

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton)	
Power and Light Company d/b/a AES Ohio for)	Case No. 22-0900-EL-SSO
Approval of Its Electric Security Plan)	
In the Matter of the Application of The Dayton)	
Power and Light Company d/b/a AES Ohio for)	Case No. 22-0901-EL-ATA
Approval of Revised Tariffs)	
In the Matter of the Application of The Dayton)	
Power and Light Company d/b/a AES Ohio for)	Case No. 22-0902-EL-AAM
Approval of Accounting Authority Pursuant to)	
Ohio Rev. Code § 4905.13)	

**INITIAL BRIEF OF
CONSTELLATION ENERGY GENERATION, LLC
AND CONSTELLATION NEWENERGY, INC.**

May 26, 2023

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I. INTRODUCTION

Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (collectively “Constellation”) submit this initial brief to urge the Commission to adopt two proposals in Constellation witness Muralikrishna Indukuri’s testimony that would result in less risk and lower prices, removing cross-subsidies to create more accurate price signals, aligning AES Ohio’s (“AES”) default service with successful CBP structures in other PJM states. First, the Commission should modify AES’ auctions for SSO load so that default service is procured by class (e.g., residential and small commercial together) rather than the traditional slice-of-system approach that only Ohio uses. All other PJM states that utilize auctions to procure supply for default service do so by class which avoids cross-subsidies that negatively impact certain customers, residential customers in particular. Second, the Commission should modify AES’ Master SSO Supply Agreement to establish upper and lower thresholds on SSO supplier tranches to mitigate the risk of customer migration and provide more certainty for SSO suppliers bidding on tranches, which will translate into lower auction prices for customers.

The benefits of Constellation’s improvements to the competitive bidding process (“CBP”), including changes to the Master SSO Supply Agreement, to customers, to SSO suppliers and to the competitive markets are significant. As Constellation witness Muralikrishna Indukuri explained, implementation of the recommendation to conduct competitive procurements by class will appropriately assign the costs of serving the different classes of customers under the SSO. That will mitigate the risks that come with a slice-of-system approach that includes combining large commercial and industrial customers along with small commercial customers and residential customers. The recommended contractual mitigation threshold would further decrease risks reflected in SSO bids that result from the risk presented by customer migration, the risks which are particularly acute from aggregations and migration by large commercial and industrial customers.

(Constellation Ex. 4 at 11-14). Mr. Indukuri testified that in his view, the proposals if adopted would result in predictable and stable quantities that SSO suppliers would be able to hedge against and in turn resulting in better auction clearing prices (“ACPs”). (Tr. 498, 505-506). Additionally, providing prices by class would result in greater transparency. (*Id* at 498).

If the Commission adopts Constellation’s proposals, Ohio would no longer be the outlier of PJM states in conducting default service auctions. All Pennsylvania utilities (PECO, PPL, METED, PENELEC, PENNPWR, WEST PENN PWR and Duquesne) and Maryland utilities procure supply for default service load by class. (Constellation Ex. 4 at 19). New Jersey procures supply for residential and small commercial customers together, with large commercial and industrial customer supply being procured separately. (*Id.*) Mr. Indukuri testified that “[n]o other jurisdiction in PJM conducts a default service procurement that includes large commercial and industrial customers with residential customers as a slice of the system.” (Constellation Ex. 4 at 19). Maryland has also successfully adopted a threshold mechanism similar to what Mr. Indukuri is recommending for Ohio. (Constellation Ex. 4 at 23). Constellation’s proposals simply reflect what other state commissions have adopted and the data presented in Mr. Indukuri’s testimony shows the positive price results of holding auctions by class. (Constellation Ex. 4 at Fig. 3).

The record exists in this proceeding to allow the Commission to take steps to offset increasing volatile SSO prices and to protect consumers. Mr. Indukuri is an experienced portfolio manager with over 18 years of experience and responsible for Constellation’s participation in competitive utility default service auctions in PJM and ISO-NE, including competitive procurements in Ohio, Pennsylvania, Delaware, New Jersey, Maryland, District of Columbia, Massachusetts, Rhode Island, Connecticut, New Hampshire and Maine. (Constellation Ex. 4 at

1-2). His testimony was thorough, and he addressed all questions raised by other parties and the Attorney Examiners during his cross-examination.

The record also shows that parties in this proceeding represent diverse industries. Those parties include representatives of large commercial and industrial customers (OEG for example), suppliers (IGS for example), residential customers (OCC) and other interested parties (OPAE and Walmart for example). There also is no dispute that the AES auction manager has the capability and ability to handle class auctions. (Constellation Exhibits 1, 2 and 3). And that manager has done class procurements in Pennsylvania and is well versed with the design of such auctions. (Tr. 525). The Commission should adopt Constellation's recommended and proven improvements to the CBP because it has the necessary evidentiary record before it.

