

**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,)	Case No. 16-776-EL-UNC
the Cleveland Electric Illuminating)	
Company, and the Toledo Edison)	
Company.)	

**APPLICATION FOR REHEARING
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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November 4, 2022

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The PUCO's Finding and Order¹ accepting the auction results of FirstEnergy² and authorizing FirstEnergy to file final tariffs fails consumers and is unlawful. The Finding and Order applies only to consumers served by FirstEnergy's standard service offer ("SSO"). PIPP consumers, the most vulnerable Ohioans, will pay electricity prices determined at a separate auction. Recent PIPP auction results³ demonstrate that it is highly likely this upcoming PIPP-specific auction will cause FirstEnergy's at-risk PIPP consumers to be billed more for the standard service offer than other consumers served by FirstEnergy's standard service offer. R.C. 4928.542 prohibits exactly that. It is unconscionable and unlawful to bill low-income Ohioans more for the same service

¹ Finding and Order (October 5, 2022).

² Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy").

³ Duke PIPP consumers will pay \$0.0315/kWh more than other residential consumers, effective June 1, 2023. *See In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 18-6000-EL-UNC, Finding and Order (September 21, 2022). PIPP consumers of AES Ohio and Ohio Power Company currently pay \$0.0386032 and \$0.08745 more per kWh, respectively. *See* the AES Ohio Revised Tariff Pages, PUCO Electric No. 17, Revised Sheet No. G10 effective June 1, 2022; Ohio Power Company Revised Tariff Pages, PUCO Electric No. 21, Revised Sheet No. 101-1 effective June 1, 2022. FirstEnergy's next PIPP auction is expected to occur in late winter/early spring 2023.

others are billed less. The Commission should not wait for the next PIPP-specific auction to act, it needs to now.

Accordingly, under R.C. 4903.10, OCC applies for rehearing of the October 5, 2022 Finding and Order, which was unlawful in the following respects:

ASSIGNMENT OF ERROR NO. 1: The PUCO erred and acted outside its authority by approving FirstEnergy's auction results, which exclude at-risk PIPP consumers, effectively charging them higher rates for SSO service than other consumers, 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 FirstEnergy to bill its standard service offer consumers \$122.30 for electric service. Rates for FirstEnergy's at-risk PIPP consumers will be set at a separate auction. Previous auction results make clear that the upcoming PIPP-specific rates will likely be higher than those the PUCO authorized in the Finding and Order for standard service offer consumers.⁴ Steps should be taken to protect consumers and make FirstEnergy's auction results comply with R.C. 4928.542. R.C. 4928.52 states that generation prices charged to PIPP consumers cannot exceed their utility's standard service offer prices. The PUCO should follow the law.

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.

⁴ Duke PIPP consumers will pay \$0.0315/kWh more than other residential consumers, effective June 1, 2023. *See In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 18-6000-EL-UNC, Finding and Order (September 21, 2022). PIPP consumers of AES Ohio and Ohio Power Company currently pay \$0.0386032 and \$0.08745 more per kWh, respectively. *See* the AES Ohio Revised Tariff Pages, PUCO Electric No. 17, Revised Sheet No. G10 effective June 1, 2022; Ohio Power Company Revised Tariff Pages, PUCO Electric No. 21, Revised Sheet No. 101-1 effective June 1, 2022. FirstEnergy's next PIPP auction will occur in spring 2023.

FirstEnergy's low-income PIPP consumers are vulnerable to poverty, food and housing insecurity, inflation, and a resurging pandemic. By allowing FirstEnergy's PIPP consumers' electricity prices to be determined by energy marketer bids in a single PIPP-specific auction that results in higher bills than SSO consumers pay, 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.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 that the Governor has good intentions. 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, PIPP consumers must meet strict requirements that their payments be made in-full and on-time to avoid accumulating arrearages (i.e., debt).⁶ If arrearages become due, it will be hard for low-income people to find the money to pay off increased debt. These vulnerable consumers thought enrolling in the PIPP program would protect them but in reality, they are being harmed.

⁵ See O.A.C. 122:5-3-02(B).

⁶ O.A.C 122:5-3-04.

The PUCO must do its part to stop this injustice. Accordingly, OCC objects to the PUCO's Finding and Order. The PUCO should include PIPP consumers in the standard offer auction instead of holding a separate, PIPP-specific auction.

The PUCO should grant OCC's Application for Rehearing as further explained below to protect at-risk PIPP consumers from being billed more for electric utility service than other utility consumers.

II. MATTER FOR CONSIDERATION

ASSIGNMENT OF ERROR NO. 1: The PUCO erred and acted outside its authority by approving FirstEnergy's auction results, which exclude at-risk PIPP consumers, effectively charging them higher rates for SSO service than other consumers, in violation of R.C. 4928.542(B) and (C) and principles of statutory construction.

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 the Ohio Department of Development ("ODOD"), with a role for the PUCO. ODOD requested that the PUCO design, manage, and supervise the competitive procurement process for PIPP consumers.⁷

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.⁸

⁷ *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.

⁸ *See* R.C. 4928.02(A); R.C. 4928.542.

PIPP-specific auctions have recently resulted in the utility billing vulnerable, low-income consumers at higher rates than other standard service offer consumers.

The Dayton Power and Light Company⁹ (“DP&L”) charges PIPP consumers higher rates, too. DP&L’s PIPP consumers are billed at \$0.1477049, while non-PIPP consumers are billed at a lower rate -- \$.1091017.¹⁰ That equals a \$0.0386032 difference, or **\$509.56** more per year for a PIPP consumer using an average of 1,100kWh per month. PIPP consumers of Ohio Power Company¹¹ are charged \$0.14786 per kWh, while other residential are charged \$0.06041 per kWh.¹² For a PIPP consumer using an average of 1,100 kWh per month, that equals a \$0.08745 difference or **\$1154.34** per year. PIPP-specific auctions recently allowed utilities to charge at-risk consumers significantly higher rates than other residential consumers.

Just like the other utilities, FirstEnergy has charged higher rates to low-income PIPP consumers. The PUCO authorized a PIPP-specific auction that charged at-risk consumers \$0.084321 per kWh.¹³ Meanwhile, before the instant auction, FirstEnergy’s SSO consumers were charged just \$0.041 per kWh.¹⁴ FirstEnergy’s at-risk PIPP consumers were charged *more than twice as much*. In total, PIPP consumers using an average of 1,100kWh per month were charged \$571.84 more in a year than consumers serviced by the SSO.

⁹ d/b/a AES Ohio.

¹⁰ See the AES Ohio Revised Tariff Pages, PUCO Electric No. 17, Revised Sheet No. G10 effective June 1, 2022.

¹¹ d/b/a American Electric Power.

¹² See Ohio Power Company Revised Tariff Pages, PUCO Electric No. 21, Revised Sheet No. 101-1 effective June 1, 2022.

¹³ See the Toledo Edison Company Rider GEN, PUCO Electric No. 8, Sheet 114 effective June 1, 2022.

¹⁴ Finding and Order (August 25, 2021) at 3.

Based on the recent PIPP-specific auctions described above, FirstEnergy's next PIPP-specific auction will likely cost FirstEnergy's low-income consumers more (just as it did last year).¹⁵ OCC estimates Cleveland Electric Illuminating Company's PIPP consumers will be charged \$333.90 more annually than consumers served by the SSO.¹⁶ Ohio Edison Consumers PIPP consumers will be charged \$338.94 in excess charges, and Toledo Edison PIPP consumers will be charged \$330.31.¹⁷ By authorizing SSO specific rates, the Finding and Order effectively allows the utility to charge low-income PIPP consumers higher prices than other residential consumers. This is unlawful.

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).¹⁸

The PUCO has found¹⁹ that cost savings need accrue only “over the long term,”²⁰ 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

¹⁵ *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, OCC's Post-Hearing Brief (September 12, 2022) at 10.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Also, a winning bid must be designed to provide a reliable electricity supplier to PIPP customers, per R.C. 4928.542.

¹⁹ *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).

²⁰ *Id.*

statute....”²¹ 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.”²² 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.”²³

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. 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 FirstEnergy standard service offer, per R.C. 4928.542.

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. Alternatively, the PUCO could schedule multiple PIPP auctions to reduce the volatility caused by auctioning off the entire PIPP load at once. These approaches are

²¹ *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.

²² *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 108, 271 N.E.2d 834 (1971).

²³ *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51.

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" If the PIPP auction results are accepted, utilities (in this case, FirstEnergy) – not low-income, vulnerable PIPP consumers – should be required to pay the difference between the SSO auction results and the PIPP auction results. This is 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 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.²⁴

The PUCO approved FirstEnergy's auction results, excluding at-risk PIPP consumers to a separate auction. As previous PIPP-specific auction results show, this could cause them to be charged higher rates. If that occurs, it is a violation of R.C. 4928.542.

III. CONCLUSION

"[T]he purpose of the PUCO * * * is to protect the customers of public utilities."²⁵ 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 FirstEnergy to procure

²⁴ Further, PIPP consumers could benefit from inclusion in the SSO auctions because the laddering and multiple auctions that occur with SSO procurement reduce volatility in price and can provide a better price.

²⁵ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 372 (2009) (Pfeifer, J. dissenting).

generation for PIPP consumers at the same auction as consumers on the SSO would best ensure this outcome.

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 4th day of November 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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Summary: App for Rehearing Application for Rehearing by Office of the Ohio
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