

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Implementation of	)	
Sections 4928.54 and 4928.544 of the	)	Case No. 16-247-EL-UNC
Revised Code.	)	

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**COMMENTS OF DUKE ENERGY OHIO, INC.**

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**I. Introduction**

Pursuant to former R.C. 4828.54, the Director of the Ohio Development Services Agency (ODSA) has historically had the option to aggregate percentage of income payment plan (PIPP) program customers to establish a competitive procurement process for the supply of competitive retail electric service for those customers through an auction. However, the law was recently amended to now require that PIPP load be auctioned off for service by competitive retail electric service (CRES) providers, pursuant to R.C. 4828.54 and 4928.544. As such, an option that has long-since existed is now a requirement.

The Public Utilities Commission of Ohio (Commission) has been requested to design, manage and supervise the procurement process. In response to this mandate and pursuant to a request from ODSA, the Staff of the Commission (Staff) submitted a report (Staff Report) containing two recommended options for conducting auctions to supply PIPP load.

The Commission now seeks comments from interested stakeholders on the Staff Report. As an electric distribution utility (EDU) in Ohio that is responsible for providing a standard service offer (SSO) to non-shopping customers in southwest Ohio, Duke Energy Ohio, Inc.,

(Duke Energy Ohio or Company) is an interested stakeholder. Duke Energy Ohio provides competitive retail electric service to non-shopping customers through an SSO that is procured through a full requirements auction approved by the Commission in the Company's last electric security plan (ESP) proceeding. Thus, the Company has knowledge and experience with procuring competitive supply for non-shopping customers, including PIPP customers, through auctions. Indeed, Duke Energy Ohio has conducted auctions more recently, as approved in its current ESP, with 83 percent of the SSO load<sup>1</sup> for the 2016-2017 planning year currently under contract and 49 percent of the SSO supply for the 2017-2018 planning year under contract.

With this experience and understanding the statutory obligation imposed upon the ODSA, Duke Energy Ohio offers the following comments for the Commission's consideration.

## **II. Discussion**

### **A. Statutory Requirements**

The newly enacted law contained in R.C.4928.54, *et seq.*, sets forth the following requirements:

1. The director of the ODSA must establish a competitive procurement process for the PIPP load that consists of an auction.
2. Only CRES providers may participate in the auction.
3. Winning bids must be less than the SSO.
4. Winning bids must result in the best value for persons paying the universal service fund (USF) rider under R.C.4928.52.

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<sup>1</sup> The current SSO load that is auctioned includes PIPP customers.

As discussed below, neither option offered by Staff fulfills all of these statutory mandates. Indeed, Staff proposes procurements that are limited in participation to those wholesale bidders engaged in SSO procurements. Further, Staff's proposals are structured in a way that is likely to result in improper subsidies and substantial costs for all customers. Notably, Staff's proposals do not clarify that the recovery of costs associated with implementing either of their options on an accelerated basis would be assured or identify the customers from whom such costs would be recovered.

With the criteria established above, the Company notes that the Commission has provided a very short period within which to respond to both of Staff's proposed options. The Company's first recommendation to the Commission would be to take some additional time to allow interested parties to discuss the various options. R.C. 4928.54 does not specify a time frame within which the PIPP auction must be accomplished. Thus, some additional time to allow for further deliberation could be helpful to the process. There are many matters involved in the decision that should be better understood and provided for, such as contingencies if bidders do not participate as anticipated, revisions to existing contracts, conforming internal systems to accommodate changes, and adequately providing information to the market to ensure that participants understand new rules and paradigms.

Also critical to the Company's comments is the fact that efforts related to Duke Energy Ohio's March 14, 2016, auction are already underway. An information session was held for bidders, the auction has been duly advertised in Megawatt Daily, and the application process is ongoing.

Additionally, both Options also create potential inequities among the EDUs. While AEP Ohio and Duke Energy Ohio have already contracted for a majority of their SSO load through May 31, 2018, FirstEnergy has none contracted for beyond May 31, 2016; and Dayton Power and Light has already procured one-hundred percent of its SSO load through May 31, 2017. Requiring AEP Ohio and Duke Energy Ohio to reconfigure their rapidly approaching SSO auctions for fractions of PIPP load, adds burden to these two EDUs that will not be felt by the other two. Thus changes now must be carefully considered and should incorporate flexibility for the EDU given the framework in which it currently operates. Recognizing the obligation borne by the ODSA, which shall be administered by the Commission, Duke Energy Ohio offers alternatives for the Commission's consideration.

#### **B. Option One**

Staff's first recommendation is for each EDU to have a separate procurement for the PIPP load in its "next scheduled [SSO] auction."<sup>2</sup> Staff recommends a number of parameters around this option including, but not limited to, the coordination with currently scheduled SSO auctions, separating the load into tranches, and requiring load caps.

