined by an SSO price in line with forward market pricing curves.

Different classes of customers have, on average, varying levels of sophistication and interest in evaluating energy market prices to determine their best option for electricity supply. Lumping all customers into one group for SSO supply means that customers presenting a higher switching risk adversely affect the rate paid by other customers who pose lower switching risk, leading to those less likely to engage in switching activity being compelled to cross-subsidize those who pose a higher risk of switching. In other words, individual SSO residential customers, who typically have a lower switching risk profile, will pay higher SSO prices because they are included in the same supply group as large industrial customers, who are costlier to serve because they have a higher switching risk profile, as demonstrated by Graph 2 below and the fall SSO auction results.[23]

[23] This is further demonstrated by the rate spike that will be experienced by those residential customers who have long been on SSO service when the fall 2022 auction prices take effect.

Graph 2 for AEP Ohio illustrates the massive migration of large industrial customers to SSO service during 2022, demonstrating the high switching risk they pose for SSO suppliers. Since 2016, the percentage of industrial load on SSO was a flat 2%. This stability enabled SSO suppliers to offer competitively low rates for 7 straight years. By the end of October 2022, however, the industrial percentage on SSO jumped to 45%, though during this same period the percentage of SSO load from residential customers remained relatively flat. Given this industrial load migration over the past year, one should expect that on or about June 1, 2023, when SSO rates of 12 cents/kWh go into effect, these industrial loads will be the first to leave SSO service in favor of CRES service, leaving the residential customers on SSO service paying higher SSO rates since they do not tend to shop for lower cost electric supply as aggressively as industrial customers.[24] This is a classic example of residential customers being forced to subsidize industrial load.

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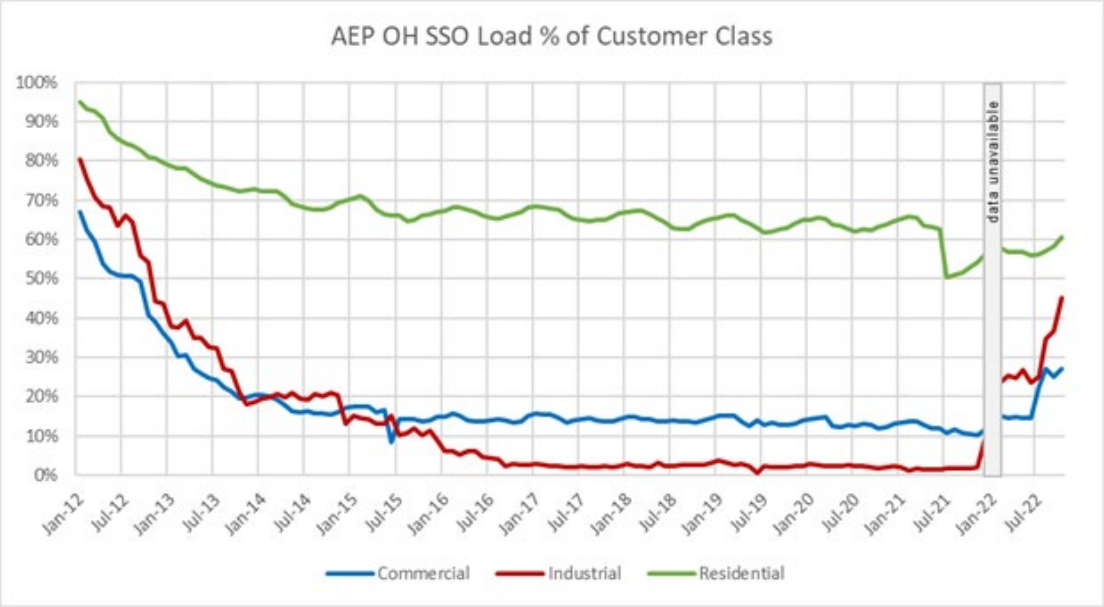
[24]Data sourced from the Public Utilities Commission of Ohio's Electric Choice Activity dashboard (https://app.powerbigov.us/view?r=eyJrIjoiZTliZDEzNGEtZjlhYi00YWEzLThjZjktMGZmNDg4OWE4ZDFkIiwidCI6IjUwZjhmY2M0LTk0ZDgtNGYwNy04NGViLTM2ZWQ1N2M3YzhhMiJ9), showing very low percentage of industrial customers and load under SSO service at the end of 2021, as compared to the percentage of residential customers and load; *see also, e.g.*, https://www.brattle.com/wp-content/uploads/2021/06/12646_retail_electricity_and_gas_competition.pdf at 7.

