

**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 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

**INITIAL COMMENTS OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

Matthew R. Pritchard (Reg. No. 0088070)
(Counsel of Record)
Bryce A. McKenney (Reg. No. 0088203)
Avery L. Walke (Reg. No. 102682)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 719-2842
mritchard@mcneeslaw.com
bmckenney@mcneeslaw.com
awalke@mcneeslaw.com
(willing to accept service via email)

January 24, 2023

**COUNSEL FOR THE RETAIL ENERGY SUPPLY
ASSOCIATION**

**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 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

**INITIAL COMMENTS OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

The Public Utilities Commission of Ohio (“Commission”) is considering in this docket whether it should reshape the structure of standard service offer (“SSO”) auctions utilized by Ohio’s electric distribution utilities (“EDU”) to provide default retail electric generation service options under their electric security plans (“ESP”). The Commission’s stated goal is to investigate whether changes to the current SSO auction process “would help significantly reduce prices resulting from SSO auctions.”¹ To achieve this intended

¹ Entry at ¶ 4.

result, the Commission indicated it was considering the following two modifications to the SSO auction process:

1. Include six-month products in the mix of products for each auction;
2. Revise credit requirements for companies seeking to bid at the auctions in order to promote participation without unduly increasing risk.

The Retail Energy Supply Association (“RESA”) appreciates the opportunity to file these comments. At the outset, RESA agrees with the Commission that its statutory duty is to ensure “that all retail electric customers served by EDU’s have reliable access to electric generation supply at market-based prices.”² In RESA’s view, customers are already receiving retail electric generation service at market-based rates. Ohio’s competitive markets are generally working correctly and in a predictable fashion. For this reason, RESA does not believe that any significant changes to Ohio’s overall market structure are warranted. However, that is not to say that the Commission should never consider changes to the SSO auction process or SSO product. RESA and other suppliers have themselves proposed changes over the years to enhance the competitive market and SSO auction product in line with the Commission’s statutory obligation.³ However, any changes should be designed to ensure that ***all*** customers are receiving market-based rates, without subsidies between the SSO and competitive supply through a competitive retail electric service (“CRES”) provider. And, while it may be appropriate to conduct an

² Entry at ¶ 2 (emphasis added).

³ See, e.g., *In re Procurement of SSO Generation*, Case No. 16-776-EL-UNC, et al., Joint Comments of IGS and Direct Energy (May 29, 2020) (regarding the Commission’s proposal to direct Staff to modify the EDUs’ SSO auction product in response to FERC and PJM cancelling the BRA for the 2022/2023 Delivery Year); *In re Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No.17-1263-EL-SSO, Initial Brief of RESA (Sept. 11, 2018) (arguing that the Commission should not subsidize the SSO rate); *In re Ohio Power Co. for Authority to Establish a Standard Service Offer*, Case No. 16-1852-EL-SSO, Joint Post-Hearing Brief of RESA and IGS (Nov. 30, 2017).

investigation in this case, any changes to the SSO auctions process should only be adopted in an SSO proceeding.

As to the two items the Commission is investigating in this proceeding, RESA does not support an asymmetrical reduction in credit requirements for some market participants. The Commission should not, and indeed cannot, apply asymmetrical requirements to reduce the costs of the SSO product while furthering its mission of ensuring that all retail electric customers have access to market-based rates. Subsidized products distort the competitive market. Moreover, failing to appropriately assign risk to riskier suppliers ultimately means that customers have to underwrite 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.

Additionally, RESA does not support the Commission adopting any changes to the SSO auction product in this proceeding, such as the 6-month auction product. However, the Commission should not preclude parties from proposing changes designed to enhance competitive retail electric markets in SSO proceedings.

I. COMMENTS

A. Any modifications to the SSO auction process should be made in an SSO proceeding.

Ohio law requires the Commission to implement SSO generation supply as part of an SSO proceeding under R.C. 4928.142 or 4928.143. While the Commission can investigate changes in this docket, it should only implement any changes as part of an SSO proceeding.

Ohio law requires an EDU to provide an SSO in the form of a market rate offer (“MRO”) under R.C. 4928.142 or an ESP under R.C. 4928.143. Both of these sections

require the Commission to adopt rules regarding their implementation, which the Commission did in Chapter 4901:1-35 of the Ohio Administrative Code. While these statutes and rules permit the Commission to adopt a competitive auction process to supply retail electric generation service to customers served under the SSO, there are a number of procedural and substantive requirements that must be satisfied before the Commission can invoke its statutory authority.

At the outset, R.C. 4928.141 mandates that it hold a hearing on any filing under R.C. 4928.142 (MRO process) or R.C. 4928.143 (ESP process). The Commission, however, has only initiated a comment process. Moreover, both the MRO and ESP each require a number of additional elements be met before changes to the SSO could be adopted.

In the MRO context, the SSO auction process must be included in the EDU's application and that process must conform to the Commission's rules.⁴ The Commission must make certain findings with respect to transmission service and with respect to the availability of market data,⁵ and these findings must occur by Commission order 90 days after the filing of the MRO application. The Commission's rules also require that each aspect of the SSO auction plan be fully explained by the EDU and supported by testimony.⁶ The SSO auction plan must also ensure an "open, fair, and transparent competitive solicitation that is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code."⁷ The SSO

⁴ R.C. 4928.142(B).

⁵ R.C. 4928.142(B)(1)-(3).

⁶ Rule 4901:1-35-03(B)(2)(a), O.A.C.

⁷ Rule 4901:1-35-03(B)(2)(c), O.A.C.

auction plan must be found to conform to the corporate separation requirements in R.C. 4928.17 and Chapter 4901:1-37, O.A.C.⁸

An SSO in the form of an ESP also has a number of requirements that must be found to be satisfied. Before it can approve an ESP, the Commission must conclude, based on the record evidence, that an ESP is more favorable than an MRO.⁹ Like the MRO process, the Commission's rules require each aspect of an ESP to be fully explained by the EDU and supported by testimony.¹⁰ The projected customer impacts must be documented, and the ESP terms must be found to be consistent with corporate separation requirements.¹¹ An ESP must also conform to Ohio's pro market-choice state policies contained in R.C. 4928.02.¹²

R.C. 4903.09 also requires the Commission to rely on record evidence when making decisions on contested issues. To satisfy the procedural and substantive requirements that must be satisfied before generation supply under an SSO can be adopted, the Commission should only order changes to the SSO procurement process as part of an SSO proceeding. The satisfaction of this requirement will have little impact on the Commission's ability to implement any SSO changes it considers in this investigative proceeding as there are two pending ESP applications, another SSO application is expected in the very near future, and the last SSO application is expected in the not-too-distant future.

⁸ Rule 4901:1-35-03(B)(3).

⁹ R.C. 4928.143(C)(1).

¹⁰ Rule 4901:1-35-03(C)(1).

¹¹ Rule 4901:1-35-03(C)(3)-(4).

¹² Rule 4901:1-35-03(C)(8).

B. RESA’s Response to the Commission’s Two Identified Potential Auction Modifications.

1. Establishing subsidized and asymmetrical credit requirements would unreasonably shift the risk of default by an SSO supplier to customers.

Revising the credit requirements for SSO suppliers would shift the risk of default from risky suppliers to customers, while also disrupting the competitive market. RESA does not support providing SSO auction participants with subsidized and asymmetrical credit requirements as compared to CRES providers.

While lowering credit requirements for SSO suppliers could attract additional suppliers to participate in the SSO auction it could also attract riskier participants and riskier bidding strategies. Significant reductions in credit requirements for riskier participants could cause problems not just from returning customers, but from any increases in market prices as there might be little incentive for such participants to hedge any amount of their forward position.

The Commission should be very cautious about encouraging riskier parties participating in SSO auctions as ultimately customers have to underwrite that additional risk. Under the current SSO auction rules, in the event there is a defaulting SSO supplier, either another existing SSO supplier steps in at the existing auction clearing price (unlikely if market prices have increased) or the defaulting load is secured through market purchases until the load can be included in a future SSO auction.¹³ The end result of could be the opposite of “significantly reduced SSO prices” as a default is more likely to

¹³ See, e.g., AEP Ohio CBP Rules at page 25:
https://aepohiocbp.com/assets/files/March%202023%20AEP%20Auction%20CBP%20Rules_13%20DEC%202022.pdf

occur if market prices increase, which would mean higher market-priced purchases being blended with the SSO auction clearing price.

It would also be anticompetitive to provide an asymmetric credit risk subsidy for SSO suppliers. The Commission should ensure that *all customers* can receive retail electric generation at competitive market-based rates. Applying asymmetric and subsidized credit requirements for SSO suppliers requires shopping customers to comparatively pay more for the same service. For these reasons, RESA encourages the Commission to reject providing asymmetrical and subsidized credit requirements to SSO suppliers.

2. The Commission should not modify the SSO auction process in this proceeding.

The Commission has historically endorsed a laddering and staggering of SSO auctions with 12, 24, and 36-month products to secure retail electric generation service for customers served under the SSO.¹⁴ These products have been tied to the PJM delivery year that begins each June 1st. As explained above, RESA does not believe the Commission should modify the EDUs' SSO products as part of this proceeding.

In RESA's view the predominant factor driving SSO auction pricing for future SSO auctions will be the then-current wholesale prices in the PJM market. This holds true for the potential 6-month auction product. Accordingly, in RESA's view, adding a 6-month product is unlikely to "significantly reduce prices," as the Commission inquired in its Entry

¹⁴ See *In re Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer*, Case No. 14-841-EL-SSO, et al., Opinion and Order (April 2, 2015) at 45-47, Second Entry on Rehearing (Mar. 21, 2018) at 6; *In re Ohio Power Co. for Authority to Establish a Standard Service Offer*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015) at 25, Fourth Entry on Rehearing (Nov. 3, 2016) at ¶ 28; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, et al., Opinion and Order (Mar. 31, 2016); *In re the Procurement of Standard Service Offer Generation [for each Ohio EDU]*, Case No. 16-776-EL-UNC, et al., Finding and Order (July 15, 2020).

soliciting these comments. In fact, the opposite could occur as products that are not tied to a PJM delivery year can face less market liquidity and impact issues such as firm transmission rights and therefore have the potential to result in additional costs and risks being reflected in bids. While RESA recognizes that holding additional auctions or including additional products in the auctions will provide the Commission with additional data points to average out in the final SSO generation price, on balance, RESA does not believe the Commission should order any changes to the EDUs' SSO auction products in this proceeding.

II. CONCLUSION

RESA appreciates the opportunity to file these comments and supports the Commission's stated intent to ensure that all customers have access to market-based rates. However, providing subsidized and asymmetric credit requirements to SSO auction participants would result in an unlawful anticompetitive outcome. Further, RESA does not believe that a 6-month auction product should be adopted by the Commission in this proceeding.

Respectfully submitted,

/s/ Matthew R. Pritchard

Matthew R. Pritchard (Reg. No. 0088070)

(Counsel of Record)

Bryce A. McKenney (Reg. No. 0088203)

Avery L. Walke (Reg. No. 102682)

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

mpritchard@mcneeslaw.com

bmckenney@mcneeslaw.com

awalke@mcneesalw.com

**COUNSEL FOR THE RETAIL ENERGY SUPPLY
ASSOCIATION**

CERTIFICATE OF SERVICE

In accordance with Ohio Adm. Code 4901-1-05, 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 of the foregoing *Initial Comments of the Retail Energy Supply Association* was sent by, or on behalf of, the undersigned counsel for RESA to the following parties of record this January 24, 2023, via electronic transmission.

/s/ Matthew R. Pritchard

Matthew R. Pritchard

Thomas Lindgren
thomas.lindgren@OhioAGO.gov

On Behalf of Staff of the PUCO

William Michael
william.michael@occ.ohio.gov

On Behalf of the OCC

Christopher Watchorn
cwatchorn@firstenergycorp.com

On Behalf of FirstEnergy

Trevor Alexander
Mark Keaney
Kari Hehmeyer
talexander@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com

On Behalf of Energy Harbor LLC

Christopher Hollon
Christopher.hollon@aes.com

On Behalf of the Dayton Power and Light Company

Michael Kurtz
Kurt Boehm
Jody Kyler Cohn
mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com

On Behalf of Ohio Energy Group

Steve Nourse
stnourse@aep.com

On Behalf of the Ohio Power Company

Mike Nugent
Joe Oliker
mnugent@igs.com
joliker@igs.com

On Behalf of IGS Energy

Mark Whitt
whitt@whitt-sturtevant.com

On Behalf of Direct Energy Business, LLC and Direct Energy Services, LLC

Rocco D'Ascenzo
Jeanne Kingery
Larisa Vaysman

rocco.dascenzo@duke-energy.com
jeanne.kingery@duke-energy.com
larisa.vaysman@duke-energy.com

On Behalf of Duke Energy Ohio, Inc.

Gretchen Petrucci
glpetrucci@vorys.com

On Behalf of Constellation Energy Generation LLC

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on
1/24/2023 4:47:17 PM**

in

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

Summary: Comments Initial Comments electronically filed by Mr. Matthew R.
Pritchard on behalf of Retail Energy Supply Association