

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Procurement of)	
Standard Service Offer Generation)	Case No. 17-2391-EL-UNC
for Customers of Ohio Power)	
Company)	

In the Matter of the Procurement of)	
Standard Service Offer Generation)	Case No. 17-0957-EL-UNC
for Customers of the Dayton Power)	
and Light Company)	

In the Matter of the Procurement of)	
Standard Service Offer Generation)	Case No. 18-6000-EL-UNC
for Customers of Duke Energy Ohio,)	
Inc.)	

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

**ENERGY HARBOR LLC’S MEMORANDUM CONTRA THE APPLICATION FOR
REHEARING BY THE OFFICE OF OHIO CONSUMERS’ COUNSEL, RETAIL
ENERGY SUPPLY ASSOCIATION, DIRECT ENERGY, LLC, DIRECT ENERGY
BUSINESS, LLC AND INTERSTATE GAS SUPPLY INC.**

I. INTRODUCTION

The Commission should deny the applications for rehearing filed by various parties.¹ The Finding and Order issued by the Public Utilities Commission of Ohio (“Commission”) in this

¹ The Office of the Ohio Consumers’ Counsel (“OCC”), and Retail Energy Supply Association/Direct Energy, LLC/Direct Energy Business, LLC/Interstate Gas Supply, Inc. (“Supplier Group”) (collectively, the “Rehearing Applicants”). The electric distribution utilities (“EDUs”) also sought rehearing under the Order, but the issues relating to each of their specific electric security plans are beyond the scope of Energy Harbor LLC’s (“Energy Harbor”) original proposal. As such, Energy Harbor will not address those issues here or specifically oppose their applications for rehearing.

docket on July 15, 2020 (“Order”) is reasonable to address an urgent problem created – not by this Commission – but by the Federal Energy Regulatory Commission’s (“FERC”) order issued on July 25, 2019, delaying upcoming PJM auctions (“FERC Order”).

The FERC Order has generated extraordinary uncertainty surrounding, among other things, the retail competitive bidding process associated with the standard service offer (“SSO”) development of the forward cost of capacity. In response to this uncertainty, numerous electric distribution utilities (“EDUs”) in Ohio petitioned this Commission seeking guidance and/or approval to modify their existing SSO auction processes.² With numerous stakeholders clamoring for Commission input, the Commission solicited feedback from Staff and other interested parties, including Energy Harbor LLC (“Energy Harbor”), concerning how upcoming SSO auctions should be conducted in light of the uncertainty created by the FERC Order. While some parties have advocated a more laissez faire approach, believing the problem will solve itself, the Commission has rightfully refused to sit on its hands and do nothing. Energy Harbor supports the Commission’s proactive approach to address the uncertainty created by the FERC.

Although Energy Harbor supports the Order and the denial of the applications for rehearing, Energy Harbor’s support for the Order is not intended to violate or otherwise infringe on the rights of EDUs or the Commission. With numerous EDUs arguing that the Order contravenes various statutory rights of EDUs, Energy Harbor does not take any position with respect to whether the Order is consistent with or in violation of Ohio law. Accordingly, Energy

² See, e.g., *In the Matter of the Procurement of Standard Generation for Customers of The Dayton Power and Light Company*, Case No. 17-957-EL-UNC, Application of The Dayton Power and Light Company (February 7, 2020); *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc., et al.*, Case No. 18-6000-EL-UNC *et al.*, Duke Energy Ohio, Inc.’s Notice of Federal Energy Regulatory Commission Order Directing PJM Interconnection, L.L.C. to Establish a New Auction Schedule for the 2019 Base Residual Auction and Request for Guidance Regarding Whether an Amendment to Duke Energy Ohio, Inc.’s Upcoming Standard Service Offer Auction Schedule Should Occur (January 23, 2020); *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Power Company*, Case No. 17-2391-EL-UNC, Ohio Power Company’s Motion to Adjust SSO Auctions (August 7, 2020).

Harbor has not addressed or otherwise responded to arguments that the Order violates statutory or administrative rules under Ohio law. In short, Energy Harbor supports the Order and the implementation of the Proposal (defined below) to the fullest extent permissible under Ohio law.

Energy Harbor supports the Order because it accomplishes two main goals that Energy Harbor champions. First, the Order does not appear to adversely impact the financial situation of any Ohio EDU, any existing auction result, or Ohio's competitive market more generally. Energy Harbor supports cost recovery for the EDUs to conduct these dual auctions and applauds the Commission's continued support of the competitive market. Second, the Commission made every possible effort to minimize costs for non-shopping customers amidst the pricing uncertainty created by the FERC Order. As explained more below, the Order creates an alternative proposal with dual auctions to determine if today's low prices could potentially provide benefits to customers in the long-term. If the capacity-only auction creates higher prices or does not provide benefits to customers, then that auction result can simply be rejected in favor of the traditional full requirements product bid. No party can possibly be harmed by this alternative proposal, since at worst it will provide the Commission with valuable information about the state of Ohio's competitive market. Energy Harbor supports the Commission's decision to conduct this dual auction without exposing any party to undue risk.

As set forth in greater detail below, the Order is reasonable and enormously beneficial to Ohio customers as it provides much needed rate stability to customers by taking action to lock-in historically low prices and by insulating customers from the volatility and risk created by the FERC Order. Therefore, the Order should be reaffirmed, and the Proposal should be implemented to the fullest extent permitted by Ohio law.

II. ARGUMENT

Some protest that the Order adds unnecessary complexity and uncertainty to an already precarious situation and imposes an undue risk on suppliers and EDUs. Before setting forth these arguments in more detail, a brief description of the Order, specifically the Proposal (defined below) adopted by the Commission in the Order, is warranted.

The Order directed each EDU to modify its SSO procurement auction by submitting two separate plans for Commission and stakeholder review and input: 1) a plan to change the current auction scheduled for Fall 2020 and Spring 2021 to substitute a 12-month product for the current, planned products, and 2) a plan for dual auctions, to be run simultaneously, for a period of four years beginning with the June 2022 DY, whereby one auction is held for a full requirements product with a proxy price for capacity (using the June 2021 capacity price) subject to true-up and a separate auction is held for (i) an energy-only product and (ii) a capacity-only hedge product where capacity will be hedged at a fixed price as determined by the bidding supplier (the “Proposal”).³

The Commission explained that the dual auction method will facilitate transparent pricing while also affording the Commission flexibility to select which auction result, if any, is most favorable to Ohio customers.⁴ Most importantly, the Commission determined that the Proposal provided critical rate stability to customers by locking-in historically low prices, thereby insulating customers from the unpredictable vicissitudes of the competitive market (especially given the pricing uncertainty created by FERC Order).⁵

³ See Order, ¶ 35.

⁴ *Id.* at ¶ 36.

⁵ *Id.* at ¶ 37.

OCC opposes the dual auction concept, arguing that it “introduces unnecessary uncertainty into the process” because it requires bidders to identify a capacity price for four years into the future when such costs are entirely unknown.⁶ Given this unknown and given the historic volatility in capacity prices, OCC argues that customers will end up paying higher prices because bidders will increase their bids to account for the heightened uncertainty.⁷

Rehearing should be denied on this point because the uncertainty has been created by FERC, not the Commission. The Commission is making the best of a bad situation by running an alternative procurement with two different auction processes in order to minimize prices to customers, foster greater pricing transparency, and provide flexibility in selecting the best possible option for customers.

Nevertheless, OCC speculates, again without any proof or evidentiary support, that the uncertainty created by the FERC Order will simply resolve itself such that a dual action approach will not be necessary in future.⁸ Instead of advocating for a more proactive approach to ensure rate stability for customers amidst the pricing uncertainty, some prefer to roll the dice by using a zero-proxy capacity price such that customers will ultimately bear the risk of any potential market volatility as a result of the FERC Order.⁹ The Commission should disfavor any proposal that exposes Ohio customers to potential rate shock and market volatility, especially during an unprecedented economic and public health crisis. Indeed, it would be unreasonable for the Commission to simply turn a blind eye to the problem, hoping that it will fix itself.

⁶ OCC AFR, p. 9.

⁷ *Id.*

⁸ *Id.* at 9-10.

⁹ OCC AFR, p. 9.

In reality, the concept of the dual auction in the Proposal provides essential rate stability at a time when stability is desperately needed, while also shifting the risks of market volatility away from customers to suppliers. And it does so by giving the Commission the flexibility to select from (or completely reject) different bid product offerings, the components of which will be transparent for all to see and compare.

The Supplier Group largely dismisses the uncertainty caused by the FERC Order, claiming that while “current market conditions have rendered future capacity prices less certain, [] uncertainty is inherent in markets.”¹⁰ While it is certainly correct that markets move over time, this has nothing to do with how to establish non-shopping prices in this extraordinary circumstance. The Commission’s dual auction strategy is a reasonable strategy to protect customers, EDUs, and the competitive market participants in SSO auctions.

OCC also criticizes the Order by alleging that “[t]here is virtually no evidence that Ohio’s SSO auction process needs to be overhauled.”¹¹ But OCC ignores the material events giving rise to the Order. If the existing SSO auction process did not need significant modification as OCC contends, why did several EDUs – *on their own initiative* – petition for Commission approval to modify their SSO auction processes in response to the uncertainty created by the FERC Order?¹² The Commission did not issue the Order simply because it desired to “radically change” the SSO

¹⁰ Supplier Group AFR, p. 11.

¹¹ OCC AFR, p. 6.

¹² See, e.g., *In the Matter of the Procurement of Standard Generation for Customers of The Dayton Power and Light Company*, Case No. 17-957-EL-UNC, Application of The Dayton Power and Light Company (February 7, 2020); *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc., et al.*, Case No. 18-6000-EL-UNC *et al.*, Duke Energy Ohio, Inc.’s Notice of Federal Energy Regulatory Commission Order Directing PJM Interconnection, L.L.C. to Establish a New Auction Schedule for the 2019 Base Residual Auction and Request for Guidance Regarding Whether an Amendment to Duke Energy Ohio, Inc.’s Upcoming Standard Service Offer Auction Schedule Should Occur (January 23, 2020).

auction process as OCC suggests.¹³ Instead, the pricing uncertainty caused by the FERC Order forced the Commission to act. The Commission appropriately decided not to stand idly by while individual EDUs separately sought approval (in different dockets) to modify SSO auction procedures, especially where such approvals would have a direct impact on both Ohio consumers and suppliers participating in the competitive retail market. Indeed, the Commission recognized that “such uncertainty could have significant effects on the auction process, including limiting participation and altering bidding strategies.”¹⁴ Consequently, the Commission ordered Staff to file a proposal that would mitigate the potential impacts of the uncertainty, which, in turn, prompted interested parties to file comments and/or alternative proposals in this docket for Commission consideration.¹⁵ The Commission then issued the Order, wherein it summarized and analyzed stakeholder comments and proposals before establishing the general parameters for how SSO auction processes should work in the future.

Curiously, OCC overlooks the foregoing events when criticizing the Commission’s justification for modifying SSO auction processes.¹⁶ In particular, OCC objected to the Commission’s reference to locking in historically low wholesale energy rates as a basis for modifying SSO auction procedures.¹⁷ OCC posits, “there is no factual basis for the PUCO’s conclusion that low wholesale prices are a new development” that would warrant modification of a prior Commission order.¹⁸ OCC is mistaken.

¹³ OCC AFR, p. 6.

¹⁴ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service, et al.*, Case No. 17-1263-EL-SSO, *et al.*, Entry (February 13, 2020), ¶ 8.

¹⁵ *Id.*; Order, ¶¶ 4-12.

¹⁶ OCC AFR, p. 7.

¹⁷ *Id.*

¹⁸ *Id.*

As a factual matter, the Order did not justify modification of SSO auction processes solely because of historically low wholesale prices as OCC misleadingly portrays. Instead, the Commission explicitly stated that it needed to modify the approved SSO auction processes for *two* main reasons: (1) low current wholesale market energy prices, *and* (2) FERC's Order created significant uncertainty regarding when and how PJM will conduct its BRAs in the future. The Commission explained:

FERC's recent actions, and appeals from those actions, have created significant uncertainty regarding when and how PJM will conduct base residual auctions in the future, particularly with respect to the treatment of generation which is used to supply standard service offers in retail choice states. **This uncertainty, in conjunction with the low wholesale market energy prices the Commission has observed in recent auctions as documented in auction reports filed in these cases, has changed the circumstances under which the EDUs' ESPs were originally approved.** Therefore, the Commission determines that it is reasonable to modify the approved SSO auction processes to mitigate the possible significant effects caused by the uncertainty surrounding PJM's BRA.¹⁹

The principal event precipitating the issuance of the Order (i.e., the uncertainty created by the FERC Order) is well documented, well known to all stakeholders, and cannot be reasonably disputed. The Commission has been put in an untenable position where numerous EDUs are understandably asking for urgent guidance and/or approval for modified SSO auction processes due to events outside of the Commission (or the EDUs') control. Meanwhile, there are legitimate concerns that the uncertainty created by the FERC Order will potentially expose customers to significant rate shock and pricing volatility. The Commission is doing the best it can to address these issues in a way that both benefits and protects Ohio customers while also preserving the fundamentals of a competitive market. The Proposal accomplishes that by creating a transparent, dual auction approach that affords the Commission flexibility to select which auction result, if any,

¹⁹ Order, ¶ 34.

is most favorable to Ohio customers while simultaneously locking-in historically low prices and insulating customers from the threat of market volatility.

III. CONCLUSION

For the foregoing reasons, Energy Harbor supports the Order (and the Proposal contained therein) to the fullest extent permissible under Ohio law, and requests that the Rehearing Applicants' applications for rehearing be denied.

Respectfully submitted,

/s/ N. Trevor Alexander

N. Trevor Alexander (0080713)

Mark T. Keaney (0095318)

Kari D. Hehmeyer (0096284)

CALFEE, HALTER & GRISWOLD LLP

1200 Huntington Center

41 South High Street

Columbus, Ohio 43215

Tel: (614) 621-7774

Fax: (614) 621-0010

talexander@calfee.com

mkeaney@calfee.com

khehmeyer@calfee.com

Attorneys for Energy Harbor LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 24th day of August, 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney
One of the Attorneys for Energy Harbor LLC

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/24/2020 4:03:54 PM

in

Case No(s). 17-2391-EL-UNC, 17-0957-EL-UNC, 18-6000-EL-UNC, 16-0776-EL-UNC

Summary: Memorandum Energy Harbor LLC's Memorandum Contra the Applications for Rehearing of the Office of the Ohio Consumers' Counsel, Retail Energy Supply Association, Direct Energy, LLC, Direct Energy Business, LLC and Interstate Gas Supply Inc. electronically filed by Mr. Mark T Keaney on behalf of Energy Harbor LLC