

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 Order¹ accepting Duke's² auction results and authorizing Duke to file final tariffs implementing standard service offer rates fails consumers and is unlawful. The Finding and Order allows at-risk PIPP consumers, the most vulnerable Ohioans, to be charged electricity prices that are higher than Duke's standard offer prices. R.C. 4928.542 prohibits exactly that.

Duke's PIPP consumers are being charged *more* than consumers being served under the standard service offer -- \$0.14725/kWh versus \$0.11575/kWh.³ This means PIPP consumers are charged \$0.0315/kWh *more* for their generation than standard service offer consumers. For a PIPP consumer using an average of 1,100 kWh per month, that equals an estimated excess charge of **\$415.80** per year above Duke's standard offer. That is nonsensical, unconscionable and unlawful for these Ohioans lacking money.

Accordingly, under R.C. 4903.10, OCC applies for rehearing of the September 21, 2022 Finding and Order, which was unlawful in the following respects:

¹ Finding and Order (September 21, 2022).

² Duke Energy Ohio, Inc.

³ See the Duke Energy Ohio Retail Capacity Rider and Retail Energy Rider, PUCO Electric No. 19, Sheet(s) 111 and 112 effective June 1, 2022.

ASSIGNMENT OF ERROR NO. 1: The PUCO erred and acted outside its authority by approving Duke's auction results and authorizing Duke to file final tariffs that charge at-risk PIPP consumers electricity prices higher than Duke's standard service offer prices, in violation of R.C. 4928.542(B) and (C) and principles of statutory construction.

Respectfully submitted,

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I. INTRODUCTION

The PUCO Finding and Order is unlawful. The PUCO ordered Duke to bill its low-income PIPP consumers \$147.25/MWh for electric service. That is a higher rate than Duke charges consumers on its standard service offer, who pay just \$115.75/MWh. The PUCO's approval of Duke's auction results thus violates R.C. 4928.542, which states that generation prices charged to PIPP consumers cannot exceed their utility's standard service offer prices.

Also, R.C. 4928.02(L) requires the Ohio Department of Development (“ODOD”) and the Public Utilities Commission of Ohio (“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. By approving Duke’s PIPP consumers’ electricity prices to be determined by energy marketer bids in PIPP-specific auctions, the PUCO has not protected at-risk consumers from high rates.

Eligibility for PIPP benefits had been limited to households with incomes below 150% of the federal poverty guidelines.⁴ But, on July 27, 2022, Governor DeWine

⁴ See O.A.C. 122:5-3-02(B).

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 and requests for proposals. There, the results of bidding by energy marketers exceeds the applicable utility's standard offer price. So, unfortunately, expanding people's eligibility for PIPP to 175% of federal poverty guidelines exposes more at-risk consumers to higher charges.

In addition, there are strict requirements for payments to be made in-full and on-time for PIPP consumers to avoid accumulating arrearages (i.e., debt).⁵ If their arrearages become due, it is difficult to imagine where low-income people will find the money to pay off such increases to their utility debt.

The PUCO must do its part to stop this injustice. Accordingly, OCC objects to the PUCO's Finding and Order. The standard-offer auction is one of the places where the PUCO (and utilities) should work to end the energy injustice described above. One solution could be including PIPP consumers in the standard-offer auction instead of the PIPP-specific procurement.

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 and acted outside its authority by approving Duke's auction results and authorizing Duke to file final tariffs that charge at-risk PIPP consumers electricity prices higher than Duke's standard service offer prices, in violation of R.C. 4928.542(B) and (C) and principles of statutory construction.

⁵ O.A.C 122:5-3-04.

The Universal Service Fund (“USF”), in R.C. 4928.51 *et seq.*, is the state funding mechanism for electric bill payment assistance through PIPP. The program is administered by ODOD, with a role for the PUCO. ODOD requested that the PUCO design, manage, and supervise the competitive procurement process for PIPP consumers.⁶

By law, PIPP consumers are not permitted to shop for their generation supply. Rather, they must rely on the ODOD (and the PUCO) to make sure that they are provided lawful, nondiscriminatory and reasonably priced retail electric service through the PIPP-specific auctions with energy marketers.⁷

As stated, Duke’s PIPP consumers are paying *more* than consumers being served under the standard service offer -- \$0.14725/kWh versus \$0.11575/kWh.⁸ This means PIPP consumers are charged \$0.0315/kWh *more* for their generation than standard service offer consumers. For a PIPP consumer using an average of 1,100 kWh per month, that equals an estimated excess charge of **\$415.80** per year above Duke’s standard offer. That is nonsensical, unconscionable and unlawful for these Ohioans lacking money.

Per R.C. 4928.542(B), a winning bid ***shall reduce*** the cost of the PIPP program relative to the otherwise applicable standard service offer rate established under R.C. 4928.141, 4928.142 and 4928.143. And a winning bid shall result in the ***best value*** for persons paying the universal service rider, under R.C. 4928.542(C).⁹

⁶ *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 22-556-EL-USF, Notice of Intent to File an Application for Adjustments to Universal Service Fund Riders (May 27, 2022) at 10.

⁷ See R.C. 4928.02(A); R.C. 4928.542.

⁸ See the Duke Energy Ohio Retail Capacity Rider and Retail Energy Rider, PUCO Electric No. 19, Sheet(s) 111 and 112 effective June 1, 2022.

⁹ Also, a winning bid must be designed to provide a reliable electricity supplier to PIPP customers, per R.C. 4928.542.

The PUCO has found¹⁰ that cost savings need accrue only “over the long term,”¹¹ rather than after every auction. The PUCO’s interpretation is wrong. R.C. 1.42 provides that “words and phrases shall be read in context and construed according to the rules of grammar and common usage.” The PUCO has stated that “[p]ursuant to rules of statutory interpretation, statutes are to be interpreted based on the plain language of the statute....”¹² The word “shall” in the statute (R.C. 4928.542) means there is no exception to the requirement that a winning bid reduce costs for PIPP consumers. “Ordinarily, the word 'shall' is a mandatory one, whereas 'may' denotes the granting of discretion.”¹³ Nothing in R.C. 4928.542 indicates “shall” means something other than its ordinary, mandatory usage. Finding otherwise requires the PUCO to add words to the statute. It has no authority to do so. “The PUCO, as a creature of statute, has no authority to act beyond its statutory powers.”¹⁴

R.C. 4928.542 says nothing about bids reducing rates “over the long term.” Adding this caveat violates Ohio’s rules of construction. R.C. 4928.542 is unambiguous, which requires the PUCO to apply its plain meaning (not construe it) that each auction must reduce rates for low-income PIPP consumers.

Unfortunately for PIPP consumers, ODOD and the PUCO are failing to require compliance with the law. This independent PIPP auction has yielded mixed results

¹⁰ See *In the Matter of the Procurement of Standard Service Offer Generation for Customers of the Dayton Power and Light Company*, Case No. 17-957-EL-UNC (September 21, 2022).

¹¹ *Id.*

¹² *In the Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 15-1046-EL-USF, Opinion and Order (October 28, 2015) at 20.

¹³ *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 108, 271 N.E.2d 834 (1971).

¹⁴ *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51.

(sometimes benefiting PIPP consumers as required by law) over the years. But the last two auctions have resulted in significant overcharges to Duke PIPP consumers.¹⁵ At-risk, low-income PIPP consumers cannot lawfully be billed higher generation rates on a per kWh basis than non-PIPP consumers served under the Duke standard service offer, per R.C. 4928.542.

The PUCO has routinely approved these unfair PIPP generation rates over the past two years, saying only: “Accordingly, the Commission will not reject the results of the competitive RFP auction.”¹⁶ Duke’s application does not improve the plight of PIPP consumers, present or future, but it should. Duke should protect its low-income PIPP consumers. And the PUCO should take action to give PIPP consumers, some of the most vulnerable in the state, the protection of the law for their electric generation rates.

That could be done in this case by combining PIPP consumers’ service into the standard-offer auctions. This approach is permissible under ODOD’s electric aggregation rules -- O.A.C. 122:5-3-06. The rule states that the ODOD Director *may* aggregate PIPP consumers for competitive auctions *if* “substantial savings for the PIPP plus program can be realized” Alternatively, if the PIPP auction results are accepted, utilities (in this case, Duke) – not low-income, vulnerable PIPP consumers – should be required to pay the difference between the SSO auction results and the PIPP auction results. Such a result would be consistent with R.C. 4928.542(B)’s requirement that a winning bid ***shall reduce*** the cost of the PIPP program relative to the otherwise applicable standard service offer

¹⁵ *In the Matter of the Procurement of Percentage of Income Payment Plan Customers of Dayton Power and Light Company*, Case No. 17-1163-EL-UNC, Notification of CBP Auction Results filed on May 25, 2022 and May 26, 2021.

¹⁶ *Id.*, Finding and Order (May 5, 2021) at 3; Finding and Order (May 18, 2022) at 3.

rate established and R.C. 4928.542(C)'s requirement that a winning bid shall result in the *best value* for persons paying the universal service rider.

As our estimates show, savings have *not* been realized in the past two stand-alone PIPP requests for proposals for Duke. This harms PIPP consumers. It also harms non-PIPP consumers who pay for the universal service fund rider to fund the PIPP program. Thus, a solution for the future would be for generation for PIPP consumers to be procured in the same auction as the standard service offer.

But fixing the problem going forward is just part of what is needed for Duke's PIPP consumers. They need help now. They are presently being charged higher electricity prices in violation of law, R.C. 4928.542. Their current plight also needs a solution from ODOD, the PUCO and Duke.

III. CONCLUSION

“[T]he purpose of the PUCO * * * is to protect the customers of public utilities.”¹⁷ The PUCO can protect consumers by granting rehearing and rejecting or modifying the Finding and Order in this case so that electricity service rates for low-income PIPP consumers do not exceed the standard service offer. Requiring Duke to procure generation for PIPP consumers at the same auction as consumers on the SSO would ensure this outcome.

¹⁷ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 372 (2009) (Pfeifer, J. dissenting).

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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 21st day of October 2022.

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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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