

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

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**BEFORE
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**MOTION FOR LEAVE TO FILE, *INSTANTER*, AN *AMICI CURIAE* BRIEF IN
SUPPORT OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S POST-
HEARING BRIEF FOR CONSUMER PROTECTION
BY
ADVOCATES FOR BASIC LEGAL EQUALITY, INC.,
LEGAL AID SOCIETY OF COLUMBUS,
LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC,
OHIO POVERTY LAW CENTER,
PRO SENIORS, INC., AND
SOUTHEASTERN OHIO LEGAL SERVICES**

The Ohio Poverty Law Center (OPLC), Pro Seniors, Inc., Southeastern Ohio Legal Services (SEOLS), the Legal Aid Society of Southwest Ohio, LLC (LASSO), the Advocates for Basic Legal Equality, Inc. (ABLE) and the Legal Aid Society of Columbus (LASC) (collectively, the Consumer Advocates) respectfully move the PUCO for leave to file *instanter* this attached *amici curiae* brief in support of the Post-Hearing Brief for Consumer Protection filed by the Office of the Ohio Consumers' Counsel on September 12, 2022.¹ The Consumer Advocates possess a strong interest in a just outcome of this case, and their *amici curiae* brief will assist the PUCO in reaching a just and reasonable outcome.

¹ Post-Hearing Brief for Consumer Protection by the Office of the Ohio Consumers' Counsel ("OCC Initial Brief"), Case No. 22-556-EL-USF (September 12, 2022).

Consumer Advocates support the Office of the Ohio Consumers' Counsel ("OCC") in opposing the Universal Service Fund ("USF") Settlement. It adopts an unconscionable and unlawful result where PIPP consumers (being people who are low-income) are billed more for electricity than other Ohioans are billed under the utilities' non-low-income Standard Service Offers. The Consumer Advocates member agencies represent consumers who participate in the PIPP program who will be adversely affected by the Settlement. It is noteworthy that no consumer advocates signed the Settlement.

The Consumer Advocates respectfully move the PUCO for leave to file instanter their *amici curiae* brief, in order to assist with a just and expeditious ruling in this case.

Respectfully submitted,

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Consumer Advocate groups represent low-income Ohioans who will be adversely affected by the Settlement in this case. The OPLC works to reduce poverty and increase justice by protecting the legal rights of Ohioans living in poverty. Pro Seniors provides education, advice, advocacy, representation and justice for seniors in Ohio, all provided at no cost to clients. SEOLS is an LSC-funded legal services program whose mission is to act as general counsel to a client community throughout thirty rural counties in southeast Ohio to provide high-quality legal services to its clients with the objective of enabling poor people to assert their rights and interests. LASSO provides free, comprehensive, civil legal assistance to address legal problems of low-income people to promote economic and family stability and to reduce poverty. ABLE is a non-profit regional law firm that provides high-quality legal assistance to help low-income individuals and

groups in Ohio achieve self-reliance, and equal justice and economic opportunity. LASC works to assist low-income and elderly individuals living in Columbus and Central Ohio combat unfairness and injustice, and to help people rise out of poverty.

Consumer Advocates support the Office of the Ohio Consumers' Counsel ("OCC") in opposing the Universal Service Fund ("USF") Settlement. It adopts an unconscionable and unlawful result where PIPP consumers (being people who are low-income) are billed more for electricity than other Ohioans are billed under the utilities' non-low-income Standard Service Offers. The Consumer Advocates member agencies represent consumers who participate in the PIPP program who will be adversely affected by the Settlement. It is noteworthy that no consumer advocates signed the Settlement.

It is unconscionable to bill low-income consumers more for electricity (and run up their debt) compared to standard offer consumers. It's also unlawful to do that under R.C. 4928.542. That statute was enacted to prevent PIPP billings for low-income Ohioans (and charges to all other Ohioans who fund PIPP) from exceeding the electric utilities' standard offers. The statute has a stated requirement for reducing costs and creating the "best value" for consumers. The statute does not allow for accepting a result where energy marketers' prices exceed the standard offers.

For energy justice, the PUCO must protect low-income Ohioans (electric PIPP consumers) from being billed more than the standard offers.² And the PUCO must protect all Ohio consumers who are billed to fund the electric PIPP program through the USF charge on their electric bills.³

² OCC Initial Brief at 2; OCC Ex. 1 (Testimony Recommending Consumer Protections Instead of the ODOD/Electric Utilities'/Industrial Groups Settlement by James D. Williams) at 27 (August 19, 2022).

³ See, OCC Initial Brief at 13-22.

The PUCO should remedy this situation as recommended by OCC in its Initial Brief.⁴ That is, ODOD should use the standard service offer rate for each electric utility—and not the higher PIPP auction rate—for calculating the USF rider rate that will be charged to all customers effective January 2023.⁵

Further, to protect current consumers participating in Ohio’s PIPP program between June 1, 2022 and May 31, 2023, ODOD and the PUCO should take the actions necessary to comply with Ohio law. This includes requiring the electric distribution utilities to make adjustments to PIPP billing or accounts for amounts that are paid to the electric utilities from the USF according to the USF rules for any amounts that resulted from the PIPP customers being charged the nonsensical SSO auction results.

⁴ *See*, OCC Initial Brief at 19-22.

⁵ *Id.*

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I. INTRODUCTION

The USF rider is the funding mechanism for providing electric bill payment assistance through a Percentage of Income Payment Plan (“PIPP”) program. The program is for qualified low-income Ohioans who are served by the Ohio electric distribution utilities. As OCC pointed out in its Initial Brief, “PIPP is a payment plan for some of the most impoverished residential utility consumers in Ohio. PIPP customers are billed and held responsible for the total cost of their actual electric usage the same as non-PIPP residential consumers.”⁶ This is because, while their monthly bills are limited to a fixed percentage of their household income, credits that reduce or eliminate the arrearages (debt) are only made if the payment is made in full and on-time.⁷

⁶ OCC Initial Brief at 11, quoting OCC Ex. 1 (Testimony of James D. Williams) at 14.

⁷ *Id.*

The USF that funds the PIPP program is administered by ODOD. But the costs are paid by all electric utility consumers (including electric PIPP customers) through the USF rider approved by the PUCO on customers' monthly electric bills.

Many of the Consumer Advocates' clients participate in the PIPP program, and more are expected to participate this year. Eligibility for PIPP has traditionally been limited to households with incomes below 150 percent of the federal poverty guidelines ("FPG"). However, recent changes, through the Governor's Executive Order 2022-12D, have the expanded electric PIPP eligibility.⁸ However, Governor DeWine's recent well-intentioned PIPP eligibility expansion is unfortunately being undermined by the nonsensical and unconscionable prices for electricity in the electric PIPP program. That's because newly enrolled low-income PIPP consumers under the Governor's Executive Order could likely end up being billed more money for electric generation than if they instead used the utilities' standard service offers without PIPP enrollment.

Under the Settlement, PIPP consumers are currently being charged higher generation rates than the rates that are charged for residential consumers served under each utility's standard service offer. The Settlement makes no mention of the fact that PIPP consumers are being charged higher rates than non-PIPP consumers. Under the policy of Ohio in R.C. 4928.02(L), the PUCO and ODOD must "protect at-risk populations...." PIPP consumers are an at-risk population.

For reasons explained, the Settlement fails to protect this at-risk population. *The Settlement harms this at-risk population, with higher charges and increased debt.* And all

⁸ <https://governor.ohio.gov/media/news-and-media/governor-dewine-announces-expanded-eligibility-for-utility-assistance-program-07272022>.

other Ohio electric consumers are harmed; not only PIPP consumers. This is because the difference between the actual electric bill and the PIPP customer payment is paid by all consumers through the USF rider.

The PUCO should remedy this situation as recommended by OCC in its Initial Brief.⁹ That is, ODOD should use the standard service offer rate for each electric utility—and not the higher PIPP auction rate—for calculating the USF rider rate that will be charged to all customers effective January 2023.¹⁰

Further, to protect current consumers participating in Ohio’s PIPP program between June 1, 2022 and May 31, 2023, ODOD and the PUCO should take the actions necessary to comply with Ohio law. This includes requiring the electric distribution utilities to make adjustments to PIPP billing or accounts for any amounts that resulted from the PIPP customers being charged more than the standard service auction rate.

II. LAW AND ARGUMENT

The Settlement, if approved, will result in ODOD filing USF rates this year that violate Ohio law. The law requires the PIPP auction process to comply with certain requirements. The law prescribes specific requirements for the selection of a winning bid or bids selected through the competitive procurement process. Those requirements are in R.C. 4928.542.

First, a winning bid must be designed to provide a reliable electricity supplier to PIPP customers.¹¹ Second, a winning bid shall reduce the cost of the PIPP program

⁹ *See*, OCC Initial Brief at 19-22.

¹⁰ *Id.*

¹¹ R.C. 4928.542(A).

relative to the otherwise applicable standard service offer rate established under R.C. 4928.141, 4928.142 and 4928.143.¹² Third, a winning bid shall result in the “best value” for persons paying the universal service rider under R.C. 4928.52.¹³

The PIPP auction process did not comply with this statute. Now, under the Settlement, PIPP customers are currently being charged higher generation rates than the generation rates that are charged for residential consumers served under each utility’s standard service offer. Not only does this result not make any sense, and is unfair to our clients, but it is unlawful. The Settlement violates the three-part test that the PUCO uses to evaluate Settlements and should be rejected.

A. The PUCO should reject the Settlement given the lack of serious bargaining and lack of diversity among those who signed it.

As OCC points out in its Initial Brief, especially in this case affecting at-risk Ohioans, the PUCO should consider diversity of interests in the Settlement.¹⁴ ODOD claims in testimony that the signatory parties represent a “wide range of interests.”¹⁵ But in fact, the Settlement lacks diverse interests, as no party that provides legal representation for residential consumers signed the Settlement.

The signers of the Settlement lack a diversity of interests. No residential consumer representative of PIPP consumers, such as OCC, signed the Settlement (and for good reason). OCC is the statutory representative for Ohio residential utility consumers.¹⁶

¹² R.C. 4928.542(B).

¹³ R.C. 4928.542(C).

¹⁴ OCC Initial Brief at 5-6.

¹⁵ OCC Initial Brief at 6.

¹⁶ R.C. Chapter 4911.

The Settlement stipulators, with their limited interests, are not a proxy for those residential consumers (including at-risk Ohioans).

OCC's Initial Brief points out that the Settlement essentially adopts the provisions of the ODOD's application filed on May 27, 2022.¹⁷ Little to no serious bargaining occurred. As OCC witness Williams testified, "The Settlement accepts verbatim the methodology that ODOD proposed to use to calculate the cost of PIPP, the electric partnership program, administrative costs, the treatment of December 31, 2022 PIPP balances, reserves, allowances for under collections, audit costs, USF interest offsets, the rate design methodology, and the aggregation of PIPP customers."¹⁸

The Settlement is not the product of serious bargaining and lacks diversity of interests. It fails the first settlement standard, and the PUCO should reject the Settlement.

B. The PUCO should reject or modify the Settlement because higher PIPP rates do not benefit consumers or the public interest; indeed, the higher PIPP rates are harmful to consumers and the public interest.

Under the Settlement, PIPP customers are currently being charged higher generation rates than the rates that are charged for residential consumers served under each utility's standard service offer. But under the policy of Ohio in R.C. 4928.02(L), the PUCO and ODOD must "protect at-risk populations...." PIPP consumers are an at-risk population.

As OCC explains in its Initial Brief, the Settlement fails to protect this at-risk population.¹⁹ *The Settlement harms this at-risk population, with higher charges and*

¹⁷ OCC Initial Brief at 6-7.

¹⁸ *Id.*

¹⁹ *See*, OCC Initial Brief at 8-13.

increased debt. The Settlement thus fails to show that it benefits consumers and the public interest. The PUCO should reject the Settlement.

In addition, the policy in R.C. 4928.02(A) requires “reasonably priced retail electric service.” Consumers and the public interest are harmed by unreasonably priced retail electric service, but that is what PIPP consumers are getting.²⁰ The Settlement thus fails this prong. The PUCO should reject the Settlement.

OCC’s Initial Brief points out the comparison between “what the PUCO has authorized each electric utility through their tariffs to charge standard offer consumers per kWh and the rates that the PUCO has authorized PIPP customers to be charged for generation services.”²¹ OCC Exhibit 1A, attached, shows the monthly additional charge to a PIPP customer and the USF. The table demonstrates that across each of the electric utilities, PIPP generation rates are significantly higher than the rates charged to standard offer consumers.²²

And, importantly, all other Ohio electric consumers are harmed, and not only PIPP consumers. That is because the difference between the actual electric bill and the PIPP customer payment is paid by all consumers through the USF rider. As pointed out in OCC’s Initial Brief, “PIPP rates that exceed the SSO rates for generation are an unreasonable additional cost on the USF that all customers (including PIPP consumers) are responsible for paying. And the burden on all consumers is even greater when and if PIPP customers are unable to pay their total electric bill.”²³

²⁰ OCC Initial Brief at 8.

²¹ *Id.* at 8-9.

²² OCC Initial Brief at 8-9; OCC Ex. 1 (Testimony of James D. Williams) at 20-21.

²³ OCC Initial Brief at 9 quoting OCC Ex. 1 (Testimony of James D. Williams) at 20-21.

OCC's Table 1 from its Initial Brief²⁴ shows that for the period June 1, 2022 through May 31, 2023, under the Settlement, PIPP consumers will be billed varying annual amounts ranging from \$330 - \$1289 *in excess* of the utilities' standard offers.²⁵ Consumer Advocates agree with OCC that these are unconscionable and unlawful additional charges *and debt* for consumers who lack the money to get out of debt. (PIPP consumers pay a percentage of their electricity charges and what they don't pay becomes debt.)

²⁴ OCC Initial Brief at 10, "Table 1: Annual Estimated Excess Electricity Charges to an Individual PIPP Consumer Above the Utilities' Standard Offers."

²⁵ *See*, OCC Initial Brief at 9-11.

**Table 1: Annual Estimated Excess Electricity Charges to an Individual PIPP
Consumer Above the Utilities' Standard Offers²⁶**

Utility	Higher Rate Increment	Monthly Excess Charge at 1,100 kWh	Total Months	Subtotal	Annual Total Excess Charge
		1100			
Ohio Power (AEP Ohio)	\$0.087450	\$96.20	12	\$1,154.40	\$1,154.40
AES (Summer)	\$0.048600	\$53.46	5	\$267.32	
AES (Winter)	\$0.041070	\$45.18	7	\$316.24	\$583.54
Duke (Summer) up to 1,000 kWh	\$0.099869	\$109.85	4	\$439.40	
Duke (Winter) up to 1,000 kWh	\$0.099869	\$99.87	8	\$798.95	
Duke (winter) above 1,000 kWh	\$0.063439	\$6.34	8	\$50.75	\$1,289.10
CEI (Summer)	\$0.018680	\$20.54	3	\$61.62	
CEI (Winter)	\$0.027503	\$30.25	9	\$272.28	\$333.90
OE (Summer)	\$0.019065	\$20.97	3	\$62.91	
OE (Winter)	\$0.027887	\$30.67	9	\$276.03	\$338.94
TE (Summer)	\$0.018413	\$20.25	3	\$60.76	
TE (Winter)	\$0.027235	\$29.95	9	\$269.55	\$330.31

²⁶ See, OCC Initial Brief at 10; Table 1 data derived from OCC Ex. 1A.

Under R.C. 4928.542(B), an energy marketer's winning bid shall *reduce* the cost of the PIPP program relative to the otherwise applicable standard service offer rate established under R.C. 4928.141, 4928.142 and 4928.143. And a winning bid shall result in the *best value* for persons paying the universal service rider, under R.C. 4928.52.²⁷

This cost reduction and best value, *required by law*, are clearly not occurring for consumers given how the ODOD/PUCO process has allowed the bidding by energy marketers to produce an unlawful result. That result is detrimental (not beneficial) to PIPP consumers and to all consumers who pay the USF rider. It's contrary to the public interest.

As OCC's Initial Brief points out, "PIPP is a payment plan for some of the most impoverished residential utility consumers in Ohio. PIPP customers are billed and held responsible for the total cost of their actual electric usage the same as non-PIPP residential consumers."²⁸ This is because, while their monthly bills are limited to a fixed percentage of their household income, credits that reduce or eliminate the arrearages (debt) are only made if the payment is made in-full and on-time. The amount of individual PIPP arrearages (debt) increases as electric bills increase due to the higher PIPP rates. PIPP customers are responsible for paying a higher generation price than non-PIPP consumers and, in turn, increasing their PIPP arrearage.²⁹

²⁷ (Emphasis added). Also, a winning bid must be designed to provide a reliable electricity supplier to PIPP customers, per R.C. 4928.542.

²⁸ OCC Initial Brief at 11 quoting OCC Ex. 1 (Testimony of James D. Williams) at 14.

²⁹ *Id.*

PIPP consumers who owe for their arrearages (debt) have more than enough existing problems for getting out from under their debt. Consumer Advocates are concerned that if the PUCO adopts the Settlement, things could get worse.

