

**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)	Case No. 22-556-EL-USF
Universal Service Fund Riders of)	
Jurisdictional Ohio Electric Distribution)	
Utilities.)	

**REPLY BRIEF FOR CONSUMER PROTECTION
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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September 23, 2022

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I. INTRODUCTION

The PUCO should protect consumers by rejecting or modifying ODOD's Settlement with the utilities and industrial customers. The current Percentage of Income Payment Plan ("PIPP") pricing for the year beginning June 1, 2022—which charges low-income PIPP consumers more than the electric standard offers for non-low-income people—is nonsensical, unlawful, unjust, and contrary to energy justice for at-risk Ohioans. It is harmful to PIPP customers and to all residential consumers who are paying the Universal Service Fund rider.

It is unconscionable to bill low-income (PIPP) consumers more for electricity (and potentially run up their debt) compared to standard-offer consumers. It is also unlawful to do this under R.C. 4928.542. That statute was enacted to prevent PIPP billings for low-income Ohioans (and charges to all other Ohioans to 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

ODOD and the PUCO to accept a result where energy marketers' prices exceed the standard offers.

R.C. 4928.542 addresses the requirements of the winning percentage of income payment plan bid selected through the competitive procurement process. The winning bid is specifically required to reduce the cost of the PIPP program relative to the otherwise applicable SSO. Despite the PUCO's conclusion in its recent AES auction order,¹ the statute's mandatory language does not suggest that this reduction is permissible to occur "over the long term."² Rather, the statute states that the winning bid "shall meet all of the following requirements" for every competitive procurement process. That is, that the PIPP rate shall result in the best value for the persons paying the universal service rider³ and that it shall reduce the cost of the percentage of income payment plan program relative to the otherwise applicable standard service offer⁴ --not over the long term, but every time. For energy justice, the PUCO must protect low-income Ohioans (electric PIPP consumers) from being billed more than the standard offers.⁵ And the PUCO must protect all Ohio consumers who are billed to fund the electric PIPP program through the Universal Service Fund ("USF") charge on their electric bills.⁶

¹ See, *In the Matter of the Procurement of Standard Service Offer Generation for Customers of the Dayton Power and Light Company*, Case No. 17-957-EL-UNC (September 21, 2022).

² *Id.*

³ R.C. 4928.542(C).

⁴ R.C. 4928.542 (B).

⁵ See, OCC Brief at 2, 13-19; Tr. at 85; OCC Ex. 1 at 27.

⁶ See, OCC Brief at 2; 19-22; See, OCC Ex. 1 and OCC Ex. 1A, Testimony Recommending Consumer Protections Instead of the ODOD/Electric Utilities'/Industrial Groups Settlement by James D. Williams (August 19, 2022) at 3-4.

For purposes of the upcoming Universal Service Fund (“USF”) rider rate application (that ODOD will file in October 2022), this means the following: 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 2023.⁷ The Settlement proposed by the ODOD and various parties should be rejected or modified.

II. REPLY

Other than the Post-Hearing Brief of the Office of the Ohio Consumers’ Counsel (“OCC”),⁸ none of the five initial briefs filed in this case⁹ address this nonsensical, unlawful, and unjust situation where PIPP consumers are being billed more for electricity than the non-low-income electric standard offers. Their position appears to be that ODOD is required to aggregate PIPP consumers, and since the process as established in the RFP Auction Order has been followed, the chips should just fall where they may.

The parties’ arguments in support of the Settlement are without merit because the Settlement fails the three-prong test. On its face, the idea that it is somehow in the public interest to charge PIPP customers higher generation rates than the rates that are charged for residential consumers served under each utility’s standard service offer doesn’t make sense.

Under the PUCO’s standards for approving settlements, the Settlement should be rejected and modified so that it will produce a result that protects at-risk Ohioans in the

⁷ *Id.*

⁸ Post Hearing Brief for Consumer Protection by Office of the Ohio Consumers’ Counsel (September 12, 2022) (“OCC Brief”).

⁹ Initial Briefs were filed by AES, AEP, Duke, ODOD and IEU.

PIPP program and protects other Ohioans who are paying the Universal Service Fund rider.

A. The EDUs and ODOD are wrong in their claims that the Settlement shows that serious bargaining occurred and that it represents a diversity of interests for meeting the first prong of the PUCO's settlement standard.

AEP¹⁰ and Duke¹¹ claim that because the Settlement reflects a resolution of the FirstEnergy Companies' objection regarding the reserve component, serious bargaining occurred. However, FirstEnergy's specific objection regarding the reserve component was identical to its objection made in at least the two previous years' USF Notice of Intent (NOI) applications.¹² The objection was not unexpected, not opposed, and accepted immediately in ODOD's response to Objections.¹³ With this one edit, as ODOD explained, the Settlement recommends that the PUCO "adopt the same rate design methodology that it has approved since 2001, and also recommends that the PUCO adopt nearly the same revenue requirement methodology."¹⁴

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

¹⁰ Initial Brief of Ohio Power Company ("AEP Brief") (September 12, 2022) at 4.

¹¹ Initial Post-Hearing Brief of Duke Energy Ohio, Inc. ("Duke Brief") (September 12, 2022) at 11.

¹² See, Case Nos. 21-659-EL-USF and 20-1103-EL-USF.

¹³ Response of ODOD to Objections to the Notice of Intent (July 14, 2022).

¹⁴ Direct Testimony of Megan Meadows at 4; See also Duke Brief at 10.

costs, USF interest offsets, the rate design methodology, and the aggregation of PIPP customers.”¹⁵

The Settlement makes no mention of the fact that PIPP consumers are being charged higher rates than non-PIPP consumers. The Settlement does not address or even mention the issues that were raised in OCC’s July 6, 2022 Comments. There OCC expressed concern over the nonsensical and unlawful higher generation charges for low-income consumers¹⁶.

Not only was there no serious bargaining, but the Settlement was not signed by parties representing diverse interests. Especially in a case like this one affecting at-risk Ohioans, the PUCO should consider diversity of interests in the Settlement. ODOD claims that the signatory parties represent a “diversity of interests.”¹⁷ But in fact, the Settlement lacks diverse interests, as no party that provides legal representation for residential consumers signed the Settlement.

OCC is the only party to this proceeding who advocates solely on behalf of the residential consumers enrolled in the PIPP program. Also, only OCC advocates solely on behalf of the residential consumers who are required to pay the USF rider on their electric bill.

Contrary to AES’ claim¹⁸ (and witness Meadow’s testimony on the stand),¹⁹ ODOD does not represent the interests of residential USF consumers. As ODOD clarified

¹⁵ OCC Brief at 7; OCC Ex. 1 (Testimony of James D. Williams) at 10.

¹⁶ OCC Brief at 7; *see also* OCC Ex. 2, Consumer Protection Comments by Office of the Ohio Consumers’ Counsel (“OCC Comments”) (July 6, 2022).

¹⁷ Ohio Department of Development’s Initial Brief (“ODOD Brief”) (September 12, 2022) at 4.

¹⁸ Initial Post-Hearing Brief of AES Ohio (“AES Brief”) (September 12, 2022) at 4.

¹⁹ Tr. at 16.

in its brief, ODOD “represents the interests of all customers (residential, commercial, and industrial) who pay the USF rider.”²⁰

ODOD administers low-income assistance programs (R.C. 4928.53). It represents PIPP customers only to the extent that ODOD ensures that the USF rates be the minimum necessary to support the PIPP program that it administers.²¹ ODOD as the administrator of low-income programs cannot legitimately represent the same customers who will be impacted by the increase in USF rates associated with the administration of low-income programs (as ODOD appears to recognize in its brief).²² And in fact, ODOD is completely indifferent to the costs associated with administering low-income programs.²³

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

Despite the parties’ arguments to the contrary, the Settlement lacks serious bargaining and diversity of interests and fails the first prong. The PUCO should reject the Settlement.

²⁰ ODOD Brief at 4.

²¹ *Id.*

²² *Id.*

²³ Tr. 16-17, 34, 38, 59-60.

B. The Settlement does not benefit consumers or the public interest because of the harm to consumers under the Settlement.

ODOD,²⁴ AES,²⁵ AEP²⁶ and Duke²⁷ claim that the Settlement benefits consumers and the public interest because the methodologies that were adopted were approved in previous proceedings. They assert that the methodologies adopted will result in USF rider rates that represent the minimal rates necessary to collect the EDUs' USF rider revenue requirements.²⁸

Notwithstanding these claims made on brief, on the stand, ODOD's witness admitted not knowing of studies being conducted by ODOD that would determine if electric aggregation is resulting in the "substantial savings."²⁹ Yet this is a requirement under the ODOD rules and Ohio law.³⁰ Contrary to ODOD's assertion,³¹ ODOD rule 122:5-3-06 is a viable rule³² that requires the director to determine if aggregating PIPP customers is feasible and whether substantial savings for the PIPP program can be realized.

Alternatives recommended to achieve minimal rates required under the ODOD rule include adjusting PIPP customer billing to the SSO rates, streamlining administrative costs, reducing EPP spending, and allocating more federal HEAP dollars towards bill

²⁴ ODOD Brief at 9.

²⁵ AES Brief at 4.

²⁶ AEP Brief at 5.

²⁷ Duke Brief at 12.

²⁸ *See, e.g.*, ODOD Brief at 9, Duke Brief at 12, AEP Brief at 5.

²⁹ Tr. 16-17, 34, 38, 59-60.

³⁰ Tr. at 34, 38, 59-60.

³¹ ODOD Brief at 7-8.

³² O.A.C. 122:5-3-06 was last updated with no changes just last year, September 7, 2021.

payment assistance for PIPP consumers.³³ These alternative pathways to achieving minimal rates do not seem to have been considered.

Reduced rates for PIPP in relation to the standard offer and the best value for persons paying the universal service rider are not occurring, and thus Ohio law is violated.³⁴ 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.

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. The Settlement fails to protect this at-risk population. *The Settlement harms this at-risk population, with higher charges and increased debt.* The Settlement thus fails this prong requiring that the Settlement benefit customers and the public interest. The PUCO should reject the Settlement.

In addition, the state 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.³⁵ The Settlement thus fails this prong. The PUCO should reject the Settlement.

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. According to ODOD's Notice of Intent,³⁶ the cost of the PIPP component of the USF rider revenue requirement is based

³³ OCC Ex. 1 (Testimony of James D. Williams) at 28; OCC Brief at 21-22.

³⁴ R.C. 4928.542.

³⁵ OCC Brief at 8; OCC Ex. 1 (Testimony of James D. Williams) at 14.

³⁶ Development Ex. 1.

in part on the total cost of electricity consumed by PIPP customers less the total PIPP installment payment made by the PIPP customer.³⁷ Therefore, as OCC witness Williams testified, “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.”³⁸

AEP attempts to minimize the impact that the higher-than-standard-offer PIPP rates have on consumers. AEP claims that as long as consumers “meet the terms of their PIPP Plus membership,”³⁹ customers are only required to pay a percentage of their income and the remainder is forgiven. But this is not true.

As OCC witness Williams explained, the PIPP payment compliance requirements are stringent. Customers must make the full PIPP payment in-full and on-time in order to have arrearages forgiven.⁴⁰ OCC witness Williams testified, “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.”⁴¹ 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

³⁷ *Id.* at 3.

³⁸ OCC Brief at 9; OCC Ex. 1 (Testimony of James D. Williams) at 20-21.

³⁹ AEP Brief at 5.

⁴⁰ OCC Brief at 11; OCC Ex. 1 (Testimony of James D. Williams) at 12, 14-15.

⁴¹ OCC Brief at 11; OCC Ex. 1 (Testimony of James D. Williams) at 14.

PIPP rates. Under the current situation, PIPP customers are responsible for paying a higher generation price than non-PIPP consumers and, in turn, increasing their PIPP arrearage.⁴²

Moreover, newly eligible PIPP consumers under the Governor's (well-intended) expansion of PIPP eligibility are not likely to understand that PIPP enrollment could 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.) It is counter-intuitive and illogical that signing up for government assistance will cost the consumer more than if they decline assistance.

Considering that PIPP consumers have some of the lowest household incomes in the state, it is unconscionable that these individuals may need to forego medical attention, food, paying rent or mortgages--all in order to make sure their electric bill is paid in-full and on-time each month to avoid the consequences of the extremely high PIPP rates. For example, non-PIPP AEP Ohio consumers are charged \$0.066222 per kWh⁴³ whereas PIPP customers are charged over twice that amount--\$0.15367 per kWh⁴⁴ --for exactly the same product. PIPP consumers who owe for their arrearages (debt) have more than enough existing problems contributing to getting out from under their debt. This situation worsens their dilemma.

⁴² OCC Brief at 12; OCC Ex. 1 (Testimony of James D. Williams) at 12, 14-15.

⁴³ Ohio Power Tariff, Generation Capacity Rider and Generation Energy Rider, PUCO No. 21, Sheet(s) 450-1 and 451-1. *See*, OCC Exhibit 1A, attached.

⁴⁴ *Id.*

The excess charges to consumers served under the PIPP program as compared to SSO consumers on an annual basis was shown in OCC's Initial Brief.⁴⁵ The chart was derived from the data in OCC Exhibit 1A, attached, which no party disputed at hearing or in briefs. Specifically, estimates are that the annual electricity billings for an individual low-income PIPP consumer (for the year ending May 31, 2023) will exceed the standard offers by approximately \$1,289 for Duke PIPP consumers, \$1,154 for AEP PIPP consumers, \$584 for AES PIPP consumers, \$339 for Ohio Edison PIPP consumers, \$334 for CEI PIPP consumers, and \$331 for Toledo Edison PIPP consumers.⁴⁶

This outcome harms consumers and the public interest in multiple ways, as described. The Settlement fails the second settlement standard. It should be rejected. Moreover, as OCC Williams testified, "the magnitude of the actual increase will not be known until ODOD files its application to increase USF rates in October 2022."⁴⁷ None of the parties, either at hearing or in briefs, has commented on this abysmal situation which harms consumers and is not in the public interest.

C. Contrary to claims of ODOD and the EDUs, the Settlement 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 the consumers receive the "best value."

The Settlement, if approved, will result in ODOD filing USF rates this year that violate Ohio law. The rates would violate state policy in R.C. 4928.02(L) and R.C. 4928.02(A), discussed earlier, and specifically violates the directives for serving PIPP consumers as laid out in R.C. 4928.542. Under R.C. 4928.542, an energy marketer's

⁴⁵ See, OCC Brief at 10, Table 1: Annual Estimated Excess Electricity Charges to an Individual PIPP Consumer Above the Utilities Standard Offers.

⁴⁶ *Id.*

⁴⁷ OCC Ex. 1 (Testimony of James D. Williams) at 21.

winning bid must first be designed to provide a reliable electricity supply to PIPP customers.⁴⁸

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. 4928.141, 4928.142 and 4928.143.⁴⁹ Third, a winning bid shall result in the “best value” for persons paying the universal service rider under R.C. 4928.52.⁵⁰

Thus, 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. 4928.542(C).⁵¹ To be clear, the statute uses the mandatory language “shall”⁵² when referring to both the necessity to reduce the cost of the PIPP program relative to the standard offer, and to a bid resulting in the best value for persons paying the USF rider.

Curiously, AES was the only party in briefs (other than OCC) to mention the requirements of R.C. 4928.542 *at all*.⁵³ However, while AES cites the language of the statute, the utility creatively concludes that this language is not mandatory and “does not guarantee that the PIPP rates will always be lower than their corresponding non-PIPP

⁴⁸ R.C. 4928.542(A).

⁴⁹ R.C. 4928.542(B).

⁵⁰ R.C. 4928.542(C).

⁵¹ Also, a winning bid must be designed to provide a reliable electricity supplier to PIPP customers, per R.C. 4928.542.

⁵² See, e.g., *Miller v. Miller*, 132 Ohio St.3d 424, 2012-Ohio-2928, 973 N.E2d 228, ¶ 28 (2011) (“Ordinarily, the word “shall” is a mandatory one, whereas “may” denotes the granting of discretion”).

⁵³ AES Brief at 5-6.

rates.”⁵⁴ But R.C. 4928.542 contains no discretionary language that enables reducing the cost of PIPP over any given year or long term, or that results in the best value for customers paying the USF to occur over multiple years or sometimes. The statute specifically applies to the requirements for selecting a winning bid or winning bidder at every competitive procurement process.

AES⁵⁵—as well as ODOD⁵⁶ and Duke⁵⁷--argue that under R.C. 4928.54 the director of development is required to aggregate PIPP consumers for the purpose of establishing a competitive procurement process for the supply of competitive retail electric service. Interestingly from Duke’s standpoint, the utility emphasizes the “shall” language in this section but disregards the “shall” language in R.C. 4928.542 requiring that the winning bid reduce the cost of the PIPP program relative to the otherwise applicable standard service offer.⁵⁸

This is also where the PUCO errors in its decision in its recent AES auction order.⁵⁹ There the PUCO concluded that R.C. 4928.54 requires that ODOD shall aggregate percentage of income payment plan program customers for the purpose of establishing competitive retail electric service for those customers.⁶⁰ The PUCO further

⁵⁴ AES Brief at 7-8.

⁵⁵ AES Brief at 5.

⁵⁶ ODOD Brief at 9.

⁵⁷ Duke Brief at 13.

⁵⁸ Duke Brief at 5.

⁵⁹ *In the Matter of the Procurement of Standard Service Offer Generation for Customers of the Dayton Power and Light Company*, Case No. 17-957-EL-UNC (September 21, 2022).

⁶⁰ *Id.* at 5-6.

concluded that this section means that PIPP auctions must be separate from the SSO auctions.⁶¹

But it is a well-established regulatory principle in Ohio that statutes on the same subject matter should be interpreted together, rather than in isolation.⁶² To harmonize related statutes, courts have turned to *in pari materia*, which means “upon the same matter or subject.”⁶³ The maxim of *in pari materia* states that acts will be given full meaning and effect to carry out the legislative intent of the sections if they can be reconciled.⁶⁴

First, all statutes which relate to the same general subject matter must be read *in pari materia*. And, in reading such statutes *in pari materia*, and construing them together, the PUCO must give such a reasonable construction as to give the proper force and effect to each and all such statutes.

