BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan	**)))))))**	**Case No. 23-23-EL-SSO**
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority	**)))))**	**Case No. 23-24-EL-AAM**

INITIAL POST-HEARING BRIEF OF CONSTELLATION ENERGY GENERATION, LLC AND CONSTELLATION NEWENERGY, INC.

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I. INTRODUCTION

Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (collectively, "Constellation") urge the Commission to adopt two changes to the competitive bidding process ("CBP") auction that will reduce risks and ultimately result in better prices for AEP Ohio's customers. These changes are necessary to send customers accurate price signals for their default service, to align Ohio's default service procurements with the industry practices of utilities in other PJM states, and to minimize and mitigate the cross-subsidization of risks across customer classes.

Ohio Power Company ("AEP Ohio") and the other signatory parties to the Joint Stipulation and Recommendation ("Stipulation") do not want the Public Utilities Commission of Ohio ("Commission") to consider the proposals in this proceeding—advocating instead that the Commission "dismiss" these issues for consideration in a separate proceeding that may never occur. But the Commission does not have authority to consider modifications to a CBP auction process outside of an ESP proceeding. *See* R.C. 4928.141. Further, the Commission can and should modify the Stipulation to incorporate proposals that benefit customers and are in the public interest.

The Commission should modify the Stipulation and adopt Constellation's proposals now for four reasons. First, the Stipulation as proposed violates several important regulatory principles and practices and does not meet the standard for Commission approval. The Signatory Parties' request to "dismiss" the CBP auction-related issues and "punt" them to a separate proceeding violates R.C. 4928.141 and the Commission's regulations. The Stipulation also includes provisions that undermine and frustrate the purpose of stipulations under Ohio Adm.Code ("OAC") 4901-1-30.

Second, the Stipulation is not in the public interest, as it fails to make any substantive changes to AEP Ohio's CBP auction process despite growing concerns about volatile default service prices.

Third, the record demonstrates that Constellation's proposals would improve the CBP auction process and benefit AEP Ohio's customers. Constellation's expert witness, Muralikrishna Indukuri, detailed the issues caused by the current CBP "slice of system" auction structure and recommends the adoption of load migration pricing bands and class-based auctions. AEP Ohio may be content with the CBP auction process as is—but the data in the record shows that auction participation is falling, auction clearing prices are almost double those of auctions conducted before 2022 and Ohio's default service is becoming more expensive relative to other states in the PJM region **<u>who get more services through their default service product</u>**. Constellation's proposals (for a load migration pricing band and class-based auctions) aim to reverse these trends and position AEP Ohio's Ohio's default service competitively for customers.

Fourth, the Commission has the power to address these disturbing trends now by modifying the Stipulation and adopting Constellation's proposals. AEP Ohio is taking the position that it is inappropriate for the Commission to consider how the Stipulation could be improved for customers—essentially telling the Commission that the only relevant proposition is to "take or leave" the Stipulation as submitted. But the Commission must ensure that AEP Ohio's proposed ESP meets the statutory criteria for approval and is just and reasonable. AEP Ohio's ESP V (as modified by the Stipulation) does not, and AEP Ohio cannot subvert the Commission's oversight by asserting that only the Stipulation as proposed is relevant.

The Commission can and should adopt Constellation's proposals because they are in the public interest and will benefit AEP Ohio's customers. With default service rates having more than doubled recently, Constellation's proposals would reduce risk premiums associated with the standard service offer ("SSO") auction structure and reduce default service prices resulting from the SSO auctions. Constellation's proposed modifications to the CBP auction process are appropriate and effective steps to address the Commission's repeated concerns throughout 2023 regarding volatility in SSO prices.[1]

II. BACKGROUND

AEP Ohio filed an application for approval of a new ESP to start when its current ESP IV ends on May 31, 2024. As with the initial application, the Stipulation proposes to continue for four more years the same CBP as was in effect in ESP IV. The Stipulation does contemplate the use of a capacity proxy price ("CPP") mechanism if base residual auction ("BRA") clearing prices for the planning year are not known at least five business days in advance of the AEP Ohio CBP auction; however, there remains more to be determined for the CPP, as AEP Ohio commits to provide interested stakeholders information on how the proxy price will work. (Joint Ex. 1 at 3-4).

In addition, the Signatory Parties recommend at pages 5-6 of the Stipulation:

> **[A]ll intervenor proposals for SSO/CBP modifications in this case be dismissed without prejudice but may be considered in other SSO-related proceedings.** If a final order is subsequently issued by the Commission in another proceeding that modifies the SSO/CBP (including an order that modifies or reverses the capacity pass-through mechanism established under Paragraph III.B.1), the Company consents to continuing jurisdiction and agrees to waive its right to withdraw under R.C. 4928.143(C)(2)(a) provided that such SSO/CBP modifications apply only during the ESP term, allow for timely and adequate cost recovery along with a reasonable time to implement the modification. The Signatory Parties (including the

[1] *See In re the Procurement of Standard Service Offer Generation for Customers of Ohio Power Company*, Case No. 17-2391-EL-UNC et al., Entry (January 3, 2023) at ¶ 3; *In re the Proposed Modifications to the Electric Distribution Utilities' Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC, Entry (July 26, 2023); and *In re the Application of Dayton Power and Light Co. d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case Nos. 22-900-EL-SSO et al., Opinion and Order at ¶ 247 (August 9, 2023).

> Company) reserve their rights to advocate specific positions as part of separate Commission dockets concerning such SSO-related determinations, including opposing such proposals and/or filing for rehearing and appeal as they deem appropriate, provided, however, that the Signatory Parties agree that any modifications to the SSO/CBP in such other proceeding(s) (including an order that modifies or reverses the capacity pass-through mechanism addressed above in [Stipulation] Paragraph III.B.1) would not be considered a modification of the Stipulation that triggers the right to withdrawal under Paragraph IV.E of this Stipulation.

(emphasis added).

The intervenor proposals that the Stipulation seeks to have the Commission dismiss include Constellation's proposals for the implementation of class-based auctions and a contractually set load migration pricing band. Under a class-based auction process, AEP Ohio would procure its default service load by customer class rather than on a "slice of system" basis as is currently done. (Const. Ex. 2, 5:20-21, 7:12-14). More specifically, Constellation proposes to institute auctions that procure default service for customers along "natural breakpoints" in the types of customers within AEP Ohio's service territory, including "Residential (all residential customers or customers under residential revenue class at Secondary Voltage), Commercial (all small commercial and commercial revenue class at secondary voltage, and Large Commercial and Industrial (all industrial and commercial revenue class customers at transmission and primary voltage). (Const. Ex. 2, 23:17-21). This change would align AEP Ohio's CBP procurement with common competitive default service procurement practices in other PJM states. (Const. Ex. 2, 25:1-7).

Constellation's other proposal is to contractually set a load migration pricing band. Under this proposal, an anticipated amount of default service load would be set for each customer class based on the aggregate peak load contribution ("PLC") of that class's default service customers at the time of the auction. (Const. Ex. 2, 20:19-21). Winning bidders would be required to supply 100% of their default service obligation at the price set by the CBP auction so long as the aggregate PLC for that class of default service customers does not exceed 105% of the anticipated default service load. (Const. Ex. 2, 20:21-24). Incremental load exceeding this amount would be settled at market rates. (Const. Ex. 2, 20:24-25:2). Additionally, the exceedance of a three percent lower mitigation threshold for a class would shift the 105% upper mitigation threshold downward to maintain an 8% "band", as detailed in the testimony of Constellation's witness Muralikrishna Indukuri. (Const. Ex. 2, 22:4-12).

Mr. Indukuri was the only expert witness to present testimony in this proceeding proposing modifications to AEP Ohio's CBP auction process. Mr. Indukuri leads the team responsible for Constellation's participation in numerous default service procurements throughout PJM and ISO-NE. (Const. Ex. 2, 1:8-12). In his role as Portfolio Manager for Constellation, Mr. Indukuri has participated in competitive utility default service procurements across PJM and ISO-NE, including competitive procurements in Ohio, Pennsylvania, Delaware, New Jersey, Maryland, the District of Columbia, Massachusetts, Rhode Island, Connecticut, New Hampshire, and Maine. (*Id.*). Mr. Indukuri has extensive experience in energy markets (Const. Ex. 2, 2:1-3:2), and his experience across multiple ISOs, states, and procurement formats has provided him with "a unique perspective of the advantages/disadvantages of the varous procurement/product structures from a customer, SSO supplier and market standpoint." (Const. Ex. 2, 1:17-21). Mr. Indukuri's unique perspective and extensive background in energy markets qualify him to offer expert opinions on the present state of Ohio's default service market and to propose improvements to the CBP auction process that will benefit AEP Ohio's customers. The Commission should give his expert testimony significant weight.

III. ARGUMENT

A. Standards of Review

OAC 4901-1-30(A) provides that "[a]ny two or more parties may enter into a written or oral stipulation concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding." The Commission's rules further require that "[u]nless otherwise ordered, parties who file a full or partial written stipulation . . . must file or provide the testimony of at least one signatory party that supports the stipulation." OAC 4901-1-30(D).

Ultimately, the question the Commission must decide is whether the Stipulation is just and reasonable. *See Office of Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123, 125-126, 592 N.E.2d 1370 (1992). In deciding whether a stipulation is just and reasonable, the Commission has traditionally used a three-part test:

1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

2) Does the settlement, as a package, benefit ratepayers and the public interest?

3) Does the settlement package violate any important regulatory principle or practice?

See, e.g., In re the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates, et al., Case No. 21-887-EL-AIR, et seq., Opinion and Order (Dec. 14, 2022) at 32.

While a stipulation has been filed in this proceeding, **the Commission still must find that the statutory and regulatory criteria for approval of an ESP have been met** in order to approve the proposed ESP. *See Indus. Energy Consumers of Ohio Power Co. v. PUC of Ohio*, 68 Ohio St. 3d 559, 563, 629 N.E.2d 423 (Mar. 30, 1994) (holding that a stipulation must be supported by the evidence of record to withstand scrutiny under the standard of review). In order to approve a proposed ESP, the Commission must find that the proposed ESP "including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code [i.e., the market-rate offer statute]." R.C. 4928.143(C)(1).

AEP Ohio has the burden of proof to show that its proposed ESP meets the statutory and regulatory criteria for approval and that the Stipulation meets the Commission's standard for approval. *See* R.C. 4928.143(C)(1); *see also In re the Commission's Review of 4901-1 Rules*, 2023 Ohio PUC LEXIS 1047, Case Nos. 18-275-AU-ORD, et al., Finding and Order (Oct. 18, 2023) at *66 (holding that "the burden of proof does not shift to other parties when a stipulation is filed" and "**<u>[t]o be clear, all requirements for an application remain in effect even when a stipulation is filed."</u>**). (emphasis added).

B. The Stipulation Does Not Meet the Standard for Commission Approval Because It Violates Important Regulatory Principles.

The Commission should reject the Stipulation as proposed because it violates important regulatory principles or practices in three ways.[2] First, rather than addressing proposed modifications to the CBP auction process in this proceeding, as required by R.C. 4928.141 and the Commission's regulations, the Stipulation recommends that these issues be "punted" for consideration in a separate proceeding that may never occur. Second, the Stipulation recommends dismissal of the intervenors' proposals for modifications to the ESP—in direct

[2] The Commission has some discretion in determining what constitutes an "important regulatory principle or practice." *See In re the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider, et al.*, Case No. 14-1693-EL-RDR, et seq., 2016 Ohio PUC LEXIS 269, Opinion and Order (Mar. 31, 2016) at *288 (Haque, A., concurring). At the very least, a stipulation violates an important regulatory principle or practice if it "violate[s] a statute of the Ohio Revised Code or a rule of the Ohio Administrative Code." *Id.*

contradiction to OAC 4901-1-30. Third, the Stipulation undermines the structure and intent of OAC 4901-1-30 by imposing the threat of withdrawal upon modification.

1. The Stipulation violates an important regulatory principle or practice by forcing non-stipulated CBP auction terms to be considered outside of an ESP proceeding in violation of R.C. 4928.141.

The Stipulation violates Ohio law by asking the Commission to "dismiss" issues pertaining to CBP auction design—the primary element of an ESP—to a separate proceeding for consideration. R.C. 4928.141 requires that public utilities apply to establish an SSO in accordance with R.C. 4928.142 or R.C. 4928.143. R.C. 4928.141(A). The proceedings established by these statutory provisions are the only mechanisms available for authorization of an SSO. *See id.* (providing, among other things, that "[o]nly a standard service offer authorized in accordance with Section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section"). In other words, all parts of an SSO must be "authorized in accordance with" the statutory provisions providing for establishment of an SSO. Contrary to AEP Ohio's proposal, R.C. 4928.141 does not contemplate or allow for piecemeal adoption of SSO components in proceedings outside the one initiated by the utility's SSO application.

Further, the Commission's rules and precedent provide that the CBP auction process is an integral part of an SSO established pursuant to R.C. 4928.141. Section 4928.141(B), Revised Code, requires the Commission to adopt rules regarding filings under R.C. 4928.142 and R.C. 4928.143. To meet this requirement, the Commission has adopted OAC Chapter 4901:1-35. With respect to a CBP, this chapter provides that "[a]n electric utility proposing an [ESP] pursuant to section 4928.143 of the Revised Code, may propose a plan for a CBP." OAC 4901:1-35-08(A). The Commission has also recognized that a utility's proposed CBP process is a "primary element" of its ESP. *See In re the Application of The Dayton Power and Light Co. d/b/a AES Ohio for Approval of Its Electric Security Plan*, et al., 2023 Ohio PUC LEXIS 800, Case No. 22-900-EL-SSO, *et seq.*, Opinion and Order (Aug. 9, 2023) at *97. Thus, pursuant to the Commission's rules and precedent, it is the utility's ESP filing, and not a separate proceeding, that is the appropriate venue for considering a utility's proposed CBP.

Finally, AEP Ohio's "consent to continuing jurisdiction" over CBP auction issues is insufficient to supersede these statutory requirements. (Joint Ex. 1 at 5). Section 4928.141, Revised Code, does not provide AEP Ohio with statutory rights that it can waive. Rather, it places an obligation on AEP Ohio to file an application for approval of a standard service offer in accordance with R.C. 4928.142 or R.C. 4928.143. It further requires that "[o]nly a standard service offer authorized in accordance with" those sections can comply with R.C. 4928.141. Any Commission order modifying the CBP auction process in a separate proceeding (regardless whether AEP Ohio has consented to such process) would violate this express requirement of R.C. 4928.141.

Altogether, the Signatory Parties' request that the Commission "dismiss" CBP auction issues to a separate proceeding violates important regulatory principles or practices by violating R.C. 4928.141 and the Commission's rules. An application brought under R.C. 4928.142 or R.C. 4928.143 is the only mechanism available for the Commission to establish a utility's standard service offer. The Commission should reject the Stipulation's call to consider unstipulated CBP auction issues in a separate proceeding that may never happen. (Hearing Tr. 56:20-57:2, AEP Ohio witness Mayhan agreed that the Stipulation does not require the Commission to open a proceeding to consider intervenors' CBP proposals).

2. The Stipulation also violates an important regulatory principle or practice by recommending dismissal of opposing parties' arguments in opposition.

The Stipulation further violates an important regulatory principle or practice by recommending dismissal of opposing parties' proposals. (Joint Ex. 1 at 5). OAC 4901-1-30(D) expressly provides that "[p]arties that do not join the stipulation may offer evidence and/or argument in opposition." The Stipulation undermines this important regulatory protection by recommending the Commission dismiss without prejudice proposals about the ESP in this proceeding. But R.C. 4928.141 does not authorize the Commission to modify a utility's SSO outside of that utility's application proceeding and OAC 4901-1-30 does not authorize stipulating parties to require that the Commission dismiss objecting parties' arguments. The Commission should reject the Signatory Parties' dismissal of these issues and, consistent with OAC 4901-1-30(D) and R.C. 4928.141, consider and adopt proposed modifications to AEP Ohio's CBP auction design through this proceeding.

3. The Stipulation provision allowing for the Stipulation's withdrawal if modified by the Commission violates an important regulatory principle or practice.

In recent years, the use of "withdrawal upon modification" provisions has become more suspect in the face of an increasing number of non-unanimous stipulations being filed with the Commission. The Commission's approach to reviewing and approving stipulations has created an incentive for parties (especially utilities) to ignore certain intervenor proposals in order to get a stipulation filed. Once submitted, the signatory parties can ignore intervenor proposals outside of the stipulation (no matter how good the arguments are that such proposals are in the public interest) because any signatory party can withdraw from the stipulation if any of those proposals are adopted by the Commission.

This dynamic creates a virtual Hobson's choice for the Commission when considering whether to approve a stipulation, undermining the structure and intent of OAC 4901-1-30. That rule provides both that "[n]o stipulation shall be considered binding upon the commission" and that "[p]arties that do not join the stipulation may offer evidence and/or argument in opposition." OAC 4901-1-30(D) and (E). These regulatory protections ring hollow when faced with the risk that a stipulation will be withdrawn and there will be additional extensive litigation as a result. This risk discourages modifications regardless of the amount of unopposed evidence and strong arguments that demonstrate such a modification would be in the public interest.

Further, the inclusion of a "withdraw upon modification" stipulation provision is not necessary to protect the interests of signatory parties in the context of non-unanimous stipulations. Presumably, the purpose of these provisions is to prevent a signatory party from being harmed by a stipulation modification that is adopted without notice. The Commission's regulations clearly contemplate that a party opposing a stipulation may offer evidence and/or argument in opposition to that stipulation. OAC 4901-1-30(D). Signatory parties thus already have an opportunity to present evidence and arguments to rebut any proposed modifications to the stipulation. As such, in the context of non-unanimous stipulations, "withdraw upon modification" provisions are not being used to protect signatory parties from potentially unknown changes; rather, they serve only to give signatory parties an "out" if that contest is lost, creating a disincentive for the Commission to modify the stipulation. The Commission should not permit such a coercive and unnecessary practice to continue—it undermines the important regulatory protections found in OAC 4901-1-30 and, in so doing, violates an important regulatory principle or practice.

C. The Stipulation is not in the public interest because it fails to substantively address significant and current issues with AEP Ohio's CBP auction.

The Commission should also refuse to adopt the stipulated ESP as proposed because it is not in the public interest. The Commission has expressed continued concern about increasing and volatile default service prices in 2023. *See, e.g., In re the Application of The Dayton Power and Light Co. d/b/a AES Ohio for Approval of its Electric Security Plan*, et al., 2023 Ohio PUC LEXIS 800, Case No. 22-900-EL-SSO, *et seq.*, Opinion and Order (Aug. 9, 2023) at *204 (stating "[t]he Commission continues to be concerned by the volatility in SSO prices, particularly the impact of increases in wholesale energy prices in 2022 on the SSO price experienced by customers."). AEP Ohio has shared this concern, sending many communications to its default service customers about increasing default service prices. (Hearing Tr. 54:15-21). Despite these growing concerns, the Stipulation makes no changes to the CBP auction process to address rising default service prices, lack of supplier participation, or the heightened risk as a result of recent customer migration to default service in 2022 and 2023.

1. Components of the current CBP auction construct are contributing to higher default service prices for AEP Ohio's customers.

The record in this case shows that the current CBP auction construct —which the Stipulation proposes to continue for four more years—does not address recent events impacting default service prices. As detailed below, customers freely migrate on and off default service (with increased prevalence particularly of commercial and industrial customers, and one notable large governmental aggregation doing so in recent years), which has resulted in unprecedented risk for default service suppliers. (Const. Ex. 2, 13:5-14). This increased risk is paid for by AEP

Ohio's default service customers in the form of risk premiums. (Const. Ex. 2, 13:22-14:2). It has also contributed to Ohio's default service auctions being more heavily impacted by recent market volatility than other nearby states. (Const. Ex. 2, 19:9-12; 25:22-26:2; AEP Ohio Ex. 9, Kelso Rebuttal Test., Exhibit LOK-1).

The record also shows that procurement of AEP Ohio's default service load on a "slice of system" basis is leading to worse results for AEP Ohio's default service customers. In addition to services like those AEP Ohio procures through its CBP auction process, the Pennsylvania utilities also receive transmission and/or renewable energy credits as part of their default service procurement process. (Const. Ex. 2, 25:15-21; 26:1-2). Yet, as detailed below, the procurement structure in Pennsylvania, which uses a class-based procurement approach, was a significant factor in drawing more bidder interest and the resulting lower prices in its default service procurement. (Const. Ex. 2, 19:9-12).

While it is within its power to do so in this proceeding, AEP Ohio has presented no CBP auction modifications to address these issues that are leading to higher default service rates for its customers. The Stipulation's lack of CBP auction modifications to address these issues is not in the public interest.

2. The Commission should not adopt a Stipulation that fails to address increasing and volatile default service prices.

It would not be in the public interest for the Commission to adopt a stipulated ESP that does not substantively address the Commission's concerns about increasing and volatile default service prices. The record in this case shows that supplier participation in AEP Ohio's CBP auctions has been falling and that prices for AEP Ohio's default service customers have been rising. (Const. Ex. 2, 18:4-13). A significant contributing factor to this trend is the substantial and unprecedented amount of default service load migration that has occurred within AEP

Ohio's service territory in recent years. (Const. Ex. 2, 14:21-15:23). While there are simple and straightforward mechanisms that can be adopted to address this issue, like the load migration pricing band proposed by Constellation, AEP Ohio's stipulated ESP proposes no changes to the CBP auction construct to address this issue or the impact it has had on default service customers. Completely failing to address this issue through the proposed ESP is not in the public interest.

The record further shows that AEP Ohio's auction clearing prices have seen an oversized impact from recent market changes due to its use of a "slice of system" procurement structure. (Const. Ex. 2, 19:9-12). Other PJM states with different procurement structures, such as class-based auctions, have been successful in drawing more bidder interest and there being lower premiums in their default service procurements. (*Id.*). As with Constellation's proposed load migration pricing band, the change to a class-based procurement structure would be a simple and straightforward modification that would improve results for AEP Ohio's default service customers. (Const. Ex. 2, 28:4-7). Yet, AEP Ohio refuses to address the risks caused by this "slice of system" procurement structure under the proposed ESP and instead proposes to continue this procurement structure for another four years. The continued use of "slice of system" procurements for four more years is not in the public interest, especially when the record shows that an alternative procurement structure like the one proposed by Constellation would benefit AEP Ohio's default service customers.

The Stipulation further recommends that the Commission "dismiss" any proposed modifications to the CBP auction construct that are not in the Stipulation. (Joint Ex. 1 at 5). Instead, the Stipulation permits these issues to be addressed in a separate proceeding that AEP Ohio admits may never happen. (Hearing Tr. 56:20-57:4). In other words, the Stipulation not only fails to address the impact that components of the CBP auction are having on increasing and volatile default service prices, it also seeks to indefinitely "dismiss" consideration of any CBP auction modifications that could fix these problems. This too is not in the public interest.

D. Constellation's Proposals Are In The Public Interest and Will Benefit Customers.

To remedy the issues detailed above, the Commission can modify the Stipulation to adopt Constellation's proposed modifications to the CBP auction process. Mr. Indukuri has identified specific risks associated with AEP Ohio's CBP auction that are leading to increased risk and higher prices for AEP Ohio's default service customers. He has proposed two reasonable and straightforward mechanisms to address these risks—both of which have been and are being used by other states in the PJM region. Those proposals are: (1) the adoption of a contractually set pricing band, and (2) the implementation of class-based default service procurements. The Commission should take this opportunity to address its continued concern about volatile default service prices by modifying the Stipulation and adopting Constellation's proposals. These modifications are necessary for a primary element of the stipulated ESP V to be in the public interest.

