

In the Matter of the Procurement of)
Standard Service Offer Generation for) Case No. 18-6000-EL-UNC
Customers of Duke Energy Ohio, Inc.)

The PUCO's Finding and Order fails consumers and is unlawful.¹ OCC demonstrated that the ODOD/PUCO PIPP program violates R.C. 4828.02(L) and 4928.542 by charging at-risk consumers electricity prices that are significantly higher than Duke's standard offer.² However, the PUCO did not address OCC's arguments in its Finding and Order,³ in violation of R.C. 4903.09. Because the PUCO did not respond to OCC's arguments, the Finding and Order is wrong and unlawful.

Accordingly, under R.C. 4903.10, OCC applies for rehearing of the Finding and Order. As explained more fully in the following memorandum in support, the PUCO's Finding and Order was unlawful in the following respects:

ASSIGNMENT OF ERROR NO. 1: The PUCO erred by rendering a decision that was not based on record evidence presented by OCC showing Duke charging at-risk PIPP consumers electricity prices higher than Duke's standard offer in violation R.C. 4828.02(L) and 4928.542, in violation of R.C. 4903.09.

¹ Finding and Order (August 24, 2022).

² Case No. 18-6000-EL-UNC, OCC's Objections (August 24, 2022).

³ Finding and Order.

Respectfully submitted,

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I. INTRODUCTION

Duke’s low-income PIPP consumers are vulnerable to poverty, food and housing insecurity, inflation, and a resurging pandemic. They are at-risk. But Duke’s electric PIPP consumers are being billed an estimated **\$1,289** more a year (June 1, 2022 to May 31, 2023) in excess of what consumers are being billed on Duke’s standard service offer.⁴

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That is in violation of R.C. 4928.542. It's also nonsensical and unconscionable for these people (PIPP consumers) who lack money.

Eligibility for PIPP benefits had been limited to households with incomes below 150% of the federal poverty guidelines.⁵ But, on July 27, 2022, Governor DeWine expanded PIPP eligibility to include households up to 175% of the poverty guidelines, in Executive Order 2022-12D. We appreciate the Governor's good intentions for Ohioans. But those good intentions have been compromised by the results of the PIPP electricity auctions. There, the results of bidding by energy marketers exceeds the applicable utility's standard offer price. It is unlawful to charge PIPP consumers in excess of the utility standard offers, per R.C. 4828.542. So, unfortunately, expanding people's eligibility for PIPP to 175% of federal poverty guidelines exposes more at-risk consumers to higher charges. The PUCO should grant OCC's Application for Rehearing as further explained below to protect at-risk PIPP consumers from overpaying for electric utility service.

II. MATTER FOR CONSIDERATION

ASSIGNMENT OF ERROR NO. 1: The PUCO erred by rendering a decision that was not based on record evidence presented by OCC showing Duke charging at-risk PIPP consumers electricity prices higher than Duke's standard offer in violation R.C. 4828.02(L) and 4928.542, in violation of R.C. 4903.09.

The PUCO's decision is not based on record evidence, as R.C. 4903.09 requires. The PUCO ignored OCC's arguments that charging at-risk consumers prices higher than

⁵ See O.A.C. 122:5-3-02(B).

Duke's standard offer violates R.C. 4828.02(L) and 4928.542. Consequently, the Finding and Order is unlawful.

R.C. 4903.09 provides that "in all contested cases heard by the Public Utilities Commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the Commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact."

The Supreme Court of Ohio has stated R.C. 4903.09 mandates that the PUCO "must explain its decisions."⁶ "PUCO orders which merely [make] summary rulings and conclusions without developing the supporting rationale or record have been reversed or remanded" to the PUCO.⁷ The Supreme Court of Ohio has also remanded PUCO orders that contain "no record citations relevant to the pertinent issue" and do "not cite evidence on rehearing."⁸

The PUCO Finding and Order violates R.C. 4903.09 and Supreme Court precedent. OCC objected to Duke's application for two reasons. First, the PUCO order would allow Duke to bill its electric PIPP consumers an estimated \$1,289 more a year (June 1, 2022 to May 31, 2023) than consumers are billed on Duke's standard service offer. This violates R.C. 4928.542, which states that electric generation prices charged to electric PIPP consumers cannot exceed their electric utility's standard service offer

⁶ *In re Fuel Adjustment Clauses for Columbus S. Power Co. & Ohio Power Co.*, 140 Ohio St.3d 352, 2014-Ohio-3764, 18 N.E.3d 1157, ¶ 45 (2014).

⁷ *MCI Telecommunications Corp. v. Pub. Utilities Com'n of Ohio*, 32 Ohio St.3d 306, 312, 513 N.E.2d 337, 343 (1987).

⁸ *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, 147 Ohio St.3d 59, 2016-Ohio-1607, 60 N.E.3d 1221, ¶ 51 (2016).

prices. Second, the PUCO's approval of Duke's application also violated R.C. 4928.02(L), which requires the PUCO to "protect at-risk" Ohioans. Duke's low-income PIPP consumers are vulnerable to poverty, food and housing insecurity, inflation, and a resurging pandemic. They are at-risk. PUCO shirked its duty to protect at-risk consumers by ordering Duke to overcharge them for electric service. OCC raised both arguments in its objections to Duke's application.

Ohio law and Supreme Court of Ohio precedent required the PUCO to address OCC's arguments. Instead, the PUCO ignored OCC's positions. The PUCO's Finding and Order did not acknowledge that OCC had filed objections to Duke's application. For this reason, the PUCO's Finding and Order violated R.C. 4903.09's requirement that decisions be based on record evidence. Further, by making a "summary ruling without record citations relevant to the pertinent issues" OCC raised, the PUCO also disregarded Supreme Court of Ohio precedent. The PUCO was required to address OCC's arguments; it failed to do so.

The PUCO's Finding and Order is unlawful. Rehearing should be granted.

III. CONCLUSION

"[T]he purpose of the PUCO * * * is to protect the customers of public utilities."⁹ The PUCO can protect consumers by granting rehearing and rejecting or modifying the Finding and Order in this case so that electricity for PIPP consumers is procured through the same auction as the standard service offer.

⁹ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 372 (2009) (Pfeifer, J. dissenting).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 23rd day of September 2022.

/s/ William J. Michael

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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