*The interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously. This court in the interpretation of related and co-existing statutes must harmonize and give full attention to all such statutes unless they are irreconcilable and in hopeless conflict.*⁶⁵ (Emphasis added)

⁶¹ *Id.*

⁶² *State v. Smith*, Ohio St.3d, 2022-Ohio-274, ¶ 30, quoting *Black's Law Dictionary* 911 (10th Ed. 2014). See *Thomas v. Freeman*, 79 Ohio St.3d 221, 225, 1997- Ohio 395, 680 N.E.2d 997 (1997) (stating that the "maxim of *in pari materia* indicates that acts will be given full meaning and effect if they can be reconciled").

⁶³ *Black's Law Dictionary* at 791; *Ohio Furniture Co. v. Mindala*, 22 Ohio St.3d 99, 101, 488 N.E.2d 881, 883 (1986).

⁶⁴ *Thomas v. Freeman*, 79 Ohio St.3d 221, 225, 1997-Ohio-395, 680 N.E.2d 997 (1997). *State ex. rel O'Neil v. Griffith*, 136 Ohio St. 526, 17 Ohio Op. 160, 27 N.E. 2d 142 (1940).

⁶⁵ *Johnson's Markets Inc. v. New Carlisle Dept. of Health*, 58 Ohio St.3d 28, 35, 567 N.E. 2d 1018 (1991); *Thomas v. Freeman*, 79 Ohio St.3d at 225.

Thus, "[t]he statutory-construction canon of *in pari materia* instructs that statutes relating to the same subject 'be construed together, so that inconsistencies in one statute may be resolved by looking at [the] other statute on the same subject.' " *State v. Smith*, Ohio St.3d, 2022-Ohio-274, ¶ 30, quoting *Black's Law Dictionary* 911 (10th Ed.2014). See *Thomas v. Freeman*, 79 Ohio St.3d 221, 225, 680 N.E.2d 997 (1997) (stating that the "maxim of *in pari materia* indicates that acts will be given full meaning and effect if they can be reconciled"); *State v. Pribble*, 158 Ohio St.3d 490, 2019-Ohio-4808, ¶ 12, 145 N.E.3d 259, quoting *State v. Moaning*, 76 Ohio St.3d 126, 128, 1996-Ohio 413, 666 N.E.2d 1115 (1996) ("*It is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law.*") (Emphasis added)⁶⁶

These principles apply to Ohio law here, despite opponents' desire to emphasize just one statute, and the PUCO's recent decision in the AES auction Order.⁶⁷ Ohio law and state policy regarding PIPP and low-income consumers support the mandatory language of R.C. 4928.542 regarding treatment of PIPP consumers. 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. This is the untenable

⁶⁶ See also, *Meyers v. Hadsell Chem. Processing, L.L.C.*, 2019-Ohio-2982, ¶ 34, 140 N.E.3d 1069 ("The interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously.")

⁶⁷ *In the Matter of the Procurement of Standard Service Offer Generation for Customers of the Dayton Power and Light Company*, Case No. 17-957-EL-UNC (September 21, 2022).

situation in which PIPP consumers (and all consumers who pay the USF rider) are finding themselves.

Moreover, despite the PUCO's decision to the contrary, R.C. 4928.542(B) requires that a winning bid reduce the cost of the PIPP program relative to the otherwise applicable standard service offer rate—at every competitive procurement process. The language does not suggest doing so “over the long term” as the PUCO has found.⁶⁸ This is a requirement for every time. There is no language in the statute to indicate otherwise.

It is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law.⁶⁹ R.C. 4928.542 is supported by other, interrelated statutes. As a matter of Ohio policy (R.C. 4928.02(L)), 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.

ODOD's aggregation rules requiring substantial savings are closely aligned with Ohio policy regarding retail electric service. Under R.C. 4928.02(A), the policy of Ohio is to ensure the availability to consumers of adequate, reliable, safe, efficient, not discriminatory, and reasonably priced retail electric service. The PIPP rates are unreasonably priced retail service considering the lower rates that non-PIPP residential consumers are charged under the standard service offer. The higher charges for PIPP customers thus violate Ohio regulatory policy and principles.

⁶⁸ *Id.*

⁶⁹ *Meyers v. Hadsell Chem. Processing, L.L.C.*, 2019-Ohio-2982, ¶ 34, 140 N.E.3d 1069 (“The interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously.”)

