BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Procurement of Standard Service Offer Generation As Part of the Fourth Electric Security Plan for Customers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company.	)))))))	Case No. 16-776-EL-UNC
In the Matter of the Procurement of Standard Service Offer Generation For Customers of Dayton Power & Light Company.	))))	Case No. 17-957-EL-UNC
In the Matter of the Procurement of Standard Service Offer Generation For Customers of Ohio Power Company.	))))	Case No. 17-2391-EL-UNC
In the Matter of the Procurement of Standard Service Offer Generation For Customers of Duke Energy Ohio, Inc.	))))	Case No. 18-6000-EL-UNC

REPLY COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

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The Retail Energy Supply Association ("RESA") supports the Public Utilities Commission of Ohio's ("Commission") stated goal in this review to "ensure that all retail electric customers served by EDUs have reliable access to electric generation supply at market-based rates." RESA encourages the Commission to continue its review of legacy methodologies to ensure that all aspects of competitive retail electric service are truly at market-based rates and without subsidies that may exist today. As discussed in more detail below, there is widespread opposition to the adoption of the potential changes identified in the Commission's Entry. While other commenters raise additional possible

changes there is a lack of record support to make changes in this proceeding, a need to make changes, if any, in a standard service offer ("SSO") proceeding, and other changes should not be adopted as they are unlawful and unreasonable.

I. REPLY COMMENTS

A. The Commission should not adopt the two potential SSO auction modifications identified in the Entry.

Duke, FirstEnergy, IGS, AEP Ohio, Constellation, AES Ohio, and RESA all generally agree that the two potential SSO auction modifications identified in the Commission's Entry should not be adopted.[1] Duke notes that these two proposals would not reduce market volatility, and may raise market premiums and increase prices.[2] FirstEnergy asserts that the proposals would have *de minimus* benefits, if any, to SSO customers while increasing administrative costs and volatility of SSO prices.[3] AEP Ohio asserts that the two proposals are "not entirely efficacious."[4] Enel states that the proposals will not align SSO auction clearing prices with actual market prices.[5] Constellation states that six-month products are not likely to result in significantly reduced SSO prices and revised credit requirements are likewise not likely to result in reduced SSO prices.[6] RESA described in its Initial Comments why it believes the two potential SSO Auction changes enumerated in the Commission's Entry should not be adopted in

[1] Duke Initial Comments at 2; FirstEnergy Initial Comments at 2-3; IGS Initial Comments at 7-9; Constellation Initial Comments at 2-5; DP&L Initial Comments at 2.

[2] Duke Initial Comments at 2.

[3] FirstEnergy Initial Comments at 2.

[4] AEP Ohio Supplemental Initial Comments at 2.

[5] Enel Initial comments at 3.

[6] Constellation Initial Comments at 2, 4.

this proceeding. Accordingly, RESA urges the Commission to decline adopting the two potential changes it identified in its Entry.

B. Modifications to the SSO auction process should only be made in an SSO proceeding.

With essentially unanimous opposition to the adoption of the potential modifications enumerated in the Commission's Entry, the fact-finding mission in this proceeding appears to be complete. Moreover, RESA and other stakeholders explicitly and implicitly agree that any potential changes to the SSO auction should occur in an SSO proceeding. As RESA and IGS explained in Initial Comments, Ohio law requires the Commission to implement SSO generation supply as part of an SSO proceeding under R.C. 4928.142 or 4928.143, and therefore any changes to the SSO auction process must occur in an SSO Case.[7] Other stakeholders, AEP Ohio, OCC, and Enel, also urge the Commission to wait until an SSO proceeding is initiated (or another case) where a thorough evaluation of potential SSO auction modifications can occur as part of a more comprehensive review than what is available in the comment process here.[8] AEP Ohio also identifies some of the issues that it believes exists with the comprehensive review occurring outside of an SSO proceeding, including the electric distribution utilities' ("EDUs") right to withdraw an electric security plan ("ESP") if the Commission modifies a term of an ESP.[9] Finally, even the Comments by Vitol and Enel demonstrate good cause for only implementing SSO auction modifications in an SSO proceeding. The proposals

[7] IGS Initial Comments at 4-5.

[8] OCC Initial Comments at 3-4; AEP Ohio Supplemental Initial Comments at 2-3 ("AEP Ohio suggests that the Commission initiate a more careful and thorough evaluation of potential SSO auction modifications as part of a broader proceeding that is subsequently implemented within an SSO/ESP proceeding."); Enel Initial Comments at 16 ("Enel respectfully submits that the Commission should open a Commission Ordered Investigation (COI)…").

[9] AEP Ohio Supplemental Initial Comments.

by Vitol and Enel would establish limitations on customer shopping, standby service, *i.e.* POLR, charges, and other modifications to the SSO process that require far more analysis and evaluation than what has been provided in this case. Interested parties must be provided ample opportunity to address and oppose proposals that would interfere with Ohio's customer choice requirements. Accordingly, RESA urges the Commission to withhold final consideration of any changes to the SSO auction process to the pending and future SSO proceedings.

C. Many potential modifications to the SSO auction process identified in this case are not supported by substantial record evidence.

This case has not provided the parties with a complete opportunity to develop the record and as such the proceeding lacks a complete evidentiary record or sufficient evidence that would permit the Commission to adopt a SSO auction modifications. R.C. 4903.09 requires the Commission to "file findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.[10] Accordingly, even if it were proper to consider changes in this proceeding, many issues raised in the proceeding lack the record support for them to be adopted and parties like RESA have not been provided a full and robust opportunity to review and potentially oppose additional proposals.

As to the two items enumerated in the Commission's Entry, the Commission specifically solicited comments on "the effectiveness of the proposed modifications."[11]

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[10] R.C. 4903.09; *see also In re Application of Ohio Power Co. for an Increase in Elec. Distr. Rates*, Case No. 20-585-EL-AIR, et al., Second Entry on Rehearing (Feb. 8, 2023), citing *In re Complaint of Suburban Natural Gas Co. v. Columbia Gas of Ohio, Inc*., 162 Ohio St.3d 162, 2020-Ohio-5221, 164 N.E.3d 425, ¶ 19; see also *Tongren v. Pub. Util. Comm*., 85 Ohio St.3d 87, 90, 706 N.E.2d 1255 (1999); *Cleveland Elec. Illum. Co. v. Pub. Util. Comm*., 76 Ohio St.3d 163, 166, 666 N.E.2d 1372 (1996); *Payphone Assn. v. Pub. Util. Comm., 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 32.*

[11] Entry (Jan. 3, 2023) at 2-3.

However, no stakeholder filed comments with analysis or projections of how these two identified SSO auction modifications would impact SSO prices and stakeholders generally agree that they would likely not have material positive impacts on the SSO auction product.

In the same vein, some of the comments identified additional potential SSO auction changes but failed to fully explain the potential modifications or support for them with analysis. For example, in the last page of its comments, Duke offers seven other options for the Commission's consideration.[12] Duke provides no analysis, projections, customer impacts, or other record evidence at all for its bullet-point considerations.[13] In sum, there is no record support for the Commission to adopt these potential changes to the SSO auctions in this proceeding.

D. The Commission should reject the anticompetitive proposals by Vitol, Enel, and Duke to implement limitations on customer shopping.

The Commission should reject the anticompetitive measures proposed by Vitol, Enel, and Duke to limit customer shopping.[14] It is the policy of the state of Ohio to promote competition and shopping and the Commission has held that anticompetitive limitations on customer shopping should be rejected.[15]

[12] Duke Initial Comments at 3 ("Limit the amount of load that can return to the standard service offer in a given month; relieve the load cap, currently at 80 percent; release the credit-based tranche cap; allow for bilateral purchases of supply; limit the ability to switch, particularly for nonresidential parties; provide the PJM would serve any load that doesn't clear under the reserve price; provide for a Commission determination of the maximum allowable premium").

[13] Duke Initial Comments at 3.

[14] Vitol Initial Comments at 24; Enel Initial Comments at 16; Duke Initial Comments at 3.

[15] See *In re The Dayton Power and Light Co.*, Case No. 12-427-EL-SSO, Opinion and Order (Sept. 4, 2013) at Page 29.

Pursuant to R.C. 4928.02, it is the policy of the state of Ohio to promote competition and customer choice. The Commission must ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs.[16] Similarly, R.C. 4928.02(C) requires the Commission to ensure a diversity of supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.[17] When utility tariff provisions created a market barrier to customer choice (*i.e.* minimum stay provisions), the Commission struck them down as inconsistent with state policy.[18]

The Commission has also rejected proposals to protect the SSO against migration risk stating that migration is properly classified as a business risk faced by all suppliers and "compensation for migration risk by means of an EDU's POLR charge would provide an advantage over [] CRES competitors."[19] In another case, the Commission rejected another nonbypassable charge that would have compensated for migration risk stating that DP&L's proposed Switching Tracker ("ST") "should be denied because it violates the policies of the state of Ohio, is anticompetitive, and would discourage further development of Ohio's retail electric services market."[20] The Commission then reasoned:

> "One of the principal aspects of a market is the opportunity for consumers to shop for a diversity of products offered by a multitude of suppliers. When a customer purchases a product from a new supplier, the previous supplier will necessarily lose that customer's representative market share. DP&L's proposed ST would provide DP&L a stream of revenue to directly compensate it for market share lost when a customer switches to a

[16] R.C.4928.02(B).

[17] R.C.4928.02(C).

[18] *In re Columbus s. Power Co. and Ohio Power co. for Authority to Establish a Standard Service Offer*, Case Nos. 11-346-EL-SSO, *et al.* Entry on Rehearing at ¶ 45 (Jan. 30, 2013).

[19] AEP Ohio ESP I Case, Order on Remand at 31-32.

[20] *Id*. at Page 30.

> competitive retail electric service provider. The Commission believes that this makes the proposed ST anticompetitive because it may discourage customers from shopping for a retail electric supplier."[21]

The limitations on customer shopping proposed by Vitol, Enel, and Duke, are much like restrictions which the Commission has previously found to be anticompetitive and incompatible with the pro-consumer choice provisions in Ohio law. Vitol and Duke assert that the Commission should implement stricter switching rules, specifically on large commercial and industrial customers and municipal aggregators to mitigate price increases in future auctions resulting from high migration risk premiums.[22] Enel makes similar proposals and offers two bullet-points recommending that the Commission open a Commission Ordered Investigation ("COI") to consider limitations on load migration and switching.[23] Each fails to demonstrate that their proposals would yield a just and reasonable result and each violate Ohio law and Commission precedent. The proposed limitations on customer switching must be rejected.

E. The Commission should reject the proposal by Vitol and OCC to implement nonbypassable standby service, *i.e.* POLR, charges.

The Commission should reject the suggestion by Vitol and the Office of the Ohio Consumers' Counsel ("OCC") for the Commission to adopt unlawful and unreasonable provider of last resort ("POLR") charges. The Commission and Ohio Supreme Court have held that the Commission's ability to authorize POLR charges is extremely limited.[24] Ohio

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[21] *Id.*

[22] Vitol Initial Comments at 24; Duke Initial Comments at 3 (5th bullet-point).

[23] Enel Initial Comments at 16.

[24] *In re Columbus S. Power Co.* 128 Ohio St.3d 512, 2011-Ohio-1788 at ¶ 22-30; *In the Matter of the Application of Columbus S. Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*; Case Nos. 08-917-EL-SSO, *et al.*, Order on Remand at 23 (concluding that a POLR charge must be based on actual costs

law and Commission precedent also both recognize that with SSO generation supplied through competitive auctions there is no need or availability of POLR charges.[25] Ohio law and Commission precedent do not support the adoption of new POLR charges to insulate the market-based SSO from market-based risks. Vitol and OCC's proposal for the Commission to consider implementing new POLR charges must be rejected.

In its comments, OCC makes a passing reference that the Commission could consider standby charges, *i.e.* nonbypassable POLR charges, in a separate proceeding.[26] OCC provides no explanation of how its contemplated POLR charge should be calculated or other information to demonstrate its proposal is just and reasonable.

Vitol offers a lengthier request for a conditionally nonbypassable standby, *i.e.*, POLR, charge where the revenue collected from government aggregation customers would be credited to SSO suppliers like itself (although at some points in its comments, Vitol's request for a POLR charge appears directed at all customers).[27] Vitol suggests that the implementation of nonbypassable POLR charges "would protect the SSO market from manipulation and migration risk."[28] Vitol also asserts that the current regulatory structure provides customers in a government aggregation program *en masse* "a free

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and risks and rejecting alleged formula-based or modeled costs as actual costs recoverable through a POLR charge) ("AEP Ohio ESP I Case").

[25] *See* R.C. 4928.142; AEP ESP I Case, Order on Remand at 29.

[26] OCC Initial Comments at 3 (OCC's states that in another case the Commission could consider consumer protections and that "[s]uch protections could be the implementation of stand-by charges.").

[27] *See, e.g.*, Vitol Initial Comments at 20 (the POLR charge should be associated with the obligation to serve all default load).

[28] Vitol Initial Comments at 19.

option to switch to SSO service."[29] Vitol even goes so far as to ask the Commission to provide it with a "retroactive" subsidy so that it can ensure that it received and receives a subsidy that guarantees it earns a profit at little to no risk.[30]

Vitol's comments mix and match regulatory concepts in an effort to provide guaranteed profit for SSO suppliers. Moreover, Vitol's comments point Ohio down a path that would suggest a termination of the current SSO competitive auctions and a return to the regulation and EFC/FAC's of years past for default generation supply. Vitol's comments are not an improvement that facilitates retail electric customers having access to electric generation supply at market-based rates and therefore must be rejected.

Much of Vitol's support for the implementation of new POLR charges is based on the world as it existed in 2008 when SB 221 was adopted and between 2011-2014 when the Commission ended FACs and required the transition to SSO generation being provided by the market through competitive auctions. For example, in the same decision Vitol cites as support for its new nonbypassable POLR charge, the Commission undercuts the arguments that Vitol raises here. In AEP Ohio's first ESP case, the Commission rejected AEP Ohio's arguments that the risk of customers leaving the SSO should be a compensable POLR cost/risk. The Commission did identify, as Vitol points out, that there was a risk and cost associated with the default generation provider associated needing to serve customers returning to the SSO. However, context is critical. When SB 221 was passed utilities were essentially providing generation service for all customers and collecting the costs, dollar-for-dollar without a markup for risks or profit, through an

[29] Vitol Initial Comments at 20 (capitalization in heading removed).

[30] *Id.* at 20.

EFC/FAC. Rather than including the costs/risks of being the default generation provider in the SSO generation price (*i.e.* FAC) utilities like AEP Ohio sought to include them in a POLR charge. However, the risks of serving as a default SSO generation provider are now priced into the clearing prices of SSO auctions. Moreover, unlike the FAC that provided incumbent utilities no profit, the SSO prices include a profit component.

Nonetheless, the Commission on remand in that case, following the Court's lead, explicitly rejected using a formula or model to project the costs of the return risk and mandated that any recovery of the risk cost/risk to serve returning customers be based on a demonstrable actual cost.[31] Moreover, the Commission identified a number of ways that the return risk could properly be calculated and that included through the actual costs of purchasing a hedge or through "competitive bidding."[32] The current SSO auctions provide participants an opportunity to price return risk into their bids and the AEP Ohio ESP I Order on Remand that Vitol cites does not support providing SSO auction winners additional nonbypassable revenue collected through a POLR charge to insulate their risks, or guaranteeing profit, for providing generation service to the SSO.

Furthermore, SB 221 itself directly undercuts Vitol's arguments. As noted above, Vitol relies on the ESP statute to claim that the General Assembly intended for there to be POLR charges to compensate SSO auction winners for return risk. However, one need look no further than other provisions of SB 221 to see that the General Assembly did not intend POLR charges to be something that should be implemented to subsidize SSO auction winners risks and costs. The market rate offer ("MRO") statute reflected in

[31] AEP Ohio ESP I Case, Order on Remand at 28-29.

[32] *Id.*

R.C. 4928.142 sets forth a process by which generation service can be secured for default SSO customers through a competitive auction process. There is no mention of standby or POLR charges in the MRO statute and Section (C)(3) of the statute explicitly states that all costs associated with "procuring generation service to provide the standard service offer, including the costs of energy and capacity *and the costs of all other products and services* procured as a result of the competitive bidding process, *shall be timely recovered through the standard service offer price*." To the extent there is a need to hedge against serving the additional load of returning customers, SB 221 very clearly indicated that bidders in competitive auctions should include that cost component in their bid prices. SB 221 does not support Vitol's request for the implementation of new nonbypassable POLR charges.

Moreover, despite all the consternation Vitol directs at shopping customers' alleged free hedge, the fact remains that shopping customers have been required to significantly subsidize the SSO. The Commission has held that this subsidy paid by shopping customers is justified (wrongly in RESA's view) because shopping customers are free to return to the SSO at any time. While RESA believes that reforms to the SSO are necessary to make the SSO more market-based, the POLR proposal suggested by Vitol and OCC undercut customer choice and market-based options, would not be lawful and reasonable, and should be rejected.

II. CONCLUSION

RESA appreciates the opportunity to file these Reply Comments and supports the Commission's stated intent to ensure that all customers have access to market-based rates. As to the Commission's request for additional information on shorter term products

and reduced credit requirements, there is widespread agreement amongst commenters that these should not be adopted. While other parties' raised some additional items for the Commission's consideration the additional proposals should not be adopted in this proceeding due to a lack of record support, the need for SSO generation supply being addressed in an SSO proceeding, and because some proposals are unlawful and unreasonable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Ohio Adm. Code 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Reply Comments of the Retail Energy Supply Association* was sent by, or on behalf of, the undersigned counsel for RESA to the following parties of record this March 16, 2023, *via* electronic transmission.

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