

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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November 4, 2022

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The PUCO's Opinion and Order<sup>1</sup> accepting the Joint Settlement<sup>2</sup> authorizing higher rates charged to consumers served under PIPP than to non-low-income consumers served under the electric utility standard offers fails consumers and is unlawful. The situation that the PUCO has authorized is harmful to PIPP consumers and to all residential consumers who are paying the Universal Service Fund (USF) rider. The Opinion and Order allows at-risk PIPP consumers, the most vulnerable Ohioans, to be charged electricity prices that are higher than the standard service offer of each of Ohio's electric distribution utilities. R.C. 4928.542 prohibits exactly that.

The PUCO's interpretation of R.C. 4928.542 harms the most vulnerable Ohioans and violated established principles of statutory interpretation and Ohio law. The PUCO erred by unreasonably and unlawfully finding that the Settlement benefits consumers and the public interest, since higher PIPP rates relative to the standard service offer are to the detriment of all consumers and the public interest. In fact, according to the application

<sup>2</sup> Joint Stipulation and Recommendation (August 5, 2022).

that ODOD filed this week to adjust the USF rates, the 2023 USF revenue requirement of \$330,654,685 represents an increase of \$143,395,993 over the 2022 USF revenue requirement.<sup>3</sup> The monthly USF Rider charges increase across each of the electric utilities for all consumers.<sup>4</sup> And ODOD acknowledges that the increase in the revenue requirement is partially attributed to the increases in the cost of electric supply for PIPP consumers.<sup>5</sup>

The PUCO further erred by unreasonably claiming that PIPP generation rates are beyond the scope of this proceeding that addresses the cost of PIPP in the USF, without identifying an alternative venue for addressing this issue. PIPP generation rates are well within the scope of this proceeding and need to be addressed now for Ohio consumers.

Accordingly, under R.C. 4903.10, OCC applies for rehearing of the October 5, 2022 Finding and Order, which was unreasonable and unlawful in the following respects:

ASSIGNMENT OF ERROR NO. 1: The PUCO erred by violating R.C. 4928.542 by authorizing ODOD to charge higher electricity prices to at-risk PIPP consumers than are being charged to the utilities' standard service offer consumers.

ASSIGNMENT OF ERROR NO. 2: The PUCO erred by unreasonably and unlawfully finding that the Settlement benefits consumers and the public interest because higher PIPP rates relative to the standard service offer are to their detriment.

ASSIGNMENT OF ERROR NO. 3: The PUCO erred by unreasonably and unlawfully claiming that the utilities' PIPP generation rates, while a component of the cost of the PIPP program, is beyond the scope of this proceeding because the USF Rider revenue requirement methodology must comply (but does not) with R.C. 4928.542.

ASSIGNMENT OF ERROR NO. 4: The PUCO erred by unreasonably and unlawfully finding that the Settlement showed that serious bargaining occurred

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<sup>3</sup> Case No. 22-556-EL-USF, Application (October 31, 2022).

<sup>4</sup> Case No. 22-556-EL-USF, Testimony of Megan Meadows, Table II (October 31, 2022).

<sup>5</sup> *Id.*; Testimony of Megan Meadows at 27.

and that diversity of interests was not required thus violating the first prong of the PUCO's Settlement standard.

Respectfully submitted,

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**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	)	
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**APPLICATION FOR REHEARING  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The PUCO Opinion and Order is unlawful. The PUCO approved the Joint Settlement authorizing Ohio Department of Development (ODOD) to proceed with an application that is contrary to law and is nonsensical. Under the Settlement, ODOD will propose USF rider adjustments that charge higher generation rates to PIPP customers than non-low-income consumers served under each utility's SSO generation rates. 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.<sup>6</sup> The chart was derived from the data in OCC Exhibit 1A, which no party disputed at hearing or in briefs, and was unaddressed in the PUCO's Order.

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

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<sup>6</sup> See OCC Brief at 10, Table 1: Annual Estimated Excess Electricity Charges to an Individual PIPP Consumer Above the Utilities Standard Offers; OCC Reply Brief at 11.

for AES PIPP consumers, \$339 for Ohio Edison PIPP consumers, \$334 for CEI PIPP consumers, and \$331 for Toledo Edison PIPP consumers.<sup>7</sup>

That is nonsensical, unconscionable and unlawful for these Ohioans lacking money. 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 who fund PIPP) from exceeding the electric utilities' standard offers.<sup>8</sup> The statute has a stated requirement for reducing costs and creating the "best value" for consumers.<sup>9</sup> The statute does not allow for the PUCO to accept a result where auction winners' prices exceed the standard offers. The PUCO's interpretation of R.C. 4928.542 harms the most vulnerable Ohioans and violated established principles of statutory interpretation and Ohio law.

Also, R.C. 4928.02(L) requires the PUCO and ODOD to protect at-risk Ohioans. The electric utilities' low-income PIPP consumers are vulnerable to poverty, food and housing insecurity, inflation, and a resurging pandemic. The PUCO did not address OCC's arguments regarding this statute, simply finding them to be "without merit."<sup>10</sup> But by approving the Settlement authorizing higher charges to consumers served under PIPP, the PUCO has not protected at-risk consumers from high rates and violated R.C. 4928(L).

The PUCO must do its part to stop this injustice. The PUCO unreasonably and unlawfully found that the Settlement authorizing higher PIPP rates relative to the

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<sup>7</sup> *Id.*

<sup>8</sup> R.C. 4928.542(B).

<sup>9</sup> R.C. 4928.542(C).

<sup>10</sup> Opinion and Order at 26.

standard service offer benefits consumers and the public interest<sup>11</sup> when in fact the situation is to their detriment. The PUCO additionally unreasonably found that PIPP generation rates, while a component of the PIPP program, are beyond the scope of this proceeding and declined to address OCC's recommendations.<sup>12</sup> The PUCO took the easy way out by not addressing this issue that is charging at-risk Ohioans higher generation rates than non-PIPP consumers.

The PUCO should grant OCC's Application for Rehearing as further explained below to protect at-risk PIPP consumers from overpaying for electric utility service.

## **II. MATTERS FOR CONSIDERATION**

**ASSIGNMENT OF ERROR NO. 1:** The PUCO erred by violating R.C. 4928.542 by authorizing ODOD to charge higher electricity prices to at-risk PIPP consumers than are being charged to the utilities' standard service offer consumers.

The Universal Service Fund ("USF"), in R.C. 4928.51 *et seq.*, is the state funding mechanism for electric bill payment assistance through PIPP, a program intended to assist the most impoverished residential utility consumers in Ohio. The program is administered by ODOD, with a role for the PUCO. ODOD requested that the PUCO design, manage, and supervise the competitive procurement process for PIPP consumers.<sup>13</sup> The USF proceeding is intended to address "the methodology ODOD will

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<sup>11</sup> Opinion and Order at 28.

<sup>12</sup> Opinion and Order at 24, 26.

<sup>13</sup> *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 22-556-EL-USF, Notice of Intent to File an Application for Adjustments to Universal Service Fund Riders (May 27, 2022) at 10.



utilize to develop the USF rider revenue requirement, the USF rate design and any issues raised by the parties concerning these items.”<sup>14</sup>

By law, PIPP consumers are not permitted to shop for their generation supply. Rather, they must rely on the ODOD (and the PUCO) to make sure that they are provided lawful, nondiscriminatory and reasonably priced retail electric service through the PIPP-specific auctions with energy marketers.<sup>15</sup> This has not happened in recent years.

Consumers served under the PIPP program are improperly and nonsensically charged a higher per kWh rate for each of the six electric utilities than non-low-income standard offer consumers.<sup>16</sup> This is undisputed. 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.<sup>17</sup>

For example, Duke’s PIPP consumers are paying *more* than consumers being served under the standard service offer -- \$0.164701/kWh versus \$0.064832/kWh.<sup>18</sup> AEP Ohio PIPP consumers are charged over twice the amount (\$0.15367 per kWh) than AEP

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<sup>14</sup> Opinion and Order at 4.

<sup>15</sup> See R.C. 4928.02(A); R.C. 4928.542.

<sup>16</sup> See OCC Ex. 1 (Testimony of James D. Williams in Opposition to the Settlement, August 19, 2022) at 18-22; OCC Post-Hearing Brief at 10, Table 1: Annual Estimated Excess Electricity Charges to an Individual PIPP Consumer Above the Utilities Standard Offers; OCC Post-Hearing Brief at 8-11; OCC Reply Brief at 9-11.

<sup>17</sup> *Id.*

<sup>18</sup> Duke Energy Ohio Retail Capacity Rider and Retail Energy Rider, PUCO Electric No. 19, Sheet(s) 111 and 112 effective June 1, 2022; see OCC Reply Brief at 10-11.

Ohio non-low-income consumers are charged (\$0.066222 per kWh)<sup>19</sup> for exactly the same product. PIPP consumers who owe for their arrearages (debt) have more than enough existing problems contributing to their ability to get out from under their debt. This situation worsens their dilemma. And unfortunately, these higher rates result in additional USF costs being passed on to all consumers through the USF rider. That is unlawful for these Ohioans lacking money.

The USF Settlement that the PUCO approved will result in ODOD filing USF rates that violate Ohio law and regulatory principles and practices. The PUCO-approved Settlement authorizes charges to PIPP consumers that are unjust and unreasonable in violation of R.C. 4905.22. Further, the Settlement that the PUCO approved violates regulatory principles and practices including that it violates Ohio law requiring that PIPP rates be reduced in relation to the standard service offer<sup>20</sup> and that consumers receive the “best value.”<sup>21</sup> The Settlement that the PUCO approved results in ODOD filing an application for USF rates that violate Ohio law. The rates would violate state regulatory policy intended to protect at-risk Ohioans under R.C. 4928.02(L) and R.C. 4928.02(A). Finally, an outcome of this Settlement that approves charging low-income consumers (who can least afford to pay higher charges) higher charges than others (non-low-income consumers) violates the regulatory principle of equity.

Specifically, the Settlement violates the directives for serving PIPP consumers as laid out in R.C. 4928.542. Per R.C. 4928.542(B), a winning bid ***shall reduce*** the cost of

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<sup>19</sup> Ohio Power Tariff, Generation Capacity Rider and Generation Energy Rider, PUCO No. 21, Sheet(s) 450-1 and 451-1; *see* OCC Reply Brief at 10-11.

<sup>20</sup> R.C. 4928.542(B).

<sup>21</sup> R.C. 4928.542(C).

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).<sup>22</sup>

R.C. 4928.542 is plain and unambiguous. The statute provides as follows:

[t]he winning bid or bids...*shall* meet all of the following requirements:

(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;

(C) Result in the best value for persons paying the universal service rider under section 4928.52 of the Revised Code. (Emphasis added).

The PUCO's Opinion and Order found<sup>23</sup> that cost savings need accrue only "over the long-term,"<sup>24</sup> rather than after every auction, and cited as support its 2016 *PIPP Auction Case*.<sup>25</sup> The PUCO's interpretation (while perhaps well-intended at the time) is wrong. The law does not support the "over the long-term" language being used in the Order. R.C. 1.42 provides that "words and phrases shall be read in context and construed according to the rules of grammar and common usage." The PUCO has similarly stated that "[p]ursuant to rules of statutory interpretation, statutes are to be interpreted based on

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<sup>22</sup> Also, a winning bid must be designed to provide a reliable electricity supplier to PIPP customers, per R.C. 4928.542.

<sup>23</sup> Opinion and Order at 25.

<sup>24</sup> *Id.*

<sup>25</sup> *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).

the plain language of the statute....”<sup>26</sup> This understanding is supported by the Ohio Supreme Court, which has held that “when interpreting a statute, a court must first examine the plain language of the statute to determine legislative intent. The court must give effect to the words used, making neither additions nor deletions from words chosen by the General Assembly.”<sup>27</sup>

Here, the word “shall” in the statute (R.C. 4928.542) means there is no exception to the requirement that a winning bid reduce costs for PIPP consumers. “Ordinarily, the word 'shall' is a mandatory one, whereas 'may' denotes the granting of discretion.”<sup>28</sup> Nothing in R.C. 4928.542 indicates “shall” means something other than its ordinary, mandatory usage. If a bid does not reduce rates for PIPP consumers, that bid violates the requirement that it “shall” do so. Finding otherwise requires the PUCO to add words to the statute. It has no authority to do so. “The PUCO, as a creature of statute, has no authority to act beyond its statutory powers.”<sup>29</sup>

The plain meaning of R.C. 4928.542 requires mandatory savings for low-income PIPP consumers at each and every auction, not just over the long-term. The PUCO’s finding that savings can accrue over the long term requires adding words to the statute.

R.C. 4928.542 says nothing about bids reducing rates “over the long-term.” Adding this caveat violates Ohio’s rules of construction. R.C. 4928.542 is unambiguous,

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<sup>26</sup> *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. 15-1046-EL-USF, Opinion and Order (October 28, 2015) at 20.

<sup>27</sup> *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 113 Ohio St.3d 394, 2007-Ohio-2203, 865 N.E.2d 1275, ¶ 12; *see also Columbia Gas Transmission. Corp. v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, 882 N.E.2d 400, ¶ 19.

<sup>28</sup> *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 108, 271 N.E.2d 834 (1971).

<sup>29</sup> *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51.

which requires the PUCO to apply its plain meaning (not construe it) that each auction must reduce rates for low-income PIPP consumers.

Unfortunately for PIPP consumers, ODOD and the PUCO are failing to require compliance with the law. The independent PIPP auctions have yielded mixed results (sometimes benefiting PIPP consumers as required by law) over the years. But last spring's auctions resulted in significant overcharges to *all six* of the utilities' PIPP consumers.<sup>30</sup> But 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 utilities' standard service offers, per R.C. 4928.542.

Even if the PUCO finds R.C. 4928.542 is ambiguous (which it is not), it should not allow a USF Settlement that charges PIPP consumers rates that exceed the standard service offer. R.C. 1.49 provides that “[i]f a statute is ambiguous, the court, in determining the intention of the legislature, may consider . . . laws upon the same or similar subject.” It is well-established in Ohio that statutes on the same subject matter should be interpreted together, rather than in isolation.<sup>31</sup> Courts call this principle *in pari materia*, which means “upon the same matter or subject.”<sup>32</sup> *In pari materia* “instructs that statutes relating to the same subject be construed together, so that inconsistencies in one

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<sup>30</sup> 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.

<sup>31</sup> *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").

<sup>32</sup> *Black's Law Dictionary* at 791; *Ohio Furniture Co. v. Mindala*, 22 Ohio St.3d 99, 101, 488 N.E.2d 881, 883 (1986).

statute may be resolved by looking at [the] other statute on the same subject."<sup>33</sup> Courts “must harmonize and give full attention to all [related] statutes unless they are irreconcilable and in hopeless conflict.”<sup>34</sup> The meaning courts give related statutes should carry out legislative intent.<sup>35</sup>

Statutes related to R.C. 4928.542 indicate the legislature intended for *every auction* to produce lower rates for low-income PIPP consumers. The PUCO’s Opinion and Order erred in declining to address<sup>36</sup> these statutes that support the plain meaning of R.C. 4928.542.

First, R.C. 4928.02(L) states that, as a matter of Ohio policy, the PUCO and ODOD must “protect at-risk populations.” Utilities’ low-income PIPP consumers are vulnerable to poverty, food and housing insecurity, inflation, and a resurging pandemic. They are at-risk. Authorizing utilities to charge low-income PIPP consumers higher rates than the standard service offer harms, rather than protects, an at-risk population. The doctrine of *in pari materia* requires the PUCO to adopt an interpretation of R.C. 4928.542 in step with its duty to protect at-risk populations. Reading R.C. 4928.542 to apply to every auction harmonizes similar statutes by ensuring vulnerable PIPP consumers are protected from *ever* paying higher prices than SSO consumers.

Another statute, R.C. 4928.02(A), supports interpreting R.C. 4928.542 to require that PIPP prices do not exceed the SSO at *any* auction, not over the long-term. R.C.

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<sup>33</sup> *State v. Smith*, Ohio St.3d, 2022-Ohio-274, ¶ 30, quoting *Black’s Law Dictionary* 911 (10th Ed. 2014).

<sup>34</sup> *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.

<sup>35</sup> *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).

<sup>36</sup> See Opinion and Order at 26.

4928.02(A) states that it is Ohio policy to ensure the availability to consumers of adequate, reliable, safe, efficient, non-discriminatory, and reasonably priced retail electric service. The electric utilities' PIPP rates are unreasonably priced, as consumers with less ability to pay are charged more for the same service. They are also discriminatory to low-income PIPP consumers. An interpretation of R.C. 4928.542 that allows the higher charges puts related statutes in conflict and should be rejected. Requiring instead that PIPP rates not exceed a utility's SSO at every auction harmonizes R.C. 4928.542 with Ohio policy requiring reasonably priced electric service. Thus, *in pari materia* requires the PUCO to adopt this interpretation.

The PUCO should interpret Ohio law in a way that gives proper force and effect to each and all related statutes. It failed to do so in approving the USF Settlement, which results in a higher rate for low-income PIPP consumers than consumers on utilities' standard service offers. The Settlement does not improve the plight of PIPP consumers, present or future, but it should. Instead, it continues with the same process that has harmed low-income consumers in recent auctions. The PUCO should protect its low-income PIPP consumers, but it did not. The PUCO should take action to give PIPP consumers, some of the most vulnerable in the state, the protection of the law for their electric generation rates.

By doing so, the PUCO would be interpreting Ohio law in a way that gives proper force and effect to each and all related statutes. Thus, a solution for the future that gives full force and effect to each and all related statutes would be for generation for PIPP consumers to be procured in the same auction as the standard service offer.

The PUCO’s Opinion and Order instead disregards R.C. 4928.542 and supporting statutes, only giving effect to R.C. 4928.54.<sup>37</sup> That statute requires the ODOD director to aggregate PIPP customers for their competitive procurement supply in an auction. The PUCO concluded this must be done in a separate auction.<sup>38</sup> But PIPP consumers’ service can be combined into the standard-offer auctions. This approach is permissible under ODOD’s electric aggregation rules -- O.A.C. 122:5-3-06. The rule states that the ODOD Director *may* aggregate PIPP consumers for competitive auctions *if* “substantial savings for the PIPP plus program can be realized . . .” ODOD rule 122:5-3-06 is a viable rule<sup>39</sup> that requires the director to determine if aggregating PIPP customers is feasible and whether substantial savings for the PIPP program can be realized.

Principles of statutory construction require the PUCO to read like statutes together. This means R.C. 4928.02(A) and (L) add meaning to R.C. 4928.542. The PUCO should interpret R.C. 4928.542 in a manner that protects at-risk consumers and ensures reasonably priced electric service. Reading R.C. 4928.542 to prevent higher prices for PIPP consumers *at every auction* achieves this, so *in pari materia* demands this interpretation. But the PUCO interprets R.C. 4928.54 in isolation, allowing separate auctions for PIPP consumers that cost them more than SSO consumers pay. This violates Ohio law.

Fixing the problem going forward is just part of what is needed for the utilities’ PIPP consumers. They need help now. They are presently being charged higher electricity prices in violation of law, R.C. 4928.542. Their current plight needs a solution

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<sup>37</sup> Opinion and Order at 25.

<sup>38</sup> *Id.*

<sup>39</sup> O.A.C. 122:5-3-06 was updated with no changes just last year, September 7, 2021.



from the PUCO, ODOD, and the utilities. That could be done in the next phase of this proceeding (in the USF adjustment phase) by requiring that PIPP consumers be billed no more than the SSO rate that is used for non-PIPP consumers.

The USF revenue requirement would be calculated based on the 2022 SSO rate not the 2022 PIPP auction rate, and utilities should be required to pay the difference between the SSO auction results and the PIPP auction results.<sup>40</sup> The PUCO erred in declining to consider this recommendation.<sup>41</sup> Such a result would be consistent with R.C. 4928.542(B)'s requirement that a winning bid *shall reduce* the cost of the PIPP program relative to the otherwise applicable standard service offer rate established and R.C. 4928.542(C)'s requirement that a winning bid shall result in the *best value* for persons paying the universal service rider. Rehearing should be granted.

**ASSIGNMENT OF ERROR NO. 2:** The PUCO erred by unreasonably and unlawfully finding that the Settlement benefits consumers and the public interest because higher PIPP rates relative to the standard service offer are to their detriment.

The PUCO erred in concluding that the Settlement “benefits consumers and the public interest as it adopts revenue requirement and rate design methodologies” approved by the PUCO in “numerous prior USF cases to ensure adequate funding for the low-income customer assistance and consumer education programs administered by ODOD.”

<sup>42</sup> The PUCO further concluded that because the Settlement “assures a reasonable

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<sup>40</sup> OCC Ex. 1 (Testimony of James D. Williams) at 27; OCC Post Hearing Brief at 20-21; OCC Reply Brief at 24-25.

<sup>41</sup> Opinion and Order at 26.

<sup>42</sup> Opinion and Order at 28.

contribution by all customer classes to the USF revenue requirement,”<sup>43</sup> it benefits consumers and the public interest.

But the PUCO erred in not considering how the Settlement’s higher rates to PIPP consumers does not benefit them or the public interest. 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.<sup>44</sup> That result is detrimental (not beneficial) to PIPP consumers and to all consumers who pay the USF rider. It’s undeniably 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. And all other Ohio electric consumers are harmed; 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 the Settlement that the PUCO adopted,<sup>45</sup> the cost of the PIPP component of the USF rider revenue requirement is based in part on the total cost of electricity consumed by PIPP customers less the total PIPP installment payment made by the PIPP customer.<sup>46</sup> 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

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<sup>43</sup> *Id.*

<sup>44</sup> R.C. 4928.542.

<sup>45</sup> Opinion and Order at 7-8.

<sup>46</sup> *Id.* at 3.

all consumers is even greater when and if PIPP customers are unable to pay their total electric bill.”<sup>47</sup>

The Settlement that the PUCO adopted thus fails this prong requiring that the Settlement benefits customers and the public interest because consumers and the public interest are not benefitted by higher rates, especially higher rates that violate statutes. Higher rates are to the detriment of all consumers and the public interest. In fact, according to the Application that ODOD filed this week to adjust the USF rates, the 2023 USF revenue requirement of \$330,654,685 represents an increase of \$143,395,993 over the 2022 USF revenue requirement.<sup>48</sup> The monthly USF Rider charges increase across each of the electric utilities for all consumers. And ODOD acknowledges that the increase in the revenue requirement is partially attributed to the increases in the cost of electric supply for PIPP consumers.<sup>49</sup> The PUCO unlawfully and unreasonably erred in finding that the Settlement benefits consumers and the public interest. Rehearing should be granted.

**ASSIGNMENT OF ERROR NO. 3:** The PUCO erred by unreasonably and unlawfully claiming that the utilities’ PIPP generation rates, while a component of the cost of the PIPP program, is beyond the scope of this proceeding because the USF Rider revenue requirement methodology must comply (but does not) with R.C. 4928.542.

The PUCO erred in concluding that “the EDUs PIPP generation rates, while a component of the cost of PIPP program, is beyond the scope of this proceeding.”<sup>50</sup> As the PUCO itself recognizes, the subject of this USF proceeding is “regarding the 2022 NOI,

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<sup>47</sup> OCC Brief at 9; OCC Ex. 1 (Testimony of James D. Williams) at 20-21.

<sup>48</sup> Case No. 22-556-EL-USF, Application (October 31, 2022).

<sup>49</sup> Case No. 22-556-EL-USF, Testimony of Megan Meadows (October 31, 2022) at 27.

<sup>50</sup> Opinion and Order at 24.

addressing the methodology ODOD will utilize to develop the USF rider revenue requirement, the USF rate design, *and any issues raised by the parties concerning these items*” (emphasis added).<sup>51</sup> This proceeding was specifically intended to address the methodology ODOD will utilize to develop the USF rider revenue requirement and any issues raised by the parties concerning this methodology. The majority of the USF revenue requirement is the generation rates charged to PIPP consumers. Thus, OCC properly addressed the high cost of PIPP as component of the methodology that ODOD will use to develop the USF rider revenue requirement.

OCC’s opposition was not “beyond the scope of this proceeding.”<sup>52</sup> OCC’s opposition was to the methodology used to calculate the cost of PIPP as defined in the Notice of Intent (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.<sup>53</sup> And while perhaps unpopular with the utilities, Mr. Williams provided a solution for the problem by having the USF revenue requirement calculated based on the 2022 SSO auction rates.

OCC identified several solutions (in OCC testimony and briefs)<sup>54</sup> to protect current PIPP customers in this proceeding. The PUCO and ODOD should require the electric utilities to adjust PIPP billing and credit PIPP consumer accounts for charges billed. PIPP consumers should be billed the standard offer rate and the utility should be

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<sup>51</sup> Opinion and Order at 4.

<sup>52</sup> Opinion and Order at 24.

<sup>53</sup> Tr. at 74; OCC Reply Brief at 20-22.

<sup>54</sup> OCC Ex. 1 (Testimony of James D. Williams) at 27; OCC Post Hearing Brief at 20-21; OCC Reply Brief at 24-25.

required to absorb the difference between the standard service offer and PIPP rate. The PUCO should prohibit the electric utilities from collecting the difference from consumers, as the utilities are in a far better financial position to pay the excess costs than the low-income consumers. A solution going forward is to restructure the standard-offer auctions to combine PIPP consumers' service.

OCC witness Williams' testimony demonstrated that the methodology as proposed by ODOD in the Notice of Intent will result in unlawfully high USF rates.<sup>55</sup> While OCC or any other group could object to the unlawfully high USF rates when ODOD files its application to set new USF rates, OCC attempted to address the issue in the NOI to prevent the delay later this year. The PUCO has recognized that:

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.<sup>56</sup>

The methodology for the USF rider revenue requirement must comply with R.C. 4928.542, a statute specifically addressing the Universal Service Fund. The EDUs' and ODOD's compliance issues with this statute were thus entirely appropriate to address in proceeding. But even if PUCO believes they were not, the PUCO erred in not identifying an appropriate venue for addressing the issues OCC raised. The PUCO Order should have at least recognized that an approximate \$170 million-dollar additional charge<sup>57</sup> to low-income consumers and the USF at large is a serious issue that must be rectified. The PUCO could have proposed its own means of addressing the situation.

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<sup>55</sup> OCC Initial Brief at 13-19; OCC Reply Brief at 20-21; OCC Ex. 1 (Testimony of James D. Williams).

<sup>56</sup> 2015 Ohio PUC LEXIS 906.

<sup>57</sup> OCC Exhibit 1 (Testimony of James D. Williams), Table 2; Tr. at 70-71.

Instead, the PUCO's Opinion and Order minimizes the concern by saying that they "addressed the possibility of this situation" (higher PIPP rates in relation to the SSO) in the *PIPP RFP Case*.<sup>58</sup> And then the PUCO cites the Finding and Order in that case that "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)."

Earlier, OCC discussed how the "over the long-term" language does not conform with Ohio law. But even if the intent of the PUCO design of the PIPP RFP auction was that savings were to be realized over the long-term, the PUCO erred in not recognizing that the RFP auction process has failed to do this. As OCC's estimates (in the record) show,<sup>59</sup> savings have *not* been realized in the utilities' separate PIPP auctions. The PUCO did not address the flaws in its process and the Orders that would permit such an outcome. Nor did the Order identify any savings that have occurred through the PIPP RFP auctions. "Over the long-term" is not defined. Is it two years, five years, or twenty-five years? When these savings will occur is undefined. This auction process harms PIPP consumers. It also harms non-PIPP consumers who pay for the Universal Service Fund rider to fund the PIPP program.

It is not a "collateral attack"<sup>60</sup> to point out errors in a case that have shown with the benefit of time to harm consumers and the public interest. The *RFP Auction Case*<sup>61</sup> is one that the PUCO on its own Motion should be revisiting. OCC has properly raised the

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<sup>58</sup> Opinion and Order at 25.

<sup>59</sup> See, Tr. at 114; Tr. at 144-145; OCC Ex. 1 (Testimony of James D. Williams) at 18-19; OCC Ex. 1A; OCC Post-Hearing Brief at 8-12; OCC Reply Brief at 10-11.

<sup>60</sup> Opinion and Order at 24.

<sup>61</sup> *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).

issue of the unlawful, higher PIPP rates in the NOI phase of this proceeding. The case is ripe for adjudication because the facts about the substantial harm to consumers of all six of the electric distribution utilities can now be established. And given that consumers have been charged the higher PIPP rates since June, harm has already occurred. Rehearing should be granted.

**ASSIGNMENT OF ERROR NO. 4:** The PUCO erred by unreasonably and unlawfully finding that the Settlement showed that serious bargaining occurred and that diversity of interests was not required thus violating the first prong of the PUCO's Settlement standard.

The PUCO erred in finding that the Settlement is the product of serious bargaining among capable, knowledgeable parties because little to no serious bargaining occurred.<sup>62</sup> The filed Settlement essentially adopted ODOD's Notice of Intent application, and the PUCO recognizes this. As support for finding that the first prong is met, the PUCO stated that "the methodology for determining the revenue requirement and rate design for the USF has been undertaken for more than two decades and ODOD's NOI application incorporates virtually the same methodologies approved by the Commission in prior USF proceedings."<sup>63</sup> But this concept supports OCC's position that little to no serious bargaining occurred, rather than supports that it did occur.

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

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<sup>62</sup> Opinion and Order at 20.

<sup>63</sup> *Id.*

balances, reserves, allowances for under collections, audit costs, USF interest offsets, the rate design methodology, and the aggregation of PIPP customers.”<sup>64</sup>

The Settlement makes no mention of the fact that PIPP consumers are being charged higher rates than non-PIPP consumers that would show that any concessions or bargaining occurred. 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 consumers.<sup>65</sup>

The PUCO erred in finding that because the signatory parties were able to reach a resolution of the reserve component issue raised by the FirstEnergy EDUs, serious bargaining occurred.<sup>66</sup> FirstEnergy’s specific objection regarding the reserve component was identical to its objection made in at least the two previous years’ USF NOI applications.<sup>67</sup> The objection was not unexpected, not opposed, and accepted immediately in ODOD’s response to Objections.<sup>68</sup> With this one edit (as ODOD explained), the Settlement recommended 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.”<sup>69</sup>

Not only was there no serious bargaining, but the Settlement was not signed by parties representing diverse interests. The PUCO further erred in finding that “a diversity

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<sup>64</sup> OCC Brief at 7; OCC Reply Brief at 4; OCC Ex. 1 (Testimony of James D. Williams) at 10.

<sup>65</sup> OCC Brief at 7; OCC Reply Brief at 5; *see also* OCC Ex. 2, Consumer Protection Comments by Office of the Ohio Consumers’ Counsel (“OCC Comments”) (July 6, 2022).

<sup>66</sup> Opinion and Order at 20.

<sup>67</sup> *See* Case Nos. 21-659-EL-USF and 20-1103-EL-USF.

<sup>68</sup> Response of ODOD to Objections to the Notice of Intent (July 14, 2022); OCC Reply Brief at 4-5.

<sup>69</sup> ODOD Ex. 3 (Direct Testimony of Megan Meadows) at 4; OCC Reply Brief at 4-5.



of interest among the signatory parties is not determinative of the first part of the three-prong test.”<sup>70</sup> But especially in a case like this one affecting at-risk Ohioans, the PUCO should consider the diversity of interests in 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. 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. The Settlement lacks diverse interests, as no party that provides legal representation for residential consumers signed the Settlement.

The Settlement lacks serious bargaining and diversity of interests and fails the first prong. The PUCO should have rejected the Settlement.

### **III. CONCLUSION**

“[T]he purpose of the PUCO \* \* \* is to protect the customers of public utilities.”<sup>71</sup> The PUCO should protect at-risk consumers, as required under 4928.02(L). The PUCO can and should protect consumers by granting rehearing and rejecting or modifying the Opinion and Order in this case so that electricity service rates for low-income PIPP consumers do not exceed the standard service offer. In the USF rate case filing, the PUCO should require 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

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<sup>70</sup> *Id.*

<sup>71</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 372 (2009) (Pfeifer, J. dissenting).

would be through a billing adjustment made through the USF that would be paid for by the electric utilities and not consumers.

The PUCO should require ODOD 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.<sup>72</sup> 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 all consumers who pay the subsidy for the PIPP program consistent with R.C. 4928.542.

Respectfully submitted,

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<sup>72</sup> OCC Initial Brief at 20; OCC Reply Brief at 24; OCC Ex. 1 (Testimony of James D. Williams) at 27.

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 4<sup>th</sup> day of November 2022.

/s/ Amy Botschner O'Brien

Amy Botschner O'Brien

Assistant Consumers' Counsel

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

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