These statutes support the specific requirement of R.C. 4928.542(B) that a winning bid for a PIPP auction must reduce the cost of PIPP relative to the otherwise applicable standard offer. Interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections.⁷⁰

ODOD's witness admitted that ODOD has not done an analysis or evaluation of the PIPP rates compared to the SSO rates of the electric utilities.⁷¹ The PIPP program is administered and managed by the ODOD. ODOD's rules control the PIPP program for electric customers. ODOD is responsible (with delegation to the PUCO allowed) for the administration of the low-income electric PIPP program and to take the actions necessary to comply with all Ohio laws and its own rules in preventing consumers from being billed unjust and unreasonable rates. R.C. 4928.542 explicitly requires the competitive procurement process to reduce the cost of PIPP relative to the otherwise applicable standard service offer. That law is being violated. This statute is not even addressed in ODOD's brief.

Opponents' exclusive emphasis on one statute that mandates aggregation for PIPP consumers⁷² should be disregarded. The PUCO's decision in the AES auction order⁷³ makes this same error. Focusing on one section of a whole interrelated body of law ignores the related laws and rules that address consumers,⁷⁴ low-income consumers

⁷⁰ *Thomas v. Logue*, 2022-Ohio-1603, 191 N.E.3D 1155, 2022 Ohio App. LEXIS 1480 (May 12, 2022).

⁷¹ OCC Brief at 15, Tr. at 60; *See*, O.A.C. 122: 5-3-06.

⁷² R.C. 4928.54; *see, e.g.*, ODOD Brief at 8-9.

⁷³ *In the Matter of the Procurement of Standard Service Offer Generation for Customers of the Dayton Power and Light Company*, Case No. 17-957-EL-UNC (September 21, 2022) at 5-6.

⁷⁴ R.C. 4928.02(A); 4928.10.

specifically,⁷⁵ and prescribe the requirements for PIPP load winning bids.⁷⁶ The Ohio legislature has 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. This statute is supported by related Ohio laws like RC. 4928.02(A) and 4928.02(L).

Statutory provisions must be construed together, and the Revised Code must be read as an interrelated body of law.⁷⁷ By not adhering to R.C. 4928.542, the Settlement violates other interrelated laws. Under Ohio law, consumers are entitled to nondiscriminatory and reasonably priced retail electric service.⁷⁸ Consumers are also entitled to understandable pricing and terms and conditions of service.⁷⁹ Regulation should enable consumer understanding of their services.⁸⁰

Unfortunately, newly eligible PIPP consumers under the Governor's (well-intended) expansion of PIPP eligibility are not likely to understand that PIPP enrollment could 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

⁷⁵ R.C. 4928.02(L).

⁷⁶ R.C. 4928.542.

⁷⁷ *Thomas v. Logue*, 2022-Ohio-1603, 191 N.E.3D 1155, 2022 Ohio App. LEXIS 1480 (May 12, 2022).

⁷⁸ R.C. 4928.02(A).

⁷⁹ R.C. 4928.10.

⁸⁰ *See*, R.C. 4928.10; R.C. 4928.02 and Rule 4901-1-10-12; 4901:1-10-24.

more money for electric generation than if they instead used the utilities' standard service offers without PIPP enrollment.”⁸¹

Consumers will have difficulty understanding their risk of higher electricity charges under the Settlement because it is counter-intuitive and illogical that signing up for government assistance will cost them more than if they decline assistance.

The aggregation of PIPP-only customers referenced in the Settlement and apparently accepted in the AES auction order⁸² fails to conform to requirements in Ohio law. Under R.C. 4928.543, ODOD is required to adopt rules that result in reductions in the cost of PIPP relative to the standard service offer rate. Furthermore, the ODOD rules under R.C. 4928.543 are not resulting in the best value for persons who pay the USF. The ODOD rules as adopted only support aggregation of electric PIPP customers if “substantial savings” are provided to the PIPP program,⁸³ which is not occurring.

R.C. 4928.542 further explicitly requires the competitive procurement process to result in the best value for persons paying the USF. The onus on ensuring that the auction results are in compliance with Ohio law falls on both ODOD and the PUCO.

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

⁸¹ OCC Initial Brief at 18 quoting OCC Ex. 1 (Testimony of James D. Williams) at 7.

⁸² *In the Matter of the Procurement of Standard Service Offer Generation for Customers of the Dayton Power and Light Company*, Case No. 17-957-EL-UNC (September 21, 2022) at 5-6.

⁸³ O.A.C. 122:5-3-06. This rule had its last update just a year ago on September 7, 2021 and is thus still a viable rule.

D. Despite ODOD's and the EDUs' claims to the contrary, OCC's Settlement position is timely made, and does not represent a collateral attack on an Order.

AEP improperly attacks OCC for raising the issue of the unlawful generation rates for PIPP customers in the Notice of Intent Settlement phase of the USF case.⁸⁴ But the utility's own explanation of a "time crunch" is precisely why it was important for OCC to properly raise this issue in the NOI. The Notice of Intent phase of the USF is specifically intended to address issues that could cause delay in having new USF rates approved and into effect by January 1, 2023. OCC witness Williams' testimony demonstrates that the methodology as proposed by ODOD in the NOI will result in unlawfully high USF rates.⁸⁵ While OCC or any other group could object to the unlawfully high USF rates when ODOD files its application to set new USF rates by October 31, 2022, OCC has attempted to address the issue in the NOI to prevent the delay later this year.

As AES acknowledges, the purpose of the NOI stage of the USF proceeding is to address methodological matters for calculating the USF revenue requirements and rate design.⁸⁶ This is precisely what OCC is doing. OCC witness Williams testified that he became aware of the high PIPP rates that resulted from the PIPP RFP auctions when he started working on the NOI phase of the USF case.⁸⁷ And this case was the first opportunity where the impact that the high PIPP rates are having upon all current PIPP

⁸⁴ AEP Brief at 4-5; *see also*, Initial Brief of Industrial Energy Users-Ohio ("IEU Brief") at 2-3.

⁸⁵ OCC Initial Brief at 13-19; OCC Exhibit 1 (Testimony of James D. Williams).

⁸⁶ AES Brief at 2.

⁸⁷ Tr. at 78.

customers and the impact that the rates will have on the 2023 USF revenue requirement became known.⁸⁸

The EDUs and ODOD improperly accuse OCC of “sitting on their hands”⁸⁹ in the PUCO’s RFP Auction case⁹⁰ that established the two-step auction process, and also regarding the results of this spring’s auction cases. Nothing could be further from the truth. There would have been no reason to file an application for rehearing at the time of the RFP Auction Order, as the EDUs suggest.⁹¹ At the time of the Auction Order six years ago, the process as established had the potential to follow Ohio law, and at times did so. And in fact, the independent PIPP auction has yielded mixed results (sometimes benefiting PIPP consumers as required by law) over the years. For example, Duke asserts that regarding its utility, prior to the 2022-2023 timeframe, PIPP customers saved money. Duke claims they were billed approximately \$5.7 million less from 2016 through the present than they would have been billed under the utility’s standard offer, had they not been aggregated in their own auction process.”⁹²

But OCC witness Williams testified on cross, “[t]here were savings in some years. It doesn’t come close to the losses this year or the projected losses for this coming year.”⁹³ This spring’s auctions have resulted in significant overcharges to all of the

⁸⁸ *Id.*

⁸⁹ AEP Brief at 8.

⁹⁰ *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).

⁹¹ *See, e.g.*, AEP Brief at 9; AES Brief at 8; Duke Brief at 15.

⁹² Duke Brief at 17; Tr. at 144-145.

⁹³ Tr. at 114.

EDUs' PIPP consumers.⁹⁴ The harm was unknown until ODOD filed its Notice of Intent. OCC witness Williams testified that specifically in the case of Duke, prior savings to PIPP consumers “pales in comparison to potential losses this coming year with the PIPP rates being what they are.”⁹⁵ And that “given the current rates, those savings are likely to be wiped out over the next year.”⁹⁶

IEU claims that no party to the proceeding raised any opposition to resolution of the issues necessary to resolve this first phase of the USF case.⁹⁷ But that is not true. OCC's opposition was to the methodology used to calculate the cost of PIPP as defined in the NOI (the unlawfully implemented electric aggregation process). OCC witness Williams testified as a result of that methodology in this case, the impact that the high PIPP rates are having on current PIPP customers and the estimated impact that they will have on the 2023 USF revenue requirement have become known.⁹⁸

Moreover, OCC initially raised this issue in the 2021 USF Case, where two of the EDUs had PIPP generation rates in excess of the Standard Service Offer.⁹⁹ All of the parties to that proceeding are parties to this proceeding, so parties were on notice that there was a problem. And yet, none of the parties that were facing upcoming auctions did anything to address the issue prior to the PIPP Auction process for 2022.

⁹⁴ 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.

⁹⁵ Tr. at 144.

⁹⁶ Tr. at 145.

⁹⁷ IEU Brief at 2.

⁹⁸ Tr. at 74.

⁹⁹ Case No. 21-659-EL-USF, Consumer Protections Comments by Office of the Ohio Consumers' Counsel, (July 6, 2021).

