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

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| 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 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 Duke Energy Ohio, Inc. | ) ) ) | Case No. 18-6000-EL-UNC |

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**COMMENTS OF OHIO POWER COMPANY**
**(AS SUPPLEMENTED ON MARCH 1, 2023)**

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In its January 3, 2023, Entry in Case No. 17-2391-EL-UNC (Entry), the Public Utilities Commission of Ohio (Commission) seeks stakeholder input regarding whether certain proposed modifications to the Ohio Power Company's (AEP Ohio's or Company's) SSO auctions, as well as to the SSO auctions of the other Electric Distribution Companies (EDUs), "would help significantly reduce prices resulting from SSO auctions."[1] Specifically, the Commission calls for stakeholder input on the following modifications:

a. Including six-month products in the offered products for each auction; and

b. Revising credit requirements for companies seeking to bid in the SSO auctions in order to promote participation without unduly increasing risk.

The solicitation of the above-mentioned input comes in response to recent increases in the results of the EDUs' SSO auctions observed over the past year. AEP Ohio offers the following comments in response to the Entry. These comments are submitted by AEP Ohio, in consultation with its auction manager, NERA.

## COMMENTS

AEP Ohio commends the Commission for undertaking this effort and supports the Commission's goals of stabilizing SSO rates while maintaining the overall effectiveness and success of the SSO auctions in Ohio. AEP Ohio submits that the two proposals referenced in the Entry, although not entirely efficacious, are items within the scope of the Commission's ESP implementation authority under which it is permissible to act outside the context of an SSO proceeding (aka Electric Security Plan or" ESP"). While a few of the proposals advanced by commenters also fall within that authority and the appropriate scope of this proceeding, many other proposals are better considered in a generic industry investigation or a rulemaking proceeding or simply implemented in an SSO/ESP proceeding to begin with – especially given the expedited manner in which the current proposals would be considered as compared to the problems that have developed over many months. While there have clearly been some recent

[1] *Entry*, Case Nos. 16-776-EL-UNC, 17-957-EL-UNC, 17-2391-EL-UNC, and 18-6000-EL-UNC January 3, 2023. Available at https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A23A03B20957C00038.

SSO auction concerns that need to be addressed, the SSO auctions in Ohio have been very successful over the long term and continue to be a critical statutory option for customers in times of market volatility and uncertainty. In short, although the Commission has some authority to act in this docket, the narrow solutions offered that are properly in the scope of this docket are unlikely to meaningfully resolve the current problems. Consequently, AEP Ohio suggests that the Commission initiate a more careful and thorough evaluation of potential SSO auction modifications as part of a broader proceeding that is subsequently implemented within of an SSO/ESP proceeding.

**A. Scope of Authority to Act in this Docket**

The two items referenced in the Entry (and some of the other implementational recommendations by some parties including the auction timing flexibility recommendation made by AEP Ohio in Part C below) are subordinate details and relate to the authority established in the EDUs' existing ESPs. Although the invitation in the Entry could be interpreted as inviting a broader set of proposals, there are limits to what the Commission can do outside of the ESP context. Regardless of the Commission's authority or limitations, however, the prudent course of action is to carefully consider the details and potential consequences of adopting any proposals to modify the existing SSO auction process.

RESA advances a strict view that "any modifications" to the SSO auction process must be made in an SSO proceeding. (RESA Comments at 4-6.) RESA goes on to recite both Commission's SSO filing requirement rules (OAC Chapter 4901-1-35) as well as the ESP statute, R.C. 4928.143, to support the proposition that all the procedural and substantive features of an ESP proceeding are triggered as a predicate to making any modifications to the SSO auctions process. (*Id.*) While AEP Ohio agrees that there are limits on what the Commission can modify outside of the context of an SSO proceeding, RESA's strict view is overstated.

In reality, there are many proceedings outside of an ESP where the Commission makes significant and substantive decisions that define implementation of an ESP. Rider proceedings are a good example; many significant decisions are made in EL-RDR proceedings that do not trigger the litany of filing requirements and statutory procedures that are attached to an SSO proceeding (*e.g.*, MRO test, EDU consent, ESP filing requirements, *etc*.). Further, audit cases and tariff cases are examples where the Commission can make subordinate decisions involving the implementation and scope of an ESP outside of the SSO proceeding. Filling in the blanks established in an ESP case and implementing all aspects of the approved plan are permissible outside the scope of an ESP case – and do not modify the overall authority of the mechanisms approved as part of an earlier ESP/SSO. The two items listed in the Entry arguably fall within that scope – though AEP Ohio does not support the two recommendations specifically as effective solutions, pursuing such matters in the course of implementing an ESP is fair game.

To be sure, there are limits to what the Commission can do outside of an ESP case: primarily, the Commission cannot modify a material term or condition of the ESP. For example, in the context of SSO auction modifications, AEP Ohio opposed the Commission's inquiry in this docket into whether auction products that extend beyond the term of the ESP should be considered for adoption outside of the ESP, in response to which the Commission subsequently reversed itself. (August 14, 2020, Application for Rehearing of AEP Ohio.) Another example is the proposal advanced in AEP Ohio's current ESP filing to establish a standby charge for governmental aggregators to utilize in avoiding the return to market prices if the customers are prematurely dropped from the aggregation, consistent with R.C. 4928.143(B)(2)(d) and 4928.20(J); as part of the ESP proceeding, a placeholder could be established that would be further addressed in a subsequent rider implementation proceeding. But these limitations do not mean that the Commission is prevented from taking some action now in this docket or others.

Another example of legal limitations on the proposals advanced in this docket is where parties advocate for a solution that conflicts with existing statutes. For example, several parties argue for a MWh cap on tranche volume; but they fail to offer a comprehensive solution that reduces risk overall or solves the problem. (Constellation Comments at 6; Enel Comments at 14.) That approach conflicts with the General Assembly's design for allocation of risk under R.C. 4928.143 and R.C. 4928.20 and, without additional components, the tranche volume cap solution is incomplete and would merely shift the risk from winning auction suppliers back to other customers. That approach also fundamentally changes the Competitive Bidding Process (CBP) plans approved in the EDUs' ESP proceedings.

The Commission can initiate an investigation under R.C. 4905.26 to explore these issues and gather information and input. Similarly, the Commission can pursue a rulemaking proceeding to consider adoption or modification of SSO filing rules or creating guidelines that address Commission expectations regarding SSO auction matters. In addition, the Commission is conducting tariff proceedings on minimum stay provisions and is actively investigating the suspension of certification for individual governmental aggregators. Any of those proceedings could lead to adoption of new policies or rules that would need to be implemented as part of a future SSO proceeding.

In sum, while RESA's position that "any modification" must be made as part of an ESP proceeding is overstated, there are limits to what the Commission can do outside of an ESP and those actions should not conflict with the terms and conditions of an existing ESP.

## B. Comments regarding including six-month products in the mix of products for each auction

Under the approved auction schedule in AEP Ohio's current Electric Security Plan (ESP IV), AEP Ohio holds two auctions each year and the products offered in the auctions include products with 12-, 24-, and 36-month supply periods; this is consistent with the supply periods of the products offered in the auctions held under AEP Ohio's prior ESPs. Each auction includes one to three of the 12-, 24-, 36-month products. The Commission has approved AEP Ohio's auction schedules with overlapping products of 12-, 24-, and 36-month supply periods in order to minimize uncertainty and potential rate volatility for SSO customers.

As indicated in the Entry, the Commission is investigating whether including a 6-month product in the product mix in each auction would help to significantly reduce prices resulting in the auctions. This investigation comes in response to the increase in auction results seen over the past year. This increase in auction prices can be seen in the table below, which provides information released for each of the November 2021, March 2022, and November 2022 auctions.

| **Auction** | **November 2021** | **March 2022** | **November 2022** |
|---:|:---:|:---:|:---:|
| Delivery Period | June 1, 2022, to May 31, 2023 | June 1, 2022, to May 31, 2023 | June 1, 2023, to May 31, 2024 |
| Date of Auction | November 2, 2021 | March 8, 2022 | November 1, 2022 |
| No. of Registered Bidders | 14 | 11 | 7 |
| Clearing Price ($/MWh) | 55.14 | 69.27 | 119.98 |

The auction clearing price of $119.98/MWh from the November 2022 auction is a dramatic increase from the auction clearing prices of $69.27 from March 2022 and $55.14 from November 2021; however, equally worthy of note is the decrease in the number of registered bidders in the November 2022 auction. The number of registered bidders in each of AEP Ohio's auctions held under ESP IV has ranged from 11 to 15 bidders, and as provided in the table above, the number of registered bidders in the November 2021 and March 2022 auctions fell within this range. The number of registered bidders in the November 2022 auction dropped to 7 bidders, which is the lowest level of participation in any auction held under ESP IV. AEP Ohio and its auction manager appreciate the Commission's investigation into whether including a 6-month product in the auction will help to significantly lower prices; however, as attracting maximum participation in the auctions is one of the driving forces for the CBP to achieve efficient and market-reflective prices, attracting participants to the auction and maximizing participation is what enables competition among bidders to drive prices down to be consistent with the market and is what will help to significantly reduce recent prices.

