

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE PROCUREMENT
OF STANDARD SERVICE OFFER
GENERATION FOR CUSTOMERS OF DUKE
ENERGY OHIO, INC.

CASE NO. 18-6000-EL-UNC

ENTRY ON REHEARING

Entered in the Journal on October 5, 2022

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Ohio Consumers' Counsel.

II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke) qualifies as an electric utility as defined by R.C. 4928.01(A)(11) and as an electric distribution utility (EDU) as defined by R.C. 4928.01(A)(6).

{¶ 3} R.C. 4928.141 provides that electric utilities shall provide consumers a standard service offer (SSO) of all competitive retail electric services in accordance with R.C. 4928.142 or 4928.143. The SSO functions to make generation supply available to customers that are not receiving this supply from a competitive retail electric services provider and is sometimes referred to as default supply. The Commission approved Duke's most recent electric security plan (ESP), which implemented a competitive auction-based SSO format, as well as a competitive bid procurement process for Duke's auctions to procure generation supply for Duke's customers for a certain period of time. *In re Duke Energy Ohio, Inc.*, Case No. 17-1263-EL-SSO, et al., Opinion and Order (Dec. 19, 2018).

{¶ 4} Since the approval of Duke's ESP, Duke's auction schedule has been modified due to delays in the timing of PJM Interconnection, LLC's (PJM) base residual auction (BRA). *In re the Procurement of Standard Service Offer Generation Customers of Duke Energy Ohio, Inc.*, Case No. 18-6000-EL-UNC, Finding and Orders (Aug. 26, 2020) and (June 16, 2021).

{¶ 5} On December 22, 2021, the Federal Energy Regulatory Commission (FERC) issued an order reversing FERC's previous determination that the backward-looking energy and ancillary services offset (E&AS Offset) was just and reasonable. Given this reversal, FERC directed PJM to submit a compliance filing within 60 days to revise its Tariff and Operating Agreement and, in order to incorporate the revised E&AS Offset in the BRA for the 2023/2024 delivery year, directed PJM to submit a compliance filing within 30 days that proposes a new schedule for the BRA and subsequent BRAs. *Order on Voluntary Remand*, Case Nos. EL19-58-006; ER19-1486-003, at ¶ 2 (Dec. 22, 2021).

{¶ 6} On January 10, 2022, Duke filed a notice advising the Commission of FERC's order cited above delaying the January 2022 BRA for the 2023/2024 delivery year and a request for guidance regarding whether an amendment to Duke's upcoming SSO auction schedule should occur. Duke also provided a modified auction schedule in case the Commission believed the SSO auction schedule should be amended.

{¶ 7} On January 26, 2022, the Commission approved Duke's proposal to modify its February 2022 SSO auction such that it procures 50 tranches of load during the 2022/2023 delivery year.

{¶ 8} On August 17, 2022, Duke filed a motion to confirm and clarify the SSO auctions for the remaining period of its ESP term, beginning with the September 2022 auction and ending with the February 2024 auction.

{¶ 9} On August 24, 2022, Ohio Consumers' Counsel (OCC) filed objections to Duke's above motion.

{¶ 10} On August 24, 2022, the Commission granted Duke's proposal to modify its SSO auction schedules.

{¶ 11} Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined

in that proceeding by filing an application within 30 days after the Commission's order is journalized.

{¶ 12} On September 23, 2022, OCC filed a timely application for rehearing on the Commission's ruling, granting Duke's proposal to modify its SSO auction schedules. In its application, OCC asserts that the Commission erred by rendering a decision that was not based on record evidence presented by OCC showing Duke charging at-risk Percentage of Payment Plan (PIPP) program consumers electricity prices higher than Duke's standard offer in violation of R.C. 4928.02(L), 4928.542, and 4903.09. According to OCC, R.C. 4903.09 and Supreme Court of Ohio precedent requires the Commission to address OCC's arguments submitted in its objection, which the Commission did not. OCC's objections primarily center on the PIPP program, which is administered by the Ohio Department of Development (ODOD) and the Commission for low-income electric consumers under state law. According to OCC, as currently run, the PIPP program is violating R.C. 4928.02(L) and R.C. 4928.542 to protect at-risk PIPP customers of Duke by charging them prices for electricity in excess of Duke's SSO for the past two auctions. OCC argues that this case provides an opportunity for the Commission to avoid this plight in the future for Duke's PIPP customers by including PIPP customers in the SSO auction. OCC asserts that combining the PIPP and SSO auctions is permissible under Ohio Adm.Code 122:5-3-06, which allows the ODOD Director to aggregate PIPP consumers for competitive auctions if substantial savings for the PIPP plus program can be realized.

{¶ 13} First, we note that OCC filed its objections to Duke's proposal to modify its auction schedules on August 24, 2022, the same day that the Commission was scheduled to issue its decision regarding Duke's proposal, giving the Commission little to no time to address such arguments prior to issuing its decision on the matter. Nevertheless, we will consider OCC's objections upon rehearing. We find OCC's objections to Duke's motion to modify its proposal to adjust its auction schedules unavailing. As noted above, Duke uses a Commission-approved competitive-auction based format to supply SSO load to certain customers, pursuant to R.C. 4928.141 and 4928.143. Despite OCC's reference to Ohio

Adm.Code 122:5-3-06, R.C. 4928.54 specifically requires that “[t]he director of development services *shall* aggregate percentage of income payment plan program customers for the purpose of establishing competitive procurement process for the supply of competitive retail electric service for those customers. The process shall be an auction. * * *.” [Emphasis added]. Furthermore, pursuant to R.C. 4928.544, ODOD submitted its request to the Commission to design, manage, and supervise the auction process, which was the impetus for the current design of the PIPP auction format decided in *In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC (*Implementation Case*), Finding and Order (Mar. 2, 2016). In response to OCC’s request to combine PIPP and SSO auctions, it is clear from the plain language of the statute that the General Assembly intended that PIPP program loads be aggregated and procured from a competitive bidding process separate from the SSO customers. For example, when responding to a stakeholder request to use a descending-clock PIPP auction format instead of a request for proposal (RFP) auction format, we noted in the *Implementation Case* that the plain language of “R.C. 4928.54 provides that only [competitive retail electric service] providers may participate in the auction. However, more than just competitive retail electric service providers participate in the SSO auctions.” *Implementation Case*, Finding and Order (March 2, 2016) at 4-5. Therefore, OCC’s proposed solution is untenable. In regard to OCC’s claim that electricity prices resulting from the PIPP auctions have been higher than those procured under the SSO auction and that this outcome violates R.C. 4928.02(L) and 4928.542, we again note that R.C. 4928.54 requires the director of ODOD to aggregate PIPP program customers for the purpose of establishing a competitive procurement process for the supply of competitive retail electric service for those customers. Consequently, we affirm our previous determination that the existing PIPP program auction format is required under law. Therefore, OCC’s application for rehearing should be denied.

IV. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That OCC's application for rehearing be denied. It is further,

{¶ 16} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

MJS/dmh

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Summary: Entry denying the application for rehearing filed by Ohio Consumers'
Counsel electronically filed by Heather A. Chilcote on behalf of Public Utilities
Commission of Ohio