Graph 2[25]



As further shown on Graph 3 below, the percentage of FirstEnergy Ohio SSO load attributable to residential customers was fairly stable, averaging approximately 25% before the October *en masse* switching of municipal aggregation load. Just as with the residential SSO customers of AEP Ohio, the residential SSO customers of FirstEnergy Ohio will be left shouldering the much higher SSO rate of 12 cents/kWh come June 1, 2023.

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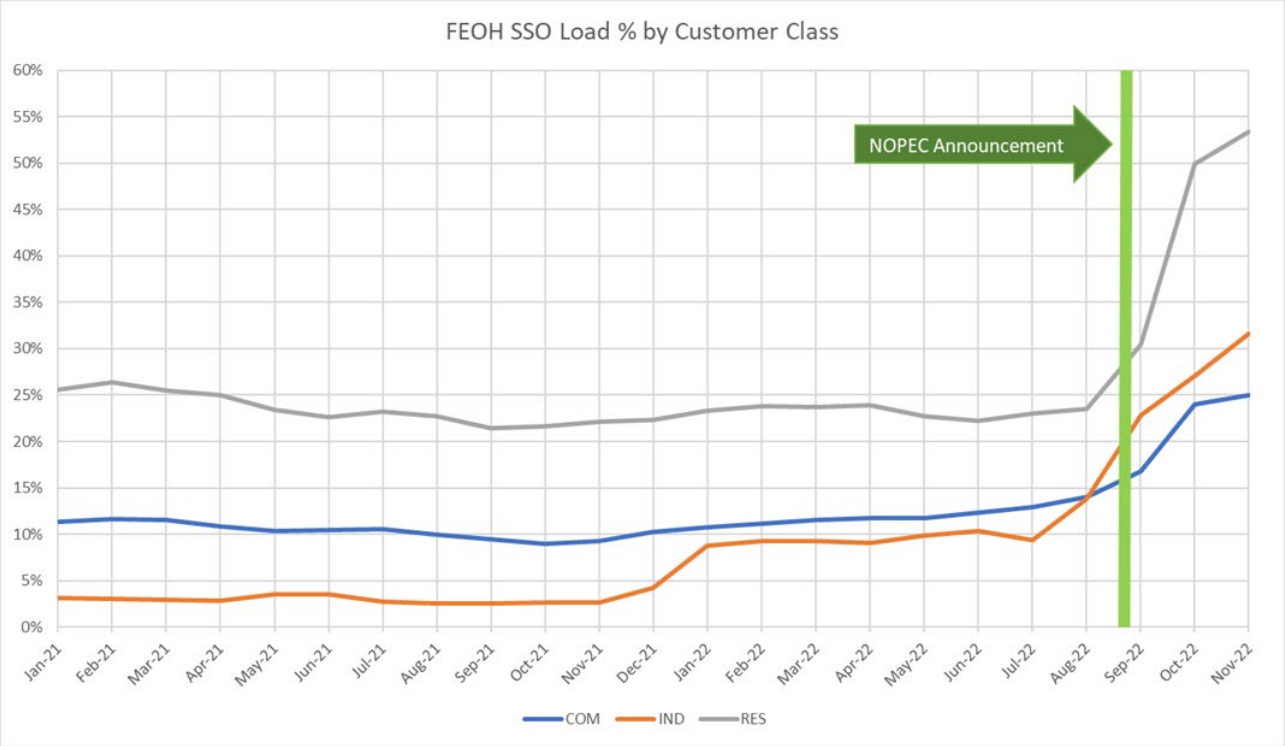
[25] Data sourced from the Public Utilities Commission of Ohio's Electric Choice Activity dashboard at https://app.powerbigov.us/view?r=eyJrIjoiZTliZDEzNGEtZjlhYi00YWEzLThjZjktMGZmNDg4OWE4ZDFkIiwidCI6IjUwZjhmY2M0LTk0ZDgtNGYwNy04NGViLTM2ZWQ1N2M3YzhhMiJ9

Graph 3[26]



This demonstrates that residential customers did not migrate *en masse* back to SSO service like commercial and industrial customers when exposed to variable, market-based prices in a time of rising energy prices, but did so only after being prompted and enabled by their municipal aggregator. It thus illustrates the materially different switching risk profiles of commercial and industrial customers as compared to at least those residential customers that have long been under SSO service, which are not reflected in the SSO prices each is required to bear under the SSO program as currently designed.

[26] *Id.*

C. CRES Customers Were Never Intended to be Given a Free Option to Return to SSO Service.

The law does not contemplate giving CRES customers a free option to return to SSO service. Senate Bill 228 signed into law in 2008 establishes the legal framework intended to govern the SSO program. That law contemplates adoption by the EDUs of standby service charges or riders to recover the costs of standing ready to serve customers in their service territory at the SSO price whenever such customers switch back to SSO service after taking service from a CRES provider.[27] Under Ohio Revised Code § 4928.20(J), municipal aggregators have been given the right to elect, on behalf of their customers, not to receive and have to pay for such standby service. In the event a municipal aggregator makes that election, any customer of that municipal aggregator that returns to the utility from CRES is required to pay the market price of power incurred by the utility "to serve that consumer" instead of the SSO price.[28] Furthermore, such customers are to be subject to market prices until expiration of the EDU's electric security plan or, by leave of the Commission, a shorter period of not less than two years.[29]

In accordance with this requirement, Ohio Administrative Code § 4901:1-21-17 provides in pertinent part that municipal aggregators must provide their customers with a written notice that includes:

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[27] *In the Matter of the Application of Duke Energy Ohio, hic, for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, at 27 (Dec. 17, 2008) ("Clearly, the legislature's intent was that the service for which the customers were not being charged was the electric utility's standing ready to serve those customers at the SSO price if they were to choose to return."); *In re Application of Ormet Primary Aluminum Corp.*, 129 Ohio St.3d 9, 11 (2011) ("POLR charges compensate utilities for standing ready to serve 'customers who shop and then return,'") (quoting *Constellation NewEnergy, Inc. v. Pub. Util Comm.*, 104 Ohio St.3d 530, 539 n.5 (2004)).

[28] Ohio Revised Code § 4928.20(J).

[29] *Id.*

(6) A statement informing customers that choose to opt out of the governmental aggregation program prior to the commencement of the governmental aggregation program that they will be served by the standard service offer established pursuant to section 4928.14 of the Revised Code or until the customer chooses an alternative supplier of electric service.

(7) A statement informing customers that, if they switch back to (name of electric utility), they may not be served under the same rates, terms, and conditions that apply to other customers served by the electric utility.

(8) If the governmental aggregator elects not to receive standby service from the electric utility under an approved electric security plan during the term of the governmental aggregation program pursuant to division (J) of section 4928.20 of the Revised Code, a statement informing customers that any customer returning to the electric utility after the commencement of the governmental aggregation program will pay the market price of power incurred by the electric utility to serve that consumer plus the amount attributable to the electric utility's compliance with the alternative energy resource provisions of section 4928.64 of the Revised Code, unless such customer becomes ineligible pursuant to paragraph (E)(1)(a) or (E)(1)(g) of this rule, or any customer who moves within the aggregation boundaries where the electric utility considers the customer that is moving to be a new customer.

(emphasis added).

