

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)	
Ohio, Inc. for Authority to Establish a Standard)	
Service Offer Pursuant to Section 4928.143,)	
Revised Code, in the Form of an Electric Security)	Case No. 14-841-EL-SSO
Plan, Accounting Modifications, and Tariffs for)	
Generation Service)	

In the Matter of the Application of Duke Energy)	
Ohio, Inc. for Authority to Amend its Certified)	
Supplier Tariff, P.U.C.O. No. 20)	Case No. 14-842-EL-ATA

**OHIO DEVELOPMENT SERVICES AGENCY'S
INITIAL POST-HEARING BRIEF**

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I. INTRODUCTION

The Ohio Development Services Agency (“ODSA”) is charged with administering low-income customer assistance programs, including the percentage of income payment plan (“PIPP”) program.¹ The General Assembly’s statutory directive to ODSA is that “energy services be provided to low-income consumers in this state in an affordable manner consistent with the policy specified in section 4928.02 of the Revised Code.”² To this end, ODSA files annual applications with the Public Utilities Commission of Ohio (“Commission”) to set the electric distribution utilities’ (“EDUs”) universal service fund (“USF”) rider rates, which support the PIPP program.³ Consistent with its statutory directives, ODSA’s continuing objective in

¹ R.C. 4928.53

² R.C. 4928.58.

³ R.C. 4928.52(B).

these annual proceedings is to secure USF rider rates that reflect the minimum rates necessary to satisfy each EDU's USF revenue responsibility.⁴

On May 29, 2014, Duke Energy Ohio, Inc. ("Duke") filed an application for approval of an electric security plan ("ESP") pursuant to R.C. 4928.143. As a part of its ESP, Duke seeks approval of the non-bypassable Price Stabilization Rider ("Rider PSR"). Rider PSR would recover from all of Duke's distribution customers the fixed and variable cost of Duke's entitlement to Ohio Valley Electric Corporation ("OVEC") power after crediting the revenues from the sale of its OVEC entitlement into the PJM market. By its application, Duke did not propose that its entitlement to OVEC power be used to serve PIPP customers; rather, Duke proposed that PIPP customer load be combined with other standard service offer ("SSO") load, and that PIPP customers be supplied with all other SSO customers through the SSO auction process.⁵

On September 26, 2014, Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct Energy"), through the pre-filed direct testimony of Teresa L. Ringenbach, opposed Rider PSR on the basis that it would cause customers to "pay twice for generation service."⁶ However, Direct Energy offered, as an alternative recommendation, that Duke's OVEC entitlement be used to supply PIPP customers directly,⁷ through 2040.⁸ Direct Energy offers three different options to price electric supply to PIPP customers: (1) the same methodology that

⁴ See, e.g., *In the Matter 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. 14-1002-EL-USF, Amended Application (November 26, 2014), at 10.

⁵ Duke Ex. 18 at 7 (Ziolkowski Direct).

⁶ Direct Energy Ex. 1 at 5 (Ringenbach Direct).

⁷ Direct Energy Ex. 1, at 9-12 (Ringenbach Direct).

⁸ Tr. IX at 2619 (Ringenbach Cross Examination).

Duke proposes through Rider PSR, (2) through a purchased power agreement that provides Duke a revenue guarantee, and (3) at the price obtained through the SSO auction.

By entry issued October 20, 2014, the Attorney Examiner granted ODSA's expedited motion to intervene in this proceeding. ODSA participated in the hearing held in this matter from October 22 through November 20, 2014, to oppose Direct Energy's alternative recommendation. ODSA urges the Commission to reject Direct Energy's recommendation because it is unreasonable, unlawful and, in some respects, indefensible.

II. PIPP ELIGIBILITY AND PROCESS

Pursuant to R.C. 4928.53, the ODSA promulgated rules to administer the low-income assistance programs as set forth in R.C. 4928.51 through 4928.58, including the PIPP program. The PIPP program is regulated under Ohio Adm. Code Chapter 122:5-3. As a general overview relevant to this proceeding, the chapter provides:

- **Eligibility:** Residential customers of an electric distribution utility are eligible to participate in the PIPP program if their annual household income is 150 percent or less than the federal poverty level. Ohio Adm. Code 122:5-3-2(B)(1).
- **PIPP Monthly Installment Amounts:** PIPP customers with an electric base load residence pay a monthly installment of 6 percent of monthly household income; PIPP customers with an electrically heated residence pay a monthly installment of 10 percent of monthly household income. Ohio Adm. Code 122:5-3-4(A)(1).
- **USF Disbursements to EDUs:** ODSA disburses funds obtained through the USF rider which is applicable to all electric distribution customers. Disbursements provide the EDU with the difference between the PIPP customer's monthly percent-of-income payment and the customer's full monthly charges for electric service, i.e., the customer's PIPP arrearages. Ohio Adm. Code 122:5-3-4(A)(3).
- **Responsibility for PIPP Arrearages:** PIPP customers are responsible for paying their PIPP arrearages when they exit the program. (However, arrearages can be reduced through credits earned.) Ohio Adm. Code 122:5-3-4(B).

III. ARGUMENT

A. Direct Energy's Proposal is Unlawful Because It Eliminates ODSA's Ability to Aggregate PIPP Customers Pursuant to R.C. 4928.54.

R.C. 4928.54 grants ODSA the right to aggregate PIPP customers to obtain their electric supply through a competitive bid process. Direct Energy's alternative proposal would commit PIPP customers to take OVEC power through 2040⁹ and, if approved, would eliminate ODSA's statutory right to aggregate – for the next 25 years. Direct Energy's recommendation is patently unlawful and must be rejected.

