BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders.	)))))	Case No. 22-556-EL-USF

INITIAL POST-HEARING BRIEF OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

The current PIPP Program auction process has been in place and in use since 2016; PIPP aggregation has been a reality in the state since 2001. The subject matter of the underlying proceeding is the revenue requirements and rate design methodologies the Department of Development proposes to use in preparing its 2022 USF rider rate adjustment application for the 2023 calendar year. While the revenue requirements and rate design methodology incorporate the PIPP auction process, and the rates established thereby, these are still two separate proceedings, separate in time and separate in process. The Office of the Ohio Consumers' Counsel asks that the Commission, in this USF Rider proceeding, amend and invalidate the process and terms of the PIPP auction process. This process was the result of much commentary and reasoned consideration (in an open forum and discrete docket), has been in place since 2016, and should not be upended without considerable input from the regulated community, interested stakeholders, and others. Put more simply, this is not the forum for those considerations. Duke Energy Ohio asks that the Commission adopt the Joint Stipulation and Recommendation filed in the above-captioned case, as it represents serious bargaining between informed parties, is in the public interest, and is not in violation of key regulatory principles.

II. BACKGROUND

A. The Universal Service Fund

The Universal Service Fund (USF) was established, under the provisions of R.C. 4928.51 through 4928.58, for the purposes of providing funding for low-income customer assistance programs, including the consumer education programs authorized by R.C. 4928.56, and for the administrative costs of those programs. The USF is administered by the Ohio Department of Development (ODOD), previously known as the Ohio Development Services Agency, in accordance with R.C. 4928.51. The USF is funded primarily by the establishment of a universal service rider on the retail electric distribution service rates of jurisdictional electric distribution utilities (EDUs), as defined in R.C. 4928.01(A)(6).

R.C. 4928.52(B) provides that, if ODOD, after consultation with the Public Benefits Advisory Board, determines that revenues in the USF and revenues from federal or other sources of funding for those programs will be insufficient to cover the administrative costs of the low-income customer assistance programs and the consumer education programs and to provide adequate funding for those programs, ODOD shall file a petition with the Public Utilities Commission of Ohio (the Commission) for an increase in the USF rider rates. R.C. 4928.52(B) also provides that the Commission, after reasonable notice and opportunity for hearing, may adjust the USF riders by the minimum amount required to provide the necessary additional revenues. To that end, since 2001 the Commission has approved USF rider rate adjustments each year for each of the Ohio EDUs.[1]

[1] *In re the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Rider of Jurisdictional Ohio Electric Distribution Utilities* (2021 USF Rider Case), Case No. 21-659-EL-USF, Opinion and Order (Dec. 15, 2021) (2021 USF Adjustment Order) at ¶ 3.

In the USF filing for prior year 2021, the Commission adopted the Joint Stipulation and Recommendation, executed by ODOD and several other parties to resolve the issues regarding the adjustment of and to adjust the USF rider rates of each of the jurisdictional EDUs, in accordance with R.C. 4928.52(B). The new USF rider rates became effective on a bills-rendered basis upon the effective date; *i.e.*, a date not earlier than both the date of the Opinion and Order and the date upon which the final tariffs for the respective EDUs were filed with the Commission.[2] A similar Stipulation is now before the Commission for its consideration for 2022-2023.

Since 2005, the USF proceedings have been a two-phase process. In the first phase of the USF case, the notice of intent (NOI) phase, ODOD files, by May 31 each year, an application with its proposed methodology to calculate the USF revenue requirement and rate design, as well as any other matters that ODOD deems appropriate. This was the process undertaken in the above-captioned proceeding. In the second phase of the USF proceeding, ODOD files, by October 31 each year, an application to adjust the USF rider rates of the EDUs, as necessary.[3]

The underlying proceeding is currently before the Commission regarding the first phase of the process outlined above.

