

## 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

### ENTRY

Entered in the Journal on October 9, 2020

{¶ 1} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy); the Dayton Power and Light Company (DP&L); Ohio Power Company d/b/a/ AEP Ohio (AEP Ohio); and Duke Energy Ohio, Inc. (Duke) each qualify as an electric utility as defined by R.C. 4928.01(A)(11) and as an electric distribution utility (EDU) as defined by R.C. 4928.01(A)(6).

{¶ 2} 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. The SSO functions to make generation supply available to customers that are not receiving this supply from a Competitive Retail Electric Services provider and

is sometimes referred to as default supply. The Commission has approved the above EDUs' electric security plans (ESP), each of which implemented a competitive auction-based SSO format, as well as a competitive bid procurement process for the EDUs' auctions, to procure generation supply for customers of each EDU for a certain period of time. *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016); *In re Dayton Power & Light Co.*, Case No. 16-395-EL-SSO, Opinion and Order (Oct. 20, 2017); *In re The Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, et al., Proposed Revised Tariffs (Nov. 26, 2019) *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al., Opinion and Order (Apr. 25, 2018); and *In re Duke Energy Ohio, Inc.*, Case. No. 17-1263-EL-SSO, et al., Opinion and Order (Dec. 19, 2018). The use of this competitive bidding process is conducive to Ohio's legal framework that is designed to ensure that all retail electric customers served by EDUs have reliable access to electric generation supply at market-based prices.

{¶ 3} 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 EDU retail competitive bidding process associated with the SSO development of the forward cost of the capacity obligation arising from the provision of SSO generation supply.

{¶ 4} 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).

{¶ 5} By Entry issued on February 13, 2020, in *In re Duke Energy Ohio, Inc.*, Case No. 17-1263-EL-SSO, et al., Entry (Feb. 13, 2020) at ¶ 8, 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 competitive bidding process to lock in historically low energy prices for the benefit of Ohio retail electric customers.

{¶ 6} On March 13, 2020, Staff filed its proposal and recommendation, as directed by the Commission in its February 13, 2020 Entry.

{¶ 7} By Entry issued on April 6, 2020, the attorney examiner invited interested stakeholders to file public comments discussing Staff's proposal and recommendation. All comments were due by April 16, 2020.

{¶ 8} On April 16, 2020, written comments were filed by Duke; Interstate Gas Supply, Inc., Direct Energy Business, LLC, and Direct Energy Services, LLC (collectively, IGS/Direct); and Energy Harbor LLC (Energy Harbor). On May 8, 2020, FirstEnergy filed its comments.

{¶ 9} On the same date, FirstEnergy filed a motion to intervene in this proceeding. On May 21, 2020, Ohio Energy Group filed a motion to intervene, and, on May 29, 2020, Ohio Consumers' Counsel (OCC) filed a motion to intervene. No memoranda contra were filed in response to these motions. The Commission granted these motions for intervention in its July 15, 2020 Finding and Order.

{¶ 10} By Entry issued on May 15, 2020, the attorney examiner invited interested stakeholders to file reply comments and sur-reply comments in response to the comments filed regarding Staff's proposal and recommendation and specifically requested that commenters discuss questions posed in the Entry about Energy Harbor's proposals. All reply comments and sur-reply comments were due by May 29, 2020, and June 5, 2020, respectively.

{¶ 11} On May 29, 2020, written reply comments were filed by AEP Ohio, Duke, OCC, IGS/Direct, and FirstEnergy.

{¶ 12} Due to the Commission's offices being closed from June 1, 2020, through June 5, 2020, filing deadlines occurring while the offices were closed were extended in accordance with R.C. 1.14.

{¶ 13} Sur-reply comments were filed on June 8, 2020, by AEP Ohio, FirstEnergy, IGS/Direct, and Exelon Generation Company, LLC.

{¶ 14} On July 15, 2020, the Commission issued its Finding and Order directing each EDU to modify its SSO procurement auction in the manner described in the order. Among other directives, in Paragraph 35(b), the Commission directed the EDUs to file their dual auction plans within 90 days of the July 15, 2020 Finding and Order, or until October 13, 2020.

{¶ 15} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 16} On August 14, 2020, applications for rehearing were filed by OCC, FirstEnergy, Duke, DP&L, and AEP Ohio. On the same date, Retail Energy Supply Association (RESA) filed a motion for leave to enter appearance on rehearing. On August 17, 2020, IGS/Direct and RESA filed a joint application for rehearing and also filed a joint motion for waiver of Ohio Adm.Code 4901-1-02(D)(4) to perfect filing of the application for rehearing.

{¶ 17} On August 24, 2020, memoranda contra the applications for rehearing were filed by Industrial Energy Users-Ohio (IEU-Ohio) and Energy Harbor.

{¶ 18} By Entry on Rehearing issued September 9, 2020, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing filed by OCC, FirstEnergy, Duke, DP&L, and AEP Ohio. IGS/Direct and RESA's joint

motion for waiver of Ohio Adm.Code 4901-1-02(D)(4) was denied, leaving RESA's motion for leave to enter appearance for rehearing moot.

{¶ 19} On October 8, 2020, AEP Ohio, Duke, FirstEnergy, and DP&L filed a joint motion for extension to file their dual auction plans and request for expedited ruling. In support of their motion, the EDUs note that a substantive ruling on the assignments of error submitted in the applications for rehearing has yet to be issued by the Commission. The EDUs argue that such a decision will greatly assist the EDUs in more fully understanding the Finding and Order and in developing dual auction plans in the best interests of their customers. To give the Commission time to rule on the pending applications as well as provide the EDUs sufficient time to formulate their plans in response to the Commission decision, the EDUs request that the Commission extend the deadline for submitting the dual auction plans by 30 days, or until November 12, 2020. The EDUs also argue that the uncertainty surrounding PJM's BRA that prompted the Finding and Order may soon resolve itself, considering the EDUs have heard that FERC is expected to rule on the scheduling of the next BRA in the next few weeks. Although the EDUs request an expedited ruling, counsel is unable to certify whether any party opposes an expedited ruling.

{¶ 20} Pursuant to R.C. 4903.10(B), filing an application for rehearing "shall not excuse any person from complying with the order, or operate to stay or postpone the enforcement thereof, without a special order of the commission." R.C. 4903.10(B). Upon review of the EDU's joint motion, the attorney examiner finds the EDUs request for an extension to file their dual auction plans in accordance with the July 15, 2020 Finding and Order's directive in Paragraph 35(b) reasonable and grants the motion, though the attorney examiner believes the extension timeline presented should be slightly altered. First, however, the attorney examiner notes that, even if a ruling by FERC on the compliance filings in the foregoing case is imminent, there is no guarantee that the implementation of such decision will not be significantly delayed by potential appeals. Nevertheless, to provide ample time for the Commission to issue its substantive ruling on the applications for rehearing and to give EDUs sufficient time to formulate their plans in response, the

attorney examiner directs the EDUs to file their dual auction plans within 14 days of the Commission issuing its Second Entry on Rehearing in this matter.

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That AEP Ohio, Duke, FirstEnergy, and DP&L's joint motion for an extension to file their dual auction plans in accordance with the July 15, 2020 Finding and Order's directive in Paragraph 35(b) be granted and that the EDUs file their dual auction plans within 14 days of the Commission issuing its Second Entry on Rehearing in this matter. It is further,

{¶ 23} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Matthew J. Sandor

By: Matthew J. Sandor  
Attorney Examiner

GAP/hac

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Summary: Attorney Examiner Entry ordering that AEP Ohio, Duke, FirstEnergy, and DP&L's joint motion for an extension to file their dual auction plans in accordance with the July 15, 2020 Finding and Order's directive in Paragraph 35(b) be granted and that the EDUs file their dual auction plans within 14 days of the Commission issuing its Second Entry on Rehearing in this matter electronically filed by Heather A Chilcote on behalf of Matthew Sandor, Attorney Examiner, Public Utilities Commission of Ohio