On cross-examination, Direct Energy admitted that its recommendation could not be implemented without ODSA's consent.¹⁰ Direct Energy suggests that the Commission could adopt Direct Energy's recommendation, which ODSA then would be free to accept or reject. However, as discussed subsequently, Direct Energy offers no evidence to support that its pricing proposals are consistent with ODSA's statutory directives, and it presents no rationale that would lead ODSA to accept its proposals. Accordingly, the recommendation should be denied.

B. Direct Energy's Proposal is Unlawful Because it Would Violate the Statutory Directive of Ensuring that Energy Services be Provided to Low-Income Consumers In an Affordable Manner. R.C. 4928.58 and 4928.02.

As stated previously, ODSA is statutorily directed to ensure that “energy services be provided to low-income consumers in this state in an affordable manner consistent with the policy specified in section 4928.02 of the Revised Code.”¹¹ To this end, ODSA strives to secure USF rider rates that reflect the minimum rates necessary to satisfy each EDU's USF revenue responsibility.

⁹ Tr. IX at 2619 (Ringebach Cross Examination).

¹⁰ Tr. IX at 2614, 2664 (Ringebach Cross Examination).

¹¹ R.C. 4928.58.

Direct Energy's pre-filed direct testimony focused on applying the PSR mechanism proposed by Duke to PIPP customers. Direct Energy performed no analyses of the effect the PSR would have on PIPP customers' electric costs or on the USF rider rate paid by all of Duke's distribution customers,¹² other than to acknowledge that its proposal could result in a price increase.¹³ However, considering that Direct Energy believes that Rider PSR will make its customers "pay twice" for electricity,¹⁴ it can be assumed that Direct Energy believes that the rider also will increase the price to provide electric supply to PIPP customers. Indeed, other intervenors in this proceeding presented testimony that Rider PSR will significantly increase the cost of electricity – as much as \$22 million¹⁵ – during the initial three year term of the ESP, and even more during the 25 year term of the OVEC entitlement. Direct Energy admits that the intent of its recommendation is to shift the cost of Duke's entitlement to OVEC power to PIPP customers.¹⁶ The magnitude of such a shift to Ohio's low income customers makes Direct Energy's proposal not only unreasonable and unlawful, but also indefensible.

Testimony was offered at hearing that if the cost of electric supply to PIPP customers increased, the customers still would only be required to pay a percentage of their income for electric supply and that their arrearages (including any increase related to the PSR mechanism) would be paid by all distribution customers through the USF rider.¹⁷ This is incorrect, considering that, even though PIPP customers arrearages can be reduced through certain crediting provisions, all customers enrolled in the PIPP program are responsible for paying their

¹² Tr. IX at 2618 (Ringebach Cross Examination).

¹³ Direct Energy Ex. 1 at 11 (Ringebach Direct).

¹⁴ Direct Energy Ex. 1 at 5 (Ringebach Direct).

¹⁵ Ohio Consumers' Counsel Ex. 48 at 4 (Hixon Direct).

¹⁶ Tr. IX at 2613-2614 (Ringebach Cross Examination).

¹⁷ Tr. IX at 2667-2668 (Ringebach Cross Examination).

arrearage balances when they leave the program.¹⁸ PIPP customers would be affected by an increase in the cost of their electric service.¹⁹ These increases violate not only R.C. 4928.58, but also R.C. 4928.02(A) and (L), which, respectively, require the Commission to ensure reasonably priced retail electric service and to protect at-risk populations.

During cross examination, Direct Energy retreated from its focus on applying the PSR mechanism to PIPP customers, and recommended that the Commission approve a purchase power agreement (“PPA”) to supply PIPP customers with OVEC power, subject to ODSA’s agreement.²⁰ Direct Energy performed no analyses of its proposal’s effect on PIPP pricing, other than to acknowledge that it could result in a price increase.²¹ Direct Energy merely surmised that, “[r]egardless of the price,” its recommendation is beneficial to PIPP customers because it will provide them with the benefits of taking service from a CRES provider under a fixed contract.²² PIPP customers effectively have the benefit of a fixed price contract because they pay a percentage of their income for electric supply.

Whether OVEC power is proposed to be priced through a PPA or at the SSO auction price, ODSA remains concerned with the uncertainty of pricing arrangements for a 25 year period and whether such proposals would provide a benefit to PIPP customers.²³ Absent evidence to support that its pricing proposals are consistent with ODSA’s statutory directives, the record does not warrant ODSA’s acceptance of these proposals. Accordingly, the proposals should be denied.

¹⁸ Tr. IX at 2618 (Ringebach Cross Examination).

¹⁹ Ohio Adm. Code 122:5-3-4.

²⁰ Tr. IX at 2664 (Ringebach Cross Examination).

²¹ Direct Energy Ex. 1 at 11 (Ringebach Direct).

²² Direct Energy Ex. 1 at 11 (Ringebach Direct).

²³ Moreover, Direct Energy’s proposal likely is too little-too late, considering that Duke has bid the capacity associated with its OVEC entitlement into the PJM base residual auction for the term of the ESP. Thus, Duke would be unable to directly serve PIPP customers during that period. Tr. IX at 2665 (Ringebach Cross Examination).

IV. CONCLUSION

ODSA opposes as unlawful Direct Energy's alternative recommendation to the extent it would eliminate ODSA's statutory right to aggregate customers. Although Direct Energy suggests that the Commission could adopt Direct Energy's recommendation for ODSA's subsequent consideration, it offers no evidence or analysis that would lead ODSA to accept its proposals. Accordingly, the proposals should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Brief was served upon the following parties of record by e-mail and/or regular U.S. mail, this 15th day of December 2014.



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