

**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,) Case No. 16-776-EL-UNC
The Cleveland Electric Illuminating)
Company, and The Toledo Edison)
Company)**

**In the Matter of the Procurement of)
Standard Service Offer Generation for) Case No. 17-957-EL-UNC
Customers of The Dayton Power and)
Light Company)**

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

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

**CONSTELLATION ENERGY GENERATION, LLC'S
REPLY COMMENTS**

I. INTRODUCTION

Constellation Energy Generation, LLC (“Constellation”) and nearly every other entity providing comments pursuant to the Attorney Examiner’s January 3, 2023 Entry recommended that the Public Utilities Commission of Ohio (“Commission”) not adopt the two proposals identified. As Constellation indicated in its initial comments and based on its vast experience bidding in default service auctions in competitive markets across the country, including six-month products in standard service offer (“SSO”) auctions and/or revising credit requirements for companies seeking to bid at the auctions will not deliver the intended result of significantly reduced SSO prices. Constellation instead recommends two other proposals – use of customer class-based products and load bands for the SSO – as they would better assist the Commission in reaching its stated goal. Further, Constellation

recommends that the Commission utilize each electric distribution utility’s electric security plan (“ESP”) proceeding as the most effective forum to consider changes to the SSO auction process because two electric distribution utilities’ proceedings are already underway with proposed competitive bid process (“CBP”) proposals, and a third electric distribution utility is expected to file shortly. Consideration of the changes to the CBPs, in conjunction with evidence based on written testimony, will create a better record for the Commission’s evaluation, rather than generalized comments. In the event, however, that the Commission opts to consider the various proposals put forward by the other commentators in these dockets, Constellation urges the Commission to reject nearly all of them because they have been previously rejected by the Commission, would be contrary to law, are unworkable, or would not be as effective as Constellation’s proposals. Requiring greater access for bidders to more granular SSO load information is, however, a recommendation that merits further consideration.

II. ARGUMENT

A. The Commission should not adopt the two proposals put forth in the January 3, 2023 Entry.

Nine of the eleven commenters provided ample reasoning why the Commission’s two proposals should not be adopted.¹ All of the Ohio electric distribution utilities (AES Ohio, Duke Energy Ohio, Inc., the FirstEnergy Companies, and Ohio Power Company), the two auction managers that manage their auctions,² multiple suppliers with sophisticated experience in the SSO auction process (Constellation, Interstate Gas Supply, Inc. [“IGS”], Vitol Inc. [“Vitol”], and Enel Trading North America, LLC [“Enel”]), and the Retail Energy Supply Association (“RESA”) recommended

¹ As for the two other commenters, the Office of the Ohio Consumers’ Counsel (“OCC”) did not the address the two proposals and the Ohio Energy Group alone expressed support for the two proposals.

² Ohio Power Company (“AEP Ohio”) utilizes NERA, while the other EDUs utilize CRA International.

against the two proposals.³ The majority of the commenters all agree that neither of the two proposals will significantly reduce SSO auction prices. The proposed addition of six-month products is not recommended because of concerns with the impact on costs, the impact on participation, and the time of the year. For example, FirstEnergy pointed out, as Constellation pointed out in its initial comments, that additional auctions needed for six-month products will increase administrative costs, which will be ultimately passed on to customers.⁴ Further, FirstEnergy notes that there is no “certainty that these products would be attractive to bidders, causing doubt as to whether six-month products would increase bidder participation, particularly during extreme weather such as summer peaks and deep winter freeze events.”⁵ Similarly, AEP Ohio along with its auction manager state six-month products that include the winter months may ultimately result in a higher rate for SSO customers.⁶ In fact, six-month products that do not follow PJM Interconnection’s planning year model will cause additional risk and hedging costs to be factored into the bids.⁷ These are all valid reasons to not require that six-month products be incorporated into the Ohio EDUs’ SSO auctions.

Regarding lower credit requirements for bidding, that change may unintentionally result in the inclusion of bidders who are unable to withstand the risks of providing full requirements SSO. A majority of commenters, including Constellation, stated that implementation of this proposal will likely increase the risk of supplier default and raise market premiums and prices.⁸ As a matter of policy, it would not be reasonable to increase risks and therefore prices in the name of trying to

³ The Dayton Power and Light Company d/b/a AES Ohio (“AES Ohio”) comments at 2; Duke Energy Ohio, Inc. (“Duke”) comments at 2; Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively “FirstEnergy”) comments at 2-3; AEP Ohio comments at 4-5, 7; IGS comments at 1; Enel comments at 3; Vitol comments at 23-24; and RESA comments at 4.

⁴ FirstEnergy comments at 2-3.

⁵ *Id.*

⁶ AEP Ohio comments at 4.

⁷ *See, e.g.*, Constellation comments at 3; FirstEnergy comments at 3; and RESA comments at 8.

⁸ Constellation comments at 5; AES Ohio comments at 2; Duke comments at 2; FirstEnergy comments at 3; AEP Ohio comments at 7; IGS comments at 8-9; Enel comments at 12; Vitol comments at 23-24.

increase participants. Furthermore, some flexibility already exists to encourage more participation in the auctions. As AEP Ohio noted in its supplemental comments, it has the discretion to adjust the parameters surrounding the credit-based tranche cap and it made such an adjustment ahead of its March 2023 SSO auction.⁹

Finally, the Commission should not place any weight on the supportive comments filed by the Ohio Energy Group regarding the two proposals (the only commenter to support them). The widespread knowledge and expertise of numerous other commenters who participate in the SSO auction process and their opposition to both proposals outweigh Ohio Energy Group's brief statements of support.

B. The Commission should consider any modifications of the SSO auction system in the pending and upcoming ESP proceedings for each EDU.

Constellation appreciates the Commission's efforts to identify methods to decrease SSO prices. However, these "UNC" case dockets are reserved for consideration of the results of each EDU's auctions and are not the best pathway to debate and address these issues because other pending cases already include specific CBP proposals. Indeed, the purpose of these UNC dockets is not to address any modifications to the ESP process; instead, the Commission reviews the result of each EDU's auctions.

Constellation proposes the Commission utilize the pending and upcoming ESP dockets of the EDUs to address any proposed changes to the SSO auction process. AES Ohio's ESP IV proceeding is well underway.¹⁰ AEP Ohio initiated its ESP V proceeding earlier this year.¹¹ FirstEnergy will be

⁹ AEP Ohio comments at 10-12.

¹⁰ *In re Dayton Power and Lights Company d/b/a AES Ohio for Approval of its Security Plan, et al.*, Case No. 22-900-EL-SSO, et al., Entry (Jan 26, 2023) (entry extending certain procedural deadlines and acknowledging that settlement negotiations are ongoing in the proceeding).

¹¹ *In re Ohio Power Company to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, et al.*, Case No. 23-23-EL-SSO, et al., Application (Jan 6, 2023).

filing its ESP application shortly. Consideration of the CBP proposals in those dockets will allow the Commission to address the proposed CBP-related terms/conditions/bidding/contracts, the specific nuances associated with each EDU's service territory, and the customer base through the respective ESP proceeding. Addressing structural changes to the SSO auction process in each EDU's ESP proceeding will allow, in addition, for specific witness testimony and cross-examination of issues. This will allow the Commission to examine changes to each EDU's auction based on a well-developed record.

Further, Constellation does not believe that a rule docket or a generic Commission-ordered investigation (as proposed by Vitol, Enel, and AEP Ohio) is the most appropriate forum to address these changes either.¹² A statewide investigation will not take into consideration the unique nature of each EDU's customer base (e.g., one EDU may have more industrial customers than another; each EDU differs in terms of size and revenue) and will result in a generic, one-size-fits-all approach. A case that only generates general comments regarding structural changes to the SSO will not yield the best basis for a decision or the best outcome as the Commission will not have an adequately developed record to consider. Using the record in this case as an example, only 11 commenters provided comments, even after the Commission agreed to offer additional time to address the issues raised in the January 3, 2023 Entry.¹³ Even then, only AEP Ohio filed supplemental comments, and it too encouraged the Commission to consider changes to the SSO auctions outside these proceedings.¹⁴ Consequently, the most efficacious manner to develop the record needed is through the ESP proceedings where testimony and other evidence will be presented. Constellation urges the

¹² Vitol comments at 21-22, 24; Enel comments at 2-3, 16; AEP Ohio supplemental comments at 2, 5.

¹³ Entry (Jan. 30, 2023) at ¶ 5.

¹⁴ AEP Ohio supplemental comments at 2-3.

Commission to consider modifications to the SSO auctions under the auspices of each EDU's ESP proceeding.

C. Constellation opposes certain concepts proposed by commenters as they have been previously rejected by the Commission, are generally unworkable, or are contrary to the law.

