***OCC EXHIBIT\_\_\_\_\_\_\_***

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| 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 |

**TESTIMONY RECOMMENDING CONSUMER PROTECTIONS INSTEAD OF THE ODOD/ ELECTRIC UTILITIES’/ INDUSTRIAL GROUPS’ SETTLEMENT**

**BY**

**JAMES D. WILLIAMS**

**On Behalf of**

**Office of the Ohio Consumers' Counsel**

*65 East State Street, Suite 700*

*Columbus, Ohio 43215*

**November 23, 2022**

**TABLE OF CONTENTS**

**Page**

[I. INTRODUCTION 1](#_Toc120115155)

[II. PURPOSE 2](#_Toc120115156)

[III. The ODOD, ELECTRIC UTILITIES AND INDUSTRIAL settlement fails THE THREE-PRONG TEST THAT THE PUCO USES FOR EVALUATING SETTLEMENTS. 4](#_Toc120115157)

[Iv. CONCLUSION 10](#_Toc120115158)

# **I. INTRODUCTION**

***Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION.***

***A1*.** My name is James D. Williams. My business address is 65 E. State Street, Suite 700, Columbus Ohio 43215. I am employed by Sterling Staffing Services (which serves state government among others) and work on behalf of the Office of the Ohio Consumers’ Counsel (“OCC”) as a Senior Utility Consumer Policy Analyst.

***Q2. HAVE YOU PREVIOUSLY TESTIFIED IN THIS PROCEEDING?***

***A2.*** Yes. I testified in a hearing that was conducted on August 30, 2023 to oppose a Stipulation and Recommendation (“Settlement”) that was reached between the Ohio Department of Development (“ODOD”), AEP Ohio, Duke Energy Ohio, AES Ohio, Industrial Energy Users (“IEU”) – Ohio, and Ohio Energy Group (“OEG”). The Settlement that was filed on August 5, 2022 pertained to the Notice of Intent (“NOI”) phase of the Universal Service Fund (“USF”).[[1]](#footnote-2) The NOI phase of the USF proceeding sought PUCO approval for the specific methodology that will be used by ODOD to calculate the USF rider rates that will be charged to customers by each of the electric distribution utilities (“EDUs”).

# II. PURPOSE

***Q3*. *WHAT IS THE PURPOSE OF YOUR CURRENT TESTIMONY IN THIS PROCEEDING?***

***A3.***The purpose of this testimony is to recommend the Joint Stipulation and Recommendation (“Settlement”) filed on November 23, 2022 should be rejected by the PUCO for failing the PUCO’s three-prong test. I will also address certain issues related to the current Settlement reached between the Ohio Department of Development (“ODOD”), AEP Ohio, Duke Energy Ohio, AES Ohio, Industrial Energy Users (“IEU”)-Ohio, and Ohio Energy Group (“OEG”). The current Settlement was filed on November 23, 2022 and recommends that the PUCO approve the USF rider rates that will be charged to customers of each of the electric distribution utilities (“EDUs”) in 2023.[[2]](#footnote-3)

Specifically, in my previous testimony I explained how the unlawful practice of charging PIPP customers electricity rates that exceeded the standard service offer (“SSO”) rates by each of the EDUs would result in significant increases in the USF rider rates. But the testimony explained that the full magnitude of the actual increases on the USF would not be known until ODOD filed its application to increase USF rates in October 2022.[[3]](#footnote-4)

ODOD has now filed an application[[4]](#footnote-5) and an amended application[[5]](#footnote-6) and the impact on the USF is staggering. According to the original application, the 2023 aggregated USF revenue requirement is $330,654,685 compared to the 2022 aggregated USF revenue requirement of $187,258,690.[[6]](#footnote-7) The amended application increases the aggregated 2023 revenue requirement to $368,032,282.[[7]](#footnote-8) This is a 97% increase over the 2022 revenue requirement. The approximate $37.4 million increase in the amended revenue requirement is attributed to the use of actual data for September 2022 whereas September 2021 data was used in the original application.[[8]](#footnote-9) Not surprisingly, a primary difference between the September 2021 and September 2022 is that all of the EDUs are now charging PIPP customers rates that exceed the SSO rates as I explained in my previous testimony.[[9]](#footnote-10) And in fact, the rates charged to PIPP customers on a kWh basis are over twice the SSO rate that is charged to non-PIPP customers.[[10]](#footnote-11)

My understanding (as explained in previous testimony) is that R.C. 4928.542(B) requires that any competitive procurement process to serve PIPP customers reduce the cost of PIPP relative to the standard service offer charges established through an electric security plan. Moreover, R.C. 4928.542(C) requires the competitive auction process to provide the best value for customers paying the USF. A $180,773,590 increase in the aggregate USF revenue requirement between 2022 and 2023 that is primarily attributed to higher rates charged to PIPP consumers through the unlawful PIPP competitive auction process.

# III. The ODOD, ELECTRIC UTILITIES AND INDUSTRIAL settlement fails THE THREE-PRONG TEST THAT THE PUCO USES FOR EVALUATING SETTLEMENTS.

***Q4.*** ***WHAT CRITERIA DOES THE PUCO RELY UPON FOR CONSIDERING WHETHER TO ADOPT A SETTLEMENT?***

***A4.*** It is my understanding that the PUCO will adopt a settlement only if it meets all of the three criteria delineated below. The PUCO must analyze the Settlement and decide the following:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties representing diverse interests?[[11]](#footnote-12)

2. Does the settlement, as a package, benefit customers and the public interest?

3. Does the settlement package violate any important regulatory principle or practice?[[12]](#footnote-13)

***Q5.* *DOES THE SETTLEMENT FILED IN THIS PROCEEDING MEET ALL THREE CRITERIA?***

***A5.*** No. The proposed Settlement does not meet the three-prong test, as I explain below. Further, the PUCO’s three-prong test is unfair and should not be used.

Q6. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE Joint Settlement THAT WAS FILED BY odod, ELECTRIC UTILITIES AND INDUSTRIAL GROUPS IN THIS PROCEEDING.

***A6.*** The Joint Settlement accepts and recommends that the PUCO approve the amended application with the USF revenue requirements for each of the EDUs in 2023.[[13]](#footnote-14) The following table provides the 2023 USF revenue requirements for each of the EDUs compared with the 2022 USF revenue requirement.[[14]](#footnote-15)

**Table 1: Comparison of 2023 USF Revenue Requirement with 2022**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| EDU | 2023 USF Revenue Requirement | 2022 USF Revenue Requirement | Difference | Percentage Increase |
| AEP Ohio | $180,761,552 | $80,600,646 | $100,160,906 | 124.3% |
| AES Ohio | $40,905,828 | $9,547,863 | $31,357,964 | 328.4% |
| Duke Energy Ohio | $34,784,697 | $11,485,776 | $23,298,921 | 202.9% |
| Cleveland Electric Illuminating | $30,434,758 | $23,243,736 | $7,191,022 | 30.9% |
| Ohio Edison | $62,368,675 | $47,307,588 | $15,061,087 | 31.8% |
| Toledo Edison | $18,776,773 | $15,073,083 | $3,703,690 | 24.6% |
| Total | $368,032,282 | $187,258,690 | $180,773,590 | 96.5% |

 The joint settlement also accepts and recommends that the PUCO approve the amended application with the individual rates for each of the EDUs in 2023.[[15]](#footnote-16) The following table provides the 2023 USF rates for each of the EDUs compared with the 2022 USF rates.