Thus, it is plain that CRES customers were never intended to be granted a cost-free option to switch back to SSO service. If their municipal aggregator elects not to pay for, and pass through to its CRES customers, the costs of standby service, they are not entitled to the SSO price on return to SSO service but instead are to bear market price of power incurred by the electric utility to serve them. As the Commission has recognized, "Clearly, the legislature's intent was that the service for which the customers were not being charged was the electric utility's standing ready to serve those customers at the SSO price if they were to choose to return."[30]

[30] *In the Matter of the Application of Duke Energy Ohio, hic, for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, at 27 (Dec. 17, 2008) (emphasis added).

In subsequent orders, the Commission has recognized the uniqueness of the return risk faced by SSO suppliers, which justifies requiring a choice between paying for standby service or being subject to market prices upon return to SSO. The Commission reasoned that whereas migration risk exists for any supplier, whether CRES or SSO, that operates in the competitive generation market, it is only the SSO supplier that bears the obligation to stand ready to serve the load of returning customers.[31] Today's SSO program is fundamentally flawed because it ignores the uniqueness of this obligation and gives CRES customers a free option to return to SSO service.

As noted by AEP Ohio in a recent application accompanying proposed tariff amendments to institute a minimum stay for governmental aggregators who return customers to SSO prematurely, the General Assembly designed Section 4928.20(J) to allow customers dropping back to get SSO rates only "if the standby service charge was paid throughout the term of the aggregation program." *In the Matter of the Application of Power Company for Authority to New or Amended Rate Schedules and Tariffs*, AEP Ohio Application at p. 1, PUCO Case No. 22-1140-EL-ATA, Filed Dec. 8, 2022. As succinctly stated by AEP Ohio, "[i]f the aggregator decided not to pay the insurance premium (standby charge), it should not be entitled to utilize the safety net coverage of the SSO." (Id.) Instead, "those customers prematurely dropped by the aggregator, who did not get the benefit promised by the aggregation, are supposed to pay then-current market prices based on a separate procurement outside of the existing SSO supply; that separate market procurement is to occur for a minimum of two years. RC 4928.20(I)." (Id. at 1-

[31] *See, e.g.*, *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, at 32 (Oct. 3, 2011).

2.)[32] AEP Ohio also notes that, "Under RC 4928.20(I), the standby charge would presumably be remitted to SSO suppliers in exchange for taking on the risk of aggregation customers returning to the SSO and would likely offset the premium that would otherwise be reflected in SSO rates (as is currently being experienced under the system that does not follow the RC 4928.20(I) regime)." (Id. at 2.)

In its recent Electric Security Plan application, AEP Ohio has proposed adding a standby service charge to effectuate the legislative intent set forth in Section 4928.20(J). *See In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer,* AEP Ohio Application, at pp. 7-8, PUCO Case No. 23-0023-EL-SSO, Filed Jan. 6, 2023. In testimony filed in support of AEP Ohio's application, witness Jaime L. Mayhan testified that "Establishment of a standby charge and a separate market procurement process where such charge is not paid, should result in a reduction of migration risk and price to the SSO, keeping that price as low as possible for customers that are served by the SSO." *Direct Testimony of Jaime L. Mayhan*, at pp. 7-8, PUCO Case No. 23-0023-EL-SSO.

Vitol strongly agrees with AEP Ohio's comments and this testimony, as they reflect the reality that the General Assembly already instituted a mechanism to protect the SSO market from manipulation and migration risk, and the Commission should implement the law already intended by the General Assembly to protect Ohio's energy markets. The fact that the EDUs are no longer charging CRES customers for standby service, and thus there is nothing for the municipal aggregators to decline under Section 4928.20(J), does not alter the fact that the SSO suppliers are being forced to bear the risks and obligations associated with customer switch-back.

[32] AEP Ohio cites Ohio Revised Code Section 4928.20(I); however Vitol believes AEP Ohio meant to cite Section 4928(J).

The legislature clearly intended for SSO suppliers to be compensated for those risks and obligations through either (1) an incremental charge for standing by ready to serve the full load of the EDUs service territory at the SSO rate; or (2) an ability to pass through the market-cost of serving the load of customers that switch back. Neither SSO suppliers nor SSO customers who never shopped for CRES service should be compelled to fund a free option for CRES customers to switchback, and in addition to implementing standby service prospectively, the Commission should consider any available retroactive remedies to rectify the costs borne by SSO load suppliers in this delivery year.

D. Allowing CRES Customers in Municipal Aggregation Programs a Free Option to Switch to SSO Service and SSO Rates Destabilizes the SSO Program When CRES Customers Are Incentivized and Enabled to Switch to SSO Service *En Masse.*

To facilitate SSO supply bidder assessment of the load-service obligations associated with each tranche to be auctioned, each EDU publishes historical data regarding their SSO load, load-switching, and number of SSO customers.[33] Bidders in the SSO auctions need such information to form reasonable estimates of the costs they will incur if they win and thus the price they are willing to bid. Although there is always a risk of some level of variation from historical norms that must be taken into account, bidders need to be able to rely on such historical data as being at least reasonably representative of the load they are going to be obligated to serve. When CRES customers in municipal aggregation programs are allowed to shift *en masse* back to SSO service, and are incentivized to do so, the program breaks down and SSO suppliers' expectations are shattered. The result, as discussed above, is fewer participants

[33] *See* https://aepohiocbp.com/index.cfm?s=dataRoom&p=monthly; https://www.firstenergycbp.com/Documents/LoadandOtherData.aspx; https://www.aes-ohioauction.com/LoadData.aspx; https://www.duke-energyohiocbp.com/Documents/LoadandOtherData.aspx

in future auctions and a sharply higher risk premium being demanded by those who do participate.

In most municipal aggregation programs, fixed prices and terms are in place to protect consumers from market volatility. For such programs, the historical data of the EDUs is reliable because the municipal aggregator's customers are largely insulated from the market forces that might drive them to switch back to SSO service. Vitol has examined a sample of municipal aggregation programs representing the vast majority of municipal aggregator load and has found that, with the exception of the customers comprising the mass migration event that gave rise to this proceeding, none of them offer variable rates or terms.[34]

If CRES customers are going to have the opportunity to reap the benefits of variable prices when market conditions are favorable—and Vitol does not dispute that they should—then vastly improved switching rules are needed to limit those customers' ability to switch to SSO service and the SSO rate *en masse* whenever conditions sour. The absence of such rules has led to an unsustainable situation in which SSO suppliers are being asked to serve load at levels grossly disproportionate to that for which they bargained and planned, and to do so at an SSO rate that is well below market. That is precisely the type of switchback risk that the legislature sought to address by adopting Section 4928.20(J) of the Revised Ohio Code. Without vastly improved rules to address that risk, interest in the SSO auctions will continue to wane and customers will be forced to pay a sizable and unnecessary premium above forward market prices.

[34] Although customers in some of these other municipal aggregation programs have switched to SSO service in recent months, that migration appears to be related to expiration of those fixed-price, fixed term arrangements and the bankruptcy of Volunteer Energy Services, Inc. *See* Volunteer Energy Services Application to Abandon CRES Certification electronically filed by Mr. Kurt J. Boehm on behalf of Volunteer Energy Services, Inc., 15-0375-EL-CRS (May 4, 2022).

Finally, the large risk premium built into the SSO rate as a result of the absence of sufficient switching rules in Ohio will create another unfortunate outcome that will severely impact customers in Ohio for years to come, particularly those residential customers shopping for generation service. For several decades the SSO rate has been the benchmark against which competitive retail energy suppliers have priced their product offerings to Ohio residents. This fact is even reflected in how the PUCO's Apples-to-Apples government website presents competitive offers and associated rate information to ratepayers visiting the PUCO website. On the landing pages for each of the EDU's in Ohio, the PUCO tells customers to "Compare the supplier offers contained in the chart with the 'Price to Compare' shown on your electric bill."[35] The PUCO then provides further information on the SSO rate, explaining as an example currently on The Illuminating Company's landing page:

> ***The Illuminating Company's residential "Price to Compare" for the generation supply portion of your bill for the period of January 1, 2023 through March 31, 2023 is $0.054695/kWh*.***

Once the current SSO clearing prices become the effective SSO retail rates on June 1, 2023, customers visiting the Apples-to-Apples website will see those distortedly-high rates and invariably believe that is the rate they should be shopping against, when in fact true market rates will be considerably lower based on forward market prices. Ohio residents comparing offered rates from competitive suppliers will compare those rates to the "Price-to-Compare" unaware that the SSO rate has been divorced from actual market rates due to the unfortunate impact of the load migration in 2022 culminating in NOPEC's mass customer drop. Knowing this, some competitive suppliers will also invariably choose to price their product offerings closer to the

[35] *See, e.g.:* *https://energychoice.ohio.gov/ApplesToApplesComparision.aspx?Category=Electric&TerritoryId=6&RateCode=1*

SSO rates instead of market rates, further burdening Ohio residents with higher rates. All of this will unfortunately lead to Ohio residents not only paying more for energy than necessary while on SSO, but also more for energy than necessary while shopping for generation service, perhaps for years to come.

In light of such profound and widespread impacts to the Ohio market, more needs to be done by the Commission to restore confidence to market participants that the SSO auction process will produce results that actually track market prices, as originally intended by the Commission when it instituted the auction process in the first place. Penalizing governmental aggregators for engaging in the damaging path that NOPEC chose is a start, but simply not enough to bring wholesale bidders back to Ohio in critical numbers and with sufficient safeguards to ensure SSO auction clearing prices reflect actual market prices for electricity.

III. CHANGES THE COMMISSION SHOULD CONSIDER

The Commission has proposed introducing six-month products to the SSO auctions and lowering credit requirements to encourage greater auction participation. Given how fundamentally disjointed the SSO auction outcomes have become from forward energy market prices, and the price instability brought about by historically high customer switching, Vitol respectfully submits that the Commission must consider more fundamental structural changes than the two offered.

While Vitol generally supports the use of shorter term products, introducing six-month products without also bifurcating customers into separate classes will likely be an incomplete resolution to the cross-subsidization problem described previously. Unless the Commission requires the usage of separate customer classes for SSO auctions, the higher migration risk premium associated with large industrial and commercial customers will continue to unjustly impact residential customers even in products of shorter duration.

Vitol strongly supports appropriate credit requirements that efficiently minimize default risk in the many markets in which it participates. When credit requirements are inadequate, the risk of experiencing defaults increases and can negatively impact the competitive efficiency of markets through lower participation due to the elevated risk of bearing high default costs and/or through higher risk premiums added to prices in order to account for the elevated default risk. The Commission must consider that lowering credit requirements simply to encourage more auction participation may actually introduce more risk to the SSO market. Vitol strongly encourages the Commission to fully and carefully evaluate credit frameworks that increase the competitive efficiency of the market without also introducing elevated default risk. Additionally, Vitol submits that even if there is an opportunity to improve credit requirements which leads to higher auction participation, this does not directly address the underlying structural challenges the SSO market faces, as described earlier.

Accordingly, to robustly improve Ohio's SSO market, Vitol respectfully requests that the Commission consider adopting the following modifications to the auction processes and Ohio rules:

(1) implementing stricter switching rules, particularly for large commercial and industrial customers and municipal aggregators, to mitigate price increases in future auctions resulting from high migration risk premiums;

(2) bifurcating the SSO auction product into separate customer classes for future auctions to limit cross-subsidization issues due to the higher migration/switching risk premium associated with customer classes that pose the highest migration risks;[36] and

(3) directing Ohio's EDUs to implement the standby service charge provisions in Ohio Revised Code 4928.20(J) in their respective current and future ESP cases.

[36] Vitol also recommends that the Commission take this opportunity to consider adopting standards to ensure that CBP auction participants are treated equally in terms of information access (e.g., requiring that an electric distribution utility provide the same load history to all auction participants).

