

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, the Cleveland Electric	)	
Illuminating Company, and the Toledo	)	
Edison Company for Authority to Establish	)	Case No. 23-301-EL-SSO
a Standard Service Offer Pursuant to R.C.	)	
4928.143 in the Form of an Electric	)	
Security Plan	)	

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

January 19, 2024

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Table of Contents

I.	Introduction.....	1
II.	Background	3
	A. FirstEnergy’s proposed competitive bidding process for ESP 5	3
	B. Constellation’s positions on the competitive bidding process.....	5
	C. Constellation supported its positions through expert witness testimony	6
III.	Standard of Review	7
IV.	Argument	8
	A. The current CBP auction construct and recent history result in unnecessary risk premiums being charged to default service customers	8
	1. The ability to migrate and recent history with unprecedented customer migrations create significant and major risks.....	10
	2. The slice of system construct creates significant and major risks	12
	3. The risks of the CBP construct have affected customers because there are fewer auction participants	13
	4. The risks of the CBP construct have affected customers because customers are paying risk premiums and they will persist in the ESP 5.....	15
	B. Although a capacity proxy price mechanism has been appropriately ordered by the Commission and should be clearly established as part of the CBP for ESP 5, it will not address customer migration risk premiums and class cross-subsidies that SSO customers are paying	16
	1. The Commission recently ordered a CPP mechanism to address the risks caused by delayed base residual auctions.....	17
	2. The Commission should be clear that the approved CPP mechanism shall be established and included in the CBP for ESP 5.....	17
	3. While a CPP mechanism is a beneficial change that Constellation supports, it does not address or mitigate the load migration risk or the cross-subsidies in the current CBP auction construct that result in less-favorable auction outcomes for all customers	18
	C. FirstEnergy’s proposed volumetric risk cap on load migration, if slightly modified, is in the public interest and would benefit customers.....	19
	1. A volumetric risk cap on load migration would mitigate risks.....	20

a.	A proper upper cap will stop default service customers from paying for events that do not happen	21
i.	SSO suppliers should supply the load above the cap.....	23
b.	A bottom PLC threshold will increase supplier certainty	24
2.	A volumetric risk cap can be readily implemented in FirstEnergy SSO auctions	24
3.	Another jurisdiction has recognized and experienced the benefit of mitigating risk associated with load migration and the certainty it creates for default service suppliers	25
4.	The recently ordered “minimum stay” tariff provisions are insufficient to address load migration risk.....	26
D.	Class-based auctions will result in better prices for customers by properly allocating risks and costs	28
1.	Class-based auctions allow bids to be tailored to specific costs and risks of each class, avoiding cost-shifting and providing greater transparency in pricing.....	28
2.	Class-based auction products can be readily implemented in FirstEnergy’s SSO auctions	30
3.	Other jurisdictions have recognized and experienced the benefits of class-based auctions and the certainty they create	31
4.	Class-based auctions would not shift risk to customers.....	33
E.	FirstEnergy’s proposal to eliminate the 36-month product will not mitigate risk premiums of other auction products or mitigate cross-subsidies.....	34
F.	FirstEnergy’s proposal to eliminate pre-bid collateral for bidders with foreign guarantors should not be adopted	34
G.	FirstEnergy’s proposed single SSO Master Supply Agreement, followed by transaction confirmations, is reasonable	35
H.	FirstEnergy’s other streamlining proposals (no longer requiring ink signatures or notarization of applications and allowing back-up bids by telephone or email) are reasonable	35
V.	Conclusion	35
	CERTIFICATE OF SERVICE	37

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I. Introduction

The Public Utilities Commission of Ohio should modify the default service auction format for the fifth electric security plan (“ESP 5”) of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively “FirstEnergy”) in order to mitigate the impact of the recent, unprecedented developments in FirstEnergy’s competitive electric market. FirstEnergy’s competitive bidding process (“CBP”) format has been substantially the same since 2009 and, as FirstEnergy’s auction manager confirmed at hearing (Tr. at 783), that format was not designed to mitigate market risks – certainly not those customer migration risks and cross-subsidies that the default service customers are paying for today in the standard service offer (“SSO”) rates. Adopting Constellation’s recommended changes will benefit the default service customers and result in a more transparent, efficient, and equitable electric marketplace in FirstEnergy’s service territories.

Specifically, Constellation recommends adoption of FirstEnergy’s proposed volumetric risk cap based on Peak Load Contribution (“PLC”) – slightly modified to set the upper PLC cap lower than proposed, to include a bottom PLC threshold and to have SSO suppliers serve and settle financially any load that would be procured at market as a result of the PLC cap being exceeded. Constellation further recommends that the auctions be class-based (not slice-of-system). These changes to the CBP format will mitigate the significant/major risk premiums that are associated

with customer migration and load uncertainty, and will properly assign risks and costs (removing cross-subsidies), all of which are being paid for by the default service customers today. These CBP changes are in the public interest and are fully aligned with ameliorating the Commission's own concerns regarding the volatility in SSO rates. The Commission repeatedly stated in 2023 that it wants to see changes in the auction clearing prices. Constellation's CBP changes will directly and effectively address the significant/major risks and costs that the default service customers pay. In addition, these changes are implementable – FirstEnergy affiliates use a volumetric risk cap and class-based auctions, other states in the PJM Interconnection region require them, and default service customers in other jurisdictions are benefitting from them. FirstEnergy's auction manager is familiar with these changes, as are SSO suppliers.

In addition to adopting Constellation's CBP proposals, the Commission should implement a capacity proxy price ("CPP") mechanism in this proceeding. Constellation supports and applauds the Commission's recent requirement in Case No. 23-781-EL-UNC for FirstEnergy to implement a CPP mechanism, like other PJM states have implemented. The Commission should clarify in this proceeding that the adopted CPP mechanism applies to the CBP adopted in this case. Importantly, the Commission should also recognize that the CPP mechanism will not mitigate premiums for the customer migration risk and load uncertainty, or eliminate the cross-subsidies existing under the slice-of-system format in the CBP that default service customers pay for today. The CPP mechanism addresses an entirely different and unrelated issue that develops when a base residual auction has not been held prior to the SSO auction in Ohio.

Similarly, the Commission should recognize that Commission-approved "minimum stay" tariff provisions applicable to governmental aggregations do not mitigate customer migration risk and load uncertainty because, among other things, those tariffs do not prevent governmental

aggregation customers from returning *en masse* to default service. Elimination of the 36-month auction product, as proposed by FirstEnergy, is another change in this case that will not address the premiums for customer migration risk and load uncertainty, or eliminate the cross-subsidies.

As to FirstEnergy's other proposals for the CBP, Constellation supports what are minor process-related modifications. These are: using a single SSO Master Supply Agreement followed by transaction confirmations, eliminating the ink signature and notarization requirements for applications, and allowing back-up bids to be presented by telephone or email. These are reasonable streamlining proposals that the Commission should approve.

Finally, there is one CBP-related proposal from FirstEnergy in this proceeding that Constellation recommends the Commission not adopt. FirstEnergy proposes to eliminate the requirement for pre-bid collateral for bidders with foreign guarantors. Although presented as a minor administrative-type change, Constellation cautions the Commission. The pre-bid collateral ensures that such bidders are providing sufficient financial wherewithal at full value because the value of the posted foreign currency can change over time. As a result, this proposed change should not be approved.

In sum, the record exists in this proceeding for the Commission to implement positive and necessary changes to FirstEnergy's CBP that will benefit ratepayers, particularly residential consumers.

II. Background

A. FirstEnergy's proposed competitive bidding process for ESP 5

FirstEnergy filed its Application for approval of a fifth ESP on April 5, 2023. FirstEnergy's Application contains a number of proposals to be in effect for an eight-year period, starting June 1, 2024. This brief focuses on how FirstEnergy should obtain generation for the non-shopping customers ("default service" or "SSO" customers) through a CBP. FirstEnergy proposes to mostly

follow its existing CBP (which is substantially the same as when auctions were first designed/conducted in 2009), but modify the CBP in the following ways for the term of the ESP 5:

- Establish a volumetric risk cap;
- Eliminate the 36-month auction products;
- Use a CPP mechanism when capacity prices are not known at the time of FirstEnergy's SSO auction;
- Modify the collateral requirements for winning SSO suppliers;
- Simplify/streamlining the bidding process; and
- Change the auction schedule from dates in October and January to June (summer) and January (winter).

FirstEnergy Ex. 1 at 6; FirstEnergy Ex. 6 at 6 and Attachment RJL-9; Tr. at 761, 782-783.

Regarding FirstEnergy's volumetric risk cap proposal, it would apply to mitigate risk associated with the migration of customers to the SSO. FirstEnergy Ex. 6 at 7. The winning SSO suppliers would provide the generation and receive compensation for each winning tranche up to an additional 20 megawatts ("MWs") above the PLC as set on June 1 of each planning year of the delivery period. FirstEnergy Ex. 6 at 6-7; Tr. at 694, 741, 761-762. As proposed, a portion of the SSO load would be fully supplied by FirstEnergy if there is an exceedance on a per-tranche PLC value by more than 20 MWs.¹ If there is an exceedance, FirstEnergy would engage in market purchases, FirstEnergy would be invoiced by PJM, and FirstEnergy would charge all SSO customers for that portion of load at real-time market prices. FirstEnergy Ex. 6 at 7; Tr. at 695-696, 742-744, 746. FirstEnergy calculates the PLC values today and that information is readily

¹ Staff Witness Benedict speculated that, when FirstEnergy would seek to charge SSO customers for the generation it procures for load amounts exceeding the cap, it is possible that the charges would not be assessed to all SSO customers. Tr. at 2370-2371. This was not part of FirstEnergy's proposal, however.

available. Tr. at 719, 720, 1946; OELC Ex. 14 (under the “Load and Other Date” link in the Documents Section on the FirstEnergy CBP website).

To be clear, FirstEnergy’s proposed volumetric risk cap is not based on customer usage. It is the per-tranche, benchmark PLC value of the customers on the SSO that would have to be exceeded by 20 MWs. Tr. 694-695, 739, 754, 1946-1947.

Robert Lee at Charles River Associates (“CRA”), FirstEnergy’s auction manager, testified in support of the FirstEnergy proposed volumetric risk cap. Tr. at 753. CRA has been the auction manager for FirstEnergy, and others in many U.S. jurisdictions – handling bidder qualifications, running the auctions, selecting the winners, reporting results and helping ensure the winners execute the SSO Master Supply Agreements. FirstEnergy Ex. 6 at 3 and Attachment RJL-1; Tr. at 698-699. Mr. Lee has managed more than 200 auctions similar to FirstEnergy’s CBP, and has worked with FirstEnergy and other Ohio electric utilities for many years. FirstEnergy Ex. 6 at 3-4, 5; Tr. at 698, 781.

B. Constellation’s positions on the competitive bidding process

Constellation supports the proposed volumetric risk cap with certain modifications, proposes adoption of class-based auctions, supports use of a CPP mechanism and responds to FirstEnergy’s other CBP proposals. Constellation proposes that the proposed volumetric risk cap be modified in three respects:

- Instead of 20 MWs, set the volumetric PLC risk cap within the range of 2-5 MWs (or approximately 15-40% of PLC tranche size);²
- The SSO suppliers (not FirstEnergy) serve the default service load if the volumetric PLC risk cap is exceeded; and

² The tranche size from FirstEnergy’s most recent auction (March 20, 2023) was approximately 12 MWs from a PLC cap perspective. Constellation Ex. 11 at 21.

- A bottom PLC threshold be established that would result in the upper risk cap being adjusted downward if the bottom PLC threshold is triggered.

Regarding Constellation’s proposed class-based auctions, FirstEnergy would cease the “slice of system” format that is currently done. Constellation Ex. 11 at 7, 25-26. The auctions would procure default service for customers along “natural breakpoints” in the types of customers within FirstEnergy’s service territory. Those with similar load characteristics would be grouped together for auction purposes. Specifically, Constellation recommends three groupings: Residential (RS class), Small Commercial (GS, ST, TR and POL classes) and Large Commercial and Industrial (GP, GSU and GT classes). *Id.* at 26.

Furthermore, Constellation supports a CPP mechanism, which the Commission has now adopted in a separate proceeding (Case No. 23-781-EL-UNC)³ because it avoids delaying the auctions, eliminates unnecessary risks that come with changing auction products, and preserves the benefits of laddering and staggering for customers. Constellation supports other FirstEnergy streamlining proposals presented in this proceeding. FirstEnergy’s proposed elimination of pre-bid collateral for bidders with foreign guarantors should not be adopted, however, because it might not protect customers. Given the potential for changes in the currency exchange rates, it is reasonable for bidders with foreign guarantors to post additional pre-bid collateral.

C. Constellation supported its positions through expert witness testimony

The Commission should recognize and afford significant weight to the expert testimony of Constellation Witness Murali Indukuri. Mr. Indukuri is an expert with extensive experience in energy markets, and leads the team responsible for Constellation’s participation in numerous default service procurements throughout PJM and ISO-NE, including competitive procurements

³ No applications for rehearing were filed in response to that Commission’s December 13, 2023 decision in Case No. 23-781-EL-UNC.

in a variety of formats in Ohio, Pennsylvania, Delaware, New Jersey, Maryland, the District of Columbia, Massachusetts, Rhode Island, Connecticut, New Hampshire, and Maine. Constellation Ex. 11 at 1. Mr. Indukuri also has extensive experience in energy markets. Constellation Ex. 11 at 2. Mr. Indukuri has “a unique perspective of the risks associated with participating in default service procurements and the advantages/disadvantages of the various procurement/product structures from a customer, SSO supplier and market standpoint.” Constellation Ex. 11 at 1. Mr. Indukuri’s unique perspective and extensive experience 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. Given his experience and insights, the Commission should give significant weight to Mr. Indukuri’s testimony.

III. Standard of Review

An ESP shall include provisions relating to the supply and pricing of electric generation service. R.C. 4928.143(B)(1). 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).

Pursuant to Ohio Adm.Code 4901:1-35-03(B)(2), an application containing a CBP shall provide a justification of its proposed CBP plan, considering alternative possible methods of procurement, including among other things subsections (B)(2)(c)-(e) which state as follows:

- (c) Detailed descriptions of how the CBP plan ensures an open, fair, and transparent competitive solicitation that is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code.
- (d) Detailed descriptions of the customer load(s) to be served by the winning bidder(s), and any known factors that may affect such customer loads * * *.

- (e) Detailed descriptions of the generation and related services that are to be provided by the winning bidder(s) * * *.

Ohio Adm.Code 4901:1-35-08(A) states that, for a CBP plan proposed for an ESP, “the electric utility shall use an independent third party to design an open, fair, and transparent competitive solicitation; to administer the bidding process; and to oversee the entire procedure to assure that the CBP complies with the CBP plan.”

FirstEnergy has the burden of proof to show that its proposed ESP meets the statutory and regulatory criteria for approval. *See* R.C. 4928.143(C)(1).

IV. Argument

SSO customers have experienced high SSO rates recently, which the evidence shows is, in part, because of less supplier participation and auction clearing prices that include premiums based on risks in serving the SSO load that the CBP construct is not designed to mitigate. FirstEnergy’s CBP should be modified to mitigate the major SSO-related risks – those associated with customer migration and load uncertainty – and to eliminate cross-subsidies. Otherwise, SSO customers will pay for risks whether they materialize or not. These points are further developed below along with Constellation’s positions and supporting arguments on the use of a CPP mechanism and FirstEnergy’s other CBP proposals.

A. The current CBP auction construct and recent history result in unnecessary risk premiums being charged to default service customers.

The evidence in the record establishes that the current CBP auction construct results in risk premiums being charged to default service customers, regardless of whether the risk materializes. This point is confirmed by multiple witnesses. As acknowledged by Mr. Indukuri, acting as an SSO supplier necessarily means taking some risks. Constellation Ex. 11 at 11; *see also* IGS Ex. 1 at 5, 6-7. FirstEnergy Witness Lee and OCC Witness Wilson each acknowledged that SSO suppliers manage risks and the related costs of managing the risks are passed through to customers.

Tr. at 702, 706-707, 1877-1878. IGS and Staff agreed that default service suppliers can offset the risks of serving the default service load by including a risk premium in the supplier's bids. Tr. at 2092, 2097-2087, 2363-2364, 2365. To the extent that default service suppliers are able to effectively manage those risks for customers, the SSO auction clearing prices will be lower, which benefits default service customers.

Historically, default service suppliers were managing the risks, although there were customer movements on and off the SSO and there were changes in usage during different seasons. Constellation Ex. 11 at 11; IGS Ex. 1 at 7. However, recent events have further increased the risks under the current CBP construct and those increased risks are being included in increased auction clearing prices and charged to the default service customers. OCC Ex. 2 at 4. As Mr. Indukuri testified, the current CBP construct does not adequately address recent events impacting default service prices. Constellation Ex. 11 at 16-18.

The Commission has already recognized this point, and stated repeatedly throughout 2023 its concerns regarding the volatility in SSO rates. *See In re the Procurement of Standard Service Offer Generation for Customers of Ohio Edison Company, et al.*, Case No. 16-776-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 The Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan*, Case Nos. 22-900-EL-SSO et al., Opinion and Order (August 9, 2023) at ¶ 247. In this proceeding, the CBP auction construct for FirstEnergy is before the Commission, which can and should accept Constellation's recommendations to mitigate the risk premiums being charged to default service customers.

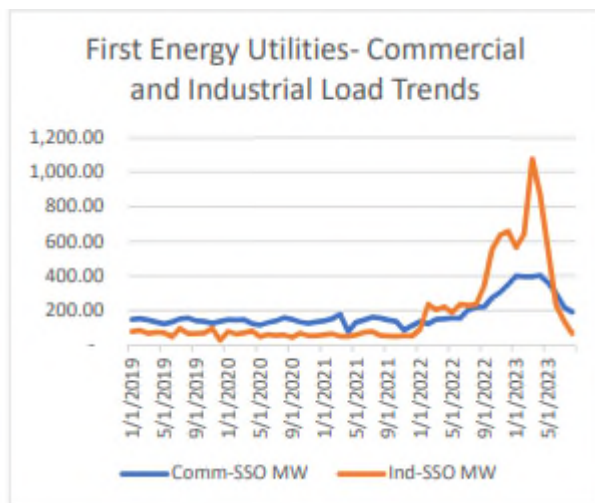
1. The ability to migrate and recent history with unprecedented customer migrations create significant and major risks.

Ohioans generally may migrate on and off default service. Recently, there has been unprecedented volatility both in the wholesale electric and natural gas commodity markets, and customers in the FirstEnergy service territories migrated to default service, particularly the commercial and industrial customers, and one large governmental aggregation's customers, all of which has resulted in unprecedented compounding migration risk. Constellation Ex. 11 at 11, 12; Tr. at 702-703, 1951. The costs to procure a greater supply of energy than what previously was believed to be necessary have **become the future cost of doing business and are reflected in SSO rates**. Constellation Ex. 11 at 12, 18; Tr. at 760-761. Thus, this increased migration risk is paid for by FirstEnergy's default service customers in the form of risk premiums. Constellation Ex. 11 at 12; FirstEnergy Ex. 6 at 9; Tr. at 710, 1878, 1938-1939, 2364. It has also contributed to Ohio's default service auctions being more heavily affected by recent market volatility than other nearby states. Constellation Ex. 11 at 18, 28.

Customer migration has been and continues to be a "significant" and "major" risk for default service suppliers under the current CBP construct. FirstEnergy Ex. 6 at 7; Constellation Ex. 11 at 18; OCC Ex. 2 at 15-16; Tr. at 759, 771. Default service suppliers had not previously experienced the general market volatility to the levels seen recently. **How customer migration is valued has changed dramatically, based on recent experience**. Constellation Ex. 11 at 13; Tr. at 710, 1950. This is due to the recent unprecedented migration by commercial and industrial customers, and due to customers moving back to the SSO from aggregations and CRES suppliers.

The record confirms the dramatic levels of customer migration to the SSO in 2022 and 2023 in FirstEnergy's service territory. For example, Mr. Lee testified that customer migration became a more acute issue, with "very high load migration numbers in 2022." Tr. at 703, 771.

The non-shopping statistics demonstrate the significant changes in 2022 and 2023 too. OELC Ex. 10. Also, Mr. Indukuri’s testimony presented the below graph of the migration of the commercial and industrial load to the SSO in the FirstEnergy service territory from 2019 to mid-2023:



Constellation Ex. 11 at 15. *See also* OCC Ex. 2 at 15-16. As illustrated by the chart, the commercial load in FirstEnergy’s service territories on the SSO **increased more than 291%** over the average SSO commercial load in the prior years. Constellation Ex. 11 at 14. The industrial load in FirstEnergy’s service territories **increased more than 1,667%** over the average industrial SSO load over the prior years. *Id.* *See also* OELC Ex. 10.

The recent shifts in Ohio aggregation activity were also dramatic. Ohio residential customers served through aggregations went from a high of approximately 73% in 2022 to a low of 53% in 2022. Constellation Ex. 11 at 13. The Northeast Ohio Public Energy Council (“NOPEC”), which had a large aggregation in FirstEnergy’s territory, dropped numerous customers in September 2022 who returned to the SSO. Tr. at 1944.

It is not only changes in the volume of load from customer migration that creates significant risk, the costs of which are passed through to default service customers. The customers’ variations in usage (“load shape”) also creates risk. Constellation Ex. 11 at 15; Tr. at 759. Residential

customers typically have a more predictable pattern of usage that is weather-sensitive, and commercial customers that operate retail businesses have a different load shape based on their business hours and type of business. Constellation Ex. 15-16; OCC Ex. 2 at 5; Staff Ex. 6 at 7; Tr. at 2374. Whereas, large commercial and industrial customers have a load shape that differs from one customer to the next, and is also distinct from both residential customers and other commercial customers. Staff Ex. 6 at 7. Mr. Indukuri explained that forecasting the loads of large commercial and industrial customers is nearly impossible since there are many drivers that affect their load. Constellation Ex. 11 at 16.

The impact of customer migration has resulted in suppliers having to serve an unprecedented and significantly higher and unpredictable load than had been forecasted. Suppliers would have been unhedged for the additional unanticipated commercial and industrial load, and consequently, they would have had to procure additional energy for the unanticipated load at a time when market prices were high. The evidence establishes that customer migration is a significant/major risk for default service customers under the current CBP construct.

2. The slice of system construct creates significant and major risks.

The product in the CBP auctions is an hourly, load-following full requirements tranche of FirstEnergy's entire (aggregate) SSO load. The tranche is defined as one percent, or a slice, of the FirstEnergy's total SSO load obligation for energy, capacity, ancillary services, and certain other transmission services. FirstEnergy Ex. 6 at 20-21; Tr. at 736, 755, 789, 2370. As a result, default service is procured for a percentage of the load of all customers, regardless of the customers' size or varying load shape. Constellation Ex. 11 at 15.

The inclusion of customer classes with different load shapes in the same default service tranche is challenging for potential default service suppliers and, as Mr. Lee explained, this format creates "a risk premium associated with the auction and that risk premium is shared by all

customers” because they are aggregated. Tr. at 764. As noted earlier, the customer classes are not all the same. Residential customers (as a class) have a fairly predictable load shape based on seasonal and weather patterns, but the load shape for commercial and industrial customers can vary significantly and can be “nearly impossible” to forecast. Constellation Ex. 11 at 15-16. While default service suppliers are sophisticated portfolio managers and have tools to mitigate certain risks,⁴ they do not have any reasonable assurance as to what the overall SSO load volume will be, or what the shape of the load will be since it could be any and every customer in the utility service territory. Constellation Ex. 11 at 15-16 at 11, 16; IGS Ex. 1 at 7; Tr. at 759. In addition, load volume and shape can vary from the time of the auction to the start of the delivery period. Tr. at 756.

Serving SSO customers on a slice-of-system basis, as opposed to by customer class, increases the risks because an SSO supplier does not have any reasonable assurance as to what the overall load volume will be, or what the shape of the load will be since it could be any and every customer in the utility service territory. Estimating that information, instead of actually knowing it, creates inefficiencies, risk, and additional cost – all of which can be mitigated. Constellation Ex. 11 at 16.

3. The risks of the CBP construct have affected customers because there are fewer auction participants.

FirstEnergy’s auction manager acknowledged that, in recent periods, there have been fewer suppliers in the SSO auctions. FirstEnergy Ex. 6 at 9. Mr. Indukuri identified more concretely the decrease in participation in the past nine SSO auctions for FirstEnergy:

⁴ The level of sophistication or level of expertise of the SSO suppliers is irrelevant to the evaluation of the proposed modifications of the CBP construct. The SSO suppliers must be pre-qualified to participate in the default service auctions. As addressed later in this brief, Constellation’s recommended CBP modifications – namely, a modified volumetric risk cap and class-based auctions – will allow for better benefits to the default service customers from the CBP. The default service suppliers manage the risks associated with default service and will continue that role with or without the recommended CBP modifications.

Auction Date	Total Bidders
January 28, 2020	13
October 5, 2020	12
January 26, 2021	12
August 23, 2021	11
October 4, 2021	11
March 7, 2022	11
October 4, 2022	7
January 10, 2023	6
March 20, 2023	7

Constellation Ex. 11 at 17.

FirstEnergy Witness Lee states that one of the reasons for the lower participation has been the “load migration and subsequent volumetric risk in the Ohio market.” FirstEnergy Ex. 6 at 9. Some SSO suppliers that had been active participants in previous Ohio SSO auctions have simply stayed away. Tr. at 1950. Some SSO suppliers made filings with the Commission stating that they were adversely affected by the NOPEC event. Tr. at 1951; FirstEnergy Ex. 6 at 8.⁵ It is also evident that, when comparing with default service auctions in other states, participation levels are greater elsewhere. Based on his knowledge and experience in numerous other auctions, Mr. Indukuri testified that the procurement structure(s) and/or contractual mitigation provisions in other states (specifically, Pennsylvania, Maryland, and New Jersey) were significant factors in drawing more bidder interest in those states’ default service procurements. Constellation Ex. 11 at 18.

The record contains undisputed evidence that the lower supplier participation in FirstEnergy CBP auctions has been caused by the recent load migration and subsequent volumetric risk in the Ohio market.

⁵ See *In re The Certification of Northeast Ohio Public Energy Council as a Governmental Aggregator*, Case No. 00-2317-EL-GAG, Finding and Order (March 8, 2023).

4. **The risks of the CBP construct have affected customers because customers are paying risk premiums and they will persist in the ESP 5.**

Testimony from multiple witnesses confirms that the risks of the CBP construct have affected customers in FirstEnergy's service territory and that the risks will persist in the ESP 5. First, Mr. Indukuri stated that the auction clearing prices have been significantly higher since the 2022/2023 migration as bidders attempted to account for the unpredictable risk of customers moving into the SSO. Tr. at 1950. Second, FirstEnergy Witness Lee acknowledged that there is significant uncertainty for the winning default service bidders around the ultimate level of SSO load and "they build that uncertainty into their valuation of tranches offered at an auction." FirstEnergy Ex. 6 at 8; Tr. at 771. Thus, **risk premiums in the auction clearing prices become part of the SSO rate that default service customers pay.** Tr. at 769. Third, OCC Witness Wilson testified that the auction clearing prices from recent SSO auctions "reflect recent events that may have substantially increased potential SSO suppliers' perception of the risk associated with providing SSO service, leading to higher offer prices."⁶ OCC Ex. 2 at 4. Fourth, IGS Witness Poprocki testified that customer migration is still occurring. Tr. at 2091. Finally, even Staff Witness Benedict acknowledges that "a supplier facing an unknown risk is going to build in a pretty large premium" in its bid. Tr. at 2358.

As for the impact of such SSO-related risks in the future, Mr. Indukuri explained in the following exchange that they will exist and affect customers:

Q. And with an event like [customer migration], do you have an opinion generally how that will impact suppliers as to future auction prices?

⁶ Similarly, OCC Witness Collins acknowledged that his recommended changes for Rider NMB could trigger risk premiums to account for the risk to the load-serving entity would have with cost increases for transmission-related NITS and RTEP for which it would have no ability to control. OCC Ex. 1 at 40; Tr. at 2245. He further acknowledged that the cost increases for NITS and RTEP charges could be passed on to the residential customers. Tr. at 2245.

- A. So I mean, this goes into the risk and how risk is perceived by suppliers. **A recent event where the risk has manifested itself at a significantly higher magnitude would, from a prudent risk management standpoint, necessitates suppliers to incorporate appropriate risk premiums into their offers going forward, and the impact would be that post event the prices would actually be significantly higher.**

I mean, the analogy I would draw here is to like your car insurance. Like you have your basic premium, the car gets in an accident, all of a sudden your premiums go up, so it's similar here. Once the risk has manifested you basically take into account that risk, price it in, and the result is that you will have offers higher than you had prior to the event.

- Q. And is that also because when an event – risk event has manifested itself, that that event could occur in the future as well?

- A. Yes, the risk is all about probability. So we assign probabilities to that event happening in the future, and that is what eventually makes it into the market clearing prices.

Tr. at 1951-1952 (emphasis added). *See also* Tr. at 1949.

Mitigating the known SSO-related migration risks can benefit customers through lower auction clearing prices. FirstEnergy Ex. 6 at 9; Constellation Ex. 11 at 10; OCC Ex. 2 at 4; Tr. at 756, 2367.

- B. Although a capacity proxy price mechanism has been appropriately ordered by the Commission and should be clearly established as part of the CBP for ESP 5, it will not address customer migration risk premiums and class cross-subsidies that SSO customers are paying.**

The CPP mechanism recently approved by the Commission in a separate proceeding is an appropriate change to FirstEnergy's auctions and Constellation supports the Commission's decision. The Commission, however, should make clear that the approved CPP mechanism is an element of the CBP that the Commission approves in this proceeding, and thus part of the ESP 5. Since the CPP does not address the customer migration risk, load uncertainty or the cross-subsidies

in the CBP, the Commission should still adopt Constellation’s proposals to mitigate those risks and inequities.

1. The Commission recently ordered a CPP mechanism to address the risks caused by delayed base residual auctions.

While FirstEnergy proposed a CPP mechanism in its Application in this proceeding, the Commission issued for comment a CPP proposal from its Staff in July 2023 in *In re the Proposed Modifications to the Electric Distribution Utilities’ Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC. On December 13, 2023, the Commission approved the Staff’s proposal for all Ohio electric distribution utilities and directed them to “modify their SSO auction products to price capacity at a proxy rate for years when no actual price has been established.” *Id.*, Finding and Order at ¶ 38. The Commission explained that, for years, there were repeated cancellations and delays in the PJM auctions that caused confusion and uncertainty. *Id.* at ¶¶ 32 and 33. The Commission further noted that the delay approved by PJM in June 2023 caused “significant doubt that tariff schedules will not return to normal until *at least* 2029/2030 delivery year.” *Id.* at ¶ 33 (emphasis in original).

2. The Commission should be clear that the approved CPP mechanism shall be established and included in the CBP for ESP 5.

Constellation urges the Commission to clarify that the CBP implemented for ESP 5 shall include the CPP approved in the Commission’s decision in Case No. 23-781-EL-UNC. R.C. 4928.141. requires 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,” which mandates that FirstEnergy provide a SSO. This clarification is necessary because the decision in Case No. 23-781-EL-UNC was silent on this point. Moreover, since Case No. 23-781-EL-UNC was decided before and separately from this ESP 5 case and before the ESP 5 will be in effect, the clarity will avoid any debates during the

term of ESP 5. The Commission should, therefore, affirm in its decision in this case that the CBP for ESP 5 shall include the CPP mechanism ordered in Case No. 23-781-EL-UNC.

