

**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.)	

**NEXTERA ENERGY MARKETING, LLC’S MEMORANDUM CONTRA APPLICATION
FOR REHEARING BY OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Commission should deny the Application for Rehearing filed by Office of the Consumers’ Counsel (“OCC”) on February 10, 2023. OCC’s Application claims that the Commission’s January 11, 2023 Finding and Order (“Order”) accepting the auction results in this docket is unlawful because the Order excludes PIPP consumers. OCC has advanced the same argument in several recent SSO auction dockets, and the Commission has rejected it each time. It should do the same here.

The Commission previously has found that the arguments in OCC’s Application for Rehearing are “an improper collateral attack on the Commission’s final, nonappealable order in the *Implementation Case* within which the Commission established the current design of the PIPP auction format.” *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.* (“*Duke SSO Case*”), Case No. 18-6000-EL-UNC, Entry on Rehearing ¶ 18 (Nov. 16, 2022) (citing *In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code* (“*Implementation Case*”), Case No. 16-247-EL-UNC, Finding and Order (Mar. 2, 2016)); *In the Matter of the Procurement of Standard Service Offer Generation for*

Customers of the Dayton Power and Light Company (“AES Ohio SSO Case”), Case No. 17-957-EL-UNC, Entry on Rehearing ¶ 19 (Nov. 16, 2022). The same is true here, and OCC has not provided a sound basis for reopening the *Implementation Case*.

The Commission also has found that OCC’s arguments are “unavailing” and “untenable” because they ignore the plain language of the applicable statutes. *See, e.g., AES Ohio SSO Case*, Finding and Order ¶ 18 (Sept. 21, 2022). As the Commission has explained, a separate PIPP auction is required by Ohio law:

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, the Ohio Department of Development (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, the Commission noted that 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. 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, Commission emphasized 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. The Commission also affirmed its previous determination that the existing PIPP program auction format is required under law.

Duke SSO Case, Entry on Rehearing ¶ 14 (Nov. 16, 2022) (*citing Duke SSO Case*, Entry on Rehearing ¶ 13 (Oct. 5, 2022)). The same explanation is fatal to OCC’s arguments in its most recent Application for Rehearing.

A similar application for rehearing filed by OCC in this docket following the Oct. 4, 2022 auction was denied by operation of law. *See* OCC Application for Rehearing (Nov. 4, 2022) (no action taken by Commission within thirty days). Nearly identical motions filed by OCC following Ohio Power's November 1, 2022 auction and AES Ohio's November 29, 2022 also were denied by operation of law. *See In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Power Company, Inc.*, Case No. 17-2391-EL-UNC (OCC application for rehearing filed Dec. 2, 2022); *AES Ohio SSO Case* (OCC application for rehearing filed Dec. 30, 2022). OCC's newest Application for Rehearing also should be denied.

For the foregoing reasons, the Commission should deny OCC's Application for Rehearing.

Respectfully submitted,

/s/ James F. Lang

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 21st day of February, 2023. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ James F. Lang

One of the Attorneys for NextEra Energy
Marketing, LLC

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Case No(s). 16-0776-EL-UNC

Summary: Memorandum Contra OCC's Application for Rehearing electronically
filed by Mr. James F. Lang on behalf of NextEra Energy Marketing, LLC