Nor does OCC's position represent a collateral attack on the PUCO's orders approving the PIPP electricity prices, as the EDUs and ODOD contend.¹⁰⁰ The PUCO has specifically found that discussing the results of a previous PUCO Order to make arguments in USF adjustment proceedings is not an impermissible collateral attack on the previous Order.¹⁰¹

The Commission finds OPAE's analysis of information from the *2024 USF Case* not to be a collateral attack on currently effective USF rates. The time to appeal the Order in the *2024 USF Case* has passed and the Order is final. Further, the Commission notes that the USF proceedings incorporate a two-part process, the NOI phase and an adjustment phase and this two-part process has been followed by ODSA for more than a decade. *The bifurcated process was initiated to provide interested stakeholders an opportunity to challenge the USF methodology to be used to calculate and design the USF rates while facilitating the implementation of new USF rates as of January of the next year.* In this NOI phase of the USF proceeding, the information necessary to calculate the USF rate to be applicable for 2016 have not yet been filed by ODSA. The most recent USF information available to analyze the rates was filed in the *2014 USF Case*. OPAE used the information filed in the adjustment phase of the *2014 USF Case* to make its arguments regarding the rate design. For these reasons, the Commission finds OPAE's analysis of the information from the *2014 USF Case* not to be a collateral attack on the currently effective rates.¹⁰² (Emphasis added)

OCC has properly raised the issue of the unlawful, higher PIPP rates in the NOI phase of this proceeding. The case is now ripe for adjudication because the facts about the substantial harm to consumers can now be established. And since consumers have

¹⁰⁰ AEP Brief at 9; AES Brief at 8; Duke Brief at 15; ODOD Brief at 7.

¹⁰¹ 2015 Ohio PUC LEXIS 906.

¹⁰² *Id.*

paid the higher PIPP rates since June, harm has already occurred. Contrary to the EDUs' and ODOD's arguments, there are no collateral estoppel or res judicata issues here.

Despite AES' perception that the PUCO has a limited role in USF proceedings,¹⁰³ in fact only the PUCO can adjust the USF Rider rate under 4928.53(B). Contrary to opponents' claims,¹⁰⁴ OCC is not asking the PUCO to amend and invalidate the terms of the PIPP Auction process. OCC is aware that there are contracts that govern the supply of electricity for PIPP customers at extremely high rates.¹⁰⁵ In the upcoming USF rate case filing, OCC asks that PIPP consumers be served at a rate per kWh that does not exceed the SSO rate being charged to non-PIPP consumers, as required by law. This would be through a billing adjustment made through the USF that would be paid for by the electric utilities and not consumers.

Specifically, for the upcoming USF application filing addressing the period January 1, 2023 to December 31, 2023, ODOD should be required to calculate the USF rates for supporting the electric PIPP program based on utilities' 2022 Standard Service Offer rate and not the 2022 PIPP auction rate.¹⁰⁶ Utilities should be required to make such adjustments through the USF to reflect lawful rates. This approach will protect consumers who are currently enrolled in PIPP (and additional enrollees, given the Governor's expanded eligibility). It will also protect consumers who pay the subsidy for the PIPP program consistent with R.C. 4928.542.

¹⁰³ AES Brief at 2.

¹⁰⁴ See, e.g., Duke Brief at 7, AES Brief at 7-8.

¹⁰⁵ For example, Duke is charging non-PIPP consumers \$0.064832 per kWh in the summer for generation service and is charging PIPP consumers unlawful \$0.164701 per kWh.

¹⁰⁶ OCC Initial Brief at 20; OCC Ex. 1 (Testimony of James D. Williams) at 27.

The General Assembly has required ODOD and the PUCO to protect at-risk consumers, under R.C. 4928.02(L). PIPP consumers are at-risk consumers. ODOD has the opportunity to protect them. A solution for the future would be for the generation for electricity for PIPP consumers to be procured in the same auction as the standard service offer. That would comply with R.C. 4928.542 and with O.A.C. 122:5-3-06.

III. CONCLUSION

[T]he purpose of the PUCO * * * is the protect the customers of public utilities.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 372 (2009) (Pfeifer, J. dissenting). The PUCO should fulfill its purpose here by rejecting or modifying the Settlement and adopting OCC’s recommendations for protection of low-income PIPP consumers and all consumers who pay the USF rider.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief for Consumer Protection was served on the persons stated below via electronic transmission, this 23rd day of September 2022.

/s/ Amy Botschner O'Brien
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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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Summary: Brief Reply Brief for Consumer Protection by Office of the Ohio
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