AEP Ohio submits that the best way to reduce auction clearing prices in future auctions is to increase participation. Thus, a modification that aims to significantly reduce prices should also be reasonably expected to increase participation in future auctions. It is not clear that the addition of a 6-month product will lead to an increase in participation or attract new bidders to the auction, and given this, including a 6-month product in the auctions may not achieve the desired outcome of reducing prices in the auction.

Additionally, it is not expected that a 6-month product would result in a lower auction price more consistently than the 12-, 24-, or 36-month products already offered. This is due to the plain fact that energy prices in winter months are typically higher than that of other months in the year. A 6-month product that includes the winter months may actually result in a higher price in the auction than would a 12-month product, which would ultimately result in a higher rate for SSO customers during those 6 months. This further demonstrates why the addition of a 6-month product may not be an advantageous modification to the SSO auctions at this time as the consequences of adding a 6-month product may not achieve lower prices. As a related matter, there is additional potential exposure to market volatility through more frequent auctions with more granular auction products.

In sum, the existing structure of laddering and staggering optimizes the balance between diversification of market exposure and practical implementation of a reasonable auction schedule.

### C. Flexibility in postponing an auction or modifying an auction schedule

Under the AEP CBP Rules for ESP IV, the auction manager, in consultation with AEP Ohio and Commission Staff, together referred to here as "the parties", "may make changes to [an] auction schedule as circumstances warrant" (See Section II.2.3 of the AEP CBP Rules.) The auction manager and AEP Ohio believe this rule provides these parties with flexibility to potentially postpone an auction or modify the auction schedule. In particular, if it can be reasonably determined by the parties that a postponement or modification to the auction schedule could lead to a better outcome in terms of supplier participation a change may be warranted. For example, it may be appropriate to modify the auction schedule if an unanticipated, extreme weather event inhibits bidders' abilities to physically participate in the auction. Additional examples the auction manager believes could have a negative impact on supplier participation and thus would warrant this flexibility to be used includes extraordinary events, such as the advent of war, terrorism, or an act of God. This flexibility to modify an auction schedule exists in other jurisdictions[2]; the auction manager and AEP Ohio understand that the Entry does not propose a modification to the EDUs' SSO auctions that would remove this flexibility, but the

[2] For example, the flexibility to modify an auction schedule exists in Pennsylvania under PECO Energy Company's procurement of Default Supply; see Section I.1.8 of the PECO Energy Company Default Service Program Request for Proposals available here: https://www.pecoprocurement.com/assets/files/0%20DSP%20V%20RFP%20Rules_MAR2023%20(Dec%2020%20posted).pdf .

auction manager and AEP Ohio believe that this flexibility should be maintained or augmented in order to deal with unplanned developments.

**D. Comments regarding revising credit requirements for companies seeking to bid in the SSO auctions in order to promote participation without unduly increasing risk**

Under Article IX of the CBP Rules for AEP Ohio's ESP IV[3] (AEP CBP Rules), in the case of supplier default, AEP Ohio may be required to procure the related SSO Supply in PJM-administered markets for the defaulted tranches until an SSO Supplier wins such tranches at the auction or in some cases, for the remainder of the delivery period. The credit requirements included as part of the auction process are designed to protect SSO customers and AEP Ohio from exposure to the costs and risks associated with supplier default and the contingency plan, and therefore, an important purpose of the auction application process is to qualify companies that can reasonably demonstrate their ability to perform under the Master SSO Supply Agreement[4] should they be a winner at the auction.  Regarding credit, generally, winners at the auction are required to post performance assurance (post-bid security) with AEP Ohio that is commensurate with AEP Ohio's exposure to a supplier default. There are unsecured credit lines extended to suppliers with investment grade ratings and suppliers that rely on a guarantor with investment grade ratings. In order to qualify to bid, each applicant posts pre-bid security, which aims to ensure to the extent possible that the applicant can post the required post-bid security amounts and meet any margin calls made during the term of the Master SSO Supply Agreement. Additionally, a credit-based tranche cap, a limit on the amount of tranches a bidder can bid and

[3] Bidding Rules for the Auctions Under the Competitive Bidding Process of Ohio Power Company. Available at https://aepohiocbp.com/assets/files/March%202023%20AEP%20Auction%20CBP%20Rules_13%20DEC%202022.pdf.

[4] Master Standard Service Offer ("SSO") Supply Agreement. Available at https://aepohiocbp.com/assets/files/AEP%20Ohio%20Master%20SSO%20Supply%20Agreement_13%20DEC%202022.pdf.

win in an auction, applies to applicants that are not rated or have credit ratings below investment grade, and do not have a guarantor that is investment grade, as further discussed below.

Another important objective of the application process is to be open to a wide range of potential bidders in order to maximize participation to increase the offered supply available to bid in the auction. For this reason, the pre-bid credit requirements aim to balance protecting SSO customers and AEP Ohio from a supplier default while allowing the largest pool of qualified participants possible to compete. As described in Section IV.29 of the AEP CBP Rules, in order to qualify to bid, a bidder is required to provide a pre-bid letter of credit or cash in an amount of $500,000 per tranche for the number of tranches the applicant wishes to bid at the maximum starting price announced by the auction manager. If more than one product is offered at an auction, additional pre-bid security on a per tranche basis of $300,000 is required; however, in lieu of posting this additional amount any bidder may choose to submit a letter of intent to provide a guaranty from a creditworthy guarantor or a letter of reference from a bank. This requirement is standard across all bidders and the levels are in line with standards for similar contracts for default supply.

Additionally, as part of the application process, bidders undergo a credit assessment that may ultimately limit the number of tranches that a bidder may bid and win in the auction. This “credit-based tranche cap” helps to limit the exposure of SSO customers and AEP Ohio to a winning bidder that is not rated or has credit ratings below investment grade and does not have a guarantor that is investment grade. The credit-based tranche cap aims to provide reasonable assurances that such a bidder will be able to meet the credit requirements including responding to any required margin calls made during the term of the Master SSO Supply Agreement.

In accordance with Section IV.1.4 of the AEP CBP Rules, "the parameters [surrounding the credit-based tranche cap] may vary over time at AEP Ohio's sole discretion. Any change to the parameters [surrounding the credit-based tranche cap] will be provided in the Bidder Information Session." (See AEP CBP Rules at page 10.) A change to this parameter would be based on many factors such as the total number of tranches available at the auction. AEP Ohio, in consultation with its auction manager, implemented a change for its March 2023 auction and the auction manager announced this change during the bidder information session that was held on January 9, 2023. For its SSO auction set to occur in March 2023, the credit-based tranche cap was increased aiming to increase participation in the auction for bidders that may be restricted in the number of tranches they can bid and win in the auctions. This increase to the credit-based tranche cap was also made in light of the higher tranche target (55 tranches) in the March 2023 auction relative to prior auctions held under ESP IV, in which the tranche target ranged from 17 to 50 tranches. The credit-based tranche caps for the March 2023 auction are provided in the table below. For the March 2023 auction, bidders that are not rated or have credit ratings below investment grade, and do not have a guarantor that is investment grade, are able to qualify to bid up to 8 tranches in the auction, where previously, based on the credit-based tranche cap parameters of prior auctions, these bidders could only bid up to 5 tranches.

| **Credit Rating for Bidder or Guarantor** | | | |
|---|---|---|---|
| **S&P** | **Moody's** | **Fitch** | **Credit-Based Tranche Cap** |
| BB and above | Ba2 and above | BB and above | No Cap |
| BB- | Ba3 | BB- | 15 |
| Below BB- | Below Ba3 | Below BB- | 8 |
| If not rated by any of these rating agencies | | | 8 |

These credit-related components of the auction process all serve to balance and protect customers and AEP Ohio from costs and risks associated with supplier default. Any modification to the credit requirements within the auction process should maintain the protections for SSO customers and the integrity of the SSO auctions. If the credit requirements in the auction process are relaxed, then participation may increase, but there are risks to any such revisions. So any changes must be carefully considered.

**E. Any modification to the credit requirements within the auction process should maintain the protections for SSO customers and the integrity of the SSO auctions**

As stated above, in consultation with its auction manager, NERA, the credit requirements included as part of the auction process are designed to protect SSO customers and AEP Ohio from exposure to the costs and risks associated with supplier default and the contingency plan; and therefore, an important purpose of the auction application process is to qualify companies that can reasonably demonstrate their ability to perform under the Master SSO Supply Agreement[5] should they be a winner at the auction. The credit requirements aim to balance protecting SSO customers and AEP Ohio while allowing the largest pool of qualified participants as possible to compete.