With respect to the second recommendation regarding the bifurcation of SSO loads, rather than treating all SSO customers as a monolithic mass, SSO auctions should be structured such that individual SSO customers pay a rate that reflects the switching risk profile of the customer class to which they belong. If the Commission wishes to give consumers flexibility to switch back to SSO service, Vitol urges the Commission to look to the policies of other states for guidance on how to mitigate the subsidization that is inherent in a program that charges customers the same rate despite differences in the actual cost of serving their load due to the different levels of switching risk any particular customer or customer class might pose. SSO/default service has been bifurcated in a number of jurisdictions such that residential customers are not unjustly and unreasonably subjected to the high premiums associated with switching risk driven by large and relatively sophisticated commercial and industrial customers, as set forth below:

- **Massachusetts**, *see, e.g.*, *Re Pricing & Procurement of Default Service*, Dkt. No. 99-60; *Re Pricing & Procurement of Default Service*, Dkt. No. 99-60-A (May 12, 2000); *Re Pricing & Procurement of Default Service*, Dkt. No. 99-60-B, 2000 WL 1273687 (June 30, 2000); National Grid, *Request for Power Supply Proposals to Provide the Following Services: Default Service in: Massachusetts*, § 1 (Aug. 6, 2021) (explaining the impact of Docket Numbers 99-60, -A, and -B on separate auctions for residential, commercial, and industrial customer classes);

- **New Jersey**, *see, e.g.*, *Re: In the Matter of the Provision of Basic Generation Serv. for the Period Beginning June 1, 2022*, No. ER21030631, 2022 WL 2953726, at *1 (N.J. Bd. of Pub. Utils. May 4, 2022) (approving separate auction results for "Basic Generation Service" for "Residential and Small Commercial Pricing" and "Commercial and Industrial Energy Pricing");

- **Pennsylvania**, *see, e.g.*, FirstEnergy's Pennsylvania Default Service Program, https://www.fepaauction.com/Home.aspx (last visited Nov. 15, 2022) (noting that default service products for residential and commercial customers will be offered in a separate auction from industrial customers).

- **Rhode Island**, *see, e.g.*, National Grid, *Request for Power Supply Proposals to Provide the Following Services: Last Resort Service for the Industrial Group . . . , Commercial Group . . . [&] Residential Group in Rhode Island*, § 1 (Mar. 11,

2021) (explaining National Grid's provision of Last Resort Service for residential, commercial, and industrial customer classes);

- **Connecticut**, *see, e.g.*, Decision, Dkt. No. 06-01-08PH01, 2006 WL 1774221 (Conn. Dept. of Pub. Util. Control June 21, 2006) (mandating RFPs for auctions for standard service to include pricing for residential, small commercial and industrial, and large commercial and industrial customers;

- **Maryland**, *see, e.g.*, MD SOS RFP, FirstEnergy, https://www.firstenergycorp.com/upp/md/power_procurements/mdsosrfp.html (identifying bifurcation of Maryland's residential and Type I and II commercial and industrial loads); and

- **Delaware**, *see, e.g.*, SOS Procurement, Delmarva Power, https://www.delmarva.com/DoingBusinessWithUs/Pages/WholesaleEnergySuppliers/SOSProcurement.aspx (last visited Nov. 15, 2022) (providing overview of Delaware's separation of standard offer service between four customer classes); Seimens, *Market Assessment Report for FP-SOS 2022 RFP* 5-7 (Feb. 16, 2022) (listing results of Delaware auctions for four customer classes).

Without expeditious action by the Commission, the structural risks that have been illuminated in recent months in Ohio will persist and adversely impact future prices for SSO customers.

IV. CONCLUSION

Vitol appreciates the opportunity to provide these comments and perspectives on the SSO program and some proposed remedies to address the infirmities which have been exposed by the recent market developments. Vitol would be happy to discuss these comments further with the Commission.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 24, 2023, the foregoing was filed using the Commission's Docketing Information System and was served by electronic mail on those parties signed up to receive service from DIS.

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