3. While a CPP mechanism is a beneficial change that Constellation supports, it does not address or mitigate the load migration risk or the cross-subsidies in the current CBP auction construct that result in less-favorable auction outcomes for all customers.

As noted earlier, capacity is one aspect of the SSO auction products.⁷ The Commission's decision in Case No. 23-781-EL-UNC explains that the adopted CPP mechanism is designed to "mitigate uncertainty surrounding PJM's capacity market." *Standard Service Offer Procurement Auctions*, *supra*, Finding and Order at ¶ 32. Thus, the purpose of the adopted CPP mechanism ordered by the Commission is targeted and limited – namely, to bring the **auction schedules** to a measure of normalcy and predictability. *Id.* at ¶ 34. The Commission was clear in Case No. 23-781-EL-UNC on its limited purpose. The Commission, in addition, confirmed that its decision in Case No. 23-781-EL-UNC did not address other changes to the CBP, such as those proposed in this ESP 5 case. At the hearing in this case, FirstEnergy Witness Lee confirmed that the CPP mechanism is a tool for capacity that avoids changing auction dates, and is not related to the customer migration risk. Tr. at 789, 800.

These acknowledgements establish that the CPP mechanism does not address or mitigate the significant/major risk of load migration or the cross-subsidies in the current CBP auction construct. The CPP mechanism, instead, has another impact of bringing normalcy and predictability to the auction schedules and Constellation supports it. This impact, however, will do nothing to address or mitigate the known significant/major risks and cross-subsidies in the CBP construct. Constellation's recommendations for a modified volumetric risk cap and for class-based

⁷ As Mr. Lee testified, PJM's base residual auctions provide SSO auction participants with information on the capacity market's outlook and pricing. FirstEnergy Ex. 6 at 11.

auctions will effectively and directly mitigate the known significant/major risks and cross-subsidies in the CBP construct. Likewise, just as the acknowledged impact of the CPP mechanism does not address or mitigate the significant/major risk of load migration or the cross-subsidies in the current CBP auction construct, the CPP mechanism does not negate the volumetric risk cap (as modified by Constellation) and the class-based auction as direct and effective measures.

That is why, as further discussed below, a volumetric risk cap based on how the daily SSO aggregate customer PLC changes, along with a class-based auction structure, should be adopted by the Commission.

C. FirstEnergy’s proposed volumetric risk cap on load migration, if slightly modified, is in the public interest and would benefit customers.

The evidence establishes that the proposed volumetric risk cap – if modified as Constellation recommends, will effectively mitigate a major risk with the SSO – the customer migration risk. The mitigation directly benefit customers through auction clearing prices with lower risk premiums. Constellation proposes modifications that will make the volumetric risk cap more effective and appropriate, without encouraging significant price arbitrage activities. Constellation’s modifications are: lower the cap level, require the SSO suppliers to service the exceedance above the cap and add a bottom threshold that allows for adjustments in the upper cap if the bottom threshold is triggered. Constellation’s modified volumetric risk cap can be implemented readily, and is proven effective because another jurisdiction (Maryland) has a similar cap in place, including in a FirstEnergy affiliate’s territory. To the extent it is argued that the Commission’s minimum stay tariff provisions sufficiently respond to the migration risk, such arguments are invalid. The minimum stay tariff provision will not negate the need for the volumetric risk cap (with Constellation’s modifications) because customers can still return to the SSO *en masse* while the tariff is in effect.

1. A volumetric risk cap on load migration would mitigate risks.

One of the **major risk factors** for SSO suppliers is load quantity risk. FirstEnergy Ex. 6 at 7; Tr. at 759, 771. As FirstEnergy Witness Lee testified:

The costs of capacity and other components are known in advance. Energy prices, however, are volatile and the energy component poses a high risk to the suppliers. At the time of the auction, winning bidders have the ability to hedge energy market prices at fixed quantity levels; however, there is significant uncertainty around the ultimate level of SSO load. SSO load is a function of customer shopping levels, overall economic conditions, and weather conditions, among other factors. * * * To limit the supplier risk and lower the price premium required for this risk, the Companies are proposing a volumetric cap on the tranche size. It assures that in situations where there is significant customer migration back to SSO, the SSO supplier exposure would be limited.

FirstEnergy Ex. 6 at 8. *See also*, Tr. at 771.

Mr. Indukuri testified similarly. In considering the results of recent SSO auctions for FirstEnergy, he stated default service suppliers could realistically be obligated to serve 200% of the load taking SSO service at the time of the auction. Constellation Ex. 11 at 20. SSO suppliers would take that risk into consideration and would reflect it in their bid. If the SSO load did not materially increase from the date of the auction, customers would pay for a risk that did not materialize. The volumetric risk cap, however, would mitigate the load migration risk.

IGS Witness Poprocki also agreed that the volumetric risk cap would mitigate the load migration risk. Tr. at 2104, 2105. Staff Witness Benedict acknowledged as well that currently there are “very high migration rates, particularly amongst industrial customers” and the migration risk will be incorporated into default service supplier bids. Staff Ex. 6 at 8; Tr. at 2366. Indeed, the testimony from FirstEnergy’s auction manager and default service suppliers confirm the migration risk, and its incorporation in the bids and auction clearing prices. Tr. At 702,706-707, 2104; FirstEnergy Ex. 6 at 7-8; Constellation Ex. 11 at 11-12. The testimony of Mr. Brakey, an energy consultant with commercial and industrial customers in FirstEnergy’s service territories,

confirms that customers will continue to be advised to explore SSO and market prices and take advantage of the differences between them by migrating based solely on the price differential. Constellation Exs. 6-10; Tr. at 1762-1763, 1770.

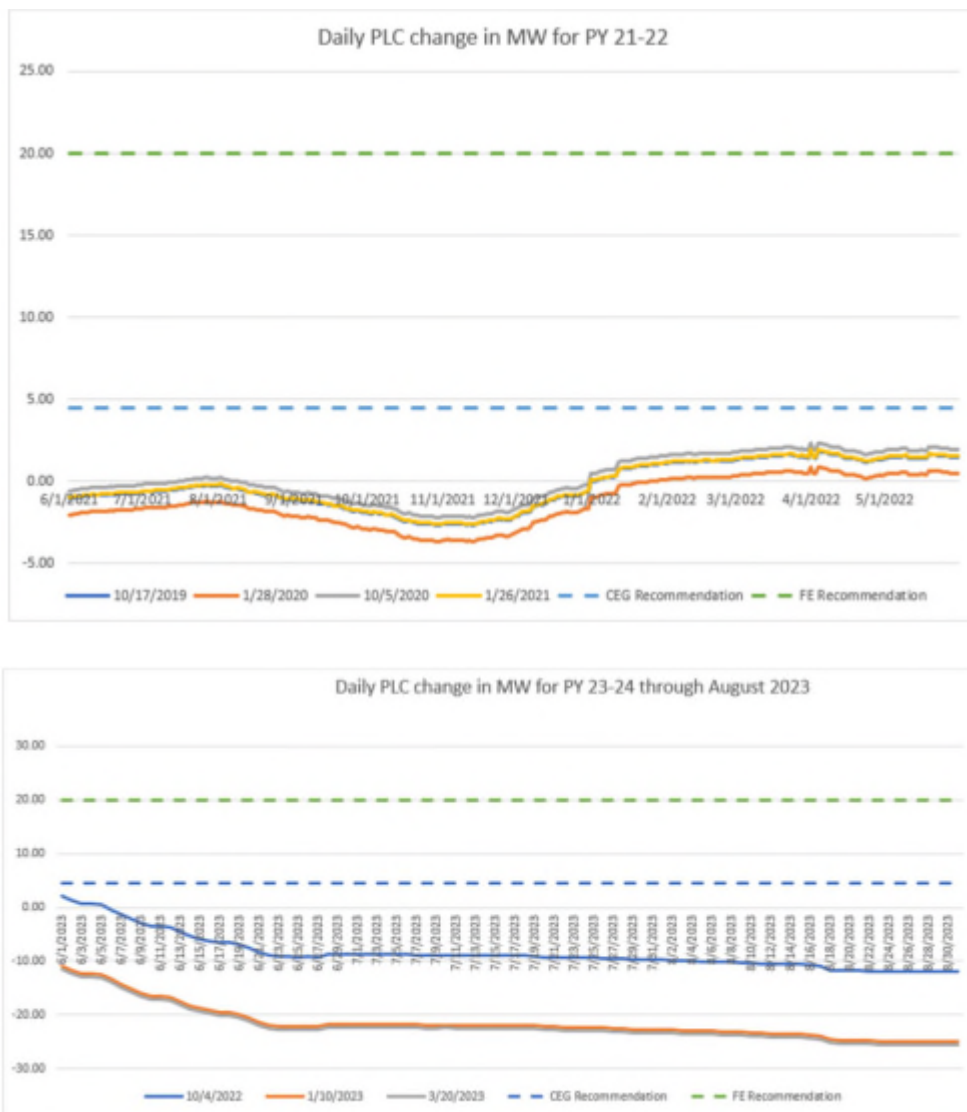
a. A proper upper cap will stop default service customers from paying for events that do not happen.

The mechanics of the proposed volumetric risk cap are simple. If a proper volumetric risk cap is in place (which includes Constellation's modification to set the cap at 2-5 MWs and for the SSO suppliers to serve that percentage of default service load if there is an exceedance of the PLC cap), the upper PLC cap mitigates the risk premium related to the possibility of a material increase in the SSO load volume known on the date of the auction due to customer migration. Constellation Ex. 11 at 20, 21. Mr. Indukuri clarified that, if the cap is exceeded, only the percent exceedance is served at real-time market prices, not all of the SSO load. Tr. at 1946, 1947-1948. This is a crucial detail for understanding the mechanics of the volumetric risk cap and its limited impact on customers if triggered. It would result in lower auction clearing prices that better reflect the costs to serve default service customers, and would manage risk on a contingent-event basis instead of assessing a higher risk premium to all customer classes, all the time for all load served.

The cap needs to be set at such a level that it allows some customers to move into default service in the event of unforeseen circumstances, and also not set too high so there is no incentive for customers to game/arbitrage the SSO rate against market prices. Constellation Ex. 11 at 20. Based on Mr. Indukuri's expertise and given that the PLC-based tranche size for FirstEnergy's most recent auction was approximately 12 MWs, a cap set at 2-5 MWs (approximately 15-40% of PLC tranche size) would provide sufficient room for many customers to move to default service, while preventing very large customers from arbitraging the default service price. Constellation Ex. 11 at 21, 23. Striking this balance is necessary for the volumetric risk cap to effectively

mitigate the risk premiums associated with customer migration and benefit all customers with lower default service prices.

Mr. Indukuri demonstrated why FirstEnergy's proposed cap level is not the appropriate level. Relying on actual data in planning years 2021/2022 and 2022/2023 of the change in daily PLCs, the two charts below from Mr. Indukuri's testimony show how FirstEnergy's proposed cap level is unnecessarily high and why Constellation's proposed modified cap level is reasonable:



Constellation Ex. 11 at 22; Tr. at 1916.

Setting the volumetric risk cap at FirstEnergy's proposed 20 MWs would obligate default service suppliers to serve PLC load that is more than 250% of the baseline at SSO auction prices. Mr. Indukuri opined that the cap at 20 MWs would have the effect of mitigating only the most extreme risk, such as a mass migration on the scale of NOPEC customers being returned *en masse* to SSO in 2022. Constellation Ex. 11 at 23. *See also* OELC Ex. 10. Constellation recommends a more effective mitigation level, one which would avoid the risk premiums being included in the SSO rates in the first place, would not promote price arbitrage, and where only a small percentage of the total SSO load might end up being priced at market. Tr. at 1946. More specifically, Constellation recommends the cap be set in the range of 2-5 MWs (or approximately 15-40% of PLC tranche size) above the benchmark PLC.⁸

i. SSO suppliers should supply the load above the cap.

Constellation also strongly recommends that load in excess of the volumetric risk cap be supplied by the default service suppliers, not FirstEnergy. As Mr. Indukuri testified, there is no benefit in having the load above the cap served by FirstEnergy.⁹ Constellation Ex. 11 at 24. There are, instead, serious concerns – FirstEnergy would be required to provide daily day-ahead bids, which is something that only SSO suppliers do (and should do), and all costs for serving the excess SSO load would reside in FirstEnergy's account, which is improper. Constellation Ex. 11 at 24 and Attachment A; Tr. at 695-696, 745, 746, 1918-1919. In addition, there are legal and competitive concerns. FirstEnergy is not permitted to provide competitive generation service to the default service load. R.C. 4928.17. *See also* R.C. 4928.02. Rather, competitive generation

⁸ The tranche size from FirstEnergy's most recent auction (March 20, 2023) was approximately 12 MWs from a PLC cap perspective. Constellation Ex. 11 at 21.

⁹ If providing the ancillary services for that excess load, the risk associated with changes in the ancillary services obligation for the load above the cap would be negligible, from a supplier's perspective because the ancillary services are a small element of SSO supply. Constellation Ex. 11 at 24; Tr. at 746, 770.

service is required to be provided by others. FirstEnergy has not identified how this aspect of its volumetric risk cap proposal is lawful. Mr. Indukuri testified that FirstEnergy providing competitive generation service to the default service load would, in addition, be anti-competitive and send an improper signal to the market, harming competition and also potentially increasing prices to the detriment of customers. Constellation Ex. 11 at 25.

b. A bottom PLC threshold will increase supplier certainty.

Constellation also recommends that a bottom PLC threshold be incorporated into the volumetric risk cap, like what is in place successfully in Maryland. Constellation Ex. 11 at 19. Mr. Indukuri explained the advantages that a bottom PLC threshold provides: it modulates customer behavior and prevents gaming, reducing the risks and risk premiums and consequently lowering bids and benefitting customers. Constellation Ex. 11 at 21.

As with the risk of unpredictable increases in default service loads, FirstEnergy's customers also pay for the uncertainty caused by falling default service load in the form of risk premiums. Constellation Ex. 11 at 21. Constellation's bottom PLC threshold proposal substantially reduces this risk (and the risk premiums paid by customers as a result) by providing more certainty to suppliers about their ongoing default service load obligations if default service load decreases. Constellation Ex. 11 at 21. This would ultimately lead to better auction clearing prices and better outcomes for FirstEnergy's default service customers. As such, a bottom PLC threshold should be adopted for the volumetric risk cap.

2. A volumetric risk cap can be readily implemented in FirstEnergy SSO auctions.

The information needed for implementing a volumetric risk cap is available today and therefore the volumetric risk cap can be readily implemented. FirstEnergy calculates the daily PLC values today and has done so for years. Tr. at 719, 1946; OELC Ex. 14 (under the "Load and

Other Data” link in the Document Section on the FirstEnergy CBP website). The daily PLC values are readily available to others because FirstEnergy posts them on its CBP website. Tr. at 721, 1946; OELC Ex. 14 (under the “Load and Other Data” link in the Document Section on the FirstEnergy CBP website). FirstEnergy would use the daily PLC values to calculate the initial benchmark – identifying the tranche-level PLC value as of June 1 of each planning year and the cap above that June 1 PLC. Tr. at 1915, 1947. FirstEnergy would monitor and compare the daily PLC against the cap to determine if it is exceeded. Tr. at 1947. Moreover, Staff recommended that the PLC remain available, if the volumetric risk cap is approved – stating that the daily PLC values should be published on the CBP website so interested parties can evaluate migration levels and whether the cap is likely to be exceeded. Staff Ex. 6 at 4-5; Tr. at 2352-2353, 2363.

3. Another jurisdiction has recognized and experienced the benefit of mitigating risk associated with load migration and the certainty it creates for default service suppliers.

The evidence establishes that other jurisdictions have recognized and experienced the benefit of mitigating risk associated with load migration. Multiple expert witnesses confirmed.