Duke Energy Ohio offers the following thoughts and comments with respect to Staff Option One. In enacting R.C.4828.54, *et seq.*, the General Assembly intended that an auction for PIPP load would result in lower prices for PIPP customers and, consequently, would reduce the burden on those subsidizing PIPP via the USF rider. However, Staff's recommendation for Option One does not comply with the law and is unlikely to achieve these goals.

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<sup>2</sup> Staff Recommendation, (February 1, 2016) at p.6.

Option One provides that bidders participating in an SSO auction would likewise also participate in the PIPP auction. However, these bidders are not necessarily CRES providers and the law requires that bidders for the PIPP load be CRES providers. To cure this deficiency with Option One, there must be separate processes, which would necessarily include bidder qualification and registration, information sessions, dedicated websites, advertisements, and bid documents, to procure supply for the respective SSO and PIPP loads. Arranging for such separate auctions, and confirming that internal systems are structured to accommodate same, entails additional time and cost. For purposes of illustration, Duke Energy Ohio's billing system is currently configured to reject PIPP customers who seek to enroll with CRES providers consistent with applicable law. In order to enable PIPP customers to be served by any CRES providers, this information technology function would need to be corrected.

Staff has suggested that PIPP load already under contract remain intact. But this suggestion is problematic for the following reasons. Conducting an auction for the remaining PIPP load for which supply has not currently been procured, would likely be a very small percentage of the PIPP load overall. It is not clear that auction participants would be interested in bidding on such a small population given the administrative costs to do so. Additionally, if this population of customers is separately associated with a different CRES provider – namely, CRES providers as the law requires - Duke Energy Ohio's internal billing processes would be impacted since internal systems are not designed to accommodate multiple CRES providers for this population of customers. Costs for changes to provide such billing are likely to offset any gain in price advantage attributable to the auction.

Accordingly, absent the requirement that “bidders would have to price each tranche below the average winning SSO price,” auction prices for generation service for PIPP load may be higher relative to SSO closing prices.<sup>3</sup> With the requirement that tranches are priced below winning SSO prices, however, PIPP tranches may go unserved. Likewise, a separate PIPP auction in the short term, attracting fewer participants, would place additional pressure on prices or increase the likelihood of unserved PIPP tranches. And as PIPP tranches will be substantially smaller than SSO tranches, a different group of bidders may participate in a PIPP auction as opposed to an SSO auction. Thus, there is no guarantee that a separate PIPP auction for a portion of the PIPP load will yield lower prices relative to the SSO auction. Even if there was a small discount, the incremental costs of additional auctions just for the relatively small PIPP load would erode that discount or, if the auction prices are higher than the overall SSO price, the incremental auction costs would exacerbate those higher costs adding to the burden placed on all other customers subsidizing PIPP load via the universal service fund rider.

To place the scale of PIPP load in perspective, Duke Energy Ohio currently has approximately 28,000 electric customers on PIPP representing approximately 350,000 MWhs of annual load. Dividing the PIPP load into 100 tranches means that each tranche represents only 3,500 MWhs and fewer than 300 customers. Because only 17 tranches of the SSO load is being auctioned in each of the Company’s next three auctions (*i.e.*, 17 percent of the total SSO for the 2016-2017 planning year and 51 percent for the 2017-2018 planning year), the actual amount of PIPP load available to the auction participants is, arguably, trivial. To illustrate, 17 tranches of the PIPP load represents less than 5,000 residential households ( $17 * 280 = 4,760$  households).

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<sup>3</sup> Staff Recommendation, (February 1, 2016) at p.5.

At typical usage levels, that is fewer than 60,000 MWh per year in total, across all 17 tranches offered in the auction. It is questionable whether wholesale auction participants would show any meaningful interest in individual tranches representing such insignificant load.

The scale of the PIPP load also begs the question as to why load caps would be reasonable. It is debatable whether the entirety of the PIPP load being available for auction would generate any meaningful interest among auction participants but limiting the amount any auction participant could be awarded would only serve to further discourage participation in such an auction.

Even assuming, *arguendo*, that there would be sufficient interest by CRES providers to participate in the Option One-styled competitive procurement process, there are additional risks and administrative costs associated with conducting separate PIPP auctions, administering separate PIPP contracts, and billing PIPP customers. The recovery of such costs would necessarily be included in the overall administration of the PIPP service and netted out, to be collected from those customers already paying the USF rider. Even if the auction resulted in generation prices lower than the prices PIPP customers would pay without such an auction, it is still possible that the costs to achieve such savings are greater than any potential price reduction. Consequently, the outcome would obviously be deemed unsuccessful.

