

**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	)	

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

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**February 9, 2024**

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**I. Introduction**

The volumetric risk cap proposed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively “FirstEnergy”) and as modified by Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (collectively “Constellation”) will mitigate the risk related to the significant uncertainty around the ultimate level of standard service offer (“SSO”) load that the SSO suppliers must serve. This risk is known and is significant, and has a direct impact on SSO rates, which none of the parties in this proceeding dispute.

Volatility in the energy market recently has affected the SSO auctions, bringing to the forefront unprecedented volatility in SSO rates, customer migration and SSO supplier participation changes. The Commission has repeatedly expressed concern with the SSO auctions and SSO rates since early 2023. Yet, the initial briefs from several parties in this proceeding, including Staff, advocate that the Commission ignore its concerns because they want to maintain the existing competitive bidding process (“CBP”) for FirstEnergy’s fifth electric security plan (“ESP 5”). Maintaining the status quo relative to the customer migration risk, however, is not reasonable when a proven-effective mechanism that will result in better SSO rates and benefit customers is available and readily implemented – the volumetric risk cap with Constellation’s modifications.

Maintaining the status quo relative to the customer migration risk for the SSO not only ignores the Commission's concerns, it also is inconsistent with Staff's position in this case that the NMB rider mechanism should not result in either risk premiums being paid by customers or subsidies between customers of the three FirstEnergy utilities. Unless the Commission adopts a volumetric risk cap, SSO suppliers unwilling to accept the risk will continue to stay away from the Ohio SSO auctions, and those SSO suppliers that do participate will need to continue incorporating substantial premiums in their future bids to account for the possibility of significant migration. Under such circumstances, the CBP cannot *effectively* leverage competitive forces and allow market conditions to determine SSO rates. The volumetric risk cap with Constellation's modifications should be adopted.

In addition, and contrary to the arguments of certain parties in their initial briefs, class-based SSO auctions (distinguished from the current slice-of-system format) more properly allocates risk (and costs) among the SSO customers based on the well-known characteristics of serving the classes. Again, parties do not dispute that risks and costs to serve vary for the different customer classes. Class-based auctions will ensure that those risks and costs are allocated properly, thus not shifting risks and costs onto customers who do not cause them. Constellation's class-based auction proposal is consistent with the Commission's long-standing cost-causation principles and with Staff's own recommendation in this case for ensuring that NMB 2 (under Rider NMB) is structured to allocate costs properly and avoid interclass cost shifting. Class-based auctions are a proven-effective format that benefits SSO customers and are utilized by every other PJM state, including FirstEnergy's affiliates.

The Commission has the record and evidence before it to adopt both a volumetric risk cap and the use of class-based auctions. Doing so will financially benefit SSO customers.

## **II. Argument**

The volumetric risk cap with Constellation’s modifications in conjunction with class-based auctions are reasonable changes for the CBP. Calls to reject these proposals on the basis that they are not “guaranteed” ring hollow. If implemented as recommended, they will reduce the substantial risk premiums that are otherwise guaranteed to continue. Both proposals are known, have been implemented, and are working successfully today (and for numerous years) in other PJM jurisdictions. These proposals do not shift risk or costs onto customers – the evidence confirms that customers already face the risks and pay for them every hour of every day in the auction clearing prices under the current construct. Importantly, both proposals will prompt greater supplier participation and greater competition in the SSO auctions (especially as compared to maintaining the status quo). The volumetric risk cap with Constellation’s modifications and class-based auctions should be approved for FirstEnergy ESP 5.

### **A. The volumetric risk cap and class-based auctions are proven effective.**

IGS, NRG and Staff claim that the volumetric risk cap and class-based auctions proposals should be rejected because they allegedly do not carry a guarantee to improve the existing auction process (in other words, the proposal results are only theoretical). IGS Initial Br. at 4; NRG Initial Br. at 2, 14-16; Staff Initial Br. at 27, 30. Their arguments should be rejected for two reasons. Of course, the Commission does not require a proposal to guarantee a specific outcome before the Commission will adopt it. IGS, NRG and Staff do not cite to any Commission precedent that states such a requirement. Indeed, in the Commission’s recent decision to require all Ohio electric distribution utilities to modify their SSO auction products “to price capacity at a proxy rate for years when no actual price has been established,” the Commission did not require a guarantee for a specific outcome before adopting the change. *In re the Proposed Modifications to the Electric Distribution Utilities’ Standard Service Offer Procurement Auctions*, Case No. 23-781-EL-UNC,

Finding and Order (December 13, 2023). 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 noted that “Staff *believes* utilizing a proxy capacity rate *should* restore order to the process *for now*.” *Id.* at ¶ 14 (emphasis added). The Commission decided to adopt Staff’s proposed capacity proxy price (“CPP”) mechanism recommendation although it was based on a belief that its impact would mitigate uncertainty surrounding PJM’s capacity market. *Id.* at ¶ 32. The Commission does not need a guarantee to adopt a volumetric risk cap and class-based auctions.

IGS’, NRG’s and Staff’s arguments should also be rejected because the unrefuted evidence in the record demonstrates that both proposals have been successfully implemented in other PJM jurisdictions, which is the best predictor of future outcomes. They are proven effective:

- Volumetric risk cap: FirstEnergy Witness Lee confirmed that the volumetric risk cap *has been used successfully* in other jurisdictions. Tr. at 763. He and Mr. Indukuri cited specifically to Maryland, where FirstEnergy’s affiliate (Potomac Edison) uses a version of the volumetric risk cap that FirstEnergy proposes here. FirstEnergy Ex. 6 at 9; Constellation Ex. 11 at 19. The volumetric risk cap mechanism used in Maryland includes both an upper PLC cap and a bottom PLC threshold, which is consistent with Constellation’s proposal in this proceeding. FirstEnergy Ex. 6 at 9; Constellation Ex. 11 at 19-20.

Moreover, as Constellation pointed out on page 26 of its Initial Brief, the volumetric risk cap mechanism in Maryland has been in place for decades. It benefits customers by enabling more competitive prices.

- Class-based auctions: Multiple witnesses confirmed that class-based auctions have been conducted successfully. FirstEnergy’s auction manager has first-hand knowledge and experience because it has conducted many such auctions in other jurisdictions. Tr. at 753, 767-768; Constellation Exs. 1, 2, 4. For example, all Pennsylvania and Maryland utilities procure supply for default service load by class, 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. Similarly, class-based default service auctions have been held for numerous years 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, while also properly allocating risks and costs, and avoiding cross-subsidies. Constellation Ex. 11 at 26-28; OCC Ex. 2 at 11.

IGS, NRG and Staff did not refute the evidence proving that both proposals are in effect in other PJM jurisdictions and are successful. FirstEnergy Ex. 6 at 8; Constellation Ex. 4; Constellation Ex. 11 at 18, 19, 21, 27. As such, the record is clear that the volumetric risk cap (modified as Constellation proposes) and class-based auctions are proven effective. Just as the Commission relied on the fact that a CPP mechanism was in effect and successful in other PJM jurisdictions when it adopted that mechanism in December 2023 (*In re the Proposed Modifications, supra*, Finding and Order at ¶ 32), it should rely on the fact that both CBP proposals in this proceeding are in effect and successful in other PJM jurisdictions. The Commission should reject the claims from IGS, NRG and Staff that the CBP changes need to be guaranteed.

**B. The volumetric risk cap will not harm or shift risk to customers because SSO suppliers will be able to better manage the risks and the SSO customers will pay less.**

IGS, NRG, OELC and Staff argue that the volumetric risk case will harm customers and/or shift risk to customers. IGS Initial Br. at 7-9; NRG Initial Br. at 2, 14; OELC Initial Br. at 55-56; Staff Initial Br. at 27. These parties are incorrect. They fail to recognize that, with the volumetric risk cap (modified as Constellation proposes), customers benefit from better SSO prices because migration risk premiums will be mitigated in the auction clearing prices. IGS, NRG, OELC and Staff also fail to recognize that, if the volumetric risk cap is not adopted, *all* SSO customers will continue to pay in all kWhs for the risk of customer migration, as they do today. Thus, there is *no* shifting of the risk to the customers with the volumetric risk cap – the risk of significant volumetric risk changes exists today, but it is amplified in that customers are paying for it perpetually. The

volumetric risk cap would act to mitigate that risk. The record evidence demonstrates these important facts.

**1. The volumetric risk cap on load migration will not harm customers.**

Some parties claim that the impact of the volumetric risk cap will be to harm customers by exposing customers to volatile or significantly higher real-time prices. IGS Initial Br. at 7-9; NRG Initial Br. at 14-15; OELC Initial Br. at 55-56; Staff Initial Br. at 27. OELC and Staff rely on data from the 2022-2023 delivery year to show this alleged harm. OELC Initial Br. at 55-56; Staff Initial Br. at 27. Their arguments in reliance on the 2022-2023 data are flawed. First, there was no volumetric risk cap in place in planning year 2022-2023 and therefore the multiple positive impacts from the mechanism were not taken into consideration – more suppliers would have been willing to participate in the auctions for that planning year, suppliers would have been willing to provide more competitive pricing because the risk premiums were lower, and customers (particularly commercial and industrial customers) would have taken into consideration the cap in considering whether to migrate. As Mr. Indukuri testified, just looking at the historic data and adding in this volumetric risk cap proposal to claim what would have happened “would actually be a mischaracterization.” Tr. at 1918. Likewise, during Mr. Lee’s cross-examination by OELC’s counsel, Mr. Lee pointed out this flaw in OELC’s analysis of the volumetric risk cap, noting that the initial “offsetting benefit” of lower risk premiums from having the volumetric risk cap in place has to be recognized. Tr. at 733. *See also* Tr. at 757-758.

Second, there were significant migrations in 2022-2023, which involved highly sophisticated market participants seeking to take advantage of the differential between the then-current market and SSO prices, there being no disincentive to do so. Mr. Indukuri explained:

[M]ost of the customers who we have seen migrate in planning year '22, '23, into the SSO were predominantly aggregation customers, NOPEC specifically, which is a sophisticated player being one of the largest



aggregators in [the FirstEnergy] territory, and industrial [and] commercial customers, [and] had the contractual provisions for the thresholds been in place, these customers would have actually had to take that into account, and it would be a very slam dunk decision, like I think Brakey Energy was suggesting to customers that SSO prices are lower than the prevailing market pricing \* \* \*.

Tr. at 1949. Mr. Indukuri's testimony is supported by the trend in shopping statistics at that time.

OELC Ex. 13. Moreover, experts in the field were advising the nonresidential customers to engage in price arbitrage.

For instance, as Mr. Indukuri recognized, Brakey Energy and its President consult with and advise mid-sized to large commercial and industrial customers and OELC members about controlling and saving on energy costs, in Ohio, including FirstEnergy's SSO. OELC Ex. 32 at 1, 2; Tr. at 1733, 1735, 1762-1763. Brakey Energy's commercial and industrial customers are primarily located in FirstEnergy's service territories and one other utility's service territory. Tr. at 1733. In its published monthly newsletters, Brakey Energy repeatedly advised electric customers to engage in price arbitrage:

- In the August 2022 newsletter, Brakey Energy told nonresidential customers to avoid aggregations, advising them that "aggregated pricing will likely significantly exceed SSO rates for most, if not all, Ohio electric customers" and that NOPEC's charge was significantly higher. It also recommended that residential customers with expiring contracts default to the SSO until spring 2023 ("make sure you provide notice to your supplier that you would like to default back to the SSO"), with even further recommendations to be issued at a later time. Constellation Ex. 6 at 1, 3; Tr. at 1765-1767.
- In the September 2022 newsletter, Brakey Energy's President warned that the SSO rates were rising, stating in a then-recent interview "[t]he auctions that determine the standard service offer...are not only going to produce higher prices because market prices have risen, they're going to be higher because *the extreme risk of the standard service offer is being laid bare for all to see.*" This newsletter also reflects that Brakey Energy had been recommending for "about a year," that residential customers with expiring contracts default to the SSO until spring 2023, with even further recommendations to be issued at a later time. Constellation Ex. 7 at 1, 4 (emphasis added).

- In the April 2023 newsletter, Brakey Energy advised the opposite: “In an Ohio Energy report first, we are leading with our Residential Corner section. With Standard Service Offer (SSO) rates skyrocketing in June, it is imperative that you, your family, friends, and neighbors execute supply agreements with Certified Retail Electric Service suppliers.” Constellation Ex. 8 at 1.
- In the May 2023 newsletter, Brakey Energy advised on the increasing SSO rates for First Energy – “[e]lectric costs will be increasing significantly on June 1 for FE and AEP customers that take electric generation service under their respective electric distribution utility’s Standard Service Offer (SSO).” It also advised the residential customers, “[w]ith SSO rates skyrocketing, it is urgent that residential customers competitively source power and not default to their electric distribution utility.” Constellation Ex. 9 at 2-3, 5; Tr. at 1768-1769.
- In the June 2023 newsletter, Brakey Energy identified updated, decreasing SSO rates effective September 1, 2023, for FirstEnergy, stating that the nonresidential customers should be shopping: “[d]espite the decrease, SSO rates remain so significantly above market that virtually all customers should be competitively sourcing power.” For residential customers, Brakey advised again that “it is urgent that residential customers competitively source power and not default to their electric distribution utility.” Constellation Ex. 10 at 4-5; Tr. at 1769-1770.

There is little doubt that energy advisers will continue to recommend that sophisticated customers take advantage of price differences, like Brakey Energy does with its published monthly energy reports to mid-sized to large commercial and industrial customers in FirstEnergy’s service territories. A volumetric PLC risk cap, however, would likely temper large-scale migrations to and from SSO service based solely on price differentials, particularly for sophisticated customers such as aggregations and large commercial or industrial customers.

Moreover, other testimony from Staff in this proceeding demonstrates that mitigating the migration risk and lowering risk premiums would benefit customers, not harm them. Specifically, Staff Witness Baas testified that changes to FirstEnergy’s Rider NMB proposal are warranted to avoid inclusion of risk premiums in the NMB 2 portion of that rider. As Staff Witness Baas

testified, a whole team of the Staff analyzed that rider and is recommending that risk premiums not be charged to customers:

[W]e felt that there would be risk premiums added to the transmission cost if they were solely through CRESs. With that in mind, we wanted to keep the lowest cost possible for customers, so we went an alternate route.

\* \* \*

[W]e were concerned that risk premiums could be added and increase transmission costs.

Tr. at 2470, 2493-2494. The Commission should take note – Staff’s position that SSO customers should continue to pay the imbedded risk premiums in FirstEnergy SSO rates is inconsistent with Staff’s position that risk premiums related to transmission should be mitigated.