The Commission may also adopt Constellation's proposals without concern for whether a Signatory Party will withdraw from the Stipulation as has happened in other proceedings. Constellation negotiated with the parties to the Stipulation to allow for parties to present modifications to AES' existing CBP for the Commission's consideration. (*See* Signatory Parties Ex. 1, Stipulation and Recommendation at Section III.A). And the Stipulation expressly states that any decision to modify the CBP by the Commission would not be considered a modification to the Stipulation. (*Id.*) In other words, a Signatory Party to the Stipulation cannot withdraw from the Stipulation and force a second hearing based on the Commission modifying AES' CBP process in this proceeding. The Commission can proceed to modify AES' CBP without being concerned that doing so would trigger a withdrawal by AES or any other Signatory Party.

Now is the time for the Commission to take action for the betterment of AES consumers and the competitive markets. To maintain the status quo, which often can be the easy decision, is not the right decision. The Commission should adopt Constellation's proposals as presented.

II. STANDARD OF REVIEW FOR EVALUATING CBP CHANGES

While the Stipulation in this proceeding is subject to the Commission's traditional three-prong test, the Commission's review of Constellation's proposed changes to the CBP process is subject to the Commission's determination that the changes are "just and reasonable and are consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02. (OAC 4901:1-35-06). Absent a stipulation in a proceeding proposing a SSO application, the burden of proof is on the utility to show that the proposals in the application are just and reasonable and are consistent with the policy of the state. (*Id.*) Because the Signatory Parties have agreed to allow for the presentation of modifications to the CBP, including the Master SSO Supply Agreement, for Commission consideration, the Commission can adopt those modifications so long as the record establishes the modifications are just and reasonable and consistent with the policy of the state. As discussed below, Constellation's proposals easily satisfy that criteria.

III. CONSTELLATION'S PROPOSALS WILL ACHIEVE BETTER RESULTS FOR CONSUMERS THAN THE STATUS QUO

A. The Ohio Competitive Bidding Process for Default Service can be Improved.

1. The current CBP structure has never been analyzed to ensure it presents the best outcome for consumers.

To date, the Commission has not considered modifying the slice-of-system approach used in Ohio since auctions were first used to procure default service. Each of the Commission regulated EDUs (Duke Energy, AEP Ohio, the three FirstEnergy utilities and AES), have relied upon a slice-of-system approach to procure default service for their retail customer load for many years only because it's familiar. *See e.g. In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority 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. 08-935-EL-SSO, et al., Second Opinion and Order

(March 25, 2009) at 20-21, 2009 Ohio PUC LEXIS 279. AES's CBP with a slice-of-system approach for its entire default load was initially implemented in September 2013 in Case No. 12-426-EL-SSO et al. *In re Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO et al., Opinion and Order at pg. 16 (September 4, 2013). Other than modifying auction timing due to unforeseen PJM base residual auction delays, the Commission has not considered or analyzed the use of the slice-of-system approach in Ohio as well as other improvements that can be made to the CBP.

Now is the time to analyze AES' CBP to ensure it presents the competitive structure that is in the best interests of consumers while advancing the competitive markets. The Commission set that goal in 2009 when it stated that it is **"... committed to having an open, fair, transparent and competitive solicitation which attracts a large number of qualified bidders and, therefore, assures the best deal possible for ratepayers."** *In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 08-935-EL-SSO, et al., Second Opinion and Order (March 25, 2009) at 21 (emphasis added). As discussed below, the current AES CBP structure is not in the best interests of Ohio consumers. It can and should be improved.

2. The current CBP process includes risk that can be mitigated to lower prices.

It is no surprise that SSO suppliers serving Ohio's default service load and retail suppliers serving shopping customers have risk. But as Mr. Indukuri noted, only SSO suppliers have the risk of migration in and out of the SSO:

But the thing that is unique to SSO suppliers is that customers can move in and out of SSO and the volumetric changes associated with those customer movements is a risk that is unique to SSO suppliers, which none of the CRES suppliers are exposed to.