B. Procedural Background

ODOD initiated this proceeding on May 27, 2022, by filing an NOI pursuant to the stipulation approved by the Public Utilities Commission of Ohio (the Commission) in ODOD's prior USF case.[4] The NOI lodged by ODOD described the revenue requirements and rate design methodologies ODOD proposed to use in preparing its 2022 USF rider rate adjustment application

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[2] *Id.* at ¶ 41-42.

[3] *In re Ohio Department of Development*, Case No. 04-1616- EL-UNC, Opinion and Order (Dec. 4, 2008) at 8.

[4] *In the Matter of the Application 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. 21-659-EL-USF, Opinion and Order (December 15, 2021).

for the 2023 calendar year. Thereafter, the Ohio Energy Group (OEG), Industrial Energy Users-Ohio (IEU), and Office of the Ohio Consumers' Counsel (OCC) moved for and were granted intervention in the underlying case. These intervening parties joined Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company), the Ohio Power Company (AEP Ohio), the Dayton Power and Light Company (DP&L), and the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, the FE Companies) as parties to the case (the EDU parties being automatically joined).

OCC and the FE Companies offered initial Comments upon the NOI filed by ODOD.[5] The Company, DP&L, and AEP Ohio filed a joint response to OCC's Comments, and ODOD filed responsive comments addressing comments from both the FE Companies and OCC.[6] Following this back and forth, all parties to the underlying case began negotiations in a good faith attempt to reach a settlement of the case, taking into consideration the Comments of OCC and the FE Companies. Following multiple rounds of negotiation, a settlement was reached in the form of a Joint Stipulation and Recommendation (the Stipulation), filed August 5, 2022, with the Commission. Duke Energy Ohio, DP&L, AEP Ohio, ODOD, OEG, and IEU signed on to the Stipulation.[7] The FE Companies and the Staff of the Public Utilities Commission of Ohio (Staff) signed off as non-opposing parties to the Stipulation, and OCC chose not to sign on to the Stipulation, instead formally opposing. ODOD filed testimony in support of the Stipulation by Megan Meadows, Chief of the Community Services Divisions at the ODOD, and OCC filed testimony in opposition to the Stipulation from its witness, James Williams.[8] On August 26, 2022,

[5] *See* Joint Reply Comments of the Dayton Power and Light Company, Ohio Power Company, and Duke Energy Ohio to the Notice of Intent (July 15, 2022).
[6] *See* Ohio Department of Development's Response to Objections to the Notice of Intent (July 14, 2022).
[7] *See* Joint Stipulation and Recommendation (August 5, 2022) (hereafter, Stipulation).
[8] *See* Testimony Recommending Consumer Protections Instead of the ODOD/Electric Utilities/Industrial Groups' Settlement by James D. Williams on Behalf of the Office of the Ohio Consumers' Counsel (August 19, 2022) (hereafter, Williams Testimony).

ODOD filed reply testimony on behalf of ODOD and in further support of the Stipulation.[9] This matter proceeded to a one day hearing on August 30, 2022.

C. Legal Background

Section 4928.54 of the Revised Code requires the director of development to "aggregate percentage of income payment plan [*i.e.*, PIPP] customers for the purpose of establishing a competitive procurement process for the supply of competitive retail electric service for those customers. The process *shall* be an auction."[10] The winning bids selected through that process are to: "(A) Be designed to provide reliable competitive retail electric service to percentage of income payment plan program customers," "(B) Reduce the cost of the percentage of income payment plan program relative to the otherwise applicable standard service offer established under sections 4928.141, 4928.142, and 4928.143 of the Revised Code," and "(C) Result in the best value for persons paying the universal service rider under section 4928.52 of the Revised Code."[11] Section R.C. 4928.544 requires that the Commission, upon request by the director of development, "design, manage, and supervise" the competitive procurement process.

Following the enactment of R.C. 4928.54*, et seq*., the Commission commenced a proceeding to define the process of securing PIPP load,[12] opening the process for comments by interested parties, which comments would be taken under consideration by the Commission in

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[9] *See* Reply Testimony of Megan Meadows in Support of Joint Stipulation on Behalf of the Ohio Department of Development (August 26, 2022) (hereafter, Meadows Reply Testimony).
[10] R.C. 4928.54, *et seq.* (emphasis added).
[11] R.C. 4928.542.
[12] *In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-0247-EL-UNC (RFP Auction Case). *Accord: In the Matter of the Procurement of Percentage of Income Payment Plan Program Generation for Customers of Dayton Power and Light Company*, Case No. 17-1163-EL-UNC (AES Ohio PIPP Case), Finding and Order (May 18, 2022), ¶ 4; *In the Matter of the Procurement of Percentage of Income Payment Plan Program Generation for Customers of Ohio Power Company*, Case No. 16-1031-EL-UNC (AEP Ohio PIPP Case), Finding and Order (May 4, 2022), ¶ 4; *In the Matter of the Procurement of Percentage of Income Payment Plan Program Generation for Customers of Duke Energy Ohio, Inc*., Case No. 16-0940-EL-UNC (Duke Energy Ohio PIPP Case), Finding and Order (May 4, 2022), ¶ 4.

designing the process. After considering recommendations by Staff and various stakeholders, including OCC, the Commission adopted the following process:

- The first phase of the competitive RFP process would consist of an initial RFP auction during which certified competitive retail electric service (CRES) providers submitted bids to serve the PIPP load for less than the standard service offer (SSO).
- If no CRES provider submitted a bid to serve the PIPP load for less than the SSO, then a supplemental PIPP auction would be conducted where CRES providers may submit bids to serve the PIPP load at any price.
- Finally, if no CRES provider participated in either RFP auction, the electric utility may implement contingency measures to procure supply for the PIPP load.[13]

Though OCC now disputes the process adopted by the Commission in 2016, and carried out by ODOD in the present year, and all years prior following its enactment, OCC did not ever file a timely application for rehearing to dispute, object to, or otherwise challenge the RFP Auction Order.[14]

D. <u>2023 RFP Auction Process</u>

The process established in the RFP Auction Order was recently followed by all participating EDUs, including those who have signed on to the Stipulation (Duke Energy Ohio, AEP Ohio, and DP&L; collectively, the Signatory EDUs) for the June 1, 2022 to May 31, 2023 delivery period. The Signatory EDUs, in consultation with Staff and independent auction managers retained by the companies, accepted bids for their initial competitive RFP auctions on May 2

[13] *RFP Auction Case*, Finding and Order (Mar. 2, 2016) (RFP Auction Order).
[14] *See generally*, docket in Case No. 16-0247-EL-UNC, whereby Ohio Partners for Affordable Energy and the Retail Energy Supply Association filed for rehearing of the RFP Auction Order.

(DP&L), April 19 (AEP Ohio), and April 18 (Duke Energy Ohio).[15] Since no conforming bids were submitted in those auctions, the companies held supplemental RFP auctions, again in consultation with Staff and the independent auction managers, on May 16 (DP&L), May 2 (AEP Ohio), and May 3 (Duke Energy Ohio). Those supplemental auctions procured supply for 100% of the PIPP load for each Signatory EDU. The independent auction managers and Bates White, LLC, a consultant retained by the Commission to monitor the RFP auctions, recommended that the Commission find that the competitive RFP auctions for the Signatory EDUs were "within the limits of [their] structures, had sufficient competitive attributes and resulted in winning prices that were reasonable."[16] The Commission found that the auctions for the signatory EDUs followed the competitive RFP process adopted by the Commission in the RFP Auction Order and met the requirements of R.C. 4928.542.[17]

As in the original RFP Auction Order, OCC did not seek to intervene in any of the 2022-2023 RFP Auction Proceedings, did not comment or intervene once it was clear that the first Auction offering was failing to produce sufficient PIPP load coverage equal to or below the price of the SSO, and failed to file an application for rehearing from the Signatory EDUs' 2023 RFP Auction Orders.[18]

By failing to sign the Stipulation in the present proceeding, and by sponsoring opposition testimony, it is clear that OCC now takes issue with the USF riders charged by Ohio's electric distribution utilities, and the competitive RFP auction process used to secure the requisite PIPP

[15] AES Ohio PIPP Case, Finding and Order (May 18, 2022), ¶ 5; AEP Ohio PIPP Case, Finding and Order (May 4, 2022), ¶ 5; Duke Energy Ohio PIPP Case, Finding and Order (May 4, 2022), ¶ 5.
[16] AES Ohio PIPP Case, Finding and Order (May 18, 2022), ¶ 5; AEP Ohio PIPP Case, Finding and Order (May 4, 2022), ¶ 5; Duke Energy Ohio PIPP Case, Finding and Order (May 4, 2022), ¶ 5.
[17] AES Ohio PIPP Case, Finding and Order (May 18, 2022), ¶ 6; AEP Ohio PIPP Case, Finding and Order (May 4, 2022), ¶ 6; Duke Energy Ohio PIPP Case, Finding and Order (May 4, 2022), ¶ 6.
[18] *See generally* RFP Auction docket and docket for Case No. 16-0247-EL-UNC, whereby OCC did not lodge comment or objection related to PIPP Auction results.

load. But, as detailed below, OCC was not diligent in its participation in the RFP Auction Process and has failed to demonstrate why the Stipulation should not be adopted by the Commission. Moreover, OCC's arguments in this case are not relevant to its analysis of the present issues or the appropriate outcome. The Commission should reject OCC's arguments as an improper collateral attack on the RFP Auction Order and the results of the auction process, which have been previously approved by the Commission.

The proposals in OCC's comments and testimony present a myriad of complex legal and policy questions that should only be addressed in an open process with all interested stakeholders, like in the RFP Auction Case. Moreover, as demonstrated at hearing, those issues should not be shoehorned into USF update proceeding, with inadequate consideration and after contracts have already been approved by the Commission and executed between suppliers and the EDUs for 2023. Moreover, the EDUs, who participated in good faith in the PIPP Auction process for 2023, following Commission protocol and orders, should not be penalized[19] for following the process set forth and approved by the Commission, in the current year and in every year to consider the current PIPP auction process so far.

For the reasons further outlined below, the Stipulation should be approved. The Stipulation meets the Commission's standard for approval, enables the continuation of the PIPP Plus Program for each respective EDU, and sufficiently recognizes the approvals already in place for this year's PIPP RFP Auction.

[19] Such penalty would come in the form of asking the EDUs who participate in good faith in the PIPP Auction process to, as counsel for ODOD put it at hearing, "eat" the difference between the SSO price and PIPP Auction results. *See* Hearing Transcript (Cross of Williams) at 87:5-18.

III. LAW AND ARGUMENT

A. <u>The Stipulation is Reasonable and Meets the Commission-Established Criteria</u>

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight.[20] The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.[21] The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has applied the following criteria:

a. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

b. Does the settlement, as a package, benefit ratepayers and the public interest?

c. Does the settlement package violate any important regulatory principle or practice?

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities.[22] The Supreme Court of Ohio has found that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.[23]

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[20] *Consumers' Counsel v. Pub. Util. Comm*., 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), *citing Akron v. Pub. Util. Comm*., 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

[21] *See, e.g*., *In re Cincinnati Gas & Elec. Co*., Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co*., Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co*., Case No. 91-698-EL-FOR, *et al*., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co*., Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985).

[22] *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm*., 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126.