In addition to its other arguments, IGS argues that the volumetric risk cap will cause “instability” in the SSO price and harm customers. IGS Initial Br. at 8. IGS claims the volumetric risk cap provides stability to the auction bidders but injects instability and variability into the SSO rate. *Id.* IGS’ instability claim relative to the volumetric risk cap is speculative – it assumes that the cap is exceeded and that, at the time of the exceedance, the market prices will be greater than the SSO rate. IGS’ claim that the volumetric risk cap will make the SSO rate unstable is unconvincing as well because the SSO rate already changes periodically. As the different delivery periods end and start, the auctions clearing prices are blended in a ladder and staggered manner, which results in changing SSO rates. Tr. at 737. IGS’ claim is also undercut by the important benefits of the cap – namely, that all SSO customers will experience lower risk premiums up front for all kWhs and that supplier participation will increase in the SSO auctions. Collectively, IGS’ instability argument does not establish that the volumetric risk cap will harm customers. Rather, the evidence establishes that the volumetric risk cap, which would mitigate migration risk through lower risk premiums, would benefit customers and not harm them.

**2. A volumetric risk cap on load migration will not shift risk to customers.**

The volumetric risk cap would not shift risk to customers. While IGS, NRG and Staff make such a claim (IGS Initial Br. at 8-9; NRG Initial Br. at 2; Staff Initial Br. at 27) and rely on the testimony of IGS witness Poprocki and Staff witness Benedict, that claim is simply wrong, for multiple reasons. First, Mr. Poprocki and Mr. Benedict both ignore a critical key fact that Mr. Lee and Mr. Indukuri explained – *the migration risk already exists and SSO customers already pay for that risk through premiums imbedded in SSO rates.* Tr. at 706-707, 1939.

Second, Mr. Poprocki and Mr. Benedict fail to recognize that the impact of the volumetric risk cap is to lower the migration risk premiums in the auction clearing prices. Mr. Indukuri testified the volumetric risk cap “provide[s] more data or clarity to the SSO suppliers such that they can quantify the risks, and thereby provide a better price to the customers.” Tr. at 1940-42. Mr. Lee agreed, stating that mitigating the load migration risk premiums would bring up-front benefits of more aggressive bidding, greater participation by suppliers, and lower SSO prices. FirstEnergy Ex. 6 at 9; Tr. at 733, 756.

Third, Mr. Poprocki wrongly states that real-time prices would be imposed if there were any increase in the peak load contribution (“PLC”), in any amount above the amount served on the first day of the delivery year. IGS Ex. 1 at 11. That is not FirstEnergy’s proposal, nor a Constellation proposal. It is the *PLC benchmark (based on the aggregated load, not any customer-specific PLC value)* that has to be exceeded and, importantly the real-time prices would be charged for only that additional portion of the load that would be procured at market prices as a result of the exceedance (it is not a re-pricing of the entire aggregated load). FirstEnergy Ex. 6 at 7; Tr. at 739. In addition, exceeding the cap will not necessarily impose extra costs because the real-time prices could be lower than the then-current SSO rate. Tr. at 706, 1921.

Fourth, Staff wrongly claims risk-shifting in reliance on Mr. Benedict's erroneous testimony that 60 percent of FirstEnergy's load would be subject to the real-time prices if the cap is exceeded. Staff. Ex. 6 at 4; Tr. at 2373. That characterization is highly misleading. It is misleading because, first, 25 percent of the shopping load would have had to return to default service to reach the cap (presuming a cap of 20 MWs and 100-MW tranches) and, then, every other FirstEnergy shopping customer would also have to return to the SSO – a clear impossibility – in order for that 60 percent figure to make sense. Tr. at 2372-2273. Staff's overt exaggeration should be rejected.

Additionally, because default service customers are already bearing the cost of migration today, a volumetric risk cap does not shift the risk. Rather a volumetric risk cap would mitigate the risk and mitigate the cost of migration that default service customers pay today. As Mr. Lee testified, the volumetric risk cap is "a way of trying to protect customers from high default service prices." Tr. at 733. IGS, NRG, and Staff are wrong in claiming that the volumetric risk cap transfers risk. Their arguments should be rejected.

**C. History shows that the descending clock format will not "squeeze" out unnecessary risk premiums related to customer migration from the auction clearing prices.**

Most witnesses who addressed the proposed CBP in this proceeding support the continued use of a descending clock format for the auction bidding. FirstEnergy Ex. 6 at 28; IGS Ex. 1 at 12; Staff Ex. 6 at 2; Constellation Ex. 11 at 6. IGS claims in its initial brief that the descending clock format aspect of the CBP will be sufficient to "squeeze" any unnecessary risk premiums out of SSO bids related to customer migration. IGS Initial Br. at 5. More specifically, IGS states bidders can choose to price into their bids appropriate levels of risk based on varying levels of demand and customer load shapes while employing their expertise to hedge against that risk. *Id.*

The descending clock format does not address/mitigate/eliminate customer migration risk, nor is it designed to. The purpose of the descending clock format is to procure “an hourly, load-following full requirements tranche of the Companies’ entire SSO load.” FirstEnergy Ex. 6 at 20. It is not designed to mitigate SSO supplier risk and thereby the risk premiums that customers are paying. Regardless of the term length to which an SSO supplier commits, each successful supplier under the descending clock format will provide full requirements SSO supply, including energy, capacity, ancillary services, and other services under the auction clearing price. FirstEnergy Ex. 6 at 21.

The way the descending clock format works also confirms that it does not address, mitigate or eliminate customer migration risk specifically. Mr. Lee explained the descending clock format:

The bidding format is simultaneous; multiple products and/or multiple tranches are bid on simultaneously. Bidding takes place online using Web-based software in a series of bidding rounds, with pre-specified starting and ending times for each round. Prior to the start of each round, the announced price for each product is disclosed to bidders. The announced price is the same for each tranche for a product but may differ across products. The starting announced price for each product—i.e., the announced price in effect during round 1—is set so as to encourage bidding participation.

At the end of each round, the bidding software (with oversight by the Auction Manager team) determines which products are over-subscribed and which products are under-subscribed. A product is over-subscribed if more supply tranches were bid on it across all bidders than the number of tranches needed of that product. Likewise, a product is under-subscribed if fewer tranches were bid on it than needed. If a product is over-subscribed, the announced price for that product will be reduced by a decrement for the next round. If a product is not over-subscribed, its announced price will not change for the next round.

The bidding process continues in this manner, with prices tending to tick down like hands on a clock. As prices change across the products, bidders are allowed to change the number of tranches they bid, subject to certain restrictions. Subject to these restrictions, in each round, a bidder simply specifies the number of tranches that it is willing and able to supply for each product given the announced price for each product. There is no pre-determined number of rounds before the auction closes. The auction closes after the first round in which no product is over-subscribed and there is no

excess supply. Winning bidders are those bidders who bid the tranches that are winning tranches as of the close of the auction.

FirstEnergy Ex. 6 at 29-30. *See also* FirstEnergy Ex. 6 at Attachment RJJ-4 pages 10-16 and Appendix A. Even if bid prices “tend to tick down like hands on a clock” through the descending clock format, there is no evidence that the risk premiums related to customer migration are “squeezed out.” To the contrary, the witnesses possessing the greatest breadth and depth of knowledge and experience of the SSO auctions, as well as default service auctions elsewhere in PJM, have described the migration risks that not only exist in Ohio, but are amplified by the current construct. Constellation Ex. 11 at 11-16; FirstEnergy Ex. 6 at 8-9. Clearly, the descending clock format is not intended to, and does not, address volumetric risk.

Also worth noting is that the descending clock format did not mitigate or eliminate customer migration risk in recent years, when customer migration was particularly acute. Mr. Lee explained this in response to questioning from the Attorney Examiner during the hearing:

I think load and load uncertainty is always a big factor in a risk premium, so it's always been a concern.

But the customer migration and some of the issues that happened in 2022, became much more of an acute issue, and that's what we focused on.

Tr. at 771. The auction clearing prices in the FirstEnergy auctions confirm that risk mitigation premiums are not “squeezed” out under a descending clock format.

Also refuting IGS' argument is the fact that recent events have increased awareness of the risk premiums related to customer migration and in turn adversely impacted the SSO auctions. Mr. Lee confirmed that the risk premiums in the recent auctions were “higher than they were in the past.” Tr. at 710. This is because the valuation of the risks changed dramatically due to the general market volatility, the related behavior with customers moving back to the SSO from aggregations and competitive retail electric service suppliers, and the variation on load shape on

the SSO. Constellation Ex. 11 at 13, 15-16. Mr. Indukuri also confirmed that the risks have affected customers through significantly higher auction clearing prices as compared to the preceding years. Constellation Ex. 11 at 17. The following figure from Mr. Indukuri’s testimony lists those various auction clearing prices:

**FIGURE 2<sup>11</sup>**

<b>Auction Date</b>	<b>Term</b>	<b>Total Bidders</b>	<b>ACPs in (\$/MWH)</b>
January 28, 2020	6/01/2020-5/31/2021 6/01/2020-5/31/2022	13	38.65 42.95
October 5, 2020	6/01/2021-5/31/2022	12	48.47
January 26, 2021	6/01/2021-5/31/2022	12	46.80
August 23, 2021	06/01/2022-05/31/2023	11	42.10
October 4, 2021	06/01/2022-05/31/2023	11	50.21
March 7, 2022	06/01/2022-05/31/2023	11	68.11
October 4, 2022	06/01/2023-05/31/2024	7	122.30
January 10, 2023	06/01/2023-05/31/2024	6	97.70
March 20, 2023	06/01/2023-05/31/2024	7	83.75

Constellation Ex. 11 at 17 (footnote omitted).

Further undercutting IGS’ argument is the fact that SSO suppliers have dropped out of the auctions because of Ohio’s customer migration risk. Mr. Lee’s unrefuted testimony establishes this point:

***In recent periods, the Companies and other Ohio utilities have also seen lower process participation from prospective suppliers in SSO auctions, and one of the reasons cited by suppliers is the load migration and subsequent volumetric risk in the Ohio market.*** By mitigating some of this risk, the Companies hope to see not only more aggressive bidding but also broader process participation and lower prices.

FirstEnergy Ex. 6 at 9 (emphasis added). *See also* Tr. at 1942. The dramatic drop in the number of participating suppliers in the FirstEnergy SSO auctions – from a high of 13 suppliers in 2020 to only 6 suppliers in 2023 – and the reasons therefor should not be overlooked, which is what IGS wrongly urges the Commission to do. Given that prior participating SSO suppliers have opted to



stay away from the auctions because of the customer migration risk, it would be unreasonable for the Commission to conclude that the descending clock format alone will “squeeze out” unnecessary risk premiums related to customer migrations in the auction clearing prices during the ESP 5.

The final reason to reject IGS’ argument is the strong opinions from expert witnesses in the case. Both FirstEnergy Witness Lee and Constellation Witness Indukuri have extensive and unparalleled experience with FirstEnergy’s auctions, other Ohio auctions and other jurisdictions’ auctions. They testified that changes are necessary to mitigate the volumetric risk. FirstEnergy Ex. 6 at 7-8; Constellation Ex. 11 at 19. For instance, Mr. Lee stated:

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.

FirstEnergy Ex. 6 at 8. Mr. Indukuri explained this point further:

[T]he fact that SSO suppliers have experienced or seen extreme fluctuations in natural gas prices means that SSO suppliers will continue to incorporate such price volatility into their future bids. In addition, there is significant risk associated with the movements in the amount of load that they would be obligated to serve as an SSO supplier.

Constellation Ex. 11 at 18.

For all of these reasons, IGS’ argument that the descending clock format will be sufficient to mitigate customer migration risk lacks evidence, and should be rejected. It is not corroborated by the evidence, including the evidence on the results of FirstEnergy’s recent auctions, and is rebutted by the expert testimony of highly experienced witnesses.

**D. The volumetric risk cap will not result in unreasonable SSO rates; rather, the volumetric risk cap aligns with important elements of the competitive bidding process and important policies.**

**1. The volumetric risk cap will not result in unreasonable SSO rates.**

In their initial briefs, IGS and Staff argue the SSO rates will be unreasonable if the volumetric risk cap is implemented. IGS Initial Br. at 9; Staff Initial Br. at 27. OELC contends that the impacts of the volumetric risk cap have not been sufficiently analyzed, similarly suggesting that the impact could be unreasonable SSO rates. OELC Initial Br. at 56. The Commission should reject this argument first for the obvious reason that these parties cannot conclusively say what future SSO rates will be, let alone that future SSO rates will be unreasonable with the volumetric risk cap in place.

The Commission should also reject this argument because IGS, Staff and OELC unreasonably assume that the volumetric risk cap will be exceeded if put into place, the prevailing real-time prices during the cap exceedance will exceed the prevailing SSO price, and there are no offsetting benefits of the volumetric risk cap. Staff even takes this a step further making an unsubstantiated and disconnected claim that, if there are offsetting benefits, they will result in “slightly lower” SSO bid prices, while assuming “extraordinarily high” real-time prices. Staff Initial Br. at 27. These assumptions are unreasonable and without record support.

Indeed, OELC, IGS and Staff are ignoring or downplaying key aspects of the volumetric risk cap that the record establishes will inure to the benefit of all SSO customers:

- All SSO customers equally benefit from lower risk premiums whether there is any exceedance. Tr. at 733.
- There may not be any exceedance. Tr. at 1921.
- The volumetric risk cap can deter customer migration for price arbitrage reasons. For example, market participants like Brakey Energy, sophisticated customers, commercial customers and industrial customers will consider whether migrating to the SSO will trigger market prices and,

in which case, customer migration based on price arbitrage may not exist. Tr. at 1918, 1948-1949.

- Market prices may not exceed the SSO rate if there is any exceedance. Tr. at 706, 1921.
- The volumetric risk cap will go a long way to entice the SSO suppliers who have not been participating in the SSO auctions, which will result in greater participation and more aggressive bidding. FirstEnergy Ex. 6 at 8, 9; Tr. at 1919.

Collectively, this evidence demonstrates that the volumetric risk cap will not result in unreasonable SSO rates.

Staff also claims that the volumetric risk cap proposal is concerning because it is based on “an unusual calculation of PLC values” and “defin[ing] PLC differently.” Staff Initial Br. at 27-28. Staff appears to have overlooked the fact that the PLC benchmark that the volumetric risk cap will rely on is daily, aggregate PLC information regularly gathered by FirstEnergy and already existing on FirstEnergy’s CBP website. FirstEnergy Ex. 6 at 6-7; OELC Ex. 14 (“Load and Other Data” in the Documents Section); Tr. at 724-725. There is nothing unusual about that data and PLC is not being re-defined. Staff’s initial brief erroneously conflates individual PLC values with the aggregate PLC information that the volumetric risk cap proposal would use.<sup>1</sup> Staff’s argument should be rejected – it does not establish that the volumetric risk cap proposal will result in unreasonable rates.

## **2. The volumetric risk cap aligns with important elements of the CBP and with important policies.**

The volumetric risk cap will not just bring benefits to the customers as the weight of the evidence establishes. The volumetric risk cap fits within the proposed CBP, corresponds with the

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<sup>1</sup> Staff’s statement that the volumetric risk cap proposal is vague should be disregarded as well. Staff Initial Br. at 28, footnote 140. The statement seems to be based on Staff conflating witness testimony conveniently to allege vagueness. The proposal is not vague – the volumetric risk cap exists in other jurisdictions and has been successful.

Commission's policy interests, and is consistent with Ohio energy policies. These are additional reasons that the volumetric risk cap (modified as Constellation proposes) should be approved.