**Table 2: Comparison of 2023 USF Rates Compared with 2022 USF Rates**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| EDU | 2023 First 833,000 kWh | 2023 Above 833,000 kWh | 2022 First 833,000 kWh | 2022 Above 833,000 kWh | Percentage Difference (1st Block) |
| AEP Ohio | $0.0053667 | $0.0001756 | $0.0024127 | $0.0001756 | 122.4% |
| AES | $0.0035110 | $0.0005700 | $0.0007223 | $0.0004213 | 386.1% |
| Duke | $0.0021270 | $0.0004690 | $0.0006075 | $0.0003477 | 250.1% |
| CEI | $0.0020060 | $0.0005680 | $0.0015450 | $0.0005680 | 29.8% |
| OE | $0.0029592 | $0.0010461 | $0.0022477 | $0.0010461 | 31.6% |
| TE | $0.0027352 | $0.0005610 | $0.0021160 | $0.0005610 | 29.3% |

***Q7. DOES THE SETTLEMENT FILED IN THIS PROCEEDING MEET THE FIRST PRONG OF THE PUCO’S SETTLEMENT STANDARD?***

***A7.*** No. The Amended Application was filed on November 21, 2022. The Supplemental Testimony of Megan Meadows filed in support of the Amended Application was also filed on November 21, 2022. Two days later without any settlement meetings or settlement negotiations the Stipulation was agreed to by IEU-Ohio, AES, AEP, Duke and ODOD and filed at the PUCO on November 23, 2022. A Settlement that reflects limited bargaining among the Signatory Parties and incorporates the Amended Application without modification cannot possibly meet the PUCO standard. For this reason, the Settlement should be rejected.

***Q8.******PLEASE EXPLAIN WHY THE PROPOSED SETTLEMENT IS NOT A PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES REPRESENTING DIVERSE INTERESTS?***

***A8.*** The PUCO sometimes considers whether stipulating parties reflect a diversity of interests. Especially in this case affecting at-risk Ohioans, the PUCO should consider diversity of interests in the ODOD/Electric Utilities/Industrial Groups’ Settlement.

The Settlement lacks diverse interests, as no party that provides legal representation for residential consumers (here, OCC), signed the Settlement. The Settlement is signed by ODOD, the Electric Distribution Utilities, and industrial groups (Ohio Energy Group and Industrial Energy Users). ODOD is a state agency with the administrative oversight responsibility of the electric PIPP program. From its website, OEG’s purposes include “To negotiate with utilities and energy providers on behalf of OEG members.” And “OEG is an organization of large energy-intensive, trade-exposed utility customers who share a common aim of securing reliable service at competitive rates.” From its website, IEU-Ohio “is a non-profit trade organization of energy-intensive Ohio industrial and commercial manufacturers working for reliable energy supplies at reasonable prices.”

The Settlement stipulators, with their limited interests, are not a proxy for those residential consumers that the Settlement most affects across Ohio.

***Q9.* *PLEASE EXPLAIN WHY THE PROPOSED JOINT SETTLEMENT DOES NOT BENEFIT CUSTOMERS AND THE PUBLIC INTEREST.***

***A9.*** The proposed Joint Settlement results in unreasonably high USF rates that contradict Ohio policy supporting reasonably priced retail electric service.[[16]](#footnote-17) Assuming 1,100 kWh monthly usage, a customer of AEP Ohio will experience a USF rate increase from $2.65 in December 2022 to $5.90 in January 2023. This is a $3.25 or 123% increase for AEP consumers. AES Ohio customers will experience a USF rate increase from $0.79 in December 2022 to $3.86 in January 2023. For AES consumers, this is a $3.07 or 389% increase. Customers of Duke Energy Ohio will experience a USF rate increase of $0.67 in December 2022 to $2.34 in January 2023. This is a $1.67 or 249% increase for Duke consumers. These are significant rate increases in a single rider over one month that do not consider the impact of other rate increases, rising electricity costs, and on-going inflationary concerns.

Customers and the public interest would not benefit from *unreasonably* priced retail electric service, but that is what PIPP consumers are getting. The Settlement thus fails this prong. The PUCO should reject the Settlement.

