

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Implementation of
Sections 4928.54 and 4928.544 of the
Revised Code.**

Case No. 16-247-EL-UNC

**MEMORANDUM CONTRA APPLICATIONS FOR REHEARING OF RETAIL
ENERGY SUPPLY ASSOCIATION AND OHIO PARTNERS FOR
AFFORDABLE ENERGY BY OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND
THE TOLEDO EDISON COMPANY**

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On April 1, 2016, the Retail Energy Supply Association (“RESA”) and Ohio Partners for Affordable Energy (“OPAE”) each filed Applications for Rehearing (individually “Application” or collectively “Applications”) alleging the Finding and Order issued on March 2, 2016 by the Public Utilities Commission of Ohio (“Commission”) was unlawful and unreasonable in establishing the process for electric distribution utilities to follow to conduct auctions to procure electric supply for Percentage of Income Payment Plan customers in Ohio. Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, “Companies”) oppose the Applications for the reasons as set forth below.

At the outset, the Companies do not believe changes are required to be made based upon the Applications filed by OPAE and RESA, for the reasons set forth below. If the Commission disagrees, however, and decides to alter their approved PIPP load auction process, the Companies then strongly recommend that such changes only be implemented commencing with the PIPP Load contract for the 2017/2018 delivery year. Time is simply too short this year prior to June 1, 2016 for the PIPP Load auction process to be modified and still achieve power flow by June 1, 2016.

OPAE

I. OPAE’s claim that a Descending Clock Auction is required by law is incorrect.

OPAE alleges that the 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. (OPAE Application p. 3) OPAE argues that because the Commission has chosen the declining clock auction process for electric distribution utilities to procure supply for Standard Service Offer (“SSO”), and for

natural gas utilities to procure supply for Standard Choice Offer (“SCO” customers, that process is the only process that can produce the “best value for persons paying the universal service rider.” (*Id.*) However, there are at least two flaws in OP&E’s reasoning.

First, the statutory requirement is for a “competitive procurement process” that “shall be an auction.” R.C. 4928.54. OP&E assumes that a Request for Proposal (“RFP”) is not an auction. But RFPs are widely recognized as a competitive procurement process and the process prescribed by the Commission is, in other terms, a “single-round sealed-bid auction.” Further, R.C. 4928.544(A) states “the process *may* be designed based on any existing competitive procurement process” for serving SSO load. (emphasis added). The Commission clearly is not required to choose the same auction process to procure PIPP load that has been previously chosen for serving SSO load. Therefore, OP&E’s argument is reduced to complaining that the process adopted by the Commission will not produce sufficient value to meet the statutory requirement without having produced any evidence to support its opinion.

Second, OP&E’s argument ignores that the PIPP supply product is substantially different from the full SSO product being procured in the Companies’ SSO auctions. Clearly the PIPP supply is for a relatively small subset of residential customers, with significantly different load profile characteristics compared to the total SSO load. Moreover, the provision that PIPP supply must be procured at a price below SSO means that the PIPP auction must communicate a fixed ceiling price to bidders before the auction. The Commission received numerous comments regarding these differences before it chose an RFP auction process as the competitive procurement process to serve PIPP load.

Third, more than one specific auction process may be found to be reasonable to be used to acquire power. Experts in the procurement field have arguments for preferring different

approaches, and regulatory agencies have approved different methodologies under varying circumstances for utilities to acquire power, including RFPs, which have been found to yield reasonable outcomes.

In short, the choice to utilize an RFP auction is well within the Commission's discretion under the statutory requirements and is therefore reasonable and lawful. OPAE's argument to the contrary is simply a matter of opinion that the Commission has already rejected.

II. The Commission Finding and Order to honor existing SSO supply contracts is reasonable and lawful because it avoids market disruptions.

OPAE argues that the Commission's Finding and Order is unreasonable and unlawful because it does not require the entire PIPP supply to be procured in the immediate upcoming auctions. OPAE Application p. 5. While the Companies are not directly affected by the provision to stagger PIPP RFP auction procurement to reflect existing supply contracts, the Companies disagree with the premise and basis of OPAE's complaint. First, the Revised Code is silent as to a deadline when the entire PIPP load must be procured via competitive procurement auction at a price less than that serving SSO load. Second, the Commission's decision not to strip out PIPP load from previously awarded agreements is temporary, and will fully "self-correct" within a few delivery years as laddered supply contracts expire and are replaced with new agreements. Third, it is the Companies' opinion that a staggered move to the new PIPP process is in the best interest of an efficient market. Finally, OPAE's argument that the "Commission's decision implies that SSO customers are 'owned' by the wholesale suppliers" and that the "Finding and Order also makes an implicit assumption that the PIPP load...is a large percentage of the SSO" is simply incorrect.

III. The Commission Finding and Order to establish contingency mechanisms to procure PIPP supply is reasonable because it recognizes the possibility that in a competitive marketplace suppliers may decline to serve PIPP customers at a price below the winning SSO auction price.