With regard to Staff's recommended contingency plan to Option One, the notion that a separate auction for PIPP load can guarantee a reduction in generation prices for PIPP customers is illusory. When converted to retail prices, the results of a separate auction for generation service for PIPP load is just as likely to result in SSO prices for PIPP customers higher than if no separate auction had been conducted. Even with the ceiling that is placed on the SSO auction

price for PIPP load, at the wholesale prices such customers currently pay for SSO service, there is no way to ensure that such service will ultimately be provided at a discount to the overall SSO price. Establishing such a price cap on the auction will serve to further discourage participation in the auction and may result in no participation, or insufficient participation to meet the criteria of the load caps. Under Option One, unserved tranches will be rolled over into future auctions or supplied through the market. By supplying unserved tranches from future auctions or through the market, Option One introduces the risk that PIPP is ultimately priced at a premium to SSO load.

Implementing this Option would cause Duke Energy Ohio to experience a number of challenges with respect to internally administering such a process and, even assuming the Company could properly fulfill the obligations associated with a separate PIPP auction, any incremental costs to implement these changes would have to be absorbed by all other customers. Due to the requirement to manage settlement with PJM Interconnection, L.L.C. (PJM), there would be 100 tranches, with each tranche representing, for Duke Energy Ohio, approximately 300 PIPP customers. Given the Company's existing systems, this plan would require manual processing using associated spreadsheets that would be extremely voluminous and probably unmanageable. And, assuming Option One to persist, Duke Energy Ohio would have to expedite the automation of systems to accommodate this change, with such costs being recovered from customers.

There are a number of other significant barriers to implementing Option One. First, it is not clear that 'aggregated' load is eligible to participate in 'wholesale' auctions of SSO load. Ohio law clearly allows certain customers to aggregate their load in order to benefit from



potential lower prices from CRES providers. Heretofore, aggregated load has only interacted with retail providers such as CRES providers. Allowing aggregated PIPP load to participate in the wholesale auction process introduces the prospect that other aggregated load may bypass the CRES providers and elect to participate directly in the wholesale market. Duke Energy Ohio and the other EDUs are equipped to handle billing and metering issues for aggregated load served by CRES providers. Bypassing that process and allowing aggregated load to participate in wholesale auctions creates a number of significant, and avoidable, complications and additional costs.

Option One also has the potential to unfairly harm non-shopping customers. To the extent implementation of Option One raises the overall SSO price in the auction or causes Duke Energy Ohio to incur additional costs, such costs incurred to benefit PIPP customers would only be paid for by non-shopping customers. This is an unfair outcome as the burden to support PIPP should be paid for by all customers via non-bypassable charges. Clearly, this is the intention of the legislature and the Commission inasmuch as the universal service riders are non-bypassable for all of the EDUs.

PIPP load represents a relatively small portion of Duke Energy Ohio's load and it is possible, if not likely, that the additional costs of separately auctioning this load now in the wholesale market including the significant necessary administrative costs to implement such a model exceeds any benefits that may accrue. There is a fair chance that no auction participant would be willing to serve PIPP load at a discount to the SSO auction, which would require all of the EDUs to incur added costs just to conduct the auction and potentially even more costs if the higher-than-SSO price is actually accepted.

For all of the reasons described above, including the significant question as to whether such a process is even legal, Duke Energy Ohio opposes the Staff's Option One.

### **C. Option Two**

Staff's second recommended option allows EDUs to continue with existing procurement methods but providing for an administratively set discounted rate for those suppliers fulfilling PIPP load. This Option Two likewise does not comply with the law as it does not specifically allow for CRES providers to bid and there is not a PIPP auction *per se*. The only incorporation of the auction into the plan is to set the underlying SSO price.

Option Two also has the potential to result in higher SSO prices, as bidders know at the outset that some portion of their winning tranches will be discounted. Therefore, SSO customers would be subsidizing PIPP customers and at the same time paying the USF Rider.

Although this proposal most likely adds even more disincentive for SSO suppliers to seek out the PIPP load, in most respects, the implications of the result are similar to Option One. It is also difficult to imagine that such a transaction could take place at the same time as the general SSO auction. For Duke Energy Ohio, the SSO price paid by PIPP customers is essentially the combination of Rider RC and Rider RE. The rates for those riders for an upcoming auction period would not be known until the last auction is conducted for the applicable delivery period. It would only be once the Commission has approved those rates, that the 'target' SSO price to be discounted would be known to bidders.

Of course, further complicating the issue is that any 'target' price would also have to be adjusted for losses as the auction process proposed by Staff is at the wholesale level rather than the retail level. If that was not already complicated enough, the idea that only a fraction of the

PIPP load (*i.e.*, the PIPP load that was not already part of previously conducted SSO auctions) means that the target may not even be the wholesale prices for Riders RC and RE. If, for example, only 17 percent of the PIPP load for the 2016-2017 planning year was at issue, the Company would have to convert the prices for the overall SSO auction result into rates for Riders RC and RE (although these will not be the approved riders since not all of the SSO load is represented) and, at only at that point, would prospective PIPP load providers have details about the prices they may have agreed to under an ‘administratively set’ discount. Thus, for regulatory, legal, and public policy reasons, Option Two is also fatally impracticable.

#### **D. Option Three**

First, it should be noted that Duke Energy Ohio is midstream with respect to the SSO auctions that were approved in the Company’s last ESP. The next such SSO auction will occur in March and the process of qualifying bidders has already begun. The Company respectfully requests that the Commission consider an option that will not disrupt existing auction processes while achieving the General Assembly’s desire to implement a competitive procurement of supply for PIPP load.

Under the Company’s proposal, the Commission would have a separate auction for all of Duke Energy Ohio’s PIPP load for the 2017-2018 planning year on the day following the November 2016 wholesale SSO auction. The PIPP auction would be open to qualified CRES providers only. Details of the auction would include an auction starting price that is equal to the final SSO clearing price applicable to the wholesale SSO auction and there would be only one successful bidder. This final component of the Company’s recommended option is temporary in nature in that it is subject to revision upon the implementation of the Company’s next SSO.

Indeed, through that future proceeding, the Company, Staff, and intervenors can evaluate a procurement for the PIPP load that appropriately balances the legal requirement for the ODSA to auction the PIPP load, the costs associated with same, the administrative challenges to be resolved, and the likely need of CRES providers to become educated about a process in which they have not, as a group, historically participated. Further, this option would enable additional evaluation of contingency plans and refinements that would avoid the circumstances realized in respect of the attempted competitive procurements for natural gas PIPP customers.<sup>4</sup>

To further detail this proposal, following the SSO wholesale auction in November 2016, the Company will, as usual, update the rates for Rider RC and Rider RE and submit those rates to the Commission. After that process has been completed, the PIPP-only auction will be conducted with a ceiling on the price of bids set at the average aggregate price for Riders RC and RE, converted for losses to wholesale rates. Thereafter, if no bidder offers to serve the PIPP load, the Commission is left with two choices. First, it may ignore the auction results and leave PIPP customers on the existing Riders RC and RE – no different than the current model. Alternatively, it may ignore the auction results and simply impose an administratively set discount to Riders RC and RE for PIPP customers. The latter option is, for all practical purposes, the only way to ensure that PIPP customers get a discount. Unfortunately, this proposal does not lower the burden on customers paying the USF rider as the discount to PIPP customers would have to be made up for by all other customers. Nevertheless, this latter proposal would be the

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<sup>4</sup> See for example, *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Service Percentage of Income Payment Plan Gas Customers Under the Gas Cost Recovery Rate*, Case No.14-315-GA-UNC, Finding and Order, (March 26, 2014), wherein the Commission permitted the Company to serve customers under the GCR rate because the bids received from competitive retail natural gas suppliers were not favorable as compared to the GCR rate.

least costly option for Duke Energy Ohio to administer as it has had such rates in prior ESPs. And, through this proposal, the ODSA will have complied with its statutory mandate in a way that is least disruptive to the currently established auction process.

This proposal also seeks to strike an appropriate balance between the expectation of the ODSA to auction the PIPP load and the desire of Staff to preserve that substantial PIPP load already under contract. On this point, it is worth noting that SSO suppliers have always borne the risk that the ODSA could, at any time, aggregate the PIPP load. Thus, SSO suppliers have likely factored the risk of PIPP load migrating away from the SSO into their bids, just as they would have factored in the risk associated with the prospect of governmental aggregation. To conduct one auction in November 2016 for all of the PIPP load for the final year of the Company's ESP will mitigate impacts to SSO suppliers associated with this known risk while allowing the ODSA to achieve its statutory mandate.

### **III. Conclusion**

Given the expedited schedule for filing comments, Duke Energy Ohio's first recommendation would be for the Commission to consider postponing a decision until further consideration and discussion. The proposals recommended by Staff, however well intended, are not fully formed and there are many unanswered questions that should be resolved prior to choosing either Option One or Two. Further, Duke Energy Ohio urges the Commission to consider the Company's recommended Option Three as the best of the possibilities.

Respectfully submitted,



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#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Comments of Duke Energy Ohio, Inc. was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 8th day of February, 2016. The Commission's electronic filing system will electronically serve notice of the filing of this document on counsel for all parties.



Elizabeth H. Watts

Associate General Counsel

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