***Q10. PLEASE EXPLAIN HOW THE SETTLEMENT VIOLATES IMPORTANT REGULATORY PRINCIPLES AND PRACTICES.***

***A10.*** The significant increases in the USF Rider rates are unjust and unreasonable in violation of R.C. 4905.22. In addition, the Settlement contradicts Ohio law. R.C. 4928.542(C) requires the competitive auction process to provide the best value for customers paying the USF. The increase in the USF rates is largely attributable to the competitive PIPP auction process that has resulted in PIPP rates for electricity that are significantly higher on a per kWh basis than the electric rates that are charged to non-PIPP customers on the EDU SSO. The PUCO and ODOD need to find a competitive auction procurement process for at-risk low-income Ohioans that abides by Ohio law. Until this happens both agencies are participating in a Settlements (through signature or non-opposition) that violate important regulatory principles. The Settlement thus fails this prong. The PUCO should not approve the Settlement.

# Iv. CONCLUSION

Q11. DOES THIS CONCLUDE YOUR TESTIMONY?

***A11.*** Yes. However, the Stipulation was filed late in the day on November 23, 2022. OCC is filing a Motions for Extension and Continuance of the November 30, 2022 hearing because of the Thanksgiving Holiday and the compressed time period to prepare an opposition. If OCC’s Motions are granted, I reserve the right to supplement this testimony with further detailed analysis that may become available through additional time to conduct discovery on the Amended Application (filed November 21, 2022), Supplemental Testimony of Megan Meadows (filed November 21, 2022) and the Stipulation.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Testimony by James D. Williams on Behalf of Office of the Ohio Consumers’ Counsel was served via electronic transmission to the persons listed below on this 23rd day of November 2022.

 */s/ Amy Botschner O’Brien*

 Amy Botschner O’Brien

 Assistant Consumers’ Counsel

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

**SERVICE LIST**

|  |  |
| --- | --- |
| sarah.feldkamp@ohioAGO.govsteven.beeler@ohioAGO.govmkurtz@BKLlawfirm.comkboehm@BKLlawfirm.comjkylercohn@BKLlawfirm.comchristopher.hollon@aes.commjschuler@aep.comAttorney Examiner:greta.see@puco.ohio.gov | dstinson@bricker.comdproano@bakerlaw.comahaque@bakerlaw.comeprouty@bakerlaw.comrocco.dascenzo@duke-energy.comjeanne.kingery@duke-energy.comlarisa.vaysman@duke-energy.comelyse.akhbari@duke-energy.comjbreig@beneschlaw.com |

1. *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, Joint Stipulation and Recommendation (August 5, 2022). [↑](#footnote-ref-2)
2. *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, Joint Stipulation and Recommendation (November 23, 2022) at 4. The Settlement claims that while the Commission Staff is not signatory to the Stipulation, it does not oppose the stipulation. [↑](#footnote-ref-3)
3. JDW-01 (August 19, 2022) at 21. [↑](#footnote-ref-4)
4. Case No. 22-556-EL-USF, Application (October 31, 2022). [↑](#footnote-ref-5)
5. Case No. 22-556-EL-USF, Amended Application (November 21, 2022). [↑](#footnote-ref-6)
6. Application at 5. [↑](#footnote-ref-7)
7. Amended Application at 5. [↑](#footnote-ref-8)
8. Supplemental Testimony of ODOD witness Megan Meadows (November 21, 2022) at 2. [↑](#footnote-ref-9)
9. JDW-01, at 18. [↑](#footnote-ref-10)
10. *See* JDW-01, Table 1 at 19. [↑](#footnote-ref-11)
11. *See* *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger Is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates,* Case No. 11-351-EL-AIR, et al., Opinion and Order (December 14, 2011) at 9; *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (March 31, 2016) at 52. The PUCO considered the diversity of the signatory parties in that case. [↑](#footnote-ref-12)
12. *Consumers’ Counsel v. Pub. Util. Comm’n.* (1992), 64 Ohio St.3d 123, 126. [↑](#footnote-ref-13)
13. Joint Stipulation (November 2022) at 3. [↑](#footnote-ref-14)
14. Amended Application at 5. [↑](#footnote-ref-15)
15. Joint Stipulation and Recommendation at 4. [↑](#footnote-ref-16)
16. R.C. 4928.02(A). [↑](#footnote-ref-17)