

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )	
Power Company for Authority to Establish a )	Case No. 23-0023-EL-SSO
Standard Service Offer Pursuant to )	
§4928.143, Ohio Rev. Code, in the Form of )	
an Electric Security Plan. )	

In the Matter of the Application of Ohio )	
Power Company for Approval of Certain )	Case No. 23-0024-EL-AAM
Accounting Authority. )	

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**REPLY BRIEF OF  
INTERSTATE GAS SUPPLY, LLC**

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**December 22, 2023**

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## **I. INTRODUCTION**

Each of the briefs submitted by the signatory parties<sup>1</sup> make the case that the Joint Stipulation and Recommendation (“Stipulation”) is the product of serious bargaining, will benefit the public interest, and does not violate any regulatory policy or practice. The Stipulation and Recommendation undeniably meets the longstanding Three Prong Test (“Test”). The collective briefs filed by the signatory parties present the Commission a clear choice: approve a Stipulation that is supported by numerous groups representing all ranges of customers, including Commission staff. Because the Stipulation provides for an equitable resolution to all outstanding issues in this case, IGS urges the Commission to approve it.

As recommended in the Stipulation, the Commission should not make substantial changes to the auction methodology utilized to supply the Standard Service Offer within AEP Ohio’s service territory. IGS encourages the Commission to follow the recommendations of the numerous parties that support the current system. Although Constellation<sup>2</sup> and the Ohio Consumers’ Counsel (“OCC”) have proposed two amorphous plans that would shift costs and risks away from bidders and directly onto customers, the Stipulation properly defers these arguments to be addressed more comprehensively in other Commission proceedings. The Commission should allow appropriate risks and potential costs to be borne directly by the auction participants that are sophisticated

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<sup>1</sup> The signatory parties are: the Staff of the Public Utilities Commission of Ohio (“Staff”), The Ohio Manufacturers’ Association Energy Group, Ohio Power Company (“AEP Ohio”), Ohio Partners for Affordable Energy, The Kroger Company, Walmart, Inc., The Ohio Energy Leadership Council, Ohio Energy Group, The Retail Supply Association, Environmental Law and Policy Center, Ohio Environmental Group, Direct Energy, Citizens Utility Board of Ohio, and Interstate Gas Supply, LLC (“IGS” or “IGS Energy”).

<sup>2</sup> Constellation Energy Generation, LLC and Constellation NewEnergy.

enough to hedge and manage risk appropriately while not potentially subsidizing the Standard Service Offer.

The Commission should approve, without modification, the Stipulation filed in this case.

### **III. ARGUMENT:**

#### **A. OCC has waived any arguments related to limitations on customer shopping or standby charges.**

Any arguments or objections made through written testimony or presented at hearing but not submitted as part of an initial brief are deemed to be waived according to longstanding Commission precedent.<sup>3</sup> OCC witness Wilson presented two such items at hearing that were starkly ignored in OCC's initial Post Hearing Brief. The two orphaned issues are potential restrictions/limits to the ways in which customers may shop for electric service and the potential for standby charges being assessed within AEP Ohio's service territory.

Regardless, at no point in prefilled testimony or throughout hearing was any specific proposal made or analysis rendered that would provide the Commission adequate guidance to divert from the filed Stipulation on these issues. To clearly demonstrate this point witness Wilson explicitly agreed on the record that he was only recommending the proposals contained in the supplemental testimony which does not include limitations on customer switching or standby charges.<sup>4</sup> The issues of standby

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<sup>3</sup> *In the Matter of the Application of The Dayton Power and Light Company for Authority to Change Accounting*, Case No. 82-858-EL-AAM, Opinion & Order at p. 5-7. (Aug. 25, 1982).

<sup>4</sup> Tr. II at 295 and Tr. II at 310.

charges and potential shopping limits were never fully built out in testimony or on the stand at hearing. Furthermore, both issues were abandoned by OCC when neither were addressed in their Initial Post Hearing Brief. It would be fundamentally unfair to allow OCC to ignore these issues in its initial post hearing brief and to subsequently address them through the reply brief process.

OCC failed to build its case in chief regarding these issues, ignored them through initial briefing, and must not waive any further rights to the issues in reply or afterward. No party addressed either issue through the initial briefing process given that the Stipulation speaks for the signatory and non-opposing parties. Accordingly, there is insufficient evidence in the record for the Commission to approve OCC's recommendation. Just as OCC spent little time developing its recommendations, the Commission need not expend time or resources contemplating either issue in this case.

**B. Adopting SSO auctions by customer class and load mitigation thresholds would go against the weight of the evidence presented on the record.**

While Constellation and OCC offer separate proposals to differentiate auctions by customer class and shift risks to different parties (and away from Constellation), neither has provided convincing evidence that these modifications to the auction process would benefit customers by consistently producing a lower auction price.

OCC contends that holding separate auctions by customer class *might* lead to more efficient and lower cost SSO auction outcomes for customers.<sup>5</sup> However, OCC witness Wilson does not support his recommendation with any data or analysis. Indeed,

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<sup>5</sup> OCC Ex. 2 at 2.

he admits that he did not compare Ohio SSO auction customer pricing results to customer pricing results in other jurisdictions.<sup>6</sup>

Constellation argues that large scale changes, including class-based auctions and load mitigation thresholds, are needed in order for SSO suppliers to avoid putting “unnecessary risk premiums” into their bids for SSO auctions within AEP Ohio’s service territory.<sup>7</sup> Yet risk premiums are a feature, not a bug, of the declining clock auction process. Under the current auction process, bidders can choose to price into their bids appropriate levels of risk based on varying levels of demand and customer load shapes while employing the expertise of their risk management teams to hedge against that risk. The declining clock auction process effectively forces bidders to squeeze as much risk premium as they can bear out of their auction bids, with the winning bidders having a combination of the lowest cost inputs and highest risk tolerance. For its own reasons, Constellation would rather shift as much risk as possible out of the auction process and onto the backs of customers. Yet, SSO auction participants are large and sophisticated organizations that can and should be able to manage their own risk without additional barriers or rules that favor certain organizations over others.