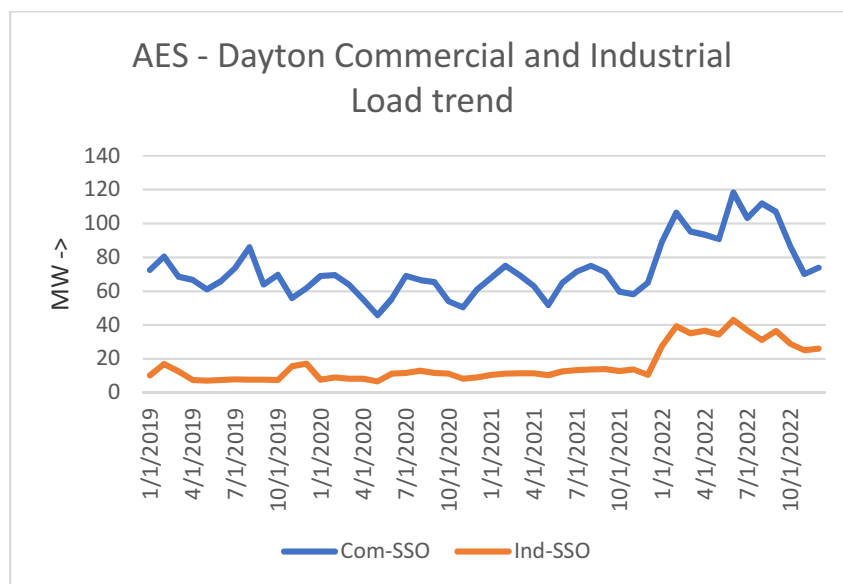
(Tr. 479). And while previously, SSO suppliers were willing to and capable of managing risks (Constellation Ex. 4 at 11), there has been unprecedented volatility both in the wholesale electric and natural gas commodity markets (Constellation Ex. 4 at 11), and realization of greater migration risk than can be effectively economically hedged.

Mr. Indukuri explained the changes in the markets in his testimony. He testified that there were multiple factors that caused the volatility in general, and in Ohio specifically. (Constellation Ex. 4 at 11). Geopolitical events and the disruption in supply chains, among other things, resulted in both high inflation and high energy prices. (*Id.*) Higher energy prices and high price volatility increased the risk (and hence the cost) for SSO suppliers serving full requirements load. (*Id.*) SSO suppliers faced further increased risks because of unprecedented customer migration (movement) to default service. (Constellation Ex. 4 at 12). Thus, the customer migration results in compounding the risk to which SSO suppliers are exposed. (*Id.*) Any actual losses or the risk of losses, and the costs to procure a greater supply of energy than what previously was believed to be necessary and procured, **“become the future cost of doing business” and are reflected in future SSO prices.** (Constellation Ex. 4 at 12). All of these factors result in higher prices for consumers on the SSO unless specific risk-mitigating actions are taken.

Mr. Indukuri also presented data in his testimony showing the shift in customers to the SSO in recent years, noting that the movement has occurred particularly in the large commercial and industrial segments. (Constellation Ex. 4 at 14). At its peak in 2022, the commercial load in AES Ohio’s service territory on the SSO was almost 150% higher than at any time over the previous three years, while the industrial load in AES Ohio’s service territory was more than 200% higher than at any time over the same period. (*Id.* at 13, 16) Figure 1, below, presented by Mr. Indukuri

illustrates the significant changes (in megawatts) by the commercial and industrial load sectors in AES Ohio's service territory over the four-year period.

FIGURE 1



(Constellation Ex. 4 at 14-15).

As a result of these migrations, SSO suppliers had to serve a significantly higher and unpredictable load than SSO suppliers had forecasted based on historical figures. (Constellation Ex. 4 at 15). SSO suppliers that purchased hedges in the forward markets based on the expected load would have been unhedged for the additional unanticipated commercial and industrial load. (*Id.*) Consequently, they would have to procure additional energy for the unanticipated load at a time when market prices were high. Under the current structure, the only way to address this risk going forward is to build in additional risk premiums that in turn raise the price for the entire slice-of-system including residential and small commercial, as well as the large commercial and industrial customer segments.

There can be no dispute that governmental aggregation and the mix of customers with very different load shapes in a slice-of-system approach increase risk premiums in Ohio's CBP process.

Although Ohio's robust aggregation activity provides additional benefits and choice to Ohio governmental entities as well their residents and businesses, it also poses greater risk to auction participants because significant load may either come onto the SSO, or leave the SSO, all at once. (Constellation Ex. 4 at 13).