Constellation opposes multiple different proposals that were included in the initial comments filed in these proceedings. If the Commission chooses to consider them at this time, it should not adopt these proposals because the Commission has previously rejected them (and nothing has changed since those denials), they are not workable solutions, or they are contrary to Ohio law.

PIPP auctions: OCC proposes that the PIPP auctions be combined with the SSO auctions.¹⁵ The Commission has repeatedly rejected OCC's proposal to combine the SSO and PIPP auctions and should do the same again here. Six months ago, in a finding and order in AES Ohio's SSO auction docket, the Commission proclaimed that OCC's "proposed solution is untenable" because "it is clear from the plain language of the statute [R.C. 4928.54] that the General Assembly intended that PIPP program loads be aggregated and procured from a competitive bidding process separate from the SSO customers."¹⁶ Then, five months ago in an entry on rehearing in Duke's SSO auction docket, the Commission once again found OCC's proposed solution "untenable."¹⁷ Finally, as recently as December 2022 and January 2023, the Commission denied OCC's applications for rehearing, which contained the same request to combine the SSO and PIPP auctions, by operation of law in FirstEnergy's SSO auction docket, AEP Ohio's SSO auction docket, and AES Ohio's SSO auction

¹⁵ OCC comments at 3.

¹⁶ *In re the Procurement of Standard Service Offer Generation for Customers of The Dayton Power and Light Company*, Case No. 17-957-EL-UNC, Finding and Order (Sept. 21, 2022), at ¶ 18 (*AES Ohio SSO Case*).

¹⁷ *In re the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 18-6000-EL-UNC, Entry on Rehearing (Oct. 5, 2022).

docket.¹⁸ In sum, the Commission has deemed OCC’s proposal meritless, and consequently denied it repeatedly. OCC has not raised any new issues in its comments filed in response to the January 3, 2023 Entry that would cause the Commission to review OCC’s proposal in a new light. Nor has the law or anything else changed that might cause the Commission to review OCC’s proposal now. Consequently, the Commission should reaffirm its prior decisions and deny this OCC proposal.

Review of “market issues”: OCC proposes that the Commission’s review include market issues including suppliers’ retail prices, “such as preventing high or unconscionable prices charged to consumers by energy marketers.”¹⁹ Constellation also opposes OCC’s proposal to engage in a review of market issues. First, such a broad review is outside the scope of the question posed by the January 3, 2023 Entry, which is focused on auction-related changes that can lower the SSO auction prices. Second, OCC’s requested broad review will not lead to tailored solutions for each EDU’s unique service territory, which would have a more direct impact on pricing. Finally, the Commission already monitors the market, addresses calls from consumers through its call center, and initiates investigations as necessary. Consequently, OCC’s proposal is neither pertinent nor necessary with regard to SSO auctions and should not be considered by the Commission.

Switching limits: Both Vitol²⁰ and Enel²¹ propose to place limitations on customer switching. Constellation opposes the switching limits suggested by both Vitol and Enel. Such arbitrary limits will harm the competitive market and are inconsistent with Ohio’s electric policy by, at a minimum,

¹⁸ *In re 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, OCC’s Application for Rehearing (Nov. 4, 2022) (denied by operation of law on Dec. 5, 2022); *In re the Procurement of Standard Service Offer Generation for Customers of Ohio Power Company*, Case No. 17-2391-EL-UNC, OCC’s Application for Rehearing (Dec. 2, 2022) (denied by operation of law on Jan. 2, 2023); and *AES Ohio SSO Case, supra*, OCC’s Application for Rehearing (Dec. 30, 2022) (denied by operation of law on Jan. 30, 2023).

¹⁹ OCC comments at 3.

²⁰ Vitol Comments at 24.

²¹ Enel Comments at 16.

not ensuring diversity of electricity supplies and suppliers, and by not giving consumers effective choices over the selection of those supplies and suppliers. *See* Ohio Revised Code (“R.C.”) 4928.02. Instead, Constellation’s proposal of migration bands (customer migrations to the SSO within a 10% band would be priced at the SSO price, blended with any load above the band priced at spot/day-ahead/real-time market prices),²² would be more effective to balance interests of SSO suppliers and customers. Further, a customer class SSO auction grouping structure, also as proposed by Constellation in its initial comments,²³ would provide additional protection. The Commission should reject Vitol’s and Enel’s proposal for switching limits as it is harmful and contrary to policy.

Standby service proposals: Vitol recommends that the utilities be required to have standby service charges.²⁴ Constellation opposes Vitol’s recommendation that the Commission require the utilities to propose standby service charges. Ohio law does not mandate that ESP applications include standby tariff proposals. Specifically, the relevant statute indicates that an ESP *may* include charges related to standby service, but does not require an EDU to do so. R.C. 4928.143(B)(2)(d). Consequently, the Commission is without jurisdiction to mandate such fees and should reject Vitol’s proposal.

Tranche caps: Enel proposes that tranche caps be implemented.²⁵ Constellation also opposes the tranche cap proposal put forth by Enel. Such caps would institute artificial limits and could make an auction less attractive to potential participants. As described above, Constellation believes its migration band and customer class SSO auction grouping structure concepts will better shield SSO customers from price fluctuations.

²² Constellation comments at 6.

²³ *Id.* at 5.

²⁴ Vitol comments at 16-20.

²⁵ Enel comments at 14.

Prohibit or limit migration via rules: Enel and Vitol propose that migration be either prohibited or restricted by implementing new rules.²⁶ Constellation opposes this proposal from Enel and Vitol as unnecessary and unworkable. In addition, the Commission recently considered and ordered tariff changes related to government aggregation migration as a result of the EDUs’ filing applications requesting to modify their respective tariffs to provide for a “minimum stay” to prevent governmental aggregators from reenrolling customers in another aggregation program after prematurely returning customers to default service.²⁷ Rule revisions should not be contemplated in these proceedings as it is outside of the scope of the limited question posed by the Attorney Examiner in the January 3, 2023 Entry.

Duke proposals: The Commission should not consider the incomplete proposals identified by Duke. Duke provided seven “options” for the Commission to consider in its comments, but none are explained with any specificity.²⁸ Consequently, these suggestions should be rejected.

D. Proposals proposed and supported by Constellation will be more efficient in reducing SSO prices.

In its initial comments, Constellation put forth two proposals. First, Constellation proposed that the Commission use a customer class grouping structure where generation service for residential, commercial, and industrial customers are procured via separate products.²⁹ Like Constellation, Vitol and Enel also agree that procuring supply for different types of SSO customers through one SSO auction process may lead to inequities.³⁰ Second, Constellation proposed that the Commission implement a requirement for protections in the winning bidders’ contract with the EDUs in the event

²⁶ Enel comments at 16; Vitol comments at 24.

²⁷ *In re the Application of Ohio Edison Company, The Cleveland Electric Illumination Company, and The Toledo Edison Company for Approval of Tariff Amendments, et al.*, Case No. 22-1127-EL-ATA, et al., Opinion and Order (Mar. 8, 2023).

²⁸ Duke comments at 3.

²⁹ Vitol and Enel have put forth similar proposals.

³⁰ Vitol comments at 4, 25-26; Enel comment at 12-13.

of larger migrations of customers from competitive supply back to default service. Constellation believes these two proposals would better assist the Commission in reaching its stated goal of significantly reducing prices resulting from SSO auctions.

Further, based on its market experience in other jurisdictions, Constellation also supports Enel's suggestion³¹ that EDUs provide SSO auction participants with greater visibility into utility hourly data and customer volumes. Constellation believes this will allow SSO suppliers to be better informed when bidding in auctions and when making hedging decisions (instead of relying on outdated data or more general data), which will have direct, positive effects on the ultimate SSO prices in auctions.

III. CONCLUSION

Nearly every commenter, including Constellation, concluded that the two changes proposed by the Commission in this proceeding will not result in any meaningful change or meet the Commission's goal. The Commission, therefore, should not adopt either of them. The most logical forum to propose structural changes to the SSO auctions and to accomplish the Commission's goal of significantly reducing prices resulting from SSO auctions is within each EDU's ESP proceeding. Under this approach, changes can be made upon evidence and a well-developed record, and that will ensure each EDU's unique service territory is taken into consideration. Proposals calling for an entire market review or Commission-ordered investigation are too broad in scope to accomplish the Commission's stated goal, and thus should be rejected. Other proposals are contrary to Ohio law, unworkable or were previously rejected. All of those other proposals should not be adopted by the Commission in these proceedings. Constellation, however, does support greater usage data and customer load information being provided to SSO suppliers. Finally, Constellation continues to

³¹ Enel comments at 14.

advocate for the establishment of customer class grouping structures and SSO migration bands to lower SSO auction prices.

Respectfully Submitted,

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Summary: Comments - Reply Comments electronically filed by Mrs. Gretchen L.
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