Constellation witness Indukuri also suggests that “these changes are necessary to send customers accurate price signals.”. Constellation’s proposed shifting of risks won’t result in “accurate price signals” but will, instead, only muddy the water for consumers and make understanding their rates and shopping alternatives more complicated.

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<sup>6</sup> Tr. II at 326.

<sup>7</sup> Constellation Initial Post Hearing Brief at 15.

Constellation witness Indukuri also failed to prove that auctions by customer class will result in lower auction clearing prices because, as he admitted, his data relates to auctions only within a narrow timeframe in other jurisdictions.<sup>8</sup> As AEP Ohio's rebuttal witness testified, based on a review of auction results from 2019-2023, the sole data source of Constellation witness Indukuri (auction results of Fall 2022) was the only auction clearing price in Pennsylvania in which AEP's price was higher than the customer class auctions.<sup>9</sup> A review of the broader set of data invalidates witness Indukuri's conclusion that auctions by customer class would lead to lower prices. Thus, when the Commission recently evaluated these arguments in AES Ohio's recent ESP proceeding, it found that evidence did not support that class-based auctions would result in aggregate savings to consumers in this state.<sup>10</sup>

Constellation also failed to present any compelling evidence as to why risks should be diverted from SSO providers to customers through an 8% mitigation threshold. Mr. Indukuri admitted that the costs associated with supplying SSO customers in a case where the PLC load was above or below the mitigation thresholds proposed (5% above and/or 3% lower than expected) would be paid by all SSO customers.<sup>11</sup> Mr. Indukuri also agreed that SSO customers would not know whether the volumetric band would be exceeded or the market price would be added during the delivery period. He conceded that customers would not have the certainty around SSO prices (that is currently known)

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<sup>8</sup> Tr. IV at 772.

<sup>9</sup> AEP Ohio Ex. 9 at 5

<sup>10</sup> *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan, Opinion and Order*, Case No. 22-900-EL-SSO, Opinion and Order at 124 (August 9, 2023) (stating that "we are not prepared, at this time, to adopt any mechanism that shifts migration risk from wholesale suppliers to consumers in this state.").

<sup>11</sup> Tr. IV at 736.

or if they would be exposed to market prices.<sup>12</sup> In these cases, customers would be wrongfully forced to provide the hedge for SSO auction bidders instead of the bidders managing the risk themselves.

As a bidder into numerous SSO auctions, IGS believes that companies bidding into auctions should bear the risk associated with volumetric change and any other risk factors inherent in the marketplace. Those risks should not be shifted to customers. For these reasons, IGS respectfully requests the Commission deny the proposals put forth by OCC and Constellation.

**C. The Commission should reject OneEnergy and Calpine's Assertion that Transmission Should be Bypassable.**

One Energy Enterprises Inc. ("OneEnergy") and Calpine Retail Holdings, LLC ("Calpine") argue that the Stipulation should be modified to make transmission bypassable.<sup>13</sup> However, both parties fail to acknowledge that, if transmission is made bypassable, it would unjustly and unreasonably add costs that suppliers do not have embedded in their fixed-price retail contracts—sometimes for three years or more. Consequently, making transmission bypassable without a responsible transition process would plunge the retail market into chaos and result in significant litigation. The Commission should reject Calpine and OneEnergy's arguments and approve the BTCR Pilot as proposed in the Stipulation.

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<sup>12</sup> Tr. IV at 715-716, 735.

<sup>13</sup> Calpine Initial Brief at 7 and OneEnergy Initial Brief at 12.



**D. The Commission should reject OCC's assertion that the Stipulation's new Customer Information System ("CIS") violates regulatory principles and practices.**

As part of the Stipulation, AEP Ohio will implement a new CIS. Other major improvements will include expanded data access for third party providers, which will enable participation in the PJM ancillary services markets and, in turn, expand customer choices within AEP Ohio's service territory. In its initial brief, OCC argues that the CIS system violates regulatory principles and practices by allowing AEP to collect the deferred expenses in either base distribution rates or a future rider without proving it is used and useful.<sup>14</sup>

There is nothing in the record to support OCC's argument. The amount of CIS expenditures for future recovery is subject to a reasonableness and prudence review and will be done through a future distribution rate case or rider. As pointed out by AEP, 17 parties to the Stipulation agreed that the amount of CIS expenditures for future recovery will be subject to review.<sup>15</sup> IGS supports AEP Ohio's new CIS system and notes that the new CIS functionalities will promote competition, be beneficial to customers and advance the public interest.

**IV. CONCLUSION**

IGS urges the Commission to adopt the Stipulation and Recommendation filed in this docket without modification and without changes to the declining clock auction format other than those present in the Stipulation. For the reasons presented above, the

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<sup>14</sup> OCC Initial Brief at 41.

<sup>15</sup> AEP Ohio Initial Brief at 14.

Commission should adopt the Stipulation and Recommendation filed in this docket without modification.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Reply Brief of Interstate Gas Supply, LLC*. was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on December 22, 2023. The Commission's e-filing system will electronically serve notice of the filing of this document upon the following parties listed below.

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Summary: Reply Brief of Interstate Gas Supply, LLC electronically filed by Mrs.  
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