1. The stipulated CBP auction construct results in unnecessary risk premiums being charged to default service customers.

The evidence in this record shows the current CBP auction process utilized by AEP Ohio is not in the best interest of customers and could be easily improved. (Hearing Tr. 729:5-15). Fewer suppliers are showing up for AEP Ohio's auctions and prices are increasing. (*Id.*; Const. Ex. 2, 18:2-6, 12-13; OCC Ex. 1, 7:11-13). These trends have resulted in AEP Ohio's customers "paying more for less" relative to their counterparts in Pennsylvania and other states who also receive default electric service. (Const. Ex. 2, 25:14-26:2).

There are specific traits of the Ohio electric market that have driven increased risk for potential default service suppliers. The movement of customers to and from default service in recent years, caused in part by robust governmental aggregation programs as well as commercial and industrial customers arbitraging default service, has created and exposed substantial and unprecedented levels of load migration risk for default service suppliers. (Const. Ex. 2, 14:21-16:3). This load migration risk equates to increased risk premiums being paid by default service customers. Additionally, the use of a "slice of system" procurement approach poses a challenge for default service suppliers trying to predict their potential default service load obligation, again resulting in the inclusion of risk premiums in auction bids. (Const. Ex. 2, 17:17-21).

a. <u>The ability to migrate to and from default service leads to risk premiums for all default service customers.</u>

There has been substantial volatility in the amount of default service load in AEP Ohio's service territory in recent years. This volatility has been driven, in part, by Ohio's robust governmental aggregation programs. The commencement and conclusion of government aggregation programs can cause large swaths of customers to either join or leave default service at a single point in time. (Const. Ex. 2, 15:1-3). Indeed, recent history has shown that government aggregations can cause unprecedented levels of migration to and from default service in a very short period of time. (Const. Ex. 2, 14:24-15:7; Hearing Tr. 689:24-690:6). The percentage of Ohio residential customers served by governmental aggregations went from a high of approximately 73% to a low of 53% in 2022 alone. (*Id.*).

In addition to the impact caused by government aggregations moving large amounts of residential customers on and off default service, there has also recently been substantial migration of commercial and industrial customers back to default service. In 2022, at its peak, the commercial default service load in AEP Ohio's service territory was 250% higher than the average commercial default service load from 2019-2021. (Const. Ex. 2, 15:20-21). That migration shift is not nearly as impactful as the unusually large industrial default service load shift, which was **1,900%** higher than the average industrial default service load over that same period. (Const. Ex. 2, 15:22-23).

This recent substantial and unprecedented migration of customers to default service has exposed, heightened, and created new risks to suppliers bidding in AEP Ohio's default service auctions. While suppliers are nominally responsible for this risk under the current CBP auction construct, **it is default service customers who ultimately pay**. Recent auction results reflect the increased prevalence of this risk in Ohio. From Fall 2019 through Fall 2021, the average auction clearing price for AEP Ohio was $45.02. (AEP Ohio Ex. 9, Kelso Rebuttal Test., Exhibit LOK-1, at 1-5). Since that time, the average price has more than doubled to $92.60 (*Id.* at 6-8).

Moreover, now that this large-scale load migration has been seen in Ohio, potential default service suppliers must account for the possibility of it happening again in their CBP auction bids. As Mr. Indukuri explained, "suppliers have seen that they could realistically be obligated to serve 200% of the load taking SSO service at the time of the auction." (Const. Ex. 2, 21:16-17). As such, the "actual losses or the risk of losses [resulting from customer movements on or off SSO], and the costs to procure a greater supply of energy than what was previously believed to be necessary and procured, **become the future cost of doing business and are reflected in [default service] prices.**" (Const. Ex. 2, 13:22-14:2). (emphasis added).

If mitigation measures are not implemented now that large scale and unprecedented default service load migration has occurred in Ohio, default service suppliers will continue to account for this risk in the form of higher risk premiums which will be passed on to AEP Ohio's default service customers. As discussed later, the "minimum stay" provisions recently ordered for the electric utilities' tariffs for large governmental aggregations are insufficient to mitigate this risk for potential default service suppliers and prevent the inclusion of risk premiums in their CBP auction bids.

b. <u>Procurement of the default service load on a "slice of system" basis harms residential and small commercial customers who pay for the uncertain load shapes of larger commercial and industrial customers.</u>

The second unique characteristic of Ohio's electric market that has caused increased risk is the procurement of default service load on a "slice of system" basis. AEP Ohio and the other Ohio electric utilities are the only utilities in the PJM region that procure default service for residential customers along with default service for larger commercial and industrial customers. (Const. Ex. 2, 25:2-7). Unlike other jurisdictions that divide their default service load into categories of customers with similar load characteristics, AEP Ohio's default service is procured for a percentage of the load of all customers, regardless of their size or varying usage characteristics (commonly referred to as "load shape"). (Const. Ex. 2, 14:11-17).

The inclusion of customer classes with different load shapes in the same default service procurement presents a particularly difficult challenge for potential default service suppliers. While residential customers (as a class) have a fairly predictable load shape based on seasonal and weather patterns (Const. Ex. 2, 17:4-6), the load shape for commercial and industrial customers can vary significantly and can be "nearly impossible" to forecast. (Const. Ex. 2, 7-13). As a result, potential default service suppliers must plan to secure additional "hedges" to account for these varying and unpredictable load shapes and ensure commercial and industrial demand is met. (Const. Ex. 2, 14:14-17).

Under the "slice of system" procurement approach, AEP Ohio's residential customers are paying for at least a portion of this risk associated with serving commercial and industrial load. (Const. Ex. 2, 14:11-17). This harms AEP Ohio's residential customers and is contrary to well understood cost causation principles long endorsed and promoted by the Commission as being "important regulatory principles." *See, e.g., In re the Application of Ohio Power Co. for Approval of an Advanced Meter Opt-Out Service Tariff*, 2016 Ohio PUC LEXIS 374, Case No. 14-1158-EL-ATA, Opinion and Order (Apr. 27, 2016) at *24-25 (finding that "<u>[t]he principle of cost-causation is an important regulatory principle</u> that requires the electric utility to recover costs from those customers who caused the cost to be incurred on the electric utility.") (emphasis added).

Given the continued increase in default service prices being seen in Ohio, it is important for the Commission to address this key component of risk that is impacting CBP auction results and harming AEP Ohio's customers.

c. <u>The unique characteristics of Ohio's electric market and the CBP auction introduce and increase risks that must be mitigated.</u>

The use of "slice of system" procurements and the recent substantial and unprecedented migration of customers to default service increases risks that, if left unmitigated, will lead to increased costs for AEP Ohio's customers. The Commission now has the opportunity to learn valuable lessons from the experiences of other PJM states and adopt two changes to the CBP auction process that are in the public interest. As detailed below, these changes will benefit AEP Ohio's default service customers through reduced risk premiums and ultimately better default service prices.

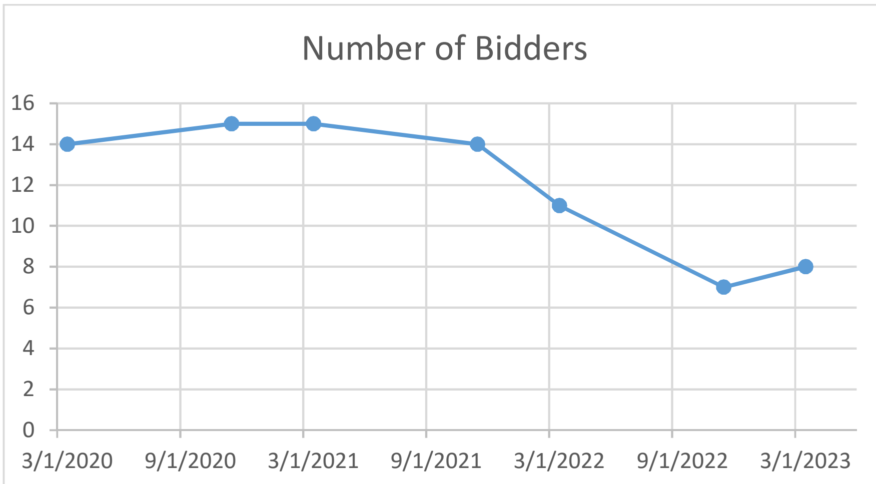
2. Load migration pricing bands will reduce risk premiums and benefit customers.

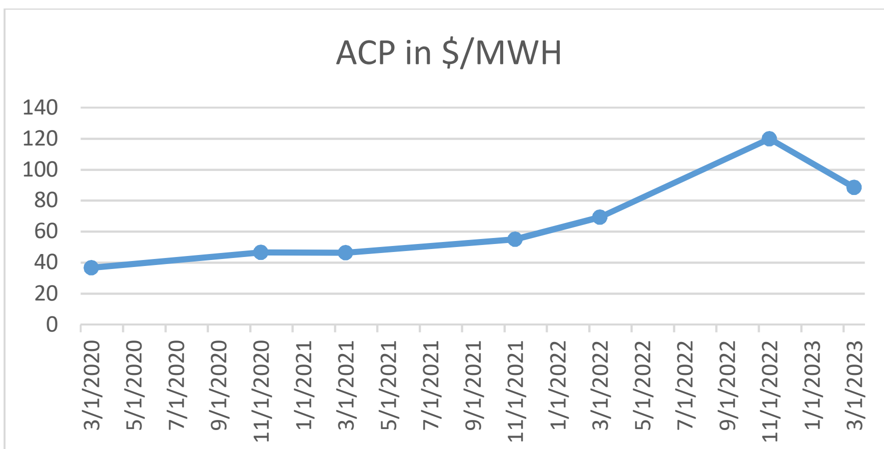
The load migration pricing bands explained by Mr. Indukuri will lower auction prices and costs for AEP Ohio's default service customers by reducing risk and providing certainty to bidders. In recent years, there has been an unprecedented increase in load migration back to AEP Ohio's default service offering. (Const. Ex. 2, 14:24-15:7, 15:20-24). This is particularly true for large commercial and industrial customers as well as the largest government aggregation in the state, who have used the default service product as an arbitrage vehicle, going on and off default service supply as the default service price compares to prevailing market prices. As a result, it has become more difficult for suppliers bidding in AEP Ohio's default service auction to reasonably predict the amount of load they will serve. (Const. Ex. 2, 12:18-21, 16:9-10).

Uncertainty has consequences. Suppliers that are unwilling to take the risk of serving an unknown and unpredictable default service load will simply choose not to participate in auctions. (*See* Const. Ex. 2, 18:2-4; 19:9-12). This has already been seen in AEP Ohio's service territory—where the number of bidders in the CBP auctions has fallen sharply from a high of fifteen to a low of seven in the last two years. (Const. Ex. 2, 18:4-12). Fewer bidders means less competition, which by itself tends to result in higher prices.

The other consequence of uncertainty is risk premiums. Suppliers that continue to participate in AEP Ohio's auctions must hedge against the possibility of a drastic increase in default service load during the delivery period. (Const. Ex. 2, 21:16-19). This additional hedging—driven by an increasingly and difficult to predict default service load—means that all of AEP Ohio's customers are paying for the potential of large-scale default service migration whether it happens or not. (Const. Ex. 2, 21:19-21, Hearing Tr. 681:12-14). The risks caused by this issue can be easily mitigated through the adoption of Constellation's proposal for load migration pricing bands.

As can be seen in the below charts, there have been fewer bidders and higher prices for AEP Ohio's customers in recent auctions. (Const. Ex. 2, 18:6-13).





a. <u>An upper load migration pricing band will stop default service customers from paying for events that do not happen.</u>

Constellation's proposal to place load migration pricing bands addresses the uncertainty faced by potential default service suppliers in a straightforward and reasonable manner. The 105% upper band proposed by Constellation means that bidding suppliers will continue to take on the risk of a historically reasonable and predictable amount of load migration. (Const. Ex. 2, 20:21-24). Unlike the present dynamic, however, customers benefit by not having to pay higher prices for the *mere possibility* of larger scale migration because load shifts above the PLC-based threshold will be settled at market rates. As Mr. Indukuri explained:

> In order to mitigate their risk, SSO suppliers would have to procure energy for the term of the Master SSO Supply Agreement at [the volume necessary to serve 200% of the load taking SSO at the time of the auction], the costs of which would be reflected in their bid. Yet, if the load did not materially increase from the date of the auction, customers would have paid for a risk that did not materialize. The upper mitigation threshold eliminates the risk of a material increase in load from the date of the auction. It will result in lower ACPs that reflect the cost to service 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 the load served.

(Const. Ex. 2, 21:17-24) (emphasis added).

At hearing, Mr. Indukuri further explained that **customers are already paying for the cost of unknown load migration in the form of risk premiums** and that adoption of his proposal would reduce overall risk and not "shift" risk to customers:

> Q. Under the proposals that you are advancing, namely, the 8 percent band proposal,[[3]] you shift some of that risk to the customers, correct, under that proposal?
>
> A. No, it does not shift the risk. What it does is creates a market design construct wherein the customers do not pay for the potential risk of customer migration because suppliers routinely pricing the product would have to take into account the potential costs and incorporate that into their bids. So in a way it would actually reduce the risk . . . that the customers would be exposed to in terms of the excess costs that they are paying today which they wouldn't under the proposal that I have.

(Hearing Tr. 679:8-23).

[3] Mr. Indukuri proposes an upper band of 5% and a lower band of 3%, which collectively are an 8% band. (Const. Ex. 2, 20:21-24, 21:1-2, 22:2-6).

The upper band proposed by Mr. Indukuri will lead to better auction results for customers by providing bidders with more certainty regarding the default service load they will be required to serve. Moreover, the proposed mechanism **<u>will not shift migration risk to customers</u>** but will **<u>reduce risk</u>** by ensuring that customers no longer pay risk premiums for an unknown and unpredictable amount of customer migration to and from default service.

b. <u>A lower load migration pricing band will increase supplier certainty to the benefit of default service customers.</u>

The lower load migration pricing band proposed by Constellation also benefits AEP Ohio's customers by reducing unnecessary risk. Default service suppliers are faced with a difficult decision when customers migrate off of default service during the delivery period. They can either release their higher-priced hedges, which they will have to sell at a loss. (Const. Ex. 2, 12-17). Or, they can hold onto those unnecessary hedges and suffer the consequences of fixed costs and falling default service load. (*Id.*). As with the risk of unpredictable increases in default service loads, AEP Ohio's customers also pay for the uncertainty caused by falling default service load in the form of risk premiums. (Const. Ex. 2, 22:17-20). Constellation's lower load migration pricing band proposal substantially reduces this risk (and the risk premiums paid by AEP Ohio's customers as a result) by providing more certainty to suppliers about their ongoing default service load obligations in the event default service load decreases. Ultimately, this should lead to better auction clearing prices and better outcomes for AEP Ohio's default service customers.

c. Similar to how capacity proxy price mechanisms reduce the risk caused by delayed base residual auctions, Constellation's pricing band proposal addresses supplier uncertainty caused by recent events.

In many ways, Constellation's pricing band proposal is similar to the capacity proxy price ("CPP") construct previously endorsed by the Commission in Case No. 16-776-EL-UNC, et al., and the CPP construct included in the Stipulation. (Joint Ex. 1 at 5). In 2020, in response to uncertainty around whether PJM BRAs would occur on their regular schedule as a result of legal challenges, the Commission ordered Ohio's electric utilities to submit proposals to modify their CBP auction processes to include CPPs that were subject to true-up. *In re the Procurement of Standard Service Offer Generation for FirstEnergy's ESP IV*, et al., Case No. 16-776-EL-UNC, et al., Finding and Order (July 15, 2020) at ¶35. In issuing this order, the Commission determined "that it is reasonable to modify the approved SSO auction processes to mitigate the possible significant effects caused by the uncertainty surrounding PJM's BRA." *Id.* at ¶34 (emphasis added). The concept of using CPPs, however, was indefinitely stayed after PJM re-established its capacity auction schedule, but the Commission continues to monitor for any developments between FERC and PJM. *Id.*, Second Entry on Rehearing (Feb. 24, 2021) at ¶ 22.

Like a mitigating CPP mechanism, Constellation's proposed load migration pricing bands mitigate supplier uncertainty. In the case of the CPP mechanism, recent events (*i.e.*, the delays and challenges to PJM's BRA) caused increased uncertainty for suppliers with respect to the prices underlying their supply obligations. The Commission recognized this uncertainty (and the potentially significant impact it could have on default service auctions) and endorsed the use of a CPP mechanism to mitigate the risk.

In the case of Constellation's proposal for a load migration pricing band, recent large-scale and unprecedented amounts of default service load migration has created significant uncertainty for suppliers with respect to the amount default service load they will have to serve. Unless the risk caused by this uncertainty is mitigated, AEP Ohio's customers will end up paying for it in the form of risk premiums included in CBP auction bids. As it has worked to address the uncertainty caused by the PJM BRA schedule, the Commission should adopt Constellation's proposed mechanism to address the present uncertainty caused by the recent unprecedented and unpredictable levels of default service load migration.

d. <u>Tariff "minimum stay" provisions are insufficient to address the increased load migration risk faced by potential default service suppliers.</u>

On May 3, 2023, the Commission issued its "minimum stay" order in Case Nos. 22-1127-EL-ATA, et al., to address concerns with future premature returns of large numbers of customers to default service by government aggregators. These minimum stay tariff provisions temporarily prevent government aggregators from re-enrolling customers into a governmental aggregation if they have been dropped to default service before the end of the aggregation's set term. *See In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Approval of Tariff Amendments*, et al., Case Nos. 22-1127-EL-ATA, et al., Finding and Order (Mar. 8, 2023) at ¶ 19.

These tariff-based minimum stay provisions are insufficient to mitigate the previously discussed increased load migration risk facing default service suppliers for two reasons. First, the tariff provisions do not provide default service suppliers any relief from serving the customers prematurely returned to default service en masse. In the event a government aggregator does decide to prematurely return a large number of customers to default service, triggering the minimum stay tariff provisions, those customers' default service supplier still must be prepared to serve those customers' load. (Const. Ex. 2, 15:1-3). Second, the minimum stay tariff provisions do not provide default service suppliers with any certainty about when a town/municipality or county may decide either to not renew their aggregation or start a new aggregation. (Const. Ex. 14:8-11). Accordingly, potential default service suppliers must continue to plan for the possibility that large amounts of load may either enter or leave default service during an aggregation's term, at the end of an aggregation's term, or through the start of a new aggregation.

Unlike tariff minimum stay provisions, Constellation's proposal for a load migration pricing band does mitigate these risks and will reduce associated risk premiums.

e. <u>Other states have recognized the benefit of mitigating the risk associated with load migration and the certainty it creates for default service suppliers.</u>

The Commission would not be alone in mitigating the risk associated with migration for the benefit of customers. The Maryland Public Service Commission has long recognized the benefits of addressing volumetric risk for default service load suppliers. Over twenty years ago, the Maryland Commission endorsed the proposed adoption of a volumetric risk mechanism for the procurement of default service load, stating "[t]his will provide protection and flexibility to wholesale suppliers thus enabling more competitive prices and, in turn, will benefit customers." *See In re Commission's Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service,* Case No. 8908, Order No. 78400, 2003 Md. PSC LEXIS 5 (Apr. 29, 2003) at *85. In furtherance of this objective, the Maryland Commission ultimately adopted a banding threshold mechanism similar to what Constellation has proposed in this proceeding. *See In re*

Commission's Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service, Case No. 8908, Phase II, Order No. 78710, Md. PSC LEXIS 30 (Sept. 30, 2003).

As recognized by the Maryland Commission some time ago, addressing the risk associated with load migration benefits default service customers by providing certainty to suppliers and enhancing competition. Constellation's proposed load migration pricing band proposal will mitigate the ever-increasing uncertainty faced by potential suppliers participating in AEP Ohio's default service auctions. This uncertainty is currently paid for by AEP Ohio's customers in the form of risk premiums that increase default service auction clearing prices. The Commission should address this concern (and the increasing default service costs presently being paid by AEP Ohio's customers) by adopting Constellation's proposal.

3. Class-based auctions will result in better prices for customers by properly allocating risks and costs.

The evidence also shows that Constellation's proposal to introduce class-based default service procurements in Ohio will benefit customers. Both AEP Ohio and the Commission have recognized that increasing default service prices are a concern. (Hearing Tr. 831:17-17 (Kelso Rebuttal Test., Cross-Examination)[4]; *see In re the Application of The Dayton Power and Light Co. d/b/a AES Ohio for Approval of its Electric Security Plan*, et al., 2023 Ohio PUC LEXIS 800, Case No. 22-900-EL-SSO, *et seq.*, Opinion and Order (Aug. 9, 2023) at *204).[5] Indeed, AEP Ohio's concern has caused it to send "a lot of communications" to its default service customers about rising default service rates. (Hearing Tr. 54:15-21). Despite this recognition, AEP Ohio is content with asking the Commission not to make any material changes to its CBP

[4] "Q: Now, the fact that the last few auctions have had higher clearing prices, that concerns you, correct? A. Yes."
[5] "The Commission continues to be concerned by the volatility in SSO prices, particularly the impact of increases in wholesale energy prices in 2022 on the SSO price experienced by customers."

auction process at this time, to dismiss all intervenor proposals in this proceeding, and to defer consideration of any such changes to a subsequent proceeding that may never happen.

But AEP Ohio's invitation to "wait and see" by not proposing any substantive modifications to the CBP auction process will serve only to harm AEP Ohio's customers who are presently paying historically high default service rates. (Hearing Tr. 831:5-7 (Kelso Rebuttal Test., Cross Examination; Const. Ex. 2, 18:12, Figure 2). The Commission should not make these customers wait any longer for Constellation's beneficial changes.

a. Class-based auctions will avoid residential customers paying for the "load shape" risk created by larger commercial and industrial customers.

The record is replete with evidence that class-based auctions increase transparency and predictability for potential suppliers, leading to more efficient and better outcomes for default service customers. As discussed above, bidding for default service load on a "slice of system" basis presents a particularly difficult challenge. (Const. Ex. 2, 17:10-13). While residential and small commercial customers have reasonably predictable load characteristics, this is not the case for larger commercial and industrial customers. (Const. Ex. 2, 17:4-10). As a result, potential default service suppliers must include risk premiums in their bids to account for the unknown load characteristics of large commercial and industrial customers within their "slice" of the default service load. (Const. Ex. 2, 17:17-21). These risk premiums are subsidized by residential and smaller commercial customers under the slice of system procurement approach and result in them paying unnecessarily higher prices for default service.

The Commission can easily mitigate this risk for suppliers and prevent residential and smaller commercial customers from unnecessarily paying these costs by adopting a class-based default service procurement. Moreover, AEP Ohio's auction manager already has experience with implementing auctions that procure electricity based in part or in whole on customer class-based products. (Const. Ex. 2, Attachment A).

b. <u>Moving to class-based auctions will eliminate cross subsidies that currently exist and will improve auction outcomes for all customers.</u>

Moving to class-based auctions will also allow suppliers to more properly predict and allocate risks associated with serving differing sets of customers, eliminating cross subsidies that currently exist (Const. Ex. 2, 27:13-14) and improving outcomes for all customer classes. (Hearing Tr. 723:6-724:10).

AEP Ohio may argue that procuring service on a "slice of system" basis reduces risk by spreading class-specific risks across the entire default service load. (*See* Hearing Tr. 717:10-14). As Mr. Indukuri explained, however, "[f]orcing certain customers to subsidize others **<u>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.</u>**" (Const. Ex. 2, 26:11-14) (emphasis added).