[23] *Id.*

The Stipulation, entered in this case by and between the Company, DP&L, AEP Ohio, OEG, IEU, and ODOD, meets the criteria set forth by the Commission in consideration of stipulation approval.[24] The purpose of the NOI phase of this proceeding (which is the focus of the underlying case and hearing), as testified to by ODOD witness Megan Meadows, Chief of ODOD's Community Services Division, is to determine the revenue requirement and rate design methodologies ODOD proposes to use in preparing its 2022 USF rider rate adjustment application for the 2023 calendar year.[25] And the Stipulation recommends that the Commission "adopt the same rate design methodology that it has approved since 2001, and also recommends that the [Commission] adopt nearly the same revenue requirement methodology."[26] The methodologies proposed are reasonable, and are the discrete subject of the underlying case. Put more simply, the underlying case is not a forum by which the entirety of the PIPP RFP auction process and procedure can be reviewed. Instead, the question before the Commission is considerably limited: is the rate design and revenue requirement set forth by ODOD in its NOI, and agreed to by the signatory parties to the Stipulation, reasonable? Duke Energy Ohio posits that it is.

As further detailed by Ms. Meadows, on both direct and cross examination, the Stipulation is the product of serious bargaining among capable, knowledgeable, parties. Ms. Meadow testified that "[a]ll parties were invited to discuss the comments to the NOI application" and that the procedural schedule was extended an additional week to facilitate additional settlement discussions.[27] Additionally, all parties to the proceeding were actively participating in the USF proceedings for several years prior to the present case, all were represented by experienced,

[24] As stated above, the Commission Staff and FE Companies have not joined the Joint Stipulation, but do not oppose it either.
[25] Direct Testimony of Megan Meadows (Meadows Direct Testimony) at 4:5-7.
[26] *Id.* at 4:7-10.
[27] *Id.* at 4:16-19.

competent counsel, and all parties were able to review and consider the Stipulation as drafted.[28] Moreover, as previously relied upon in the 2021 USF Opinion and Order adopting that Stipulation, and stated again here by Ms. Meadows in the underlying matter, all parties to the case were afforded the opportunity to engage in settlement discussions on the proposed stipulation, with nearly every party the USF proceeding acting as prior signatories to stipulations filed in prior USF cases.[29]

Finally, in direct testimony, Ms. Meadows highlights that the Stipulation was influenced by and took into consideration the comments from at least the FE Companies in determining the final language set forth in the Stipulation. Namely, the Stipulation reflects agreement as to the FE Companies' objection regarding the Reserve component in calculating the USF revenue requirement. Settlement was not reached upon the comments offered by OCC, namely that a retroactive cap be set for PIPP auctions at the SSO clearing price—as Ms. Meadows states "effectively request[ing that] Development . . . redesign or modify the PUCO-approved PIPP procurement process in this NOI proceeding."[30] As further detailed below, such a change is not the proper subject of this NOI proceeding. However, these changes to the Stipulation, and bringing the FE Companies to a non-opposing position, demonstrate that bargaining did occur, even if OCC could not be convinced to join in the Stipulation. OCC's signing on to a Stipulation (or not) cannot be the measuring stick by which bargaining is considered for the first prong of the Commission's evaluation. The Stipulation was clearly the product of serious bargaining among capable,

[28] *Id.* 4:20-5:2.
[29] *In the Matter of the Application 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. 21-659-EL-USF, Opinion and Order (December 15, 2021) at ¶ 27.
[30] Meadows Direct Testimony at 5:11-13.

knowledgeable parties and, therefore, meets the first condition used by the Commission to evaluate a stipulation.

Regarding part two of the three-part test, the Stipulation benefits consumers and the public interest. As set forth in the direct and reply testimony of Ms. Meadows, the Stipulation adopts nearly the same methodologies approved in numerous prior USF proceedings, which methodologies "ensure adequate funding for the low-income customer assistance programs and the consumer education programs administered by Development and provide a reasonable contribution by all customer classes to the USF revenue requirement."[31] Additionally, the Stipulation benefits consumers and the public interest because the methodologies adopted (the only question at issue in the underlying matter) "will result in USF rider rates that represent the minimal rates necessary to collect the EDUs' USF rider revenue requirements."[32] In its direct testimony, OCC argues that Ms. Meadows (and therefore the signatory parties to the Stipulation) fail to express why the Stipulation benefits customers and is in the public interest. However, as elaborated by Ms. Meadows in her reply testimony, "the PUCO already has conducted and approved the PIPP auctions for the test year in this proceeding" and the statutes establishing the PIPP aggregation process "*require* that PIPP customers are to be aggregated, an auction is to be conducted to provide their electric supply, and the auction is to proceed until a winning bid is selected."[33] As further detailed by Ms. Meadows, "[u]pon Development's request, the PUCO is responsible for the design, management and supervision of the auction" and "the PUCO designed the auction first to obtain bids to serve PIPP customers below the SSO price and, if no bids were received, to obtain bids for the best available price even if it is above the SSO price."[34] The process

[31] *Id.* at 5:19-23.
[32] *Id.* at 5:23-6:3.
[33] Reply Testimony of Megan Meadows (Meadows Reply Testimony) at 3:11-17 (emphasis added).
[34] *Id.* at 3:17-23.

therefore "selects the lowest bid offered to supply PIPP customers" and this "lowest bid is used to calculate the cost of PIPP and, therefore, helps produce the minimal rates necessary to collect the EDU's USF rider revenue requirements."[35] As highlighted by Ms. Meadows, under the current PIPP auction structure, approved and designed by the PUCO, the process followed by the EDU parties to this case *did* result in the lowest auction price possible for the time period in which the auction took place. And as Ms. Meadows further explains in her reply testimony, R.C. 4928.54 mandates that "PIPP customers be aggregated" meaning "Development has no discretion" in whether or not aggregation or auction should occur.[36] Accordingly, pursuant to the system in place for 2022-2023, the actions undertaken by the parties and ODOD, as represented in the Stipulation, are in the public's best interests. The Stipulation complies with the second criteria used by the Commission to evaluate a stipulation.

Finally, the Stipulation complies with R.C. 4918.544, and does not violate any important regulatory principles or practices. In each USF proceeding since adoption of the two-step declining block rate design in 2001, the PUCO has approved stipulations adopting the same rate design, and specifically has found that it does not violate R.C. 4928.52.[37] R.C. 4928.52 "does not specify the rate design the PUCO must adopt; but rather leaves it flexibility."[38] As detailed by Ms. Meadows, this "traditional rate design provides a reasonable contribution by all customer classes to the USF revenue requirement."[39] The USF rider rates for 2023 were determined consistent with the NOI methodology approved by the Commission in the 2022 USF NOI Order issued in Case No. 21-659-EL-USF.

[35] *Id.* at 21-23.
[36] *Id.* at 4:4-6.
[37] Direct Testimony of Meadows at 6:6-9.
[38] *Id.* at 6:8-10.
[39] *Id.* at 6:10-11.

As noted by the Commission in the 2022 USF proceeding (Case No. 21-659-EL-USF):

> [U]nlike other proceedings before the Commission where we are charged with balancing the interest of the utilities and the public, in this matter the Commission's role is limited primarily to facilitating the process by which ODOD files for and the EDUs implement their respective USF rider rates. In USF proceedings, in accordance with R.C. 4928.52(B), the Commission cannot decrease the USF rider without the approval of the director of ODOD. Thus, in light of the Commission's limited role in these USF proceedings, our evaluation of the issues raised in this proceeding and Staff's participation in this case, is restricted.[40]

And like the Commission's findings in Case No. 21-659-EL-USF, here, the Commission should find that the "Stipulation and proposed customer notice are reasonable [and the proposed rates] reflect the minimum level necessary to produce the required revenues for ODOD to cover the administrative costs of the low-income customer assistance programs and the consumer education program and to provide adequate funding for those programs."[41] As likewise found by the Commission in the last USF proceeding, the current USF Rider rate design should be found to be in the "public interest to the extent it provides adequate funding, at the lowest USF rider rate feasible, for the low-income customer assistance programs and the consumer education program offered by ODOD and does not violate any important regulatory principle or practice."[42]

B. <u>The Signatory EDUs Followed the Process Established in the RFP Auction Order</u>

As established by the record in the underlying case, and as admitted by OCC at hearing, the Signatory EDUs (including Duke Energy Ohio) followed, and the Commission approved, the RFP Auction process for the June 1, 2022 to May 31, 2023 delivery period.

As set forth above, following the enactment of R.C. 4928.54, *et seq.*, the Commission was tasked with establishing a proceeding to define the auction process for aggregated PIPP Plus

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[40] *In the Matter of the Application 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. 21-659-EL-USF, Opinion and Order (December 15, 2021) at ¶ 29.
[41] *Id.* at ¶ 31.
[42] *Id.*

customers in Case No. 16-0247-EL-UNC.[43] The Commission commenced a comment period and invited all interested parties to participate in voicing an opinion as to what the appropriate auction structure and timing would be for the aggregated PIPP customers. The Commission heard input from Staff, the EDUs, many other stakeholders, and OCC. Following careful consideration of the comments received, the Commission adopted the process outlined above, whereby under a two phase RFP process, an initial RFP auction is held where CRES providers can submit bids to serve the PIPP load for less than the SSO, followed by a process where CRES providers may submit bids to serve the PIPP load at any price.[44] Following the adoption of the process set forth above for the PIPP RFP auction, numerous parties filed for rehearing of the Commission's decision to adopt the process.[45] Notably, OCC did not.[46] Additionally, these motions for rehearing were denied by the Commission, and the RFP Auction process as designed went into effect.[47]

The process set forth in the RFP Auction Case's Opinion and Order, Case No. 16-0247-EL-UNC, was followed by the Signatory EDUs, including Duke Energy Ohio, for the June 2022 to May 2023 delivery period. Indeed, Duke Energy Ohio, in consultation with Staff and independent auction managers retained by the Company, accepted bids for its initial competitive RFP auction on April 18, 2022.[48] At that time, no conforming bids were submitted in the Duke Energy Ohio PIPP auction.[49] As a result, Commission rules dictated that the Company must hold

[43] *In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-0247-EL-UNC (the RFP Auction Case).
[44] RFP Auction Case, Finding and Order (Mar. 2, 2016) (RFP Auction Order).
[45] *See, e.g.*, RFP Auction Case, Application for Rehearing of the Retail Energy Supply Association (April 1, 2016); Application for Rehearing of Ohio Partners for Affordable Energy (April 1, 2016).
[46] Hearing Transcript (Cross Examination of Williams) at 101:1-8 ("Q: And OCC did not file an application for rehearing in response to that March 2, 2016, entry, correct? A: I don't believe so, subject to check.").
[47] *See In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-0247-EL-UNC, Entry that the Applications for Rehearing filed by OPAE and RESA Be Denied (April 27, 2016).
[48] *See* Duke Energy Ohio PIPP Auction Case, Notification of PIPP RFP Results (April 20, 2022) (informing the Commission that "No bidder submitted a conforming bid in the RFP process during the Bid Window on Monday, April 18, 2022.").
[49] *Id.*

a subsequent, supplemental RFP auction, again in consultation with Staff and independent auction managers on May 3, 2022.[50] This supplemental auction was able to procure 100% of the PIPP load for the Company.[51] The Commission reviewed the results of the PIPP RFP auction and found that the auction followed the competitive process adopted by the Commission in the Case No. 16-0247-EL-UNC, and also met the requirements of R.C. 4928.542.[52] Additionally, the independent auctioneer, CRA International, found that the competitive bidding rules were not violated, the RFP was open, fair, transparent, and competitive, information was made public about the auction appropriately, and there was no evidence of anti-competitive or inappropriate behavior.[53] Moreover, as admitted at hearing by OCC, and established in the case law establishing the auction, the PIPP RFP Auction is a competitive market process to secure generation for the PIPP load, and the EDUs have no control over the marketers that bid into the competitive PIPP or SSO auctions.[54] With winning bids secured for 2022-2023, the auction results, as adopted and approved by the Commission, were relied upon; contracts were entered into with suppliers for the PIPP load established for 2022-2023; and the Commission established the finality of the 2022-2023 auction results[55]

No party, including OCC, intervened in the Company's 2022 RFP Auction Case (or any other EDUs' auction cases), even though the SSO auction results and the PIPP SSO auction results

[50] *See* Duke Energy Ohio PIPP Auction Case, Notification of Supplemental PIPP RFP Results (May 4, 2022).
[51] *Id.* at 1.
[52] Duke Energy Ohio PIPP Auction Case, Finding and Order (May 4, 2022) at ¶ 6 (finding "that the competitive RFP auction process followed the process adopted by the Commission in the RFP Auction Order and met the requirements of R.C. 4928.542. Accordingly, the Commission will not reject the results of the competitive RFP auction.").
[53] Duke Energy Ohio PIPP Auction Case, Notification of Supplemental PIPP RFP Results (May 4, 2022) at 5-6.
[54] Hearing Transcript (Cross of Williams) at 108:25-109:7.
[55] *Id.* at 109:8-17 ("Q: And you understand, I believe, based on the conversation you had with Mr. Stinson earlier, that the electric distribution utilities have already executed those contracts with winning bidders for the SSO – PIPP SSO auctions, correct? A: It's—that's my understanding, yes.").

are filed in public dockets, and the results were readily available.[56] OCC did not file a response of any kind to letters in the Company or other EDUs' 2022-2023 Auction RFP dockets, whereby it was first established that the PIPP auction rate results would be higher than the EDUs' SSO rate.[57] Neither did OCC file any objections or move to reopen the original docket which established the PIPP auction process, Case No. 16-0247-EL-UNC, in response to the results of the 2022-2023 PIPP auction.[58] Indeed, in the case of Duke Energy Ohio, prior to the 2022-2023 timeframe, PIPP customers were billed approximately $5.7 million *less* from 2016 through the present than they would have been billed under the Company's SSO, had they not been aggregated in their own auction process.[59]

Duke Energy Ohio and the other Signatory EDUs have followed the process set forth by the Commission in the RFP Auction Case. The process was executed without inappropriate conduct or violations. Moreover, the Signatory EDUs have relied in good faith on the Commission's approvals in their respective 2022 PIPP Auctions. In doing so, they have executed CRES supply contracts for PIPP load for 2022-2023. Any attempt to undo or alter such arrangements, especially when such arrangements were expressly approved of by the Commission, would result in an unfair change and lack the requisite due process that should be afforded to the process. The Commission approved the EDUs' 2022 PIPP auction results and specifically found that they met the requirements of R.C. 4928.542. OCC effectively requests that ODOD redesign or modify the Commission-approved PIPP procurement process in this USF proceeding, and at the eleventh hour. OCC had notice of the PIPP Auction process for 2023, had an opportunity to intervene in either those cases or the original RFP Auction Docket, as it saw fit. And it failed to

[56] *Id.* at 103:3-6.
[57] *Id.* at 106:3-11.
[58] *Id.* at 107:15-17.
[59] *Id.* at 145:14-19.

do so. As demonstrated in testimony and at hearing, a change to the procurement process is not the proper subject of ODOD's USF application, and the Commission should provide certainty to the procedure executed by the EDUs, and approve the Stipulation as filed in the underlying case.

IV. CONCLUSION

For the foregoing reasons, the Stipulation and Recommendation filed by the signatory parties should be approved and adopted by the Commission.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 12th day of September 2022, upon the persons listed below.

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