The volumetric risk cap should be approved (modified as Constellation proposes) because it will be consistent with the major elements of the CBP for the ESP 5, including:

- Developing products and contract terms, as formalized in the Master Supply Agreement, that encourage participation in the CBP;
- Developing the auction design and bidding procurements to attract bidders and to promote competitive bidding; and
- Providing starting prices for the CBP that are intended to attract bidder participation.

FirstEnergy Ex. 6 at 19-20. Testimony from Mr. Lee confirms that a purpose of the cap is to respond to suppliers' concerns with the existing CBP. FirstEnergy Ex. 6 at 9. Mitigating the volumetric risk will make the CBP attractive, encourage suppliers to participate in the auctions, and promote competitive bidding.

In addition, the volumetric risk cap (modified as Constellation proposes) responds appropriately to the Commission's policy interest since 2023 in changing the CBP format due to concerns about the 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. The Commission has also stated concerns regarding the capacity component of SSO rates, and then modified that component. *In re the Proposed Modifications, supra*, Finding and Order at ¶¶ 33 and 34 (December 13, 2023). In addition, the Commission confirmed in December 2023

it “will continue ‘to consider and analyze ways to improve the auction processes.’” *In re the Proposed Modifications, supra*, Finding and Order at ¶ 31 (quoting *In re the Application of the Certification of Northeast Ohio Public Energy Council as a Governmental Aggregator*, Case No. 00-2317-EL-GAG, Finding and Order at ¶ 87 (March 8, 2023)).

Moreover, the volumetric risk cap will not interfere with the Commission’s longstanding practice of laddering and staggering the auction clearing prices and products or interfere with the proposed auction schedule. This is evident because FirstEnergy is proposing to continue the laddering and staggering. FirstEnergy Ex. 6 at Attachment RJJ-9. It is also confirmed in the testimony elicited at hearing. Tr. at 737, 783-784, 802.

Finally, the volumetric risk cap is consistent with Ohio’s electric policy in R.C. 4928.02, including the following subsections:

- (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure; [and]

\* \* \*

- (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment[.]

The volumetric risk cap (modified as Constellation proposes) is designed to mitigate one of the undisputed major risk factors being paid for by the default service customers and to do so for their benefit. Nothing presented by the parties who oppose the volumetric risk cap establishes that the SSO rates will be unreasonable with the cap. The evidence in the record establishes instead that, without the volumetric risk cap, substantial customer migration risk premiums would continue to be included in auction clearing prices, increasing the SSO rates. Because Staff does

not support customers having to pay risk premiums under Rider NMB and wants to “keep the lowest cost possible for customers” (Tr. at 2493-2494) and the Commission itself has had concerns with the SSO auctions and rates, the Commission should adopt the volumetric risk cap (modified as Constellation proposes) to keep the lowest cost possible for the SSO customers. The volumetric risk cap is, in addition, consistent with the proposed CBP, long-standing Commission policy interests and statutory policies. The volumetric risk cap should be approved.

**E. The volumetric risk cap will result in greater supplier participation and greater competition in the SSO auctions.**

None of the parties opposing the volumetric risk cap in their initial briefs (IGS, NRG, Staff and OELC) address the unrefuted testimony that the cap will prompt greater supplier participation and greater competition in the SSO auctions. As Mr. Lee explained, the volumetric risk cap is a key change designed to encourage supplier participation and mitigate risk for customers. FirstEnergy Ex. 6 at 6. More specifically when supporting a volumetric risk cap, Mr. Lee testified that the cap is directly responsive to the volumetric risk concerns in Ohio raised by market participants: “In recent periods, the Companies and other Ohio utilities have also seen lower process participation from prospective suppliers in SSO auctions, and one of the reasons cited by suppliers is the load migration and subsequent volumetric risk in the Ohio market.” FirstEnergy Ex. 6 at 8, 9. Mr. Indukuri testified that migration risk is a concern of other suppliers, noting that “there have been quite a few suppliers, right off the top of my head I can think of Vitol, who have proposed risk -- or the same or \* \* \* somewhat similar conditions that we have here to essentially better define the risk for the suppliers.” Tr. at 1941-1942. *See also Procurement of Standard Service Offer Generation, supra.*

Mr. Indukuri again confirmed in the following exchange that suppliers in the SSO auctions are looking for changes in the CBP because of volumetric risk:

Q. Have you seen impacts to the auctions as a result of that 2022 and 2023 migration?

A. So I mean, we participate in Ohio auctions and we participate at pre and post, and yes, I've seen a significant difference in -- and the Commission recognized that as well, and opened a bunch of dockets to essentially address the high SSO clearing prices.

And the way I think of this migration affecting it is, one, we have seen less suppliers show up in the SSO procurements in Ohio, and secondly, the auction clearing prices have been significantly higher post the migration event, and that was predominantly to account for this -- for unpredictable risk of customers moving into the SSOs.

So I would say the impacts have been higher clearing prices for SSO in Ohio, fewer suppliers showing up in the SSO auctions.

And specifically like the NOPEC event, there was a docket where a lot of suppliers actually contested NOPEC dropping its customers.

