

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE PROCUREMENT  
OF STANDARD SERVICE OFFER  
GENERATION FOR CUSTOMERS OF DUKE  
ENERGY OHIO, INC.

CASE NO. 18-6000-EL-UNC

## FINDING AND ORDER

Entered in the Journal on February 22, 2023

### I. SUMMARY

{¶ 1} The Commission accepts the results of Duke Energy Ohio, Inc.'s auction and authorizes Duke Energy Ohio, Inc. to file final tariffs implementing the rates for standard service offer customers.

### II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke) is an electric utility as defined by R.C. 4928.01(A)(11) and an electric distribution utility as defined by R.C. 4928.01(A)(6).

{¶ 3} R.C. 4928.141 provides that electric utilities shall provide consumers a standard service offer (SSO) of all competitive retail electric services in accordance with R.C. 4928.142 or 4928.143.

{¶ 4} In Case No. 17-1263-EL-SSO, et al. (*ESP Case*), the Commission approved, pursuant to R.C. 4928.143, Duke's application for an electric security plan (ESP), including a competitive auction-based SSO format, as well as a competitive bid procurement (CBP) process for Duke's auctions, for the period of June 1, 2018, through May 31, 2024. Under the CBP process, Duke will obtain all generation necessary to serve its SSO load through a series of auctions. With respect to the original auction schedule, the Commission determined that Duke's twelfth auction should occur in February 2023. *ESP Case*, Opinion and Order (Dec. 19, 2018). In accordance with the proposed bidding rules, the Commission has a two-business-day window from the conclusion of the auction to review the results. *ESP Case*, Duke Ex. 2, Att. E at 40. Duke proposed to retain CRA International Inc. d/b/a Charles

River Associates, Inc. (CRA) as the auction manager for Duke's auctions. *ESP Case*, Duke Ex. 2 at 8.

{¶ 5} However, on July 25, 2019, the Federal Energy Regulatory Commission (FERC) issued an order directing PJM Interconnection, LLC (PJM) to not conduct its base residual auction (BRA) regarding the 2022-2023 delivery year, previously scheduled for August 2019. *Order on Motion for Supplemental Clarification*, Case No. EL16-49-00, at ¶ 2 (July 25, 2019). This direction prevented PJM from moving forward with a wholesale competitive bidding process the output of which informed potential bidders in each electric distribution utility (EDU) retail competitive bidding process regarding the forward cost of the capacity obligation arising from the provision of SSO generation supply.

{¶ 6} Thereafter, on December 19, 2019, FERC ordered that PJM must submit a new schedule regarding the BRA within 90 days. *Order Establishing Just and Reasonable Rate*, Case No. EL16-49-00, at ¶ 4 (Dec. 19, 2019).

{¶ 7} By Entry issued on February 13, 2020, in the *ESP Case*, the Commission directed Staff to file a proposal for a modified product which contains capacity flow-through provisions since the uncertainty caused by FERC's order precludes the use of a more traditional three-year auction product at a time when market fundamentals were signaling opportunities to use a forward looking CBP to lock in historically low energy prices for the benefit of Ohio retail electric customers.

{¶ 8} On March 13, 2020, Staff filed, in Case No. 18-6000-EL-UNC, a singular proposal and recommendation, as directed by the Commission. On April 6, 2020, the attorney examiner issued an entry in the above-captioned case inviting interested stakeholders to file public comments discussing Staff's proposal and recommendation. Subsequently, interested stakeholders filed comments in response to Staff's recommendation.

{¶ 9} On July 15, 2020, the Commission issued a Finding and Order in which the EDUs were directed, in part, to modify their SSO procurement auctions by submitting a plan to change the current auctions scheduled for Fall 2020 and Spring 2021 to substitute a 12-month product for the current, planned products. *In re the Procurement of Standard Service Offer Generation*, Case Nos. 18-6000-EL-UNC, et al. (*Procurement Cases*), Finding and Order (July 15, 2020) at ¶ 35.

{¶ 10} On August 14, 2020, in the *ESP Case*, Duke filed its motion to adjust its Fall 2020 and Spring 2021 auctions.

{¶ 11} On August 26, 2020, the Commission granted Duke's motion to adjust its SSO procurement auction processes for the Fall 2020 and Spring 2021 auctions. *Procurement Cases*, Finding and Order (Aug. 26, 2020) at ¶ 14.

{¶ 12} On February 24, 2021, the Commission issued a Second Entry on Rehearing regarding the July 15, 2020 Finding and Order. Among other things, the Commission recognized that PJM had reestablished its capacity auction schedule and, therefore, granted rehearing and directed the EDUs to file, within 60 days, new proposed auction schedules consistent with the timeframes established by PJM for future BRAs and consistent with the provisions for staggering and laddering auctions contained in the ESPs. *Procurement Cases*, Second Entry on Rehearing (Feb. 24, 2021) at ¶ 22.

{¶ 13} On April 23, 2021, in compliance with the February 24, 2021 Second Entry on Rehearing, Duke filed its application for approval of newly proposed auction schedules.

{¶ 14} On June 16, 2021, the Commission granted Duke's application for approval of newly proposed auction schedules, including Duke's proposal for its September 2021 and February 2022 auctions, as well as future auctions. *Procurement Cases*, Finding and Order (June 16, 2021) (*Procurement Order*) at ¶ 24. By Entry on Rehearing issued on August 11, 2021, the Commission reaffirmed its approval of Duke's application for newly proposed

auction schedules, while making a clarification regarding Duke's February 2023 auction. *Procurement Cases*, Entry on Rehearing (August 11, 2021) at ¶ 24.

{¶ 15} On December 22, 2021, FERC issued an order reversing FERC's previous determination that the backward-looking energy and ancillary services offset (E&AS Offset) was just and reasonable. Given this reversal, FERC directed PJM to submit a compliance filing within 60 days to revise its Tariff and Operating Agreement and, in order to incorporate the revised E&AS Offset in the BRA for the 2023/2024 delivery year, directed PJM to submit a compliance filing within 30 days that proposed a new schedule for the BRA and subsequent BRAs. *Order on Voluntary Remand*, Case Nos. EL19-58-006; ER19-1486-003, at ¶ 2 (Dec. 22, 2021).

{¶ 16} On January 21, 2022, PJM submitted a compliance filing in response to the above order in which PJM proposed changing the BRA for the 2023/2024 delivery year from January 25, 2022, to June 8, 2022. *Compliance Filing Concerning Certain Proposed Revised Pre-Auction Deadlines*, Case Nos. EL19-58-010; ER19-1486-00, at 2 (Jan. 21, 2022).

{¶ 17} On January 10, 2022, Duke filed a notice advising the Commission of FERC's order cited above delaying the January 2022 BRA for the 2023/2024 delivery year and a request for guidance regarding whether an amendment to Duke's upcoming SSO auction schedule should occur. In the filing, Duke requested that the Commission once again modify its auction so that its February 2022 SSO auction procures 50 tranches of a 12-month product for the 2022/2023 delivery year. If adjusted in this manner, Duke noted that it will adjust the load for the remaining period, June 2023 through May 2024, after a final PJM capacity rate is established.

{¶ 18} On January 26, 2022, the Commission granted Duke's request to adjust its February 2022 SSO auction schedule and directed Duke to adjust the schedules in a manner consistent with its filing.

{¶ 19} On August 17, 2022, Duke filed a motion to confirm and clarify the SSO auctions for the remaining period of its ESP term, considering the timing of the BRA auctions are now more certain.

{¶ 20} On August 24, 2022, the Commission granted Duke's request to adjust its auction schedules, including the September 2022 SSO auction schedule. By Entry on Rehearing issued on October 5, 2022, the Commission reaffirmed its approval of Duke's request to adjust its auction schedules. *Procurement Cases*, Entry on Rehearing (Oct. 5, 2022).

{¶ 21} On September 20, 2022, Duke's CBP auction was held, during which the 40-tranche target of a 12-month product for delivery year 2023/2024 was reduced to 20 tranches due to lower than anticipated participation. *Procurement Cases*, Finding and Order (Sept. 21, 2022) at ¶ 21.

{¶ 22} On September 21, 2022, the Commission issued a Finding and Order accepting the results of the auction and directing Duke to file revised auction schedules that account for the 20 unfulfilled tranches prior to the beginning of the 2023/2024 delivery year. *Procurement Cases*, Finding and Order (Sept. 21, 2022) at ¶ 23. By Entry on Rearing issued on November 16, 2022, the Commission reaffirmed its acceptance of the September 21, 2022 auction results. *Procurement Cases*, Entry on Rehearing (Nov. 16, 2022).

{¶ 23} On February 7, 2023, Duke filed a motion to amend the SSO auction for February 2023, which Duke avers was set to procure 80 tranches for the 2023/2024 delivery year and 30 tranches for the 2024/2025 deliver year. Duke asserted that, at the time of filing, the applicable PJM capacity rate for the 2024/2025 delivery year was still unknown; therefore, to avoid substantial uncertainty and confusion among bidders, Duke requested that the Commission approve a delay in the auction for the 2024/2025 delivery year product until after such time as the relevant BRA results were available.

