

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 23-24-EL-AAM
Accounting Authority)	

**MEMORANDUM CONTRA OF
CONSTELLATION ENERGY GENERATION, LLC AND
CONSTELLATION NEWENERGY, INC.
TO OHIO POWER COMPANY’S MOTION FOR INTERIM RELIEF TO CONDUCT
MARCH 2024 SSO AUCTION AND REQUEST FOR EXPEDITED RULING**

I. INTRODUCTION

On December 21, 2023, AEP Ohio filed a motion for interim relief seeking permission from the Public Utilities Commission of Ohio (“Commission”) to conduct a March 2024 standard service offer (“SSO”) auction pursuant to the competitive bidding process established under its ESP IV. Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (collectively, “Constellation”) oppose AEP Ohio’s request because it fails to comply with the Commission’s Order to implement a capacity proxy price (“CPP”) mechanism for future SSO auctions. *See In re the Proposed Modifications to the Electric Distribution Utilities’ Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC (“*Generic SSO Proceeding*”), Finding and Order (Dec. 13, 2023) (“*CPP Order*”) at ¶ 35. If the Commission chooses to grant AEP Ohio’s request for interim relief, it should require AEP Ohio to implement a CPP mechanism as part of the March 2024 auction process.

II. ARGUMENT

The Commission should not grant AEP Ohio's request for interim relief unless AEP Ohio follows the mandate in the *CPP Order* and implements a CPP mechanism for the proposed March 2024 auction. AEP Ohio argues in its motion that a CPP mechanism should not be used for the proposed auction because it would be difficult to implement, stating:

The steps needed to implement the capacity proxy rate (including the calculation methodology, the appropriate education of potential bidders, as well as the updates to the auction rules, Master SSO Supply Agreement, bidder information sessions, and other auction documents) and true-up method will not be completed in time for the Company to hold a March 2024 auction following the revised provisional schedule . . . that largely maintains the various timelines for bidder deadlines provided in the auction rules.

(AEP Motion For Interim Relief, Memorandum in Support at 8-9).

The Commission should reject this argument and require the use of a CPP mechanism for the proposed March 2024 auction for three reasons. First, AEP Ohio's bald assertion that the implementation of the *CPP Order* "will not be completed in time" (based on the provisional schedule AEP Ohio has proposed) is not good cause to waive the Order's requirements. Moreover, as Commission Staff noted in its Proposal and Recommendation in the *Generic SSO Proceeding*, there are various examples of utilities implementing default service procurements with CPP mechanisms in other jurisdictions. AEP Ohio and its auction manager (who itself has experience with implementing a CPP mechanism in New Jersey) can use these examples to quickly and efficiently implement a CPP mechanism for the proposed March 2024 auction.

Second, the implementation of a CPP mechanism for the proposed March 2024 auction is consistent with Commission Staff's recommendation relative to the March 2024 auction proposed by the FirstEnergy Utilities. *See In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Authority to Establish a Standard Service Offer*

Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 23-301-EL-SSO (“*FE ESP V Case*”), Commission Staff Limited Memorandum Contra (Dec. 20, 2023). The Commission has previously expressed a desire to align the utilities’ SSO auction practices,¹ and the use of a CPP mechanism in both AEP Ohio’s and the FirstEnergy Utilities’ proposed March 2024 auctions will further that objective relative to the CPP mechanisms required for all electric utilities.

Third, and most importantly, AEP Ohio’s default service customers will benefit from the use of a CPP mechanism in the proposed auction. As recognized by the Commission in the *CPP Order*, AEP Ohio’s default service customers should not wait any longer for the stabilizing benefits that the CPP mechanism will have on AEP Ohio’s SSO.

A. AEP Ohio Has Not Shown Good Cause To Waive The Requirements of the *CPP Order*.

AEP Ohio is required to follow the mandate of the Commission’s *CPP Order* unless it has shown good cause for not doing so. Section 4905.54, Ohio Revised Code, requires that a public utility “comply with every order, direction, and requirement of the public utilities commission made under authority of this chapter and Chapters 4901., 4903., 4907., and 4909. of the Revised Code, so long as they remain in force.” Generally, the Commission does not waive the requirements set forth in its orders except for good cause shown. *See, e.g., In re the Annual Reports for Calendar Year 2022 for the Fiscal Assessment of All Regulated Entities*, et al. Case Nos. 23-01-AU-RPT, et al., Entry on Rehearing (Aug. 9, 2023) at 2 (advising utilities of possible civil forfeiture if it fails to comply with the Commission’s order “absent good cause shown”); *In re the*

¹ *CPP Order* at ¶ 35.

Annual Reports for Calendar Year 2020 for the Fiscal Assessment of All Regulated Entities, Case No. 21-01-AU-RPT (Second Entry on Rehearing) at ¶ 3 (same).

The *CPP Order* is clear in its directive that Ohio’s electric distribution utilities must implement CPP mechanisms for future SSO auctions. The *CPP Order* requires the State’s electric distribution utilities to “modify their SSO auction products such that capacity is priced at a proxy rate where the actual price is not yet established” and to “work in conjunction with their auction managers to revise all supplier documents, as necessary, as well as update the pertinent information presented at bidder information sessions to be conducted prior to each auction.” *CPP Order* at ¶ 35. Notably, the *CPP Order* does not limit the applicability of these requirements to SSO auctions held after a certain date or require the utilities to make filings requiring further Commission action to implement these modifications. Accordingly, the *CPP Order* requires that AEP Ohio make these changes for all subsequent SSO auctions (*i.e.*, like the one AEP Ohio proposes to hold in March 2024) unless good cause can be shown to relieve it from the Order’s requirements.

In this case, AEP Ohio’s mere assertion that its efforts to implement the requirements of the *CPP Order* “will not be completed in time” for the proposed March 2024 auction does not constitute good cause for two reasons. First, AEP Ohio’s new motion proposing the March 2024 date should not delay the *CPP Order* for AEP Ohio’s auctions. AEP Ohio committed in the Stipulation filed months ago in this case to the concept of the CPP mechanism. (*See* Joint Stipulation and Recommendation at 3 – Section III.B.1). As such, its request to conduct an

additional auction now under the competitive bidding process used in ESP IV should not, in effect, delay the effectiveness of the Commission's directive.

Second, AEP Ohio's claim that it is not possible for these steps to be completed in time is dubious, at best. There are many examples that can guide AEP Ohio and its auction manager to quickly and efficiently implement a CPP mechanism for the proposed March 2024 auction. For example, the electric distribution utilities in Pennsylvania and New Jersey have successfully implemented CPP mechanisms for several years "with no obvious negative impacts on the auction clearing price or bidder interest." *See Generic SSO Proceeding*, Commission Staff Proposal and Recommendation (July 26, 2023) (Attachment A to July 26, 2023 Entry). Their experience can and should be leveraged by AEP Ohio and its auction manager to implement the CPP mechanism used for the proposed March 2024 SSO auction. Indeed, AEP Ohio's auction manager (NERA) has direct experience as the auction manager for New Jersey's electric distribution utilities.

In light of this experience implementing CPP mechanisms, AEP Ohio's concern that its efforts to implement a CPP mechanism "will not be completed in time" for the proposed March 2024 auction does not constitute good cause to waive the requirements of the Commission's *CPP Order*. If the Commission decides to grant AEP Ohio's request to hold a proposed auction in March 2024, it should require AEP Ohio to implement and utilize a CPP mechanism for the auction.

B. To Align With Commission Staff's Recommendation for the FirstEnergy Utilities, the Commission Should Require AEP Ohio To Implement a CPP Mechanism for Its Proposed March 2024 Auction.

The Commission should also require AEP Ohio to follow the mandate of the Commission's *CPP Order* to align AEP Ohio's auction process with the auction process to be used in a March 2024 auction to be held by the FirstEnergy Utilities. On December 13, 2023, Ohio Edison

Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “FirstEnergy Utilities”) filed a similar motion seeking permission to hold two SSO auctions (in January/early February 2024 and mid-March/early April 2024) in accordance with the competitive bidding process rules set forth in the FirstEnergy Utilities’ ESP IV. *See FE ESP V Case*, Motion for Interim Relief (Dec. 13, 2023) at 2. On December 20, 2023, Commission Staff filed support for the motion for interim relief but recommended that the Commission require the FirstEnergy Utilities to comply with the requirements of the *CPP Order* for the second auction. *FE ESP V, supra*, Commission Staff Limited Memorandum Contra (Dec. 20, 2023). Commission Staff reasoned that:

[T]he Commission should direct the [FirstEnergy Utilities] to include a proxy rate for capacity in the second auction (to occur between mid-March and early April 2024) that **would allow for a two year product that better reflects the Commission’s recent [CPP] Order on this issue. Including a proxy rate in the second auction being requested by the Companies will allow sufficient time for the modified auction product to be implemented and for pre-auction activities to be conducted.**

(*Id.* at 2, emphasis added).

The Commission should apply this reasoning to AEP Ohio’s request and require that a CPP mechanism be implemented and used for the proposed March 2024 auction. The Commission has previously expressed a desire for consistency between the electric distribution utilities’ competitive bidding processes. *See e.g., CPP Order* at ¶ 35. To ensure consistency between the auctions held by the FirstEnergy Utilities and AEP Ohio, the Commission should follow the

recommendation of its Staff and require a CPP mechanism for the proposed March 2024 SSO auction.

C. AEP Ohio’s Default Service Customers Will Benefit From a CPP Mechanism.

Finally, the Commission should require AEP Ohio to implement a CPP mechanism for the proposed March 2024 SSO auction because it will benefit AEP Ohio’s default service customers. In the *CPP Order*, the Commission acknowledged the benefits of a CPP mechanism allowing for multi-year auction products, stating that “[a]uction schedules must return to a measure of normalcy and predictability, where among other things, the blending of auctions with one-, two-, and three-year products are offered.” *Id.* at ¶ 34. The Commission further acknowledged the benefits that the certainty created by the CPP mechanism will have for customers, stating “[the Commission’s] present goal is to stabilize the SSO procurement auction. And the certainty provided by a proxy price and true-up mechanism . . . should alleviate the disturbance present in the capacity markets since FERC’s 2018 decision.” *Id.* at 35.

The Commission should not further delay AEP Ohio default service customers’ receipt of these benefits. Once before, the Commission stayed the implementation of CPP mechanisms in Ohio because of a belief that PJM’s base residual auctions would resume on a normal schedule. *Id.* at ¶ 33. But significant delays in the PJM base residual auctions have rematerialized and the Commission has acknowledged that the “delay and uncertainty have been more persistent than [the Commission] could have reasonably anticipated” and that CPP mechanisms are now appropriate given the circumstances. The Commission should not once again delay the implementation of a CPP mechanism and require AEP Ohio’s default service customers to continue paying for the uncertainty caused by the PJM capacity market.

III. CONCLUSION

For these reasons, Constellation respectfully requests that the Commission not grant AEP Ohio's motion for interim relief without also requiring AEP Ohio to utilize a CPP mechanism consistent with the *CPP Order* for the proposed March 2024 auction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of this filing on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document was also served (via electronic mail) on the 28th day of December 2023 upon all persons/entities listed below:

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Summary: Memorandum Contra to Ohio Power Company's Motion for Interim Relief to Conduct March 2024 SSO Auction and Request for Expedited Ruling electronically filed by Mrs. Gretchen L. Petrucci on behalf of Constellation Energy Generation, LLC and Constellation NewEnergy, Inc..