Some of the suppliers' names that I remember were Vistra, I think it's all in the docket, and I think it was Trans Alden [sic]. These were the suppliers that seemed to be -- at least they claimed in their filings that they were adversely affected by the NOPEC event.

Tr. at 1950-1951.

Mr. Lee also acknowledged that the volumetric risk cap has been successful in other jurisdictions. FirstEnergy Ex. 6 at 8. Mr. Indukuri testified that the volumetric risk cap in Maryland (which is similar to FirstEnergy's proposal modified as Constellation recommends) has been successful. Constellation Ex. 11 at 19-20.

The facts in the record establishing that the volumetric risk cap will prompt greater supplier participation and greater competition in the SSO auctions support the adoption of a risk cap. Based on these additional considerations, the Commission should approve the volumetric risk cap (with the modifications recommended by Constellation) for the ESP 5.

**F. Class-based auctions will avoid cross-subsidies through proper cost and risk allocation.**

IGS, NRG, and Staff argue that Constellation's proposal for class-based auctions should also be denied, mostly claiming that (1) no change is warranted because the current CBP format has been successful and (2) wrongly contending that risk falls on the SSO suppliers. IGS Initial Br. at 10-11; NRG Initial Br. at 14; Staff Initial Br. at 30. IGS, NRG and Staff arguments are wrong and contrary to the record evidence, as already detailed in Sections II.A and II.B above. The current CBP format does nothing to mitigate the existing risk premiums that SSO customers are paying for in current SSO prices.

Staff argues, in addition, against class-based auctions and advocates for continued use of the slice-of-system format, with all customer classes paying the same SSO rate. Staff Initial Br. at 30. Staff contends that the slice-of-system format "mitigates the idiosyncrasies of serving any customers class, to the benefit of all customers." *Id.* Staff's position is ill advised and ironically supports continuing cross-subsidies. That is because, as Staff itself recognizes, the different customer classes have different load characteristics for the SSO and, as such, there are differing risks and costs. Staff Initial Br. at 30. Thus, grouping all customer classes in the same auction tranches will result in cross-class subsidies (not create transparent market signals to customers in a class on the actual cost of SSO service to that class) and will continue an incentive for those classes of customers receiving subsidized SSO service to flip back and forth from shopping to SSO service depending solely on the subsidized SSO price they would receive. It is no surprise, given the inescapable reality, that Ohio is the only state that conducts default service procurements in this fashion. Constellation Ex. 11 at 27; OCC Ex. 2 at 12-13.

Staff's support for continuing cross-subsidies in the SSO should also be rejected because it is not consistent with Staff's position recommending against such for another proposal in this



case. Specifically, Staff is opposing interclass and intraclass cost-shifting through a single, not-cost-allocated uniform rate in the context of Rider NMB. Staff Initial Br. at 39.<sup>2</sup> Staff reasons that the proposed unified rate design for NMB 2 rates would cause interclass and intraclass cost shifts because it does not align with PJM's cost allocation and, therefore, Staff is opposing it. *Id.* at 39. Class-based auctions would be beneficial to avoid interclass cost shifts among the SSO customers and should be approved just as Staff advocates to avoid interclass cost-shifting in the NMB rider.

Removing the slice-of-system format and substituting class-based auctions is an additional reasonable change that will avoid cross-subsidies that exist, through proper cost and risk allocation. Class-based auctions further support the Commission's long-standing policy of promoting cost-causation principles. The Commission should adopt Constellation's class-based auction proposal and reject the arguments from IGS, NRG and Staff to the contrary.

### **III. Conclusion**

The Commission should implement two key improvements to FirstEnergy's CBP auction construct for the term of the ESP 5 – the volumetric risk cap (modified as Constellation recommends) and class-based auctions. The cost of past risks and experiences will result in the unnecessarily high future rates for serving the SSO customers, and a continued low level of bidder participation. The parties do not dispute that the risks exist or that they are included in the bidding. Thus, mitigating the major risks inherent in the current CBP auction structure is the reasonable response. Doing nothing, like several parties advocate, is ill advised. Given that the unrefuted record evidence establishes that the volumetric risk cap is proven successful and easy-to-

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<sup>2</sup> Staff makes several recommended changes for Rider NMB, but was especially clear that, regardless of whether the Commission agrees with the other recommendations, the Staff's allocation recommendations involving the different customer classes would still be needed to mitigate cost shifting. Staff Initial Br. at 40-41.

implement, Constellation respectfully requests that the Commission modify the proposed CBP auction construct to include it. In addition, Constellation requests that the Commission order FirstEnergy to implement class-based auctions – to improve the well-documented inefficiencies in the slice-of-system format through better risk and cost allocation and avoid unnecessary cross-subsidies. Class-based auctions are the norm, are proven successful and easy to implement, and align with the Commission’s long-standing policy of promoting cost-causation principles. Notably, Commission Staff recognizes the importance of avoiding risk premiums that result higher costs to customers and implementing proper risk and cost allocation, as Staff is advocating for other changes in the ESP to accomplish these same goals. Constellation’s volumetric risk cap and class-based auction proposals therefore should be implemented for the CBP.

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## **CERTIFICATE OF SERVICE**

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