

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

REPLY BRIEF OF AES OHIO

The Dayton Power and Light Company d/ab/a AES Ohio urges the Commission to reject the arguments raised by The Office of the Ohio Consumers' Counsel¹ against the August 5, 2022 Joint Stipulation and Recommendation ("Stipulation"). The Stipulation recommends the use of nearly the same revenue requirement methodology and rate design that the Commission has approved for use in past applications by the Ohio Department of Development to adjust the Universal Service Fund rider rates.² If approved, the Stipulation would provide ODOD with a process to ensure adequate funding for low-income customer assistance programs and consumer education programs at the minimum rates necessary to collect each electric distribution utility's USF revenue requirement, as contemplated by R.C. 4928.54(B). The Stipulation is reasonable and should be adopted.

OCC does not address the process outlined in the Stipulation. Instead, OCC criticizes the separate practice of aggregating and procuring load for customers enrolled in the Percentage of

¹ Sept. 12, 2022 Post-Hearing Brief for Consumer Protection by Office of the Ohio Consumers' Counsel.

² E.g., *In re 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*, Case No. 21-659-EL-USF, Opinion and Order (Oct. 6, 2021).

Income Payment Plan (“PIPP”) program, as required by Commission order.³ OCC chiefly complains that the PIPP rates approved by the Commission earlier this year (without objection from OCC),⁴ which in turn reflect PIPP auction results that were approved by the Commission (also without objection from OCC),⁵ are higher than their corresponding Standard Service Offer rates.

AES Ohio shares OCC’s concerns about the impact of recent PIPP auctions on all customers; however, OCC’s positions and remedies are untenable under Ohio law. Specifically, OCC contends that (1) the PIPP rates are unlawful under R.C. 4928.542 because they are higher than their corresponding SSO rates (p. 2); (2) the PIPP auction process should be combined into the SSO auction process (p. 19); (3) ODOD should fund the USF as if the Commission had capped this year’s PIPP rates at their corresponding SSO rates (p. 20); (4) EDUs should adjust PIPP billing and accounts to charge only SSO rates (both prospectively and retroactively) (p. 21); and (5) EDUs should not recover the resulting costs stemming from their reliance on the Commission’s approval of PIPP auction results (*i.e.*, their contractual obligations with auction winners to purchase load for the June 2022 / May 2023 delivery year) (p. 21). These arguments should be rejected for the following reasons.

First, the Commission should not allow OCC to collaterally attack auction results and resulting rates that were approved by the Commission in other dockets without objection from OCC. OCC has waived these issues and should not be afforded a belated opportunity to raise

³ *In re the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-0247-EL-UNC (*RFP Auction Case*), Finding and Order (Mar. 2, 2016).

⁴ *E.g.*, *In re AES Ohio*, Case No. 22-373-EL-RDR, Finding and Order (May 18, 2022).

⁵ *E.g.*, *In re AES Ohio*, Case No. 17-1163-EL-UNC, Finding and Order (May 18, 2022).

them in this proceeding, particularly since the EDUs have already acted in reliance on the Commission's orders and implemented the rates at issue.

Second, PIPP rates that are higher than SSO rates are not inherently unlawful. In the *RFP Auction Case*, the Commission expressly recognized that although the competitive process established by the Commission under R.C. 4928.54 to procure PIPP supply “may occasionally result in the PIPP load being served at a price higher than the blended SSO price, the RFP auction has been established to reduce the cost of the PIPP program to the otherwise applicable SSO *over the long-term*, in compliance with R.C. 4928.542(B).”⁶ OCC did not file an application for rehearing from that order, and does not argue that any of the EDUs violated that order in procuring their PIPP supply and setting their PIPP rates this spring. Since OCC relies exclusively (p. 2) on R.C. 4928.542 to show that this year's PIPP rates are unlawful, its position is contrary to Commission precedent.

Third, the Commission should reject any request by OCC to engage in retroactive ratemaking, which is prohibited by Ohio law.⁷

Fourth, just this week, the Commission rejected OCC's attempt to combine the PIPP and SSO auctions.⁸ The Commission held that despite OCC's attempt to show that ODOD has discretion under the Ohio Administrative Code not to aggregate PIPP load separately, “R.C. 4928.54 specifically requires that ‘[t]he director of development services shall aggregate percentage of income payment plan program customers for the purpose of establishing competitive procurement process for the supply of competitive retail electric service for those

⁶ *RFP Auction Case*, Finding and Order (Mar. 2, 2016) at 5 (emphasis added).

⁷ E.g., *Lucas Cty. Comm'rs v. Pub. Util. Comm.*, 80 Ohio St.3d 344, 348, 686 N.E.2d 501 (1997) (“retroactive ratemaking is not permitted under Ohio's comprehensive statutory scheme”).

⁸ *In re AES Ohio*, Case No. 17-957-EL-UNC, Finding and Order (Sept. 21, 2022) at ¶ 18.

customers. The process shall be an auction.”⁹ The Commission added that “it is clear from the plain language of the statute that the General Assembly intended that PIPP program loads be aggregated and procured from a competitive bidding process separate from the SSO customers.”¹⁰ Accordingly, the Commission affirmed its “previous determination that the existing PIPP program auction format is required under law.”¹¹

Moreover, OCC’s request to combine the PIPP and SSO auctions does not address the effect of including PIPP load on the SSO price, the implications of the statutory requirement that only CRES may participate in the PIPP procurement process, or how combining the two auctions would “[r]educe the cost of the percentage of income payment plan program relative to the otherwise applicable standard service offer,” as required by R.C. 4928.542(B).

Fifth, the Commission is required to allow ODOD to sufficiently fund the USF. R.C. 4928.54 authorizes increases to the USF rider rates to “provide adequate funding” for its low-income customer assistance programs and consumer education programs. Requiring ODOD to ignore the actual costs of those programs is inconsistent with that statutory framework.

Sixth, the Commission should reject OCC’s attempt to require EDUs to subsidize the results of this year’s PIPP auctions. R.C. 4928.52 contemplates the recovery of costs to utilities regarding the PIPP program; requiring them to absorb some of those costs is inconsistent with that statute and in conducting a “competitive procurement process” as required by R.C. 4928.54. OCC does not address what distortive effects that subsidy would have on future auctions, or cite

⁹ *Id.* (quoting R.C. 4928.54).

¹⁰ *Id.*

¹¹ *Id.*

any authority for the proposition that EDUs should incur those costs after relying on Commission orders to procure PIPP load and set PIPP rates this year.

AES Ohio stresses that it is open to discussing alternative PIPP procurement processes that would protect customers under the current statutory framework. However, given the myriad of complex legal and policy questions involved, any PIPP reform should be addressed in an open process with all interested stakeholders, as in the *RFP Auction Case*, not this USF update case.

Respectfully submitted,

/s/ Christopher C. Hollon
Christopher C. Hollon (0086480)
AES OHIO
1065 Woodman Drive
Dayton, Ohio 45432
Phone: (937) 259-7358
Email: christopher.hollon@aes.com

Counsel for AES Ohio

(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was e-filed with the Public Utilities Commission of Ohio on September 23, 2022. The PUCO's e-filing system will electronically service notice of the filing of this document on all counsel of record in this proceeding.

/s/ Christopher C. Hollon
Christopher C. Hollon (0086480)

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Summary: Brief Reply Brief of AES Ohio electronically filed by Mr. Christopher C.
Hollon on behalf of The Dayton Power and Light Company d/b/a AES Ohio