

**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.)	

**OHIO DEPARTMENT OF DEVELOPMENT’S MEMORANDUM CONTRA
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL’S
APPLICATION FOR REHEARING**

I. INTRODUCTION

By order issued October 5, 2022 (the “Order”), the Public Utilities Commission of Ohio (“Commission”) approved a Stipulation and Recommendation (“Stipulation”) entered into by a majority of the parties to this proceeding.¹ The Office of the Ohio Consumers’ (“OCC”) filed an application for rehearing of the Commission’s Order on November 4, 2022. Because the Commission’s Order fully considered and addressed each of OCC’s assignments of error, OCC’s application for rehearing should be denied.

II. ARGUMENT

OCC raises the following four assignments of error:

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 [Stipulation] benefits consumers and the public interest because higher PIPP rates relative to the standard service offer are to their detriment.

¹ The signatory parties include the Ohio Department of Development (“Development”), Ohio Power Company, AES Ohio, Duke Energy Ohio, Industrial Energy Users Ohio and Ohio Energy Group. The FirstEnergy electric distribution utilities (“EDUs”) and Commission Staff were not signatories but did not oppose the Stipulation. OCC opposed the Stipulation.

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 [Stipulation] 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 resolution of Assignment of Error No. 3 is dispositive of Assignment of Error Nos. 1 and 2

and will be addressed together. Assignment of Error No. 4 will be addressed separately.

A. The Commission should deny Assignment of Error Nos. 1, 2 and 3, because its Order fully considered and addressed whether PIPP generation prices approved in prior proceeding were beyond the scope of this proceeding.

Pursuant to R.C. 4928.544, the Commission is statutorily required to “design, manage and supervise” the PIPP auction process. Under the statute, the Commission also has the responsibility to ensure that the auction’s winning bids comply with R.C. 4928.542. The Commission designed the PIPP auction process in the *PIPP RFP Case*,² and