As such, AEP Ohio maintains its stance that any modification to the credit requirements within the auction process should preserve the protections for SSO customers and the integrity of the SSO auctions. If the credit requirements are relaxed, then participation may increase, but there are risks to any such revisions. Similar sentiments of concern over any modifications to the current credit requirements of the SSO auctions were expressed across the initial comments submitted by other stakeholders including the other Ohio electric distribution utilities, SSO Suppliers, and consumer groups. In its initial comments, RESA states that "failing to appropriately assign risk to riskier suppliers ultimately means that customers have to underwrite

[5] Master Standard Service Offer ("SSO") Supply Agreement. Available at https://aepohiocbp.com/assets/files/AEP%20Ohio%20Master%20SSO%20Supply%20Agreement_13%20DEC%202022.pdf.

the risk that the risky supplier defaults on its supply obligation. Such an outcome could easily result in costing customers more than any potential savings." (RESA Initial Comments at page 4.) Vitol Inc. (Vitol) puts forth that "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 Initial Comments at page 24.)

Many stakeholders including AES Ohio, Duke Energy Ohio, FirstEnergy, and RESA, expand on these concerns and express that the risk of supplier default is compounded during times of market volatility and when prices increase. For example, Duke Energy Ohio states that "loosening credit requirements cannot be justified in a market environment with rising interest rates and increased commodity price volatility. Duke Energy Ohio's belief is that this would be a deviation from best practices for credit risk management" (Duke Initial Comments at pages 2 to 3.) AES Ohio argues that in light of recent market volatility, implementing more relaxed credit requirements "may increase the risk of supplier default and, therefore, customers returning to the standard service offer, placing upward pressure on auction outcomes and resulting SSO rates." (AES Ohio Initial Comments at page 2.) FirstEnergy asserts that "[the] risks presented by lower-credit suppliers would be exacerbated during a period of market instability and/or at a time when there is increased likelihood of customers switching to SSO service." (FirstEnergy Initial Comments at page 3.) AEP Ohio and NERA generally agree with this viewpoint that risks associated with loosening credit requirements may be more acute during this time of higher market volatility.

Lastly, IGS also asserts that current credit requirements in the SSO auctions should not be changed and goes on to state that "[credit] requirements are important in organized electricity markets in which the Commission must balance the need for market participation against corresponding risk of default. Default by market participants results in the socialization of costs across the entire market." (IGS Initial Comments at pages 8 to 9.) However, IGS then advocates change by stating that, in reference to the creditworthiness assessment of applicants to the SSO auctions and serving SSO suppliers, the "general risk profile of a CRES provider should be taken into account instead of just relying primarily on credit ratings." (IGS Initial Comments at page 8.) IGS's recommendation in this regard should not be adopted.

The standards for evaluating an SSO supplier's creditworthiness under the Master SSO Supply Agreement rely on both credit ratings by the major rating agencies and the supplier's current tangible net worth. These metrics, both credit ratings by the major rating agencies and a supplier's current tangible net worth, used to determine the appropriate amount of credit under the Master SSO Supply Agreement are in line with standards for similar contracts for default supply and provide an objective methodology for determining the creditworthiness of SSO suppliers. Further, credit ratings are used to establish any credit-based tranche cap limiting the number of tranches a bidder can bid in the SSO auctions. As stated above, this credit-based tranche cap helps to limit the exposure of SSO customers and AEP Ohio to a winning bidder that is not rated or has credit ratings below investment grade and does not have a guarantor that is investment grade. The credit-based tranche cap aims to provide reasonable assurances that such a bidder will be able to meet the credit requirements including responding to any required margin calls made during the term of the Master SSO Supply Agreement. Additionally, as stated above, AEP Ohio has the discretion to adjust the parameters surrounding the credit-based tranche cap and already made such an adjustment ahead of its March 2023 SSO auction.

AEP Ohio and NERA believe that using credit ratings is just and reasonable and is consistent with practices in other jurisdictions and that a change to the method used to determine the creditworthiness of an SSO supplier or a bidder's credit-based tranche cap is not warranted at this time. As IGS acknowledges, private, unrated companies have the opportunity to obtain a credit rating and requiring an entity to be rated in order to receive a credit line is not discriminatory. An entity is not required to be rated to participate in the SSO auctions or to serve SSO load, rather such an entity will not be granted unsecured credit under the Master SSO Supply Agreement and may be constrained by the credit-based tranche cap.

## CONCLUSION

In conclusion, AEP Ohio appreciates the opportunity to file comments and requests that the Commission take action as described above to implement the Company's recommendations.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy was sent by, or on behalf of, the undersigned counsel to the following parties of record this 1st day of March 2023, via e-mail:

*<u>/s/ Steven T. Nourse</u>*
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