This outcome harms consumers and the public interest in multiple ways, as described. The Settlement fails the second settlement standard. It should be rejected.

C. The PUCO should reject or modify the Settlement because it violates regulatory principles and practices, including that it violates Ohio law requiring that PIPP rates be reduced in relation to the standard service offer and that consumers receive the “best value.”

As OCC points out in its Initial Brief, the Settlement, if approved, will result in ODOD filing USF rates this year that violate Ohio law.³⁰ The law supports the aggregation of PIPP customers for the purpose of establishing a competitive procurement process (involving energy marketers) for the supply of electricity for these customers and for that process to be an auction.³¹

But the law prescribes specific requirements for the selection of a winning bid or bids selected through the competitive procurement process. Those requirements are in R.C. 4928.542. The requirements are not optional.

First, a winning bid must be designed to provide a reliable electricity supplier to PIPP customers.³² Second, a winning bid shall reduce the cost of the PIPP program relative to the otherwise applicable standard service offer rate established under R.C.

³⁰ See, OCC Initial Brief at 13-19.

³¹ R.C. 4928.54.

³² R.C. 4928.542(A).

4928.141, 4928.142 and 4928.143.³³ Third, a winning bid shall result in the “best value” for persons paying the universal service rider under R.C. 4928.52.³⁴

The law requires the PIPP auction process to comply with each of these requirements. Instead, this year’s PIPP auctions for all of the electric distribution utilities violate R.C. 4928.542(B), which requires that the PIPP auction process reduce the cost of the percentage of income payment plan program relative to the standard service offer.

Unfortunately, as explained by OCC, for PIPP consumers and those consumers who fund PIPP, ODOD and the PUCO are failing to require compliance with the law. R.C. 4928.542 explicitly requires the competitive procurement process to reduce the cost of PIPP relative to the otherwise applicable standard service offer. It is within the discretion of the ODOD director to handle the PIPP auctions in a way that doesn’t result in increased charges to PIPP consumers in excess of standard offer consumers.³⁵

The independent PIPP auction has yielded mixed results (sometimes benefiting PIPP consumers as required by law) over the years. But this spring’s auctions have resulted in significant overcharges to all PIPP consumers.³⁶ The Ohio legislature determined that at-risk, low-income PIPP consumers cannot lawfully be billed higher generation rates on a per-kWh basis than non-PIPP consumers served under the standard service offer, per R.C. 4928.542. Yet, that is precisely the situation in which PIPP consumers are finding themselves.

³³ R.C. 4928.542(B).

³⁴ R.C. 4928.542(C).

³⁵ See, *In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC, Finding and Order (March 2, 2016).

³⁶ See, OCC Initial Brief at 16-17; See, e.g., *In the Matter of the Procurement of Percentage of Income Payment Plan Customers of Dayton Power and Light Company*, Case No. 17-1163-EL-UNC, Notification of CBP Auction Results filed on May 25, 2022 and May 26, 2021.

Consumer Advocates note Ohio policy (R.C. 4928.02(L)), that the PUCO and ODOD must “protect at-risk populations.” PIPP consumers are an at-risk population. By sanctioning high PIPP generation rates in relation to the standard service offer, the Settlement fails to protect this at-risk population.

Also, charging PIPP consumers rates that exceed the rate non-PIPP consumers are being charged for electricity violates Ohio policy that consumers must be treated equitably. Under R.C. 4928.02(A), service must be “nondiscriminatory.” Additionally, the policy in R.C. 4928.02(A) requires “reasonably priced retail electric service.” As OCC witness Williams pointed out, “Customers and the public interest would not be benefited by unreasonably priced retail electric service, but that is what PIPP consumers are getting.”³⁷ And the PIPP rates are unreasonably priced retail service considering the lower rates that non-PIPP residential consumers are charged under the standard service offer. These higher charges for PIPP customers thus violate Ohio regulatory policy and principles.

Another regulatory principle is violated as a result of the Settlement. Under Ohio law, consumers are entitled to nondiscriminatory and reasonably priced retail electric service.³⁸ Consumers are also entitled to understandable pricing and terms and conditions of service.³⁹ Regulation should enable consumer understanding of their services.⁴⁰ Unfortunately, newly eligible PIPP consumers under the Governor’s (well-intended) expansion of PIPP eligibility are not likely to understand that PIPP enrollment could

³⁷ OCC Initial Brief at 17, quoting OCC Ex. 1 (Testimony of James D. Williams) at 14.