{¶ 24} On February 10, 2023, the attorney examiner granted Duke's motion, directing that the auction for the 12-month product for delivery year 2023/2024 will proceed as

scheduled on February 21, 2023, but the auction for the 24-month product for the 2023/2024 and 2024/2025 delivery years will be delayed to a later time. No interlocutory appeals were filed in response to the February 10, 2023 Entry.

{¶ 25} At this time, considering the uncertainty that would have been created among bidders if the February 21, 2023 CBP auction had proceeded without delaying the auction for the 24-month product that includes the 2024/2025 delivery year, the Commission affirms the attorney examiner's directive issued in the February 10, 2023 Entry.

{¶ 26} On February 21, 2023, Duke held the contemplated CBP auction. The auction consisted of 13 rounds in the descending-clock phase. On February 22, 2023, CRA and Bates White, LLC (Bates White), a consultant retained by the Commission to monitor the CBP auction, filed reports regarding the conduct of the auction. These reports consisted of confidential versions, filed under seal, and a redacted version of the report filed by CRA, which is publicly available in this docket.

{¶ 27} According to the reports filed by CRA and Bates White, for the 80 tranches of the 12-month product, the auction resulted in a clearing price of \$82.79 per megawatt hour for the delivery period of June 1, 2023 to May 31, 2024. CRA and Bates White each recommended that the Commission find that the auction, within the limits of its structures, had sufficient competitive attributes and resulted in a winning price that is reasonable.

{¶ 28} The Commission finds that the reports filed by CRA and Bates White do not contain any recommendation or evidence that the auction violated the CBP rules in such a manner as to invalidate the auction. Accordingly, the Commission accepts the results of the auction.

{¶ 29} On February 22, 2023, Staff filed a motion for protective order, pursuant to Ohio Adm.Code 4901-1-24, requesting that both the report of the Commission's consultant regarding Duke's auction and the notification of the auction results filed on February 22, 2023, be kept confidential. In support of the motion, Staff submits that these documents are

highly competitive and sensitive in nature, in that they identify the details of various bids and parties making the bids in the auction. According to Staff, disclosure of this information would be highly prejudicial to the bidding parties and the viability of any future auction in Ohio.

{¶ 30} Ohio Adm.Code 4901-1-24 provides that, unless otherwise ordered, protective orders issued pursuant to the rule automatically expire after 24 months. However, given the highly competitive and sensitive nature of the reports filed by CRA and Bates White, the Commission finds that it would be appropriate to grant protective treatment indefinitely, until the Commission orders otherwise. Therefore, we find that Staff's motion for protective order of the information, is reasonable and should be granted, to the extent set forth in this Finding and Order. Accordingly, the Bates White report and the following information related to the CRA report will be protected from public release: the names of unsuccessful bidders; price information, including starting price methodologies and round prices/quantities for individual bidders; all information contained in Part I and Part II of the bidder applications; and indicative preauction offers.

{¶ 31} However, the Commission finds that certain information regarding the auction contained in the report submitted by CRA should be released to the public after a brief period of time to allow the winning bidders to procure any additional necessary energy or capacity to serve the SSO load. Therefore, unless otherwise ordered by the Commission, the following information will be subject to public release 21 days after the issuance of this Finding and Order: the names of bidders who won tranches in the auction; the number of tranches won by each bidder; the first round ratio of tranches supplied compared to tranches needed; and the redacted report filed by CRA detailing the auction proceedings, subject only to redaction of any confidential information enumerated above. The Commission's docketing division is directed to work with Staff to assure the appropriate public release of information.

{¶ 32} Finally, all bidders are required to immediately disclose to the Commission and Staff all prices, terms, and conditions for any post-auction assignments of tranches obtained through the CBP, subject to appropriate protections for confidential or proprietary information.

### III. ORDER

{¶ 33} It is, therefore,

{¶ 34} ORDERED, That the information set forth in Paragraph 30 be deemed confidential and remain under seal indefinitely. It is, further,

{¶ 35} ORDERED, That, unless otherwise ordered by the Commission, the information set forth in Paragraph 31 be subject to public release 21 days after the issuance of this Finding and Order. It is, further,

{¶ 36} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

#### COMMISSIONERS:

*Approving:*

Jenifer French, Chair  
Lawrence K. Friedeman  
Dennis P. Deters

MJS/dr

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Summary: Finding & Order accepting the results of Duke Energy Ohio, Inc.'s auction and authorizes Duke Energy Ohio, Inc. to file final tariffs implementing the rates for standard service offer customers. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio