

AEP CBP STAKEHOLDER WORKSHOP

FINAL WRITTEN COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

I. INTRODUCTION

FirstEnergy Solutions (“FES”) submits these Final Written Comments regarding Ohio Power Company’s (“AEP Ohio’s”) Competitive Bid Process (“CBP”), as proposed via the CBP stakeholder process established pursuant to the August 8, 2012 Order regarding AEP Ohio’s Electric Security Plan in Case No. 11-0346-EL-SSO (“ESP Order”). FES participated in the stakeholder workshops held October 25, November 8, and November 9, 2012, as well as the November 27, 2012 stakeholder call. FES submitted Initial Written Comments in the form of redlines to proposed CBP documents on October 29 and November 13, 2012.

FES’ comments are currently limited to three main areas of concern: 1) AEP Ohio’s proposal to split the second auction into two procurements, possibly with varying tranche size; 2) the inability to post cash as pre-bid security in the initial auction; and 3) the lack of appropriate protections against potential abuse by affiliated bidders. FES reserves the right to make additional comments at a later date. FES respectfully requests AEP Ohio consider these comments and modify the CBP accordingly.

II. COMMENTS TO STAFF’S PROPOSED RULES

1. The CBP should be modified to combine the proposed second and third auctions, allowing the tranche size to remain at 1% of SSO load.

On page 40 of the ESP Order, the Commission directed “AEP-Ohio to conduct an energy auction for delivery commencing on June 1, 2014, for 60 percent of its load, and

delivery commencing on January 1, 2015, for the remainder of AEP-Ohio's energy load.” AEP Ohio has interpreted the ESP Order to mean that this is incremental to the 10 percent being procured around May of 2013 for delivery around July of 2013. The ESP Order does not specify whether this auction should be split into multiple procurements or held as a single procurement.

AEP Ohio has proposed to procure the energy for delivery commencing June 1, 2014 in two auctions of 25 tranches each, held in January 2014 and March 2014. AEP Ohio also has stated that the tranche size is subject to change. When asked for the rationale behind this decision, NERA Economic Consulting (“NERA”) indicated that the intent was to maintain increased supplier interest.

FES submits that AEP Ohio’s proposal will, to the contrary, jeopardize robust supplier participation. It is important for potential bidders to have a clear understanding of the product definition prior to the auction and a potentially moving target due to a fluctuating tranche size will impart confusion and render the CBP less attractive to potential bidders. Further, combining the two auctions into one auction of 50 tranches and maintaining a tranche size would increase supplier participation. In sum, in order to promote supplier participation and the benefits of competition, AEP Ohio should: (1) modify the CBP to maintain a fixed tranche size of 1% of SSO load (as is done in other Ohio auctions); and (2) combine the auctions into one.

2. The CBP should be modified to allow cash as a form of pre-bid security in all auctions.

AEP Ohio has stated that “While cash will be accepted as security under the terms of the Master SSO Supply Agreement, it will not be accepted as a form of pre-bid

security in the first auction. This will be revisited in the improvement workshops for the auctions held in 2014.” It is FES’ position that cash should be an acceptable form of pre-bid security in all auctions. Cash is less expensive than a letter of credit, and is less administratively burdensome. It is unclear why cash would be considered at a later date, but not for the first auction.

3. The CBP should be modified to allow for appropriate protections against potential abuse by affiliated bidders.

While AEP Ohio indicated in the Stakeholder Process Proposal for Key Elements of the CBP that the 80% load cap applies to each supplier **or group of affiliated bidders**, this point is not reflected in the AEP Bidding Rules. Specifically, references to the 80% load cap on pages 10 and 19 should explicitly provide that this cap applies to Ohio Power Company and AEP Retail combined. All CBP documents should also include a definition of affiliated bidders making this distinction.

AEP Ohio’s CBP documents are also missing Rules and Protocols for Participation by Associated Bidders, an element which was included in both FirstEnergy Ohio and Duke Energy Ohio CBPs (see Attachment). AEP Ohio’s CBP documents should be modified to include these additional protections, consistent with the other CBPs in the state.

III. CONCLUSION

FES appreciates AEP Ohio’s efforts to develop a CBP consistent with the successful CBP processes in Duke Energy Ohio and FirstEnergy Ohio territories, as requested by the Commission. FES believes that the few changes described above and

included in FES' previous written comments will ensure a successful CBP process in AEP Ohio's territory as well. Thank you for your consideration.

**Rules and Protocols for
Participation by Associated
Bidders in Duke Energy Ohio, Inc.
Standard Service Offer CBP
Auctions**

April 4, 2012

1. **INTRODUCTION**

As outlined in Section 4.2.2 of the Bidding Rules for the Duke Energy Ohio, Inc., Standard Service Offer (“SSO”) Competitive Bidding Process (“CBP”) auctions, the competitiveness of an auction may be compromised by the coordinated or collusive behavior that bidding associations may facilitate. As a result, the Auction Manager has developed standards that apply when associated parties apply to participate in a CBP auction. The following sections outline the specific protocols that will be followed when associated entities submit Part 1 and/or Part 2 Applications to participate in a CBP auction for Duke Energy Ohio, Inc.

2. **PROCEDURE**

Potential associations among Qualified Bidders may come to the attention of the Auction Manager at different points in the application process. In order to improve the process efficiency and minimize the risk of disclosure of potentially confidential information, the Auction Manager will approach each case as described below.

2.1. **Following the Receipt of the Part 1 Applications**

Potential associations among applicants may become apparent after the Part 1 Application but before Qualified Bidders are required to disclose such associations as part of the Part 2 Application. The Auction Manager will take no action related to potential associations until each party submits their completed Part 1 Application. In cases where there is an apparent relationship among applicants, the Auction Manager will initiate a request for additional information regarding the relationship among the potentially associated parties, the structure of their organization, and the independence of the respective bidding teams.

In such cases, the Auction Manager will notify representatives of Duke Energy Ohio, Inc., PUCO Staff, and the PUCO’s consultant that there is a potential association among applicants.

In addition, as outlined in Section VII of the Part 2 Application, the Auction Manager reserves the right to request additional information from each party including, but not necessarily limited to:

- a. Information on how the entity maintains its independence from the associated party including any available supporting documentation such as a Corporate Separation Agreements, Codes of Conduct, and/or organization charts;
- b. A list of individuals within the organization who have played or will play a material role in the CBP auction;

- c. Information regarding the nature of any work done in conjunction with or on behalf of the associated party;
- d. Information describing the organizational structure of the associate(s), identifying common management and oversight among the associated entities as well as the management involved in or responsible for bid approval;
- e. The internal process or protocol related to determining indicative offers submitted as part of the Part 2 Application; and,
- f. Disclosure of whether the entity is bidding on behalf of itself or acting as an agent for other entities.

Any responses to the above will be treated as confidential if labeled as such.

2.2. Following the Receipt of the Part 2 Applications

In some cases, the potential relationship among Qualified Bidders will not be known to the Auction Manager until the Qualified Bidders submit final certifications along with their Part 2 Application. In such cases, the Auction Manager will initiate the steps outlined above in Section 2.1, upon receipt of the completed Part 2 Applications.

After the Auction Manager has requested and received additional information from each associate, the Auction Manager will work with representatives of Duke Energy Ohio, Inc., PUCO Staff, and the PUCO's consultant to determine:

- a. Whether each of the associated bidders will be allowed to independently participate in the CBP auction; and
- b. Any restrictions that may be applied as a result of the participation by associated bidders.

Any restrictions will be based on the information provided by the associated bidders as part of the Part 1 Application, the Part 2 Application, and the additional information that was provided at the request of the Auction Manager.

3. **REMEDIES AND ACTIONS RELATED TO PARTICIPATION BY ASSOCIATED BIDDERS**

This section summarizes the potential restrictions that will be considered by the Auction Manager, Duke Energy Ohio, Inc., PUCO Staff, and the PUCO's consultant in relationship to associated participation. Restrictions on participation may include, but may not be limited to, the following:

- a. Indicative offers may be restricted such that any applicable load cap or credit based tranche cap may apply across the associated bidders;
- b. Pre-bid security or collateral requirements may be altered for the associated bidders to ensure that associates do not gain a competitive advantage over other bidders; and,
- c. In some cases, one or more associated bidders may not be allowed to participate in the CBP auction.

4. **HANDLING OF CONFIDENTIAL INFORMATION**

In order to execute the process of gathering information on associated entities and executing the remedies outlined in Section 3, there may be situations that require the Auction Manager to share, directly, certain confidential information among the associated parties, Duke Energy Ohio, Inc., the PUCO and its staff and/or the consultant hired by the PUCO to monitor the process.

In addition, as part of the remedies outlined in Section 3, an associated party may gain access to or be able to ascertain certain confidential information of the other associated entities. While access to such information is counter to Certification (5) in the Part 2 Application, access to such information acquired through the data gathering and remedies related to associated bidders will not be considered a violation of the CBP rules.¹

Confidential information includes but may not be limited to the initial eligibility for each associated bidder based on indicative bids submitted with the Part 2 Application. The Auction Manager will make all efforts to minimize the disclosure of any such confidential information.

¹ Certification (5) from the Part 2 Application states: (5) Please certify that you do not have any knowledge of Confidential Information that is relevant to the bidding strategy of any other Qualified Bidder.