Mr. Indukuri testified that the proposed volumetric risk cap is similar to the contractual provisions used successfully in Maryland. He explained, however, that the limit in Maryland is to a specific load increase and a specific load decrease from a set baseline load level, which Mr. Indukuri refers to as upper mitigation and lower mitigation thresholds. Constellation Ex. 11 at 19.

Mr. Lee also confirmed that the volumetric risk cap has been used successfully in other jurisdictions. Tr. at 763. He too cites specifically to Maryland, where FirstEnergy’s affiliate in Maryland (Potomac Edison) uses a version of the volumetric risk cap that FirstEnergy proposes here. FirstEnergy Ex. 6 at 9. Mr. Lee explained that the volumetric risk cap mechanism used in Maryland includes both an upper cap and a bottom PLC threshold, which is consistent with Constellation’s proposal in this proceeding. FirstEnergy Ex. 6 at 9.

The Maryland Public Service Commission recognized the benefits of addressing volumetric risk for default service load suppliers over 20 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 – including an upper cap and a bottom PLC threshold. *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).

4. The recently ordered “minimum stay” tariff provisions are insufficient to address load migration risk.

As part of its findings, the Commission should also conclude that the “minimum stay” provisions recently ordered for FirstEnergy’s tariffs (and the other Ohio electric utilities’ tariffs) are insufficient to mitigate this risk for potential default service suppliers and prevent the inclusion of risk premiums in their CBP auction bids. 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 Application of Ohio Edison Co., The Cleveland Electric*

Illuminating 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 minimum stay tariff 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 mitigate the risk that default service suppliers will have if aggregation customers prematurely returned to default service *en masse*. In the event a government aggregator decides to prematurely return a large number of customers to default service or to let its supplier contract expire, triggering the minimum stay tariff provisions, those customers' default service supplier still must be prepared to serve those customers' load. Constellation Ex. 11 at 13; Tr. at 1944. Staff Witness Benedict agrees – the minimum stay provisions address risk partially – as to “re-aggregations” – and, even then, only to prevent it for a period of time. Tr. at 2361.

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. Default service suppliers must still 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 these minimum stay tariff provisions, the volumetric risk cap (as modified by Constellation's proposals) does mitigate these migration risks and will reduce the associated risk premiums.

As recognized by FirstEnergy, Constellation and the Maryland Commission, addressing the major risk associated with load migration will benefit default service customers by providing certainty to suppliers and enhancing competition. The volumetric risk cap, as modified by Constellation, will mitigate the uncertainty faced by potential suppliers participating in

FirstEnergy's default service auctions. This uncertainty is currently paid for by FirstEnergy'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 FirstEnergy's customers) by adopting the volumetric risk cap proposal, as modified by Constellation's recommendations.

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

Implementing class-based auctions (instead of the slice-of system tranche format) is Constellation's second recommendation to mitigate risks with the SSO auctions. Class-based auctions will allow the bidding to be tailored to the cohesive group of customers to be served and will better allocate costs to the SSO customers. Class-based auctions avoid cross-subsidies – one customer class paying for the risks associated with another class. This recommendation is readily implemented because FirstEnergy's auction manager has the experience and technical capabilities to conduct class-based auctions. The auction manager has experience and has conducted numerous auctions under this format. Moreover, numerous other jurisdictions use class-based auctions and their customers benefit from it. In this circumstance, Ohio is the outlier, the only jurisdiction in the PJM region with the slice-of-system construct. Now is the time to implement class-based auctions and bring the benefits to the FirstEnergy customers.

1. Class-based auctions allow bids to be tailored to specific costs and risks of each class, avoiding cost-shifting and providing greater transparency in pricing.

Constellation recommends removing the slice-of-system tranche format and instead procure by customer class. Mr. Indukuri recommended using natural breakpoints – grouping customers that have similar characteristics (i.e., served at similar voltages from those customers served at different voltages) or simply based on residential versus commercial customers.

Constellation Ex. 11 at 26. FirstEnergy's natural breakpoints would be: Residential (RS class), Small Commercial (GS, ST, TR and POL classes) and Large Commercial and Industrial (GP, GSU and GT classes). Constellation Ex. 11 at 26.

Class-based auction products would be beneficial for customers for two primary reasons. First, this modification would provide default service bidders with greater knowledge and therefore predictability regarding the load they would be obligated to serve, as to both the potential volume and the load shape. Constellation Ex. 11 at 27. Just as explained earlier with regard to the volumetric risk cap, greater knowledge and predictability decreases risk, which translates to lower auction clearing prices. Second, this modification would better and more accurately allocate costs that simultaneously eliminates cross-subsidies among differing customer classes. Constellation Ex. 11 at 29. This is because, when the costs and risks differ but the classes are included in the same auction, the lower-cost customer classes are in effect subsidizing the service provided to the higher-cost customer classes. OCC Ex. 2 at 11. Holding class-based auctions would allow SSO suppliers to tailor their bids to the particular costs and risks presented by each class.

Importantly, as Mr. Indukuri explained:

Forcing certain customers to subsidize others does not lower total service costs, but instead, it 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.

* * * *

The proper allocation of costs to cost-causers can only improve the market, and customer behavior. The failure to properly allocate costs inevitably leads to inaccurate pricing. Inaccurate pricing leads to inefficient choices on the part of both consumers and those who must make decisions about energy usage. To the extent that the actual cost to serve one class of customers is attributed instead to another class of customers, then the prices of serving those two classes, which may be quite different, will not be reflective of the actual cost to serve.

Constellation Ex. 11 at 29-30.

Mr. Indukuri confirmed that class-based auctions would still allow customers to have the same supply options as they have today. Constellation Ex. 11 at 30. The default service, including its laddering and staggering of the auction clearing prices, would continue. The other options that exist in the competitive market would still be available as well. Constellation Ex. 11 at 30.

OCC Witness Wilson also recommends class-based auction products for improving the efficiency of the auction outcomes, benefiting customers and the public interest. OCC Ex. 2 at 5.

2. Class-based auction products can be readily implemented in FirstEnergy's SSO auctions.

FirstEnergy's auction manager has experience with and has conducted default service auctions involving classed-based auction products. Constellation Exs. 1, 2 and 11 at Attachment B, pages 1-2, 4-5. In particular, FirstEnergy's auction manager has conducted more than 30 class-based auctions in Pennsylvania for FirstEnergy affiliates, the results of which were approved by the Pennsylvania Public Utility Commission. Constellation Exs. 4 and 11 at Attachment B, pages 1-2; Tr. at 753, 768-769.

FirstEnergy's auction manager has the technological systems in place to conduct default service auctions involving classed-based auction products. Constellation Ex. 3 and 11 at Attachment B, pages 3; Tr. at 753, 769. In addition, there are no system limitations or other limitations that would preclude FirstEnergy from conducting class-based auctions. Constellation Exs. 5 and 11 at Attachment C; Tr. at 753.

Collectively, the evidence demonstrates that implementing class-based auction products can be readily accomplished for the ESP 5.

3. Other jurisdictions have recognized and experienced the benefits of class-based auctions and the certainty they create.

Class-based auctions have been conducted successfully in multiple other jurisdictions. FirstEnergy's auction manager has conducted many such auctions. Tr. at 753, 767-768; Constellation Exs. 1, 2, 4.

Mr. Indukuri explained that no other jurisdiction in PJM conducts a default service procurement that includes large commercial and industrial customers with residential customers as a slice of the system. Constellation Ex. 11 at 27. In particular, all Pennsylvania and Maryland utilities procure supply for default service load by class and the New Jersey utilities procure supply for residential and small commercial customers together, with the large commercial and industrial customer supply procured separately. Constellation Ex. 11 at 27; OCC Ex. 2 at 12, 13. In addition, for numerous years, separate class-based default service auctions have been held in Delaware, District of Columbia, Illinois, and Massachusetts. OCC Ex. 2 at 12-13.

Class-based auction products have resulted in lower auction clearing prices. Mr. Indukuri provided an analysis comparing the results between the Ohio auctions and Pennsylvania auctions in the latter part of 2022:

September-December 2022 PJM Auctions									
Auction Date	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	Residential	\$ 98.71				
			12/01/2022-11/30/2023	Small C&I	\$ 113.26				
			12/01/2022-11/30/2024	Small C&I	\$ 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			\$ 107.37				
Oct-22		Penelec	06/01/2023-05/31/2024	Small Commercial	\$ 107.98	Fixed price full requirements product that includes energy, capacity, Transmission, ancillaries and REC's			
		Penn Power			\$ 113.33				
		West Penn Power			\$ 97.75				
		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		Residential	\$ 129.93	
12/01/2022-11/30/2023			Small Commercial	\$ 102.82					
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	Residential	\$ 93.71				
			12/01/2022-11/30/2023	Small Commercial	\$ 95.37				
			12/01/2022-11/30/2024	Small Commercial	\$ 94.81				

Constellation Ex. 11 at 28. It is important to note that the Pennsylvania auction products had lower auction clearing prices even though the Pennsylvania auction products included more components – namely transmission and renewable energy credits, which are not part of the auction products procured in the Ohio. Thus, during the same time frame, Pennsylvanians received more in their default service and paid lower prices than their Ohio counterparts.

FirstEnergy expressed concern that, with class-based auctions, some products or customer classes may garner limited or no bidder interest. FirstEnergy Ex. 6 at 36; Tr. at 790. But FirstEnergy provided no concrete support for this concern or identified any harm. OCC Ex. 2 at 18. Moreover, Mr. Lee acknowledged that there has never been an auction rejected for the lack of participation. Tr. at 803.

FirstEnergy's concern that some tranches "may go unserved" is also unfounded because the auction manager can make modifications if there is undersubscription (insufficient supply for a tranche) and, as Mr. Lee explained in this testimony, there is a contingency plan in the unlikely event tranches are not secured in an auction. FirstEnergy Ex. 6 at 37-38; Tr. at 791, 2377-2378. Altogether, this concern is nothing more than speculation, which is insufficient to establish that

class-based auctions are harmful or unwarranted. It also is not reasonable to perpetuate cross-subsidies based on speculation and inaccuracies. FirstEnergy did not propose anything to address that speculative concern – as Mr. Wilson noted, FirstEnergy only considered a single break-out format of residential, commercial and industrial classes. OCC Ex. 2 at 15. Finally, it should be mentioned that customers may obtain their electric supply from the options in the competitive retail market. OCC Ex. 2 at 17; Tr. 1886.

4. Class-based auctions would not shift risk to customers.

The evidence establishes that class-based auctions would not shift costs to customers. Customers are currently paying a price for the benefit of the risks being handled and managed on their behalf. Tr. at 706-707, 1939. Since the default service customers are already bearing the cost whether there are class-based auctions or not, the question is whether they all are going to pay higher SSO rates with high risk premiums or the costs and risks will be more properly assigned, eliminating cross-subsidies, because bidders have greater knowledge and therefore predictability regarding the load (volume and shape) that they would be obligated to serve. Constellation Ex. 11 at 27. Mr. Wilson testified that a separate auction for residential customers would lower SSO costs for them and not impose additional costs on other customer groups. OCC Ex. 2 at 6. Mr. Benedict also acknowledged, in the following exchange, that risk premiums related to risks for one class would be isolated (not shared) with another class:

Q. Okay. You agree in a client's auction with industrial -- we do a class auction with industrial customers having their own class, that the load and migration risk associated with industrial customers should be isolated to the industrial class, correct?

A. That's correct.

Q. And that you would not expect to see risk premiums associated with those load migration risks to be paid by residential consumers if a class auction is in place, correct?

- A. Right. All the idiosyncrasies associated with serving that particular customer class would be isolated in that auction.

Tr. at 2378-2379.

The Commission should not rely on the superficial, risk-shifting claims. The Commission should conclude, instead, that class-based auctions will be effective to mitigate significant/major risks associated with the SSO auctions, to the benefit of customers. In addition, the Commission should conclude that class-based auctions will be consistent with the major elements of the CBP for the ESP 5 and therefore implement them for the ESP 5.

E. FirstEnergy's proposal to eliminate the 36-month product will not mitigate risk premiums of other auction products or mitigate cross-subsidies.

Mr. Lee testified that the proposed elimination of the 36-month product for the ESP 5 is because that product has had fewer bidders than other products. FirstEnergy Ex. 6 at 10. Mr. Lee stated that the goal with eliminating the 36-month product is more aggressive bidding and lower SSO rates overall. FirstEnergy Ex. 6 at 10; Tr. at 748. He acknowledged, however, that it could create new risks. Specifically, he stated the elimination of the 36-month product may increase SSO rate volatility (because the pricing will apply to shorter periods of time) and may lead suppliers to be less interested in participating in the auctions or to be less aggressive in them. FirstEnergy Ex. 6 at 10, 11. These acknowledged potential impacts highlight that eliminating the 36-month product for the FirstEnergy ESP 5 does not address or mitigate the significant/major risk of load migration or the cross-subsidies in the current CBP auction construct.

F. FirstEnergy's proposal to eliminate pre-bid collateral for bidders with foreign guarantors should not be adopted.

FirstEnergy proposes to no longer require bidders relying on foreign guarantors to post additional pre-bid security. FirstEnergy Ex. 6 at 15. Mr. Lee describes this proposed change as administrative or to simplify the overall auction process. *Id.* at 15. The pre-bid collateral

requirement, however, ensures that the bidders relying on foreign guarantors are providing sufficient financial wherewithal and that the funds will be available (at the necessary full value) if later needed. When a bidder relies on a foreign guarantor, the pre-bid security is needed because foreign currency values change over time and what the guarantor has pledged may not have the same value down the road. As a result, this proposed change should not be approved by the Commission.

G. FirstEnergy's proposed single SSO Master Supply Agreement, followed by transaction confirmations, is reasonable.

Constellation supports FirstEnergy's proposal to adopt a single SSO Master Supply Agreement approach for each winning supplier for the full ESP 5 term. Constellation Ex. 11 at 32. Following each auction, winning bidders would simply execute transaction confirmations. This is a reasonable advancement that streamlines the CBP process. The Commission should approve this change.

H. FirstEnergy's other streamlining proposals (no longer requiring ink signatures or notarization of applications and allowing back-up bids by telephone or email) are reasonable.

Constellation also supports FirstEnergy's proposals:

- To no longer require ink signatures or notarization of applications; and
- To allow back-up bids by telephone or email.

Constellation Ex. 11 at 32. These are additional reasonable and simple advancements that streamline the CBP and ease administrative burdens. The Commission should approve them.

V. Conclusion

The Commission has an opportunity in this proceeding to implement important improvements to FirstEnergy's CBP auction construct for the term of the ESP 5. Having seen extremely high auction clearing prices and decreasing bidder participation in recent years, it is

more important than ever to mitigate the major risks inherent in the current CBP auction structure, because those risks are causing FirstEnergy's default service customers to pay substantial risk premiums and unnecessarily high prices for their default service. Numerous witnesses agree such risks exist, and the record shows that the risks are indeed causing FirstEnergy's default service customers to pay more for default service. Fortunately, there are proven and easy-to-implement mitigation measures that directly address the load migration risk and cross-subsidies in the current CBP auction structure. For these reasons, Constellation respectfully requests that the Commission issue an order modifying the proposed CBP auction construct to include: (1) the volumetric risk cap as proposed by FirstEnergy but as would be modified by Constellation, (2) class-based auctions, and (3) FirstEnergy's other streamlining proposals (using a single MSA with transaction confirmations, no longer requiring ink signatures or notarization of applications and allowing back-up bids by phone or email). The Commission should clarify that the CPP mechanism approved in Case No. 23-781-EL-UNC shall apply for the ESP 5. The Commission should not, however, adopt FirstEnergy's proposal to eliminate pre-bid collateral for bidders with foreign guarantors.

/s/ Michael J. Settineri

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on this 19th day of January 2024 upon all persons listed below:

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