OPAE argues that the Commission's Finding and Order is unreasonable and unlawful because it violates the requirement in R.C. 4928.541 that the bidding process continue until a winning bid or winning bids are selected and has the potential to result in a cost to service PIPP customers above the SSO price. OPAE Application, p. 8. However, the Commission received numerous comments in this proceeding regarding the very real possibility that market participants may perceive the cost to serve PIPP load to be greater than the cost to serve the full SSO load profile. In that circumstance, there is no competitive procurement process that will result in a winning bid unless suppliers are compelled to bid.

Similarly, OPAE argues that the Commission's Finding and Order is unreasonable and unlawful because it allows PIPP load to be served via bilateral contracts. However, the Commission's decision recognizes the physical reality that on June 1 of each year power must flow to serve PIPP customers. This contingency plan of permitting purchases from the market in the event the RFPs do not yield a winning bidder is reasonable in light of the statutory obligation the electric utilities have to provide retail generation service to nonshopping customers, including PIPP customers.

RESA

IV. The Commission’s decision not to compel the use of an independent auction manager is reasonable and lawful.

RESA argues that the Commission’s 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. RESA Application, p. 4. While the Companies have employed an independent RFP auction manager, the Companies do not find in the controlling statutes a requirement to employ an independent RFP auction manager and therefore do not consider the lack of such requirement to be unjust or unreasonable. Similarly, employing an independent RFP auction manager is not required either by the statutes or the Commission’s Finding and Order. The Companies note the Commission’s express intent to examine each electric distribution utility’s PIPP RFP auction process, and that Staff is directed to file a Report within 90 days of the start of the delivery year. The Companies expect that such review will help guide any future developments of the PIPP procurement process.

V. 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, is contrary to R.C. 4928.54.

RESA argues that the Commission’s 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 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.” RESA Application, p. 6. RESA further argues that failing to establish such a special certification process will not further the Commission’s stated goal to “achieve as many auction participants in each auction as possible.” *Id.* RESA envisions a “waiver...of the applicability of various Commission-imposed

requirements that would not logically apply to a CRES provider who only wants to participate in the PIPP auctions and supply the electric power only for the utility's PIPP load." *Id.* However, such waiver and special certification is incongruent with the statute because the "various Commission-imposed requirements" were in existence at the time that R.C. 4928.54 was enacted. Under the canons of statutory interpretation, the General Assembly is presumed to have been fully aware of its own statute, R.C. 4928.08, as well as the Commission's rules implementing it. And yet, R.C. 4928.54 contains no provision for a special certification process. Indeed, the plain reading of R.C. 4928.54 is that all of the "various Commission-imposed requirements" must be met to become an eligible bidder. RESA's suggested special certification process should be rejected.

VI. Establishing a uniform, standard protocol for providing information is unnecessary and impractical.

RESA argues that the Commission 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." RESA Application p.7. RESA argues that "necessary details should not only be mandated information for the RFPs, but should be uniform for all of the electric utilities." *Id.* However, the additional requirements proposed by RESA are not necessary to include by prescription, as all of the Ohio electric distribution utilities follow information protocols to conduct their competitive bid process procurement of SSO. Indeed, the Companies have followed a nearly identical process of communicating key information for their RFP auction as they have for their SSO auctions.

Moreover, exact uniformity of data may not be possible among all of the electric distribution utilities, and any mandate as proposed by RESA may simply be impractical.

Further, website information will be addressed as part of the Companies' ongoing consultation with Staff review of the RFP auction process, and all data will be posted by the Companies in a timely fashion to allow for an efficient procurement process.

With respect to RESA's request for a uniform, standard protocol in the event of a "tie," the Companies note that as long as a tiebreaker process is defined in the bidding rules and is unbiased, no additional requirements are necessary. There are many unbiased ways to break a tie in a procurement process. Such a process does not need to be uniform across all electric distribution utilities.

VII. The Commission's Finding and Order sufficiently establishes a just and reasonable contingency plan in the event the RFP auction process fails to secure supply for the PIPP load.

RESA argues that "there are unanswered questions and concerns" surrounding the Commission's Finding and Order that "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...." RESA Application, p. 8. The Companies agree that "from the market" can mean handling in the same fashion as a failed SSO auction; the Companies' SSO contingency plans are well documented and the Companies plan to use the PJM administered markets if PIPP supply is not procured in the RFP auctions. However, RESA's proposal to address the unfilled load by having a "comment period" before Commission approval (or disapproval) of a bilateral transaction would be cumbersome, inefficient, and unnecessarily duplicative of FERC rules already in place to address wholesale interaction with affiliates and non-affiliates through market-based tariffs.

VIII. Conclusion

While the Companies do not believe there is a necessity to change the approved PIPP auction process, and that the Applications for Rehearing filed by OP&E and RESA should be rejected, if the Commission decides to make changes, at a minimum, those changes should apply to PIPP auctions held for the 2017/2018 period and thereafter. With less than two months before June 1, 2016, time simply does not permit for changes to the PIPP auction process for the 2016/2017 period. For all of the reasons state above, the Commission should deny the Applications for Rehearing of RESA and OP&E.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that these comments were filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 11th day of April, 2016. The Commission's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Robert M. Endris _____
*One of the Attorneys for Ohio Edison
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Summary: Memorandum Memorandum Contra RESA and OPAE Applications for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company electronically filed by Mr. Robert M. Endris on behalf of Burk, James W. Mr.