

**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.)

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
APPLICATION FOR REHEARING**

Ohio Partners for Affordable Energy ("OPAE") hereby applies for rehearing of the Finding and Order issued by the Public Utilities Commission of Ohio ("Commission") on March 2, 2016 in this proceeding, which implements the provisions of Revised Code ("R.C.") 4928.54, et seq. OPAE submits that the Commission's March 2, 2016, Finding and Order is unreasonable and unlawful in the following particulars:

- 1) The Commission Finding and Order is unreasonable and unlawful because it runs afoul of the requirements of R.C. 4928.542 by failing to utilize a declining clock auction to determine the price of full requirements service to serve Percentage of Income Payment Plan ("PIPP") customers. Finding and Order at 4-5.
- 2) The Commission Finding and Order is unreasonable and unlawful because it fails to bid the entire aggregated load of PIPP customers as required by R.C. 4928.54. Finding and Order at 4.
- 3) The Commission Finding and Order is unreasonable and unlawful because it violates the requirement in R.C. 4928.541 that the bidding process shall be "conducted until a winning bid or winning bids are selected" and the obligation created by R.C. 4928.542(B) that the bidding "reduce[s] the cost of the percentage income payment plan program" by creating the potential that the bidding process could result in the assignment of the right to provide full requirements service for PIPP customers at a cost above that of the standard service offer in violation of R.C. 4928.54 Finding and Order at 5.

4. The Commission Finding and Order is unreasonable and unlawful because it violates the R.C. 4928.54 and R.C. 4928.541 requirement that the PIPP aggregation be served at a price set through a PIPP auction or the SSO, not through bilateral contracts.

The reasons for granting this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MEMORANDUM IN SUPPORT
OF THE APPLICATION FOR REHEARING**

- 1) The Commission Finding and Order is unreasonable and unlawful because it runs afoul of the requirements of R.C. 4928.542 by failing to utilize a declining clock auction to determine the price of full requirements service to serve PIPP customers. Finding and Order at 4-5.

The Finding and Order proposes to implement a Request for Proposal ("RFP") that will establish the price for the percentage of income payment plan program ("PIPP") customers at a percentage off the standard service offer ("SSO"). Using an RFP rather than an auction is inconsistent with the intent of R.C. 4928.542. The Commission has chosen the declining clock auction process to determine the price of the SSO because it produces the best price for customers. The Commission followed this precedent to establish the standard choice offer ("SCO") for natural gas local distribution companies, again, because the declining clock auction has produced optimal pricing for customers.

R.C. 4928.542(B) and (C) make clear that the focus of the bidding process is to produce the lowest price and "best value for persons paying the universal service rider." The declining clock auction has been demonstrated to produce the lowest price. It is also an auction. An auction requires bidding; an RFP does not. The latter is simply the submission of a price. While it is a competition between organizations seeking to obtain

a contract, an RFP is not an auction, which is a head-to-head competition. When a foreclosed home is auctioned by the local sheriff, the potential purchasers offer prices in real time. The sheriff does not ask for a submission of proposals. It is a violation of the statute for the Commission to choose a bidding option that is not an auction and will not produce the best price.

Using an RFP will not produce the optimal pricing. The Commission notes that the utility RFP will determine what happens if there are multiple winning bidders. However, this means that competitive retail electric service (“CRES”) providers will not know how many customers they are bidding on. The size of the load is critical to determining the bid. When governmental aggregations conduct an RFP, the size of the load is well defined. This allows CRES providers to offer the most competitive price because the size of the load affects the price. Bidding on 40,000 people can result in a lower price than a bid for 10,000 customers. Because there may not be a single winner under the RFP process, a CRES provider faces increased risk when determining its bid because it does not know the size of the aggregated load. To protect against this uncertainty, the CRES providers will have to factor in the additional risk, which will result in a higher price.¹

The Commission’s justification for rejecting the recommendations of OPAE and several marketers that a declining clock auction be used is that under R.C. 4928.54 only CRES providers can participate in the auction and, apparently, some CRES providers are incapable or lack the necessary experience to participate in a declining clock auction. Frankly, any CRES provider that is incapable of participating in a declining

¹Risk is a factor in the SSO auctions because customers may leave either through shopping or by purchasing via a governmental aggregation. CRES providers include a risk premium in their bids because of this uncertainty.

clock auction will not be a major factor in the auction because it cannot provide the best value. Bidding platforms using a declining clock format are commonly available and used by large customers to choose CRES. There is no evidence that an RFP increases the number of CRES providers that participate. The fact that CRES providers are 'familiar' with an RFP process does not mean that they are unfamiliar with a competitive declining clock auction bidding process. CRES providers that are not familiar with a declining clock auction process should learn if they want to compete. Given that the overriding purpose of the auction is to reduce the cost of the PIPP aggregation, failing to utilize the auction bidding process that the Commission has sanctioned for SSO and SCO loads (because it produces the best price) is contrary to the intent of the statute. Utilizing an RFP process is unreasonable and unlawful.

OPAE, in its comments on the second staff recommendation, noted that an RFP process would be acceptable for the first year because of the short amount of time available. However, the Commission decision to not require a declining clock auction in the out years virtually guarantees that all customers paying for PIPP will pay more. This is contrary to the intent of R.C. 4928.54. A declining clock auction should be used so the savings to all customers is maximized.

- 2) The Commission Finding and Order is unreasonable and unlawful because it fails to bid the entire aggregated load of PIPP customers as required by R.C. 4928.54. Finding and Order at 4.

The Commission's Finding and Order fails to follow the requirements of R.C. 4928.54 because it fails to include the entire PIPP load in an auction. As defined by the Commission, "the competitive RFP auction should...be implemented to procure supply for the amount of PIPP load that would otherwise have been included in the utility's next

SSO auction.” Finding and Order at 4. This is not the entire PIPP load. Governmental aggregations bid out the entire load of customers within their jurisdictions, not only the part of the load that is not being currently served through an SSO bid. The PIPP aggregation is analogous to a governmental aggregation; it is just a different sort of aggregation. There is also nothing in the statute to distinguish the PIPP load from any other aggregated load, whether it be a governmental aggregation or a grocery store chain. Competitive principles dictate that the entire load of a customer group be bid when an aggregation is formed.

The Commission’s decision implies that SSO customers are ‘owned’ by the wholesale suppliers serving the SSO load. This is inconsistent with Ohio law and the operation of Ohio’s competitive market. An SSO bid is based on a projected load, but that load is subject to change if a customer chooses to exercise his or her right to enter into a bilateral contract with a marketer or to participate in a governmental aggregation. The bidders have already factored in the risk that customers may leave the SSO. The fact that PIPP customers cannot leave the aggregation is one of the factors that makes the pool attractive to bidders.

The Finding and Order also makes an implicit assumption that the PIPP load, beyond being an entitlement to the SSO supplier, is a large percentage of the SSO. The reality is more complicated, as is demonstrated by the following chart²:

²Data on total customers, SSO customers, and CRES customers is available on the Commission’s website: <http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates-and-aggregation-activity/electric-switch-rates-by-customer/customers-2014/> PIPP customer data is from the Application filed by the Ohio Development Services Agency in Case No. 15-1046-EL-USF, Exhibit A.2: <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15J30B55740F08055.pdf> .

Utility	# of Customers	# of SSO Customers	# of CRES Customers	# of PIPP Customers	CRES as a % of All Customers	PIPP as a % of Customers	PIPP as a % of SSO Customers	PIPP as a % of CRES Customers
AEP-OH	1,468,092	1,016,133	451,959	140,795	30.79%	9.59%	13.86%	31.15%
DPL	515,784	286,735	229,049	38,396	44.41%	7.44%	13.39%	16.76%
Duke	696,380	335,861	360,519	29,239	51.77%	4.20%	8.71%	8.11%
CEI	745,620	154,626	590,994	59,415	79.26%	7.97%	38.42%	10.05%
OE	1,036,077	267,402	768,675	81,972	74.19%	7.91%	30.65%	10.66%
TE	308,401	81,452	226,949	27,498	73.59%	8.92%	33.76%	12.12%

In the case of AEP-Ohio, where the smallest percentage of customers shop, the PIPP load is a negligible component of the SSO load, but a CRES provider that can win the customer through the PIPP auction will significantly increase the percentage of shoppers. The same is true for The Dayton Power and Light Company. In the Duke territory, the largest city has a governmental aggregation, which accounts for a significant portion of shopping customers. If that aggregation failed to receive a competitive offer, that entire load would return to the SSO. Still, PIPP is a relatively small percentage of Duke's total customers, SSO customers and CRES customers. The FirstEnergy operating companies have consistently experienced the highest level of shopping, thanks in large part to two sizeable governmental aggregations. PIPP is a small percentage of all customers, but a relatively large percentage of SSO customers. However, because two large aggregations in FirstEnergy's service areas could return to or leave SSO service at any time, the SSO providers have already calculated that risk and included it in their bids. Every utility is different, and there is no reason to treat PIPP customers as captive to the SSO supplier. The PIPP pool should be treated like any other governmental aggregation.

In addition, this component of the Finding and Order creates the possibility that PIPP customers may be served at a price higher than the SSO because the staggered bidding requires additional procurement processes. This issue is discussed more below.

There is no reason to treat aggregated PIPP customers any differently than any other governmental aggregation. While PIPP customers are prohibited from purchasing directly from a CRES provider, there is nothing in the statute that makes the PIPP aggregation any different from any other governmental aggregation. The Commission decision is unreasonable and unlawful because it introduces exceptions not authorized by statute and that result in a higher cost for customers than if the entire PIPP load is auctioned.

- 3) The Commission Finding and Order is unreasonable and unlawful because it violates the requirement in R.C. 4928.541 that the bidding process shall be “conducted until a winning bid or winning bids are selected”, and the obligation created by R.C. 4928.542(B) that the bidding “reduce[s] the cost of the percentage income payment plan program” by creating the potential that the bidding process could result in the assignment of the right to provide full requirements service for PIPP customers at a cost above that of the standard service offer. Finding and Order at 5.

Should the Commission use a declining clock auction and bid the entire PIPP aggregated load, then there is no need for a supplemental auction which awards the pool to a supplier(s), “even if such price is above the blended SSO price.” Finding and Order at 5. The entire purpose of R.C. 4928.54, et seq. is to reduce the cost of serving the aggregated PIPP pool, and R.C. 4928.542(B) is explicit about the purpose of the auction. A competitive declining clock auction will either produce a lower price or it will

not. This complies with the requirement of R.C. 4928.541 that the auction be held until a “winning” bid – one that produces a lower price – is completed.

The Commission acknowledges that its plan could raise the price to serve the PIPP load over the SSO in the proposed supplemental auction. Finding and Order at 5. Bilateral contracts, which would likely be above the SSO, would be used if the supplemental auction does not receive any bids. Id. The Finding and Order indicates that this is the result of staggered procurement levels with only part of the PIPP load auctioned annually. Id. This Commission-approved process can result in higher prices, contrary to the plain language of the statute. Implementing a declining clock auction for the entire load resolves this issue.

4. The Commission Finding and Order is unreasonable and unlawful because it violates the R.C. 4928.54 and R.C. 4928.541 requirement that the PIPP aggregation be served at a price set through a PIPP auction or the SSO, not through bilateral contracts.

As noted above, the procurement approach taken by the Commission creates the potential for the price to serve the PIPP pool to exceed the SSO. If the auction or supplemental auction fails to produce adequate supply for the load, the electric distribution utility (“EDU”) would be forced to enter into bilateral contracts to procure the full requirements service. These contracts will likely exceed the price of the SSO. This violates the intent of R.C. 4928.54, et seq., and the specific requirement of R.C. 4928.541 that the cost of electricity for the PIPP pool be set through an auction. The solution is the same for all the objections: bid the entire PIPP load through a declining clock auction. If the price is lower, the bidder wins. If the price is higher, the PIPP load continues to be served by the SSO.

Wherefore, the Finding and Order is unreasonable and unlawful because it creates more problems than it solves and violates the statutory obligation to reduce the cost of serving the entire PIPP load for all customers. The process must be an auction where competitors bid for the load. Submitting a response to an RFP is not a bidding process as required by the plain language of R.C. 4928.541. The declining clock auction has been demonstrated to be the closest thing to a purely competitive market as experienced under SSO and SCO auctions. It should be used for the PIPP load.

Aggregated PIPP customers are no more owned by SSO suppliers than any other customer. CRES providers are better positioned to value the risk of adding or losing load through contracts or governmental aggregations. There is no reason not to bid the entire PIPP load. And, bidding the entire load resolves the other problems caused by the Finding and Order. If no one bids or the bids are not lower than the SSO, then the load remains with the SSO as the General Assembly intended and the SSO suppliers can anticipate. That resolves the other flaws in the Finding and Order: the declining clock auction will either produce a price lower than the SSO, thereby providing customers with value, or it will not.

If the Ohio Development Services Agency (“ODSA”) and the Commission choose to consider OPAE’s suggestions to include demand response and long-term contracts for generation that will stimulate economic development while providing a hedge against market prices, they will achieve the best value for all customers. OPAE encourages the Commission to follow a procurement strategy

that produces a price lower than the SSO for the PIPP aggregation, and use all the tools available through the market to make that happen over both the short- and long-term. Therefore, the Commission should grant this application for rehearing for the reasons set forth in the memorandum in support of the application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing and Memorandum in Support was served on the persons stated below via electronic transmission this 1st day of April 2016.

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Summary: Application for Rehearing and Memorandum in Support electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy