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 the Dayton Power and 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

REPLY COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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TABLE OF CONTENTS

PAGE

I. INTRODUCTION 1

II. COMMENTS 2

A. To protect consumers, the PUCO should adopt a limited and focused approach in remedying the temporary unavailability of PJM capacity costs in forthcoming SSO supply auctions. 2

B. The Staff's Proposal is consistent with the PUCO's policy objectives of reducing uncertainty, encouraging bidder participation, and not altering bidding strategies. 4

C. Each utility should be required to submit, within sixty days of the PUCO order in this proceeding, a modified auction timeline and all SSO auction related modifications for comments by the stakeholders and approval by the PUCO. 5

D. Energy Harbor's Proposal of including a long-term fixed-price capacity product for SSO auction is self-serving and costly to customers...6

E. IGS/Direct's proposal of not modifying the current SSO auctions or compressing the SSO product to the timeframe of known capacity costs is unproven and does not benefit customers. 8

F. FirstEnergy's proposal of using a non-zero "proxy price" provides no benefits to customers. 9

III. CONCLUSION...10

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REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

The use of competitive bidding to obtain electricity from suppliers by utilities for its standard service offer ("SSO") customers has been one of the few bright spots of the SSO regulatory framework in Ohio.[1] The competitive auction for SSO supply has worked well as demonstrated by the record low electricity prices in recent auctions and the steady decline in generation costs paid by SSO customers. Now, however, Energy Harbor LLC ("Energy Harbor") wants to use the delay of the Base Residual Auctions ("BRA") by PJM Interconnection, LLC

[1] *See, e.g.*, https://www.legislature.ohio.gov/download?key=8111&format=pdf. Specifically, the PJM Wholesale rate has declined from approximately $0.08/kWh in 2008 to approximately $0.05/kWh in 2016.

("PJM") for delivery year 2022-2023 to significantly alter Ohio's SSO supply auction process for its own benefits. The Office of the Ohio Consumers' Counsel ("OCC") opposes the proposals by Energy Harbor because its proposals are unnecessary, unproven, and would increase the costs of electricity for many Ohioans.

OCC recognizes the important role of a fully functioning competitive market in lowering the cost of standard offer electricity service and bringing innovations to all Ohioans.[2] OCC supports the directives of the Public Utilities Commission of Ohio ("PUCO") in adopting a limited and focused approach and in maintaining service reliability and competitively-priced electric service for all Ohioans. [3] OCC also recognizes the Staff's Proposal and Recommendation filed on March 13, 2020 as the right step in effecting the PUCO's directives.[4]

II. COMMENTS

A. To protect consumers, the PUCO should adopt a limited and focused approach in remedying the temporary unavailability of PJM capacity costs in forthcoming SSO supply auctions.

The PUCO amended the SSO supply auctions of Duke in July 2019 and February 2020.[5] In its February 13, 2020 Entry approving the modification of Duke's SSO auction, the PUCO also directed the Staff to "file a proposal for a modified product which contains capacity flow-through provisions."[6] In that entry, the PUCO further affirmed that the uncertainty created by the

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[2] *See,* for example, a recent study titled "Update on Electricity Customer Choice In Ohio: Competition Continues to Outperform Traditional Monopoly Regulation" by several faculties of Cleveland State University and Ohio State University at https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2620&context=urban_facpub.

[3] *In re Application of Duke Energy Ohio, Inc.,* Case No. 17-1263-EL-SSO, Entry (July 31, 2019); Entry (Feb. 13, 2020).

[4] *See* Staff Proposal and Recommendation in Case No. 16-0776-EL-UNC et al. (Mar. 13, 2020) (the "Staff Proposal").

[5] *See In re Application of Duke Energy Ohio, Inc.,* Case No. 17-1263-EL-SSO, Entry (Feb. 13, 2020).

[6] *Id.*

lack of PJM BRA capacity prices "could have significant effects on the auction process, including limiting participation and altering bidding strategies."[7]

This limited and focused approach of relying on a capacity cost flow-through and true-up mechanism, as exemplified in the PUCO entry, is reasonable. There is no evidence presented in this proceeding that would suggest the PUCO should depart from this policy of relying on a capacity cost flow-through rate mechanism.

As it stands now, PJM is likely to resume its Base Residual Auction in early 2021, and the PJM capacity costs to the suppliers for delivery year 2022/2023 and later years will be established and available after the PJM auctions. Specifically, PJM will be filing a revised compliance filing with the Federal Energy Regulatory Commission ("FERC") on June 1, 2020, and the first BRA is currently scheduled to be held eight months after that date. At the same time, the next two rounds of SSO auction for Ohio utilities in Ohio are scheduled in late 2020 and early 2021 (September 2020 and February 2021 for Duke, October 2020 and January 2021 for FirstEnergy, and November 2020 and March 2021 for Ohio Power).[8] The BRA capacity clearing prices are currently known for the 2021/22 delivery year. And the unavailability of PJM capacity costs for the delivery year of 2022-2023 will likely affect one or two rounds of forthcoming SSO supply auctions in Ohio. Moreover, under PJM's proposed compressed Base Residual Auction schedule, those future clearing prices will be known before winning bidders are required to supply service to SSO customers.

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[7] *Id.*

[8] *See*, for example, http://www.duke-energyohiocbp.com/portals/0/Documents/DEO_ESP_Schedule.pdf, http://www.aepohiocbp.com/assets/userFiles/file/ESP%20IV%20Auctions%20Provisional%20Schedule%2023%20JAN%202020.pdf, and https://www.firstenergycbp.com/Portals/0/FEOU_ESP_Auctions_Schedule_ESP-IV_20160426.pdf.

In the second half of 2021, the PJM capacity costs for the 2022-2023 and later delivery years would likely be available to all suppliers participating in future Ohio SSO supply auctions. There is no need to make substantial or permanent changes to previous-approved SSO supply auction processes. If the PUCO intends to permanently and substantially revise the SSO supply auctions in Ohio, the PUCO should do so in a separate proceeding with a hearing and a comprehensive and complete record before initiating any proposed major policy change.

B. The Staff's Proposal is consistent with the PUCO's policy objectives of reducing uncertainty, encouraging bidder participation, and not altering bidding strategies.

In response to the directives of the PUCO, the Staff's Proposal recommended a modified SSO auction product that contains capacity cost flow-through provisions. Specifically, Staff recommends that the PUCO direct the six major electric utilities and their auction administrators to modify the SSO auction products such that the supplier's capacity obligation is priced at $0/MW-day, and they are made whole for all future PJM-determined capacity costs through a "pass-through" charge under each utility's existing auction cost recovery mechanism for delivery year 2022/2023 through the end of each utility's current ESP.[9]

The Staff's recommendation can reduce the risk assumed by the suppliers and the risk premium that could be included in the supplier offer prices for the uncertainty associated with not knowing the 2022/2023 delivery year PJM capacity cost. This capacity cost "pass-through" provision will reduce uncertainty and likely encourage more suppliers to participate in the SSO auctions and to bid more aggressively. This would ultimately lead to lower SSO bidding price for Ohioans than otherwise would exist if bidders are unsure about the collection of PJM-imposed capacity costs. Simply stated, uncertainty adds risk and that additional risk will result in greater

[9] Staff Proposal and Recommendation at 5.

than necessary offer prices. The Staff's proposal will eliminate uncertainty regarding the capacity pricing component in SSO auction, which will result in more reasonable prices for consumers.

OCC recommends that the Staff Proposal be clarified regarding the timing of the application of the capacity cost pass-through rate mechanism. OCC is concerned that the Staff's recommendation, in its current form, is overly broad for the application of a pass-through clause. Specifically, the language in the Staff Proposal that "all procurements for the 2022/2023 delivery year and beyond, for the duration of each utility's ESP be modified to include a pass-through clause for RPM capacity costs incurred by winning suppliers" should be modified.[10] OCC recommends this pass-through clause be limited to the delivery years of 2022/2023 and possibly extended to 2023/2024 if PJM capacity cost information is not available before the SSO supplier auction. If the unavailability of PJM capacity cost information somehow continues beyond 2023/2024 and the need for a "pass-through" clause arises in the future, the PUCO can make a decision on extending the "pass-through" clause at that time. Moreover, as mentioned earlier, PJM's proposed truncated capacity auction schedule should render moot any necessary extension beyond the 2022/23 delivery years.

C. Each utility should be required to submit, within sixty days of the PUCO order in this proceeding, a modified auction timeline and all SSO auction related modifications for comments by the stakeholders and approval by the PUCO.

OCC recommends that the stakeholders have the opportunity to review and to comment on the details of the revised SSO auctions before these revisions are approved by the PUCO and implemented in the next revised SSO auctions. The revisions should include, but not be limited to, a modified auction timeline, the modified SSO auction products, the revised Master Supply

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[10] Staff Proposal and Recommendation at 7.

Agreements, and the specific “pass through” recovery mechanism for capacity costs. The customers of each utility should be allowed to fully participate in the SSO auction revision process. The comments of the stakeholders should be considered by the PUCO in approving any revision of the SSO auction. In its proposal, the Staff recognizes the importance of the participation by the suppliers regarding the modified SSO auction. It indicates that “Sufficient time must be given to auction administrators to implement the pass-through clause and to allow suppliers to understand and gain comfort with their rights and obligations under this proposal.”[11] The customers of the utilities should be afforded the same consideration.

D. Energy Harbor’s Proposal of including a long-term fixed-price capacity product for SSO auction is self-serving and costly to customers.

In its Comments, Energy Harbor recommended substituting a long-term (up to six years) fixed price capacity-only hedge product in place of the pass-through capacity charge rate mechanism proposed by the Staff. More specifically, the utility would modify its SSO supply auctions to solicit offers for capacity for delivery year 2022/2023 and the following four years, along with other tranches not previously procured due to the PJM capacity uncertainty, and suppliers would offer capacity at a fixed-price for the duration of the contract.[12] Energy Harbor further claimed that doing so would provide stability to customers by locking in low prices while not negatively affecting existing and future SSOs.[13] But this proposal is incompatible with Ohio’s competitive electric marketplace and would likely increase electricity prices paid by Ohio’s customers over an extended period of time.

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[11] *See* Staff’s Proposal at 5.

[12] *See* Comments of Energy Harbor LLC at 2-3 (April 16, 2020).

[13] *See* Comments of Energy Harbor LLC at 3.

First, as indicated by Energy Harbor, offering long-term fixed price contracts would shift some of the risk from consumers to the bidders.[14] But any such risk shifting, especially with a long-term contract, would invariably increase the costs of the supply offered in the auctions. More importantly, the increased risks associated with long-term contract would also discourage bidder participation or a more aggressive bidding strategy by bidders (meaning lower prices for customers). These outcomes contradict the policy objectives of the PUCO. A higher risk premium, less bidder participation, and less aggressive bidding would increase the bidding prices in the SSO supplier auctions, resulting in higher prices for customers. These effects on bidder participation and bidding strategy would be especially pronounced in a smaller market such as Ohio (in comparison to the full PJM footprint) or in the marketplace where at least one of the market participants is heavily subsidized.

Second, there is no truth that a four year extension in delivery years for SSO supply auctions would provide economic benefits to customers. Energy Harbor has not offered any evidence that the current market price of electricity would not be lower in the future. Neither has Energy Harbor demonstrated that the current prices of four to six-year long-term supply contracts would be lower than the future prices of long-term supply contract. The current SSO supply auctions with a combination of one-year, two-year, and three-year delivery periods have already provided certain price stability and supply reliability for customers and, at the same time, reflected the changing market prices and expectations. BRA auctions are held three years in advance of the actual delivery year. Any SSO auction that would allow offers that exceed that three-year timeframe would require bidders to guess capacity clearing prices. That additional uncertainty will result in more risk for bidders that will most likely result in greater SSO prices

[14] *Id.*

to consumers. If Energy Harbor's proposals are adopted, the SSO customers would be locked into higher electricity prices over an extended period of time. That would not be good for Ohioans.

Energy Harbor also made an alternative proposal recommending that the PUCO retain the existing full requirement product for all or a portion of SSO load with delivery from two to five years.[15] This approach is unreasonable and costly to customers and it should be rejected for the same reasons discussed above. It should be noted that the Staff Proposal did not advocate an energy-only product in the SSO supply auction. The Staff's Proposal does not propose to relieve the winning bidders' responsibility to supply the capacity as well as energy in the delivery year. The Staff's Proposal only modifies the timing of the collection of the actual capacity costs. There is no need to discuss the implementation of a bifurcated energy-only and capacity-only products as proposed by Energy Harbor.

An additional complexity is the possibility that the capacity procured under Energy Harbor's proposal would extend beyond the terms of existing ESPs. This may interfere with the development, evaluation, and approval of the next SSO plan.[16]

E. IGS/Direct's proposal of not modifying the current SSO auctions or compressing the SSO product to the timeframe of known capacity costs is unproven and does not benefit customers.

In their joint comments, IGS/Direct argued that there is no need for the PUCO to modify the SSO supply auction process. The SSO bidders should still be required to provide a full-requirement product even when the PJM capacity costs are unknown for delivery year 2022-2023

[15] *See* Comments of Energy Harbor LLC at 4-5.

[16] *See* Comments of Energy Harbor LLC at 3.

and beyond.[17] In the alternative, they suggest that the PUCO modify the SSO product to "compress the SSO product to the timeframe that capacity prices are known."[18]

The PUCO should not adopt either approach advocated by IGS/Direct. As discussed earlier, the SSO bidder's risk and required risk premium in its bid price will increase if the SSO bidder is required to provide a full-requirement product without knowing the capacity costs decided in the PJM market. This will raise offer prices, discourage bidder participation, and inhibit competitive bidding strategies in the SSO supply auction. That means higher prices for customers.

In terms of compressing the SSO product to the timeframe capacity costs are known, it may not work because the SSO product could be reduced to only one-year (2021-2022) delivery product if the SSO auction is held in early 2021. The intended benefits of a diversified supply portfolio with different delivery years would be lost. Bidder participation may also be adversely affected as some suppliers will require a steady cash flow associated with a two-year or three-year supply contracts. Also, as opposed to shortening the SSO auction delivery periods, the Staff's proposal for a capacity cost flow-through and true-up mechanism will better serve reliability needs by making sure there are winning bidder commitments to deliver service to consumers up to three years out.

F. FirstEnergy's proposal of using a non-zero "proxy price" provides no benefits to customers.

In its comments, FirstEnergy recommended the use of a non-zero "proxy price" (instead of a $0/MW-day capacity prices proposed in the Staff's Proposal) in the SSO supply auction. FirstEnergy proposed a non-zero capacity costs based on 90% of the average market clearing

[17] *See* Joint Comments of IGS and Direct Energy at 3 (April 16, 2020).

[18] *Id.*

price for the past two years.[19] FirstEnergy also claimed certain benefits associated with revenue collection, carrying costs savings, and cost allocation advantages associated with a non-zero capacity cost.[20]

But FirstEnergy did not explain how where these market clearing prices were derived or how the average market clearing prices were calculated. The PUCO should not attempt to guess what future capacity prices might be. It is sounder and simpler to use a zero capacity cost as a placeholder and for the bidder to understand and assess its risk (or no risk) to participate in an SSO supply auction. And, as mentioned earlier, under PJM's plan to compress future BRAs, actual capacity pricing results will be known to the PUCO and winning bidders prior to the Ohio utilities' delivery-year obligation to furnish service to consumers. So, under the Staff's plan, a full requirements product that includes an actual capacity clearing price will be supplied to SSO customers for that future delivery period. FirstEnergy's recommendation will only introduce unnecessary and unwanted complexity in the SSO supply auction and potentially additional unnecessary costs to consumers. In addition, FirstEnergy also claimed that both the zero and non-zero "proxy price" approaches result in customers paying the eventual actual PJM capacity costs charged to SSO suppliers.[21] So there is no proven benefits to justify the additional complexity of using a non-zero "proxy price" for capacity delivered in future years.

III. CONCLUSION

OCC supports the directives of the PUCO is adopting a limited and focused approach in addressing the uncertainty caused by the delay of the PJM Base Residual Auction to early 2021. The capacity charge "pass-through" rate mechanism proposed by the Staff will reduce

[19] *See* Comments of FirstEnergy at 2 (May 8, 2020).

[20] *See* Comments of FirstEnergy at 2-5.

[21] *See* Comments of FirstEnergy at 3.

uncertainty and risk and will likely encourage more suppliers to participate in the SSO auctions and to competitively bid to provide the lowest price for customers. This is a good first step in maintaining the benefits of a competitive electricity market in Ohio in response to the actions (or inactions) at the federal level and PJM. The PUCO should adopt the Staff Proposal as well as certain modifications and clarifications suggested in these reply comments.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission, this 29th day of May 2020.

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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