

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**APPLICATION FOR REHEARING OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code, the Retail Energy Supply Association (“RESA”)¹ hereby files this Application for Rehearing from the March 2, 2016 Finding and Order issued by the Public Utilities Commission of Ohio (“Commission”) in this matter. RESA was a participant in this proceeding and filed comments in response to all of the Staff proposals.

RESA files this application for rehearing because the Commission’s March 2, 2016 Finding and Order is unreasonable and unlawful in the following respects:

1. The Commission failed to require that an independent auction manager conduct and monitor the competitive request for proposal (“RFP”) auctions, and evaluate the bids for serving the percentage of income payment plan (“PIPP”) load.
2. The Commission failed to establish a special competitive retail electric service (“CRES”) registration process to obtain a CRES certificate for entities who want to participate in the PIPP auctions to serve only the PIPP load, but who will not offer competitive retail electric service to the general public.

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

3. The Commission failed to establish a uniform, standard protocol for key information that must be in the RFPs and the timing for bidding information.
4. The Commission failed to establish a uniform, standard protocol in the event of a tie among RFP bids.
5. The Commission failed to establish any parameters regarding the procuring the supply for the PIPP load "from the market through bilateral transactions" that it has authorized, in the event that the initial and supplemental RFP auctions fail to procure a supply for the PIPP load.

The facts and arguments that support these grounds for rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. Introduction

RESA seeks rehearing of the March 2, 2016 Finding and Order (“Finding and Order”) to address five key omissions that will assist the Public Utilities Commission of Ohio (“Commission”) in achieving the goals for an auction of the Percentage Income Payment Plan (“PIPP”) load required by Sections 4928.54, and 4928.544, Revised Code. Specifically, the Commission should:

- a. Require an auction manager;
- b. Establish a special certification process for entities who want to participate in the PIPP auctions to serve only the PIPP load, but who will not offer competitive retail electric service to the general public;
- c. Assure needed data is provided to bidders prior to the request for proposals (“RFP”) due date;
- d. Provide for a mechanism in the foreseeable event that there is more than one bid at the closing price; and
- e. Clarify that, if there is no winning bid, the electric utility will enter into bilateral contracts in the PJM market.

These five additional items are part of today’s standard service offer (“SSO”) auctions, and including these five items in the new PIPP RFP process will assist in furthering and optimizing these new auctions.

II. Background

The Commission initiated this proceeding on February 1, 2016, and asked interested stakeholders to provide comments on three different Staff proposals: (a) PIPP-separate

procurement, (b) administrative discount and (c) RFP process.² This case has been on the “fast track” because of the Commission’s interest in having a procurement process in place for the electric utilities’ PIPP loads, starting in early 2016. RESA filed comments on February 8 and 23, 2016, raising concerns and providing alternatives.

On March 2, 2016, the Commission issued its Finding and Order, requiring the electric utilities to implement immediately a competitive RFP auction process to serve the PIPP load in their respective service territories.³ The adopted process could have up to three steps: (a) the electric utilities will conduct an initial RFP auction, (b) the electric utilities will conduct a supplemental RFP auction if no competitive retail electric service (“CRES”) providers bid in the first RFP auction, and (c) the electric utilities would enter into a bilateral transaction if the first two RFP auctions do not procure supply because of a lack of participation.⁴ The Commission put in place few parameters for this new process, leaving most details to be developed by the electric utilities, in consultation with the Commission’s Staff.⁵

III. The Finding and Order is unjust and unreasonable because it does not require that an RFP auction manager be employed for the new competitive RFP auctions.

In its Finding and Order, the Commission ordered that the RFP auction be implemented immediately and that the RFPs be developed by the electric utilities in conjunction with the Staff.⁶ The public would be well served if five additional details were provided by the Commission. First among the five items is the use of an auction manager. Use of an auction manager is standard with the SSO auctions and is widespread nationally. An independent third-party auction manager assures prospective bidders that common bidding practices will be used

² The PIPP-separate procurement was Staff’s first recommended process. Later, Staff recommended the RFP process.

³ Finding and Order at 4.

⁴ *Id.* at 5.

⁵ *Id.* at 4.

⁶ *Id.* at 4.

and minimizes concerns or perceptions of favoritism should utility-affiliated CRES providers participate in these competitive RFP auctions. The Commission stated that it desires to have as many auction participants in each auction as possible.⁷ Thus, to ensure an open and fair process, the Commission should have required that each of the electric utilities employ an independent auction manager to conduct and monitor the RFP auctions. Moreover, Commission delineation of an independent, third-party auction manager assures that the practice will be standardized for all of the electric utilities.

The Commission has previously noted how important an independent auction manager is for these types of competitive auctions. To ensure such fair dealings and independence for the electric utilities' auctions in procuring electric supplies for their SSO customers, the Commission has not only recognized the importance of independent auction managers, but also required their use.⁸ The PIPP load has been part of the SSO auctions in the past and there is no reason to not include an independent auction manager to oversee and ensure fairness for the PIPP load RFP auctions. Accordingly, the Commission should modify the Finding and Order to require that each of the electric utilities use an independent third party auction manager as part of their respective competitive RFP auctions to serve the PIPP load in their respective service territories.

IV. The Finding and Order is unjust and unreasonable because it does not establish a special CRES certification process to obtain a CRES certificate for entities who

⁷ Finding and Order at 4.

⁸ See, e.g., *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO et al., Opinion and Order at 40 (August 8, 2012) (“[T]he substantive details of the CBP process need to be established to maximize the number of participants in AEP-Ohio’s auctions through an open and transparent auction process. * * * The CBP should include guidelines to ensure an independent third party is selected to ensure there is an open and transparent solicitation process, a standard bid evaluation, and clear product definitions.”); and *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case Nos. 12-426-EL-SSO et al., Opinion and Order at 12 and 16 (September 4, 2013) (“[Charles River Associates] will select the winning bidder(s), but the Commission may reject the results * * *”). Additionally, the Commission has approved multiple competitive bidding auctions results that included the use of independent auction managers. See, PUCO case numbers 12-2742-EL-UNC, 13-2120-EL-UNC, 11-6000-EL-UNC, 15-6000-EL-UNC, 14-300-EL-UNC, and 15-792-EL-UNC.

want to participate in the PIPP auctions to serve only the PIPP load, but will not offer competitive retail electric service to the general public.

In deciding that the electric utilities shall implement competitive RFP auctions for obtaining an electric supply to serve the PIPP load, the Commission stated that it “desires to achieve as many auction participants in each auction as possible, without restrictions, limits, or unusual partnership arrangements * * *.”⁹ Wholesale suppliers have successfully participated for years in the Ohio utilities’ auctions for the SSO load, but the Commission’s decision in this matter will not allow them to participate, except perhaps when an RFP auction does not procure supply for a given delivery year as a result of no participation.¹⁰ Thus, the competitive process for the PIPP load excludes wholesale suppliers that are not CRES providers. As a result, the adopted competitive process will not further the Commission’s stated goal – to “achieve as many auction participants in each auction as possible.”

The Commission can further its stated goal, however, by establishing a special PIPP-only CRES certification process to obtain a CRES certificate for entities who want only to participate in the PIPP auctions and supply the electric power for the PIPP load.

As part of this special PIPP-only CRES certification process would be a waiver, pursuant to Rule 4901:1-21-02(C), Ohio Administrative Code, of the applicability of various Commission-imposed requirements that would not logically apply to a CRES provider who only want to participate in the PIPP auctions and supply the electric power only for the utility’s PIPP load. Those requirements include making environmental disclosures (Rule 4901:1-21-09). This special PIPP-only CRES certificate will encourage participation in the PIPP auctions and help ensure their success. The Commission may implement this process through its entry on

⁹ Finding and Order at 4.

¹⁰ Per the Commission’s Finding and Order, non-CRES providers will be able to enter into a bilateral transaction with the electric utility. Finding and Order at 5.

rehearing by providing that any wholesale supplier that will participate in the PIPP RFP auctions but not serve the general public register as a CRES but need not comply with any other CRES requirement under Chapter 4901:1-21, Ohio Administrative Code.

V. The Finding and Order is unjust and unreasonable because it does not establish a uniform, standard protocol for key information that must be in the RFP bids and the timing for bidding information.

In order to prepare a proposal in response to an RFP, the prospective bidder must have access to detailed information as to the make-up of the PIPP load, including the historic load profile. To appropriately price an on-demand service for PIPP customers, bidders must plan to meet the peak and seasonal demand of the PIPP customers and forecast the likely migration into and out of the PIPP customer group. The Commission delegated the development of the RFPs to the electric utilities, in consultation with Staff.¹¹ At a minimum, the Commission should have directed that the utility's information about the PIPP load be on as discrete a time basis as available, and be provided in advance to qualified bidders. In addition, the Commission should require the RFPs to include such critical information as a definitive date stating when the RFP bids are due and to delineate that the RFPs be issued well in advance of the bid due dates. The Commission also should make clear that the electric utilities will have to publish their blended SSO price (following the SSO auction), after which bidders can then develop their RFP bids in response. A reasonable period of time after the blended SSO prices is published for bidders to be required to submit their RFP bids would be two or three days.

These necessary details should not only be mandated information for the RFPs, but should be uniform for all of the electric utilities. The Commission did not discuss any of these details in its Finding and Order and did not establish a uniform, standard protocol for the RFP bids. The new RFP process should not be implemented on an *ad hoc* basis, and the Commission

¹¹ Finding and Order at 4.

should establish a uniform, standard protocol for key information that must be in the RFP bids and the timing for bidding information.

VI. The Finding and Order is unjust and unreasonable because it does not establish a uniform, standard protocol in the event of a tie between RFP bids.

The Commission ruled that each utility's RFP "should explain how it will determine who will serve the PIPP load, in whole or in part, if there are multiple winning bidders."¹² Since it is foreseeable that two or more bidders could submit the same bid price, some process should exist to address this situation. One such possibility is for the auction manager to send to the suppliers who submitted the tying low bids a request for a tie-breaker submission and continue the process until there is a clear winner. Further, the tie-breaking method should be the same for all utilities. Accordingly, the Commission should modify its ruling and establish a uniform, standard protocol for handling a tie during all of the RFP auctions.

VII. The Finding and Order is unjust and unreasonable because it does not establish any parameters regarding the procuring the supply for the PIPP load "from the market through bilateral transactions" that it has authorized, in the event that the initial and supplemental RFP auctions fail to procure supply for the PIPP load.

The Commission's Order provides little detail about the bilateral transaction step that it adopted. The Commission stated:

In the unlikely scenario that both an initial and supplemental RFP auction fail to procure supply for the PIPP load, then the load should be procured from the market through bilateral transactions much the same way an SSO auction would if it did not result in all available tranches being filled, until such additional RFP auctions can be conducted. Further, we note that the requirement in R.C. 4928.54 that only CRES providers may participate in the auction does not preclude non-CRES providers from serving the PIPP load if the RFP auction does not procure supply for a given delivery year as a result of no participation.

The bilateral transaction was not part of the Staff proposal that the Commission adopted and modified. As a result, there are unanswered questions and concerns as to how the electric

¹² Finding and Order at 4 (Emphasis added).

utility must procure the supply for the PIPP load “from the market through bilateral transactions.” If the Commission intended the utility to simply enter into a bilateral agreement with a supplier, it is unclear how the electric utility will decide the terms of a particular bilateral transaction and how the electric utility will approach potential suppliers. If that was what was intended, the Commission should clarify (to avoid any appearance or perception of favoritism) that, if a bilateral contract is required, an electric utility should receive bids from more than one supplier prior to entering into the bilateral contract. Moreover, a report from the independent auction manager could be submitted to the Commission documenting how the potential suppliers were selected, the bid process used and the results.

The Commission decision did provide that “all RFP auction results and winning bids will be subject to Commission approval.”¹³ If the Commission intended the utility to simply enter into a bilateral agreement with a supplier, this language is, also, unclear whether the award of a bilateral contract for the PIPP load will be subject to Commission approval, and whether there will be the opportunity to provide public comments on the bilateral contract before a Commission ruling. RESA believes that the award of a bilateral contract should be subject to Commission approval with a short period available for public comment. Those steps will ensure transparency and avoid any perception of unfairness.

If the Commission’s conclusion to procure the supply for the PIPP load “from the market” intended to mean that a failed RFP auction should be handled in the same fashion as a failed SSO auction, RESA finds that it has merit. Ohio, fortunately, has no experience with failed SSO auctions, so there is no precedent on the subject. A review of the auction rules and master supply agreements reveals that AEP Ohio has specifically addressed the failed auction contingency, having the utility go into the PJM-administered markets and secure the energy and

¹³ Finding and Order at 4.

capacity needed.¹⁴ This is a logical, market-based, and price-transparent method versus using bilateral contracts. The Commission should clarify what is required in the event that the initial and supplemental RFP auctions fail to procure supply for the PIPP load.

VIII. Conclusion

For all of the foregoing reasons, the Commission should grant rehearing and modify its Finding and Order in this matter consistent with the assignments of error above.

Respectfully submitted,



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¹⁴ In the NERA-prepared bidding rules for AEP Ohio, Articles IX 1.2 and IX 1.3 state that the utility is authorized to go into the PJM competitive market and secure the power and capacity needed.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 1st day of April 2016.


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Summary: Application for Rehearing electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association