³⁸ R.C. 4928.02(A).

³⁹ R.C. 4928.10.

⁴⁰ See, R.C. 4928.10; R.C. 4928.02 and Rule 4901-1-10-12; 4901:1-10-24.

significantly increase their debt. (As stated, the debt increase is due to higher electricity prices compared to rates they otherwise would have been charged on the standard offer.) As pointed out in OCC's Initial Brief, "[N]ewly enrolled low-income PIPP consumers under the Governor's Executive Order could likely end up being billed more money for electric generation than if they instead used the utilities' standard service offers without PIPP enrollment."⁴¹

Our clients—as would any consumer—will have difficulty understanding their risk of higher electricity charges because it is counter-intuitive and illogical that signing up for government assistance will cost them more than if they decline assistance. Thus, this principle for consumer understanding is violated.

The Settlement fails the third Settlement prong because it violates regulatory principles and practices. The PUCO should reject or modify the Settlement.

D. The PUCO should require that in its upcoming filing ODOD calculate the USF rates for supporting the electric PIPP program based on the 2022 standard service offer rate and not the 2022 PIPP auction rate.

As OCC points out, higher rates for PIPP consumers than for other consumers harms consumers, is not in the public interest, and violates regulatory principles and practices. The proposed Settlement, by allowing the current PIPP-only auction to continue and to bill PIPP customers in excess of standard-offer rates, harms consumers, violates the public interest, and violates regulatory principles and practices.⁴²

The Settlement adopts a PIPP aggregation process. As pointed out by OCC, a better process needs to be established going forward. In the upcoming USF rate case

⁴¹ OCC Initial Brief at 18 quoting OCC Ex. 1 (Testimony of James D. Williams) at 7.

⁴² OCC Initial Brief at 5-19.

filing, PIPP consumers should be billed no more than the standard-offer prices for non-PIPP consumers, as required by law.⁴³

Any future competitive procurement processes for the supply of electricity to serve PIPP consumers should in fact result in the “best value” for persons paying for the USF rider. At a minimum, PIPP consumers should not be charged higher generation rates on a kWh basis than non-PIPP consumers on the standard offer.

Consumer Advocates support OCC’s recommendations to protect consumers. To protect current consumers participating in Ohio’s PIPP program between June 1, 2022 and May 31, 2023, ODOD and the PUCO should take the actions necessary to comply with Ohio law.⁴⁴ Protecting consumers includes requiring the electric distribution utilities to make adjustments to PIPP billing or accounts for amounts that are paid to the electric utilities from the USF. This would be done according to the USF rules for any amounts that resulted from the PIPP customers being charged the nonsensical auction results. Electric distribution utilities should not be authorized to collect from consumers any of the adjustment costs that are made to the customer billing and accounts as described above.⁴⁵

In addition, Consumer Advocates support OCC’s recommendation that the PUCO require ODOD to help mitigate the impact of the significant increases in the USF rates

⁴³ OCC Initial Brief at 19.

⁴⁴ OCC Initial Brief at 19-22.

⁴⁵ OCC Initial Brief at 20-21; *see*, OCC Ex. 1 (Testimony of James D. Williams) at 28.

this coming year that can be attributed to the higher-than-SSO PIPP rates.⁴⁶ ODOD should invite comment on the following options:⁴⁷

- Increasing the amount of Home Energy Assistance Program (HEAP) and/or other available grant funding for electric PIPP customers to help reduce arrearages and the costs of the USF;
- Scaling back the amount collected under the USF for the Electric Partnership Program (“EPP”) to increase the amount of USF funds that are available to offset the higher costs of PIPP;
- Reducing the low-income program administrative costs that are funded under the USF based on the availability of other state or federal grant funds;
- Evaluating if improvements can be made through grants with community action agencies to help streamline assistance that consumers may need because of the high PIPP rates; and
- Using more HEAP funds (than planned) on bill-payment assistance. This would be instead of home weatherization, in order to provide some help toward averting what may become a financial crisis of increased debt burden for many PIPP consumers. Bill payment assistance will assist these consumers who already are facing housing and food insecurity, inflation, and higher prices for other energy in addition to a resurging pandemic.

⁴⁶ OCC Initial Brief at 21.

⁴⁷ OCC Initial Brief at 21-22.

III. CONCLUSION

As pointed out in OCC's Initial Brief, the Settlement does not pass the PUCO's three-part test for evaluating settlements. The Settlement lacks serious bargaining and a diversity of interests by virtue of it not being signed by a legal representative of Ohio's residential utility consumers including PIPP consumers. The Settlement harms consumers and is not in the public interest because low-income PIPP consumers are being billed rates higher than the standard service offer, and USF charges are increased to all consumers. And the Settlement violates regulatory principles by, among other things, sanctioning higher PIPP electricity (generation) rates than the standard service offer. That is a violation of Ohio law.

Consumer Advocates recommend that the PUCO protect consumers by rejecting or modifying the Settlement, consistent with OCC's consumer-protection recommendations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Leave to File, *Instante*, an *Amici Curiae* Brief in Support of the Office of the Ohio Consumers' Counsel's Post-Hearing Brief for Consumer Protection was served on the persons stated below via electronic transmission, this 23rd day of September 2022.

/s/ Susan Jagers

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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*Testimony in Opposition to the Settlement by James D. Williams
On Behalf of Office of the Ohio Consumers' Counsel
PUCO Case No. 22-556-EL-USF*

Table 1: Electric Standard Service Offer Rates Compared to PIPP Rates

Utility	SSO Generation Rate (\$/ kWh)	PIPP Generation Rate (\$/ kWh)	Difference (\$/ kWh)	1,100 kWh ²⁸ Usage at the SSO Rate Costs:	1,100 kWh Usage at the PIPP Rate Costs:	Monthly Additional Charge to a PIPP Customer and the USF
Ohio Power ²⁹	\$0.06622	\$0.15367	\$0.08745	\$72.84	\$169.04	\$96.20
AES Summer ³⁰	\$0.1091	\$0.1577	\$0.0486	\$120.01	\$173.47	\$53.46
AES Winter	\$0.09233	\$0.1334	\$0.04107	\$101.56	\$146.74	\$45.18
Ohio Edison Summer ³¹	\$0.065166	\$0.084231	\$0.019065	\$71.68	\$92.65	\$20.97
Ohio Edison Winter	\$0.056344	\$0.084231	\$0.027887	\$61.98	\$92.65	\$30.67
Cleveland Electric Illuminating Summer ³²	\$0.06555	\$0.084231	\$0.01868	\$72.11	\$92.65	\$20.54
Cleveland Electric Illuminating Winter	\$0.056728	\$0.084231	\$0.027503	\$62.40	\$92.65	\$30.25
Toledo Edison ³³ Summer	\$0.065818	\$0.084231	\$0.018413	\$72.40	\$92.65	\$20.25
Toledo Edison Winter	\$0.056996	\$0.084231	\$0.027235	\$62.70	\$92.65	\$29.95
Duke Summer ³⁴	\$0.064832	\$0.164701	\$0.099869	\$71.32	\$181.17	\$109.85
Duke Winter<1000kWh	\$0.064832	\$0.164701	\$0.099869	\$64.83	\$164.70	\$99.87
Duke Winter >1000kWh/kWh	<u>\$0.04183</u>	<u>\$0.10462</u>	<u>\$0.06279</u>	<u>\$4.12</u>	<u>\$10.46</u>	<u>\$6.34</u>

²⁸ Average PIPP usage based on the PIPP Monthly Reports.

²⁹ Ohio Power Tariff, Generation Capacity Rider and Generation Energy Rider, PUCO No. 21, Sheet(s) 450-1 and 451-1.

³⁰ AES Ohio Tariff, Generation Standard Offer, PUCO No.17, Twenty-Third Revised Sheet G-10.

³¹ Ohio Edison Tariff, Generation Services Rider, PUCO No. 11, Sheet 114.

³² Cleveland Electric Illuminating Tariff, Generation Services Rider, PUCO No. 13, Sheet 114.

³³ Toledo Edison Tariff, Generation Service Rider, PUCO No. 8, Sheet 114.

³⁴ Duke Tariff, Retail Capacity Rider and Retail Energy Rider, PUCO Electric No. 19, Sheet(s) 111 and 112.

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Case No(s). 22-0556-EL-USF

Summary: Motion Motion for Leave to File, Instantter, an Amici Curiae Brief in Support of the Office of the Ohio Consumers' Counsel's Post-Hearing Brief for Consumer Protection by Advocates for Basic Legal Equality, Inc., Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, LLC, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services electronically filed by Mrs. Tracy J. Greene on behalf of Jagers, Susan