The structure of default service procurements on a slice-of-system basis that includes all classes of customers is another area in which risks for serving Ohio default service load -- including the AES Ohio service territory -- are exacerbated for SSO suppliers, which ultimately results in higher prices for consumers. (*Id.*) As Mr. Indukuri noted, the load shape for commercial and industrial customers can vary significantly -- with large commercial and industrial customers having unique load shapes from any other customer even within their own customer class, adding additional risk to SSO pricing when the SSO load is procured on a slice-of-system basis for all customers, rather than by class. (*Id.*) That is because serving SSO customers on a slice-of-system basis, as opposed to by customer class, increases risks dramatically because an SSO supplier does not have any reasonable assurance as to what the overall load volume will be, or what the shape of the load will be since it could be any and every customer in the utility service territory. (Constellation Ex. 4 at 16). Estimating that information, instead of actually knowing the parameters (by separating customer classes), creates inefficiencies, risk, and additional cost -- all of which can be mitigated by implementation of the Constellation proposals. (*Id.*)

The evidence of the increased risk in Ohio's CBPs is evident from the significant decrease in SSO suppliers participating in CBPs. In recent SSO auctions, including the AES auctions, there have been fewer bidders, which means that some SSO suppliers that had been active participants in previous Ohio SSO auctions simply stayed away. (Constellation Ex. 4 at 16). In the 2019 and 2020 AES Ohio SSO auctions, there were 12 and 14 registered bidders, respectively, whereas in

the 2022 Fall AES Ohio SSO auctions, there were only nine registered bidders. (*Id.*) The number of registered bidders dropped further to six in the April 2023 AES SSO auction. (*Id.*) Figure 2 below illustrates the differences.

FIGURE 2

Auction Date	Term	Total Bidders	ACPs in (\$/MWH)
March 09, 2020	06/01/2020-05/31/2021	14	36.96
	06/01/2020-05/31/2022		40.56
March 22, 2021	06/01/2021-05/31/2022	12	47.22
March 22, 2022	06/01/2022-05/31/2023	9	75.13
April 18, 2022	06/01/2022-05/31/2023	9	122.5
November 29, 2022	06/01/2023-05/31/2024	9	113.42
April 4, 2023	06/01/2023-05/31/2024	6	83.21
	06/01/2023-05/31/2025		90.14

(Constellation Ex. 4 at 17).

Notably, other states have, like Ohio, experienced high volatility and high commodity price environments but have had greater bidder participation and lower ACPs, even when those procurements included additional products. (Constellation Ex. 4 at 17). Although there were increases in the ACPs in other PJM default service auctions, the increase in the AES ACPs during auctions conducted near the same time was substantially higher, as discussed and presented in Mr. Indukuri's testimony. (Constellation Ex. 4 at 17-18, Fig. 3). Mr. Indukuri noted that this data indicates that the risks are higher in Ohio than in these other states. (*Id.*) He also testified that the procurement structure(s) and/or contractual mitigation provisions in Pennsylvania, Maryland, and

New Jersey were a significant factor in drawing more bidder interest and in lower prices in their respective default service procurements. (*Id.*)

All of the above data and testimony from Mr. Indukuri support the Commission changing AES' CBP to mitigate risks that in turn will result in better and more transparent pricing.

3. The Commission's Minimum Stay Order will not reduce risk.

The Commission's minimum stay order issued on May 3, 2023, in Case Nos. 22-1127-EL-ATA, et al., will not address the migration risk that Constellation's proposals are addressing. (*See* Constellation Ex. 4 at 27 and Tr. 525-526). In that order, the Commission approved tariff applications by Ohio EDUs to implement "minimum stay" provisions. Mr. Indukuri addressed that order in his testimony, noting that the new tariff provisions only temporarily prevent *governmental aggregators* from re-enrolling the customers that were dropped en masse to default service. (Constellation Ex. 4 at 27). The tariff provisions provide no risk mitigation for the SSO suppliers because they do not alter the SSO suppliers' obligation to serve the customers that were dropped en masse. The tariff provisions also do not provide any risk mitigation regarding when an aggregator chooses to drop its customers to default service nor do the tariffs provide any protection in the event a new town/municipality or county chooses to aggregate their customers away from default service. (*Id.*) He further explained that AES Ohio's tariff revision, when implemented, will solely restrict aggregations from going on and off SSO supply within a 12-month period. That does not eliminate the risk for SSO suppliers associated with aggregations. (*Id.*) Mr. Indukuri also testified that aggregators can still drop customers back to the SSO when the supply term ends for the aggregation – in turn presenting a risk for suppliers. (Tr. at 526). For an SSO supplier providing default service for a product that is two years or longer, an aggregation may return its customers to default service, and later renew the aggregation to take customers off of default service – or vice versa – within that time period.

Unlike the Commission's minimum stay order, Constellation's proposals directly address the risks created through the slice-of-system auction approach as well as the risk of customer migration to and from the SSO, while preserving competitive markets and customer decisions regarding their choice of supplier. Other states use similar auction processes and threshold mechanisms, and Ohio should, as well.