The proper allocation of costs is important and can only improve the market and customer behavior. (Const. Ex. 2, 27:2-3). The failure to properly allocate costs leads to inaccurate pricing and inefficient decision making by customers. (Const. Ex. 2, 27:4-5). In an exchange at hearing, Mr. Indukuri explained why accurately reflecting customer risks in default service prices in order to send proper price signals results in better prices for all customers:

> Q. So is that a good thing . . . in your opinion that customers have the option of the SSO in circumstances where it's a lower price than the CRES offers?
>
> A. It's – I think the SSO price that reflects the risks appropriately is the best option for customers because it helps customers make a decision based on all the risks that are inherent at that point in time . . .

> Q. Yeah. So at some time CRES prices may be lower than the SSO and vice versa, correct?
>
> A. Again, as long as the risks are appropriately reflected, that is the appropriate price that the customers can take into account when making a decision.
>
> Q. And that's a benefit to have competitive choice including whether to go back to the SSO if that is a more favorable price.
>
> A. No, because if customers basically move into the SSO and that behavior is unpredictable, then that risk is appropriately priced by suppliers, and under the current construct, everyone, even the ones that are not causing that risk, are paying for it. So everyone actually will suffer when customers migrate in and out of SSO without any limit because . . . suppliers have to pay the cost associated with that movement by appropriately buying more hedges . . . and it's a cost that then is passed on to the customers.

(Hearing Tr. 723:6-724:10).

Mr. Indukuri's testimony at hearing also addressed concerns that not enough suppliers would be interested in serving AEP Ohio's large commercial and industrial default service load if a class-based procurement structure is adopted. There was approximately 30 megawatts of default service load provided to AEP Ohio's large commercial and industrial customers based on data from August 2023. (Hearing Tr. 778:3-5). According to Mr. Indukuri, who has actively participated in numerous auctions in Ohio and many other jurisdictions, this amount of load for AEP Ohio's large commercial and industrial default service customers would be sufficient to draw supplier interest. (Hearing Tr. 778:5-8). This conclusion was based on Mr. Indukuri's many years of experience in other class-based default service auctions. (Hearing Tr. 778:8-11). Indeed, based on his experience, Mr. Indukuri identified procurements in Delaware and in PEPCO D.C.'s service territory as two examples where auctions are successfully held to procure

30 megawatts or less of default service load for larger commercial and industrial customers. (Hearing Tr. 785:4-20).

Any potential concerns about class-based auctions harming large commercial and industrial customers are unwarranted. Residential and small commercial customers will benefit directly from removing supplier risk premiums associated with certain unique characteristics of large commercial and industrial customer load. Further, the move to class-based default service procurements will allow potential suppliers to better predict and allocate risks and costs, resulting in better outcomes **for all classes of customers**. The record also shows that there would continue to be sufficient supplier interest in serving AEP Ohio's large commercial and industrial default service customers. Class-based auctions, used in other PJM states, are warranted and in the public interest.

c. Recent auction results show a negative trend in Ohio auction clearing prices as compared to other states.

Recent auction results show that Ohio has been more impacted by changing market conditions than other PJM states, who use class-based auctions. Unlike Ohio's electric utilities, Pennsylvania's utilities also procure transmission and/or renewable energy credits as part of their default service auctions. (Const. Ex. 2, 25:15-21). Accordingly, to make an-apples-to-apples comparison between Ohio and Pennsylvania auction clearing prices, the additional cost of these components must be removed from the Pennsylvania results. (*Id.*). But even with those components included in the Pennsylvania's auction clearing prices, as can be seen in the chart below, Ohio's default service auction results were higher in Fall 2022 auctions held for the June

2023 through May 2024 delivery term than Pennsylvania's auction results for the same delivery period. (Const. Ex. 2, 26:1-2).

September-December 2022 PJM Auctions

Auction Da	State	Utility	Term	Product	ACP in $/MWh	Notes on Product
Sep-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
Oct-22		First Energy Ohio			$ 122.30	
Nov-22		AEP			$ 119.98	
Nov-22		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	

This trend continued into the Spring 2023 auctions for the June 2023 through May 2024 delivery term, where multiple Pennsylvania utilities again had lower clearing prices than all Ohio utilities despite the additional components of Pennsylvania's default service product. (AEP Ohio Ex. 9, Kelso Rebuttal Test., Exhibit LOK-1 at 8).

As Mr. Indukuri explained, the primary driver behind this shift in auction prices is higher perceived risks in Ohio as compared to other states:

> Although there were increases in the ACPs in other PJM default service auctions, the increase in the AEP Ohio ACPs during auctions conducted near the same time was substantially higher . . . This indicates that the risks are higher in Ohio than in these other states. 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 premiums in their respective default service procurements.

(Const. Ex. 2, 19:6-12).

AEP Ohio may point to Exhibit LOK-1, attached to the testimony of Lisa Kelso, in an attempt to show that historic auction clearing prices have been lower than those in Pennsylvania. But, as Mr. Indukuri explained:

> [A]ctual losses or the risk of losses, and the cost to procure a greter supply of energy than what was previously believed to be necessary and procured, **<u>become the future cost of doing business and are reflected in [default service] prices.</u>**

(Const. Ex. 2, 13:22-14:2) (emphasis added). Accordingly, these historic auction prices are no longer representative of likely future auction prices because they do not account for recent substantial and unprecedented market events. Indeed, Ms. Kelso also acknowledged at hearing that "just because there's been certain performance in the past doesn't necessarily predict the future." (Hearing Tr. 821:23-25). She also acknowledged that removing the transmission and renewable energy credit costs from Pennsylvania auction clearing prices could result in them being lower than Ohio's historical auction clearing prices. (Hearing Tr. 820:25-821:16). What is relevant in this proceeding is how suppliers are pricing risk today—not how they priced the risk in the past.

The Commission must do something now to address and mitigate these present higher risks or Ohio's default service customers will continue to pay for them in the form of higher risk premiums included in AEP Ohio's CBP auction bids.

d. <u>There is sufficient data in the record to support a change to class-based auctions.</u>

There is more than sufficient data in the record to conclude that AEP Ohio's customers will benefit from making the change to class-based auctions. The record shows that:

1. Under the current CBP construct (which AEP Ohio proposes to continue for four more years), residential customers subsidize (and pay premiums for) risks caused by larger commercial and industrial default service customers. (Const. Ex. 2, 14:14-17).

2. Inaccurate price signals resulting from the "slice of system" procurement approach lead to higher prices for all customers. (Const. Ex. 2, 27:4-5).

3. The proper allocation of costs and risks resulting from class-based auctions will improve auction outcomes for all classes of customers. (Hearing Tr. 723:6-724:10); *See supra*, III.D.3.

4. Recent auction results show that Ohio has been more negatively impacted by recent market volatility than other states. (Const. Ex. 2, 26:1-2; AEP Ohio Ex. 9, Kelso Rebuttal Test., Exhibit LOK-1 at 7-8); *See supra*, III.D.3.c.

5. Ohio has experienced large amounts of customer migration to and from default service recently. (Const. Ex. 2, 15:3-5, 15:20-23); *See supra*, III.D.1.a.

6. AEP Ohio's last two default service auctions have drawn significantly less bidder interest. (Const. Ex. 2, 18:6-13); *See supra*, III.D.2.

7. The procurement structure in other jurisdictions like Pennsylvania, including class-based auctions, has been a significant factor in drawing more bidder interest and lower premiums for default service. (Const. Ex. 2, 19:9-12).

8. There would be sufficient supplier interest in serving AEP Ohio's large commercial and industrial default service customer load if Ohio moves to class-based auctions. (Hearing Tr. 778:5-20); *See supra*, III.D.3.b.

9. Class-based auctions would not be difficult to implement as part of ESP V, as AEP Ohio's auction manager has experience with class-based procurements for default service. (Const. Ex. 2, Attachment A).

This data shows that AEP Ohio's default service customers would benefit from the move to class-based auctions as part of ESP V. The Commission should not hesitate to implement this change that will mitigate risks and ultimately provide better prices for AEP Ohio's default service customers.

e. <u>Constellation's proposals directly address concerns about increasing auction prices by reducing uncertainty and mitigating risks faced by potential default service suppliers.</u>

Constellation's proposal seeks to reverse the disturbing increasing trend in recent auction prices by moving Ohio to class-based procurements that are similar to those held in other PJM states. (Const. Ex. 2, 25:2-7). Class-based auctions will increase transparency in the procurement process and prevent cross-subsidization. (Const. Ex. 2, 10:18-19, 27:13-14). In so doing, potential default service suppliers will be better able to predict and manage risks—resulting in better default service prices for all customers. (Const. Ex. 2, 17:20-21). When asked if adoption of Constellation's proposals would result in price reductions for all customer classes, Mr. Indukuri explained:

> The auction clearing prices would be reduced and for two reasons. One is we are giving certainty on the risk that the suppliers would be exposed to in serv[ing] the SSO load in Ohio. That in itself will prevent them from making assumptions on their risk exposure thereby providing better prices to the customers and also the procurement being based off of the specific customer characteristics would benefit or would result in providing the appropriate prices to the various customer classes.
>
> The combination of . . . the mitigation and the customer-specific procurement also could potentially attract more bidders and more bidders in general creates competition and competition often results in lower prices.

(Hearing Tr. 780:25-781:14).

Moreover, the data shows that Ohio's default service auction clearing prices have been trending negatively compared to those in other states where class-based auctions are used. With auction results like these in recent years, simply maintaining the status quo through continued use of the "slice of system" procurement approach—as urged by AEP Ohio and the Signatory Parties—is no longer sufficient. It is time for the Commission to align itself with other PJM states in receiving the benefits of class-based default service procurements.

E. The Commission Should Adopt In This Proceeding Constellation's Proposals That Benefit Default Service Customers.

1. The Commission is not bound by the terms of a stipulation.

AEP Ohio has encouraged the Commission not to consider anything outside the four corners of the Stipulation and the Commission's test for stipulation approval. *See* Ohio Power

Company's Motion to Strike Specified Intervenor Testimony in Opposition to the Joint Stipulation and Recommendation (Oct. 2, 2023) at 2-3 (arguing that Mr. Indukuri's testimony and proposals should be stricken as "irrelevant" because they do not directly address the Commission's three-part stipulation test).

AEP Ohio's push to limit the Commission's considerations in this proceeding to only the content of the Stipulation is inconsistent with Commission practice and Ohio law. The Commission has a duty to examine the evidentiary record and determine that a utility has met its burden of proof to show that statutory standards have been met. *See Indus. Energy Consumers of Ohio Power Co.*, 68 Ohio St. 3d at 563. Further, when considering a stipulation, the Commission's ultimate duty is to review the evidence presented at the hearing and determine what is just and reasonable. *Office of Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123, 125-126, 592 N.E.2d 1370 (1992).

The determination of whether a stipulation is just and reasonable necessarily includes the Commission's contemporaneous consideration of the alternative proposals presented by non-signatory parties. In this proceeding, the Commission has the requisite authority to consider (and adopt) Constellation's proposals to modify the CBP, which substantively address existing issues with the CBP auction process. This is especially important given the extremely high prices that SSO residential customers are facing today as a result of the CBP not being structured to address the risk premiums embedded in SSO pricing. Under such circumstances, the Commission's obligation to determine whether the Stipulation is just and reasonable must include full consideration **now** of alternative CBP auction proposals that could benefit AEP Ohio's customers.

2. The Commission has modified stipulations to adopt proposals that were in the public interest.

The Commission has routinely modified stipulations to ensure they are in the public interest. For example, in FirstEnergy's 2012 ESP proceeding, 2012 Ohio PUC LEXIS 706, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at *98, the Commission initially found that "the record indicates that there are significant additional benefit for customers" in the stipulated ESP. Despite making this determination, the Commission still made modifications to the CBP auction process (specifically, clarifications about the process for selecting the independent auction manager) that it described as necessary to find that the Stipulation was in the public interest. *Id.* at 99-102. There are various other examples of the Commission determining that a proposed stipulation is in the public interest only after modifying it to include additional terms.[6]

The Commission has similarly modified specific provisions of stipulations to ensure those provisions are in the public interest. In FirstEnergy's 2016 ESP proceeding, 2016 Ohio PUC LEXIS 270, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at *218, the Commission found that a severability provision within the Stipulation pertaining to a specific rider "require[d] modification in order to be in the public interest."

As it did in these other proceedings, the Commission has the opportunity again to modify a stipulation in order for it to be in the public interest. As the record shows, Constellation's

[6] *See, e.g.*, *In re the Application of Columbus Southern Power Co. and Ohio Power Co. for Approval of Program Portfolio Plans and Requests for Expedited Consideration*, Case Nos. 09-1089-EL-POR *et al.*, Opinion and Order (May 13, 2010) at 26; *see also In re the Application of Columbus Southern Power Co. and Ohio Power Co. 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. 11-346-EL-SSO *et al.*, Opinion and Order (Dec. 14, 2011) at 30-32, 38, 41-42, 50, 54-55, 59, 61, 63-65; *see also In re the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR *et al.*, Opinion and Order (Mar. 31, 2016) at 81-92, 106 and Second Entry on Rehearing (Nov. 3, 2016) at ¶ 103.

proposed modifications to the CBP auction construct will mitigate substantial risks inherent in the current structure —risks that cause AEP Ohio's default service customers to pay more for default service. These modifications are necessary to ensure that both the CBP auction process and the Stipulation in its entirety are in the public interest.

3. The Commission can and should adopt proposed modifications to the CBP auction process that are in the public interest.

The Commission can and should adopt Constellation's proposals to modify the CBP auction process for the benefit of AEP Ohio's customers. The record establishes that AEP Ohio's default service customers are currently paying substantial risk premiums for unbounded default service load migration risk. (Hearing Tr. 724:5-10). Further, AEP Ohio's residential and small commercial customers are paying for risks caused by the disparate load shapes of larger commercial and industrial customers. (Const. Ex. 2, 14:11-17). Finally, the data shows that class-based procurements would improve auction outcomes and reverse the disturbing trend of AEP Ohio's default service customers "paying more for less" compared to their counterparts receiving default service in other PJM states.

As referenced above, the Commission has expressed continued concern about the volatility in standard service offer prices for Ohio's customers. *See In re The Application of the Dayton Power and Light Co. d/b/a AES Ohio for Approval of its Electric Security Plan*, et al., 2023 Ohio PUC LEXIS 800, Case No. 22-900-EL-SSO, *et seq.*, Opinion and Order (Aug. 9, 2023) at *204.[7] This concern is justified. As the record in this case shows, there has been a significant drop in auction participation in recent years and AEP Ohio's default service rates have more than doubled. (Const. Ex. 2, 18:4-13). The data shows that Ohio has experienced an

[7] "The Commission continues to be concerned by the volatility in SSO prices, particularly the impact of increases in wholesale energy prices in 2022 on the SSO price experienced by customers."

oversized impact because of the unique risks that exist only in Ohio's CBP auction construct. (Const. Ex. 2, 18:16-19:12).

Constellation's proposals address these issues by making simple modifications to the CBP structure and contracts that reduce risk and increase transparency, ultimately leading to better default service rates for AEP Ohio's customers. The time has come for the Commission to reject the status quo and modify the CBP auction construct to mitigate risks and provide relief to AEP Ohio's default service customers.

IV. CONCLUSION

The Commission has an opportunity in this proceeding to make a few simple but important improvements to AEP Ohio's CBP auction construct. Having seen extremely high auction clearing prices in recent years, it is more important than ever to identify and mitigate risks caused by risks inherent in the CBP auction structure, because those risks are causing AEP Ohio's default service customers to pay substantial risk premiums for their default service. Mr. Indukuri's testimony demonstrates that such risks exist, and the record shows that they are indeed causing AEP Ohio's default service customers to pay more for default service. Fortunately, there are proven and easy-to-implement mitigation measures that the Commission should adopt now to improve the CBP auction construct for the benefit of all AEP Ohio default service customers.

For these reasons, Constellation respectfully requests that the Commission issue an order modifying the Stipulation and the CBP auction construct to include: (1) load migration pricing bands, and (2) class-based auctions.

Respectfully submitted,

/s/ Michael J. Settineri_________

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CERTIFICATE OF SERVICE

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