4. The Commission can and should use this proceeding to improve AES' CBP.

The Commission should not turn a blind eye to the risks that are built into SSO pricing, as well as the opportunity to eliminate cross subsidies that result from using the slice-of-system approach. And as it considers whether to change AES' CBP from the status quo, the Commission should recognize that it has the legal authority in this proceeding to do so. R.C. 4928.141 (the SSO statute), directly spells out what the Commission must do with regard to SSO proceedings. That statute indicates that any changes to the SSO auction process have to occur in an SSO case. R.C. 4928.141(B) directs that when an EDU makes a filing under R.C. 4928.142 (MRO) or R.C. 4928.143 (ESP), the Commission has to hold a hearing to review the application filed and ensure that the application satisfies rules promulgated for each process. The rules the Commission has promulgated to implement R.C. 4928.141 and related statutes further indicate that material changes to a CBP can only be proposed in an ESP or MRO proceeding. Ohio Adm. Code 4901:1-35-08. It follows that any change to the auction process for an EDU has to be considered within the auspices of the proceeding initiated for its MRO or ESP filing.

With unnecessary risk premiums being built into SSO pricing, fewer suppliers bidding on AES' tranches and the continued risk of customer migration, now is the time for the Commission to take action to improve AES' CBP. As discussed below, Constellation has presented proposals

through its expert witness, Muralikrishna Indukuri, that will improve AES default service for the benefit of customers, SSO suppliers and the competitive market.

B. Constellation's Proposals Address the Issues within the Current CBP.

1. Constellation's proposals mitigate risk for suppliers and customers.

Muralikrishna Indukuri, an experienced Portfolio Manager for Constellation and an expert in portfolio management and in default service procurements across multiple states, presented two mechanisms that independently help mitigate the risks that exists today in AES' CBP, with implementation of both proposals achieving the greatest benefits. First, he recommended that AES Ohio's default service auctions be improved to remove the slice-of-system methodology and instead procure by customer class. (*Id.* at 18). In AES Ohio's service territory, natural breakpoints would be: Residential (Residential and Residential heating), Commercial (Secondary and Street Lighting) and Large Commercial and Industrial (Primary, Primary substation and High Voltage) since these classes would result in customers with similar load characteristics being grouped together for auction purposes. (Constellation Ex. 4 at 18).

Second, he recommended that AES Ohio adopt contractual provisions in the Master SSO Supply Agreement that limit the exposure to a SSO supplier to a specific peak load contribution ("PLC") increase and a specific PLC load decrease from a set baseline load level. (Constellation Ex. 4 at 23-24). He referred to the PLC load increase and decrease as an upper mitigation threshold and lower mitigation threshold, respectively, and recommended an upper mitigation threshold of five percent and a lower mitigation threshold of three percent. (*Id.* at 23). He testified that these percentages allow for natural changes in load volume, while eliminating the need for SSO suppliers to include the risk of dramatic changes in load volume in their bids. (*Id.*) The mitigation threshold could either be expressed as a percentage based on PLC values or if the tranches are all the same

size, the mitigation threshold could be converted from a percentage to a flat megawatt amount based on PLC values, as is the case in Maryland. (*Id.*)

Mr. Indukuri clarified his testimony when appearing before the Commission that the upper and lower mitigation thresholds were based on PLC values and not volumetric load. (Tr. 450-453). Mr. Indukuri testified that by using the PLC values, the thresholds would be affected only by changes in the actual customer accounts being served under SSO and the associated PLC values of those accounts, and would **not be affected by** the individual customer shape, variability due to weather, or general changes in customer usage. (Tr. 473). PLC values are known for the entire planning year by customer because those values are assigned once a year by the utility to each customer. (Tr. 474). By using the PLC values as the baseline and to measure against the thresholds, only customer migration back to the SSO or away from the SSO would trigger the thresholds, not a severe weather event like Winter Storm Elliott.

The upper and lower mitigation thresholds would be simple to implement. When conducting auctions by customer class, winning bidders' obligations would be set based on the amount of load served at the time of the auction using PLC values for the particular customer class. (Constellation Ex. 4 at 24). AES would compare the PLC values for each class to the PLC values for that class as of the auction date. If the PLC values are less than or equal to 105% of the original PLC values, then SSO suppliers would be obligated to serve the amount of their fractional load for the designated class at their SSO bid price. (*Id.* at 24 *and see* Attachment B to Constellation Ex. 4).

If the PLC value for a class is greater than 105% of its original PLC value, then the SSO suppliers would still serve the load over 105% of the original PLC value; however, rather than serving the load at the SSO bid price, the SSO supplier would settle with the utility for the load that exceeded the upper mitigation threshold at then-current PJM market prices. (*Id.*) The cost to

serve the load above the upper mitigation threshold would be calculated along with the initial SSO price, and result in a new, blended price to compare (“PTC”) that would be published and applicable to all customers in that particular class taking SSO default service. (*Id. and see* Tr. 478) Subsequently, if customers moved off of the SSO and the aggregated customer PLCs for the load being served was below the upper mitigation threshold, all of the SSO load would once again be served by the SSO supplier at the SSO bid price. (*Id.*) For billing purposes, all SSO customers within the class would share in the cost for any load served at PJM market prices, with charges reflected on bills either as two separate line items – SSO bid price and PJM market price -- or as one adjusted PTC price.

The lower mitigation threshold works in tandem with the upper mitigation threshold. Taking the lower mitigation threshold of 3%, coupled with the previously described 5% upper mitigation threshold, an SSO supplier would be obligated to provide default service at the ACP within an 8% band (5% above, 3% below). For example, if the PLC values of a class dropped by more than the 3% lower mitigation threshold to 5% below the original PLC values, then the upper mitigation threshold would be reduced by 2% to maintain the 8% band. Mr. Indukuri testified that the lower mitigation threshold allows an SSO supplier to eliminate higher-priced hedges for that extra 2% above the new 8% threshold, which may never be needed. (Constellation Ex. 4 at 25).

He further explained that the lower mitigation threshold would also mitigate supplier risk. He noted that if the volume of load on SSO is dropping, it is likely because the current market price is lower than the SSO price, meaning that SSO suppliers bought energy at a price higher than they can sell it back to the market, and actually lost money on the sale. However, being able to plan for a specific amount of load to be hedged with the mitigation threshold will lower volumetric

load risk for SSO suppliers, thereby lowering the risk calculus that is reflected in their bids and lowering the ACPs. (Constellation Ex. 4 at 25-26).

Whether acting in concert or independently, Constellation's proposals mitigate the customer migration and load shape risk that exists in Ohio. Auctions by class specific to AES Ohio will address the higher risk of shopping by large commercial and industrial customers as well as the more variable load shape of that group. Adapting the banding proposal based on customer PLC values will eliminate the risk associated with serving a material change in load from the date of the auction. Like the class auction proposal, the banding proposal will result in better prices that reflect the costs to serve SSO customers, and further operates to manage risk on a contingent event basis instead of assessing a risk premium to all customer classes, all the time, for all load served. (Constellation Ex. 4 at 25).

2. Constellation's proposals provide benefits that are in the public interest.

Mr. Indukuri also made clear at the hearing that customers will benefit from both of Constellation's proposals. He succinctly summarized the benefits in response to a question from AES counsel, stating that:

[I]n my view, they would actually result in predictable and stable kind of quantities that SSO suppliers would be able to hedge against and thereby lower – potentially lower the auction clearing prices for Ohio customers, and they also provide the prices by class. So that would result in more transparency for customers so they could make appropriate decisions in terms of who they would choose as a supplier.

(Tr. 498). He further testified that in reducing the risks that suppliers imbed in their pricing, customers would see lower prices. (Tr. 499).

Mr. Indukuri provided an additional explanation in his written direct testimony. (Constellation Ex. 4 at 20). He noted that utilizing a form of class auction would benefit AES customers in two significant ways. First, it would provide SSO bidders with greater knowledge

and therefore predictability regarding the load they would be obligated to serve, as to the potential volume and the load shape. (*Id.*) He noted that with that knowledge and predictability comes decreased risk, which translates to lower ACPs. (*Id.*) He supported this conclusion through Figure 3 in his testimony based on auctions held in Pennsylvania that utilize class auctions. (Constellation Ex. 4 at 20).¹

Mr. Indukuri testified that the second benefit of procuring SSO generation by customer class is a better and more accurate allocation of costs that simultaneously eliminates cross-subsidies among differing customer classes. (Constellation Ex. 4 at 21). Supporting the continuing evolution of the competitive electric market includes eliminating cross-subsidies and appropriately allocating costs. Mr. Indukuri testified that forcing certain customers to subsidize others does not lower total service costs, but serves only to distort the evaluations customers must make in considering their choices of supply and products – ultimately leading to inefficiency and higher total costs of service. (*Id.*) Procuring default service through class auctions would result in a price that would appropriately allocate risk to the entity that is causing that risk and a better price. (Tr. 500, 505-506).

Constellation's proposals would stimulate auction participation, as expressed by Mr. Indukuri. (Tr. 468). Adoption of the banding proposal alone would mitigate the risk of migration which would incentivize more suppliers to participate in the default service procurement auctions. (Tr. 524). In response to a question during cross-examination on whether non-generation holding bidders would refrain from bidding, Mr. Indukuri said it would be just the opposite:

¹ Because the Ohio AES auctions are full requirements versus the auctions in Pennsylvania, to make an apples-to-apples comparison, Pennsylvania ACPs would need to net out the transmission and REC prices from the ACP using FERC-approved transmission rates as published by PJM, and the REC obligation by state from <https://www.dsireusa.org/> and REC Market prices from public sources (i.e., Megawatt Daily). Doing so would further lower the auction prices in those jurisdictions. (Constellation Ex. 4 at 20 and Tr. 530).

... I can speak to this from experience and most suppliers who participate in SSO auctions are sophisticated risk managers and they always look at what is the predictability of the risk, what is the certainty around the risk, and if they can model the risk. To the extent you can provide that information, that should not discourage suppliers from participation.

And that's what I think our proposal essentially accomplishes, that it provides certainty and predictability for the SSO suppliers, thereby lowering the risk that the SSO suppliers are – I should say lowering the uncertainty around the risk that the SSO suppliers are underwriting, and so I would expect that there would be more interest, not less...

(Tr. 466).

The evidence in this proceeding shows that customers, SSO suppliers and the competitive market will benefit from Constellation's proposals. By adopting Constellation's proposals, the Commission will remove part of the risk imbedded in default auctions, resulting in increased supplier participation and ultimately lower prices for customers. As to the concern by some that suppliers will not "show up" for large commercial and industrial auctions, Mr. Indukuri testified that "... our experience of class base[d] procurements across all of the PJM states refutes the supposition that there would be less suppliers in bidding on industrial loads." (Tr. 464). The Commission should not miss this opportunity to benefit customers.

3. The Commission should adopt both of Constellation's proposals.

Constellation urges the Commission to adopt both of Constellation's proposals. Although the proposals can be adopted separately, the benefits as discussed above warrant adoption of both. As Mr. Indukuri testified, the upper and lower threshold proposal would mitigate a significant part of the migration risk that SSO suppliers face when pricing default service. (Constellation Ex. 4 at 24-25). Moreover, that mitigation would incent suppliers to participate in bids for that class of customers because the risk would be predefined. (Tr. 524). Adopting a class-based auction for default service and implementing upper and lower threshold levels can be used to provide more certainty for suppliers participating in the auctions and needed stability and market transparency

for consumers. The Commission should adopt both of these risk mitigation measures, encouraging the return of SSO suppliers that have fled Ohio because of its risks and welcoming new SSO suppliers.

C. Other States have Adopted CBPs Similar to what Constellation is Proposing in this Proceeding.

The Commission should be confident based upon empirical evidence that Constellation's proposals are both workable and beneficial. Indeed, the Commission would simply be following what other state commissions in the PJM footprint have done for years. For example, all Pennsylvania utilities (PECO, PPL, METED, PENELEC, PENNPWR, WEST PENN PWR and Duquesne) and Maryland utilities procure supply for default service load by class. (Constellation Ex. 4 at 19). New Jersey procures supply for residential and small commercial customers together, with large commercial and industrial customer supply being procured separately. (*Id.*) As Mr. Indukuri testified, no other jurisdiction in PJM conducts a default service procurement that includes large commercial and industrial customers with residential customers as a slice-of-the system. (Constellation Ex. 4 at 19). It is time for Ohio to take its place with other PJM states and usher in a new day of transparency and predictability for Ohio consumers through reforms to default service auctions.

1. Actual auction results from other states show that Ohio customers would benefit from Constellation's proposals.

Data shows that Ohio customers will benefit from Constellation's proposals. Mr. Indukuri presented data from auctions in Pennsylvania and Ohio as well as a description of the types of products in Figure 3 to his testimony, copied below.

FIGURE 3

September-December 2022 PJM Auctions						
Auction Date	State	Utility	Term	Product	ACP in \$/MWh	Notes on Product
Sep-22 Oct-22 Nov-22 Nov-22	Ohio	Duke Energy	06/1/2023-05/31/2024	Slice of System	\$ 115.75	Fixed price full requirements product that includes energy, capacity and ancillaries
		First Energy Ohio			\$ 122.30	
		AEP			\$ 119.98	
		Dayton Power and Light/AES			\$ 113.42	
Sep-22	Pennsylvania	Duquesne	12/01/2022-11/30/2023	Residential	\$ 109.31	Fixed price full requirements product that includes energy, capacity ancillaries and REC's
			12/01/2022-11/30/2024		\$ 98.71	
			12/01/2022-11/30/2023	Small C&I	\$ 113.26	
			12/01/2022-11/30/2024		\$ 100.09	
			12/01/2022-02/28/2023	Medium C&I	\$ 182.00	
Nov-22		Met-Ed	06/01/2023-05/31/2024	Residential	\$ 100.59	Fixed price full requirements product that includes energy, capacity, Transmission, ancillaries and REC's
		Penelec			\$ 94.66	
		Penn Power			\$ 100.88	
		West Penn Power			\$ 89.31	
		Met-Ed	06/01/2023-05/31/2024	Small Commercial	\$ 107.37	
		Penelec			\$ 107.98	
		Penn Power			\$ 113.33	
		West Penn Power			\$ 97.75	
Oct-22		PPL Electric Utilities	12/01/2022-11/30/2023	Residential	\$ 106.47	Fixed price full requirements product that includes energy, capacity, ancillaries and REC's
			12/01/2022-05/31/2023		\$ 129.93	
			12/01/2022-11/30/2023	Small Commercial	\$ 102.82	
			12/01/2022-05/31/2023		\$ 130.86	
Sep-22		PECO	12/01/2022-11/30/2023	Residential	\$ 100.22	Fixed price full requirements product that includes energy, capacity, ancillaries and REC's
			12/01/2022-11/30/2024		\$ 93.71	
			12/01/2022-11/30/2023		\$ 95.37	
			12/01/2022-11/30/2024	Small Commercial	\$ 94.81	

(Constellation Ex. 4 at 21).

Mr. Indukuri explained in his testimony that in order to make an apples-to-apples comparison, Pennsylvania ACPs would need to net out the transmission and REC prices from the ACP using FERC-approved transmission rates as published by PJM, and the REC obligation by state from <https://www.dsireusa.org/> and REC Market prices from public sources (i.e., Megawatt Daily). Doing so would further lower the auction prices in those jurisdictions, further increasing the difference between the Pennsylvania ACP results and AES results. But even without doing that analysis, data in Figure 3 shows the built-in risk premiums that exist in Ohio.

For example, for the AES auction held on November 22 for the delivery period of June 1, 2023 through May 31, 2024, the ACP cleared at \$113.42/MWh. Pennsylvania utility ACPs for that same period that were done by class and included RECs and transmission ranged from

\$89.31/MWh to \$100.88/MWh for residential customers and \$97.75/MWh to \$107.98/MWh for small commercial customers.

And that difference would remain regardless of whether the risk of aggregations in Ohio moving back to default service was mitigated. While Mr. Indukuri acknowledged that Pennsylvania does not have the risk of governmental aggregations (Tr. 50), his testimony was that the difference would still exist between Ohio ACPs and Pennsylvania ACPs even if the risk of aggregation migration in Ohio was controlled – the Ohio ACPs would still be higher than the Pennsylvania ACPs because of the slice-of-system construct. (Tr. 530).

2. State commission orders support a Commission adoption of Constellation’s proposals.

The Commission should adopt Constellation’s proposals, and it can look to other state commissions’ development of CBPs for support. For example, the Public Service Commission of Maryland adopted auctions by customer class for default service in April 2003, over twenty years ago. **Significantly, the Maryland Commission found that the “... resulting retail prices should be fair to all customer classes because the Settlement is also designed to avoid subsidies.”** *In re Commission’s Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service*, Case No. 8908, Order No. 78400, April 29, 2003 at 84, 2003 Md. PSC LEXIS 5.

That same order addressed the implementation of banding thresholds. (*Id.* at 85). The Maryland Commission found that the settling parties’ agreement to develop a volumetric risk mechanism will address the levels of volumetric and pricing risk to which the wholesale suppliers will be exposed. **The Maryland Commission also found that “[t]his will provide protection and flexibility to wholesale suppliers thus enabling more competitive prices, and, in turn, will benefit consumers.”** (*Id.*)

The Maryland Commission subsequently, in September 2003 and in a later phase of that same case, adopted a specific banding threshold similar to what Constellation is proposing in this proceeding. *In re. Commission's Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service*, Case No. 8908, Phase II, Order No. 78710, September 30, 2003, 2003 Md. PSC LEXIS 30. The Maryland Commission's orders support the Commission's adoption of Constellation's proposals.

IV. CONCLUSION

The last two years have starkly demonstrated that the magnitude of risks that SSO suppliers were bearing far exceeded the perceived level of those risks, and auction prices going forward will reflect that new appreciation of the full extent of the risks. Ohio electric distribution utilities have procured default service for customers for years using a slice-of-system approach. But that approach is not used by any other PJM state and for good reason. The slice-of-system approach results in certain customers subsidizing other customers when auctions aggregate large commercial and industrial load with residential load. A class auction approach can properly allocate risk premiums by class and eliminate subsidies between classes. Constellation's upper and lower mitigation threshold banding proposal will also benefit consumers because it will address levels of volumetric and pricing risk to which wholesale suppliers are exposed, providing protection and flexibility to suppliers and enabling more competitive prices. Both proposals are just and

reasonable and consistent with the policy of this state. The Commission should move from the status quo for the benefit of Ohio consumers.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 26th day of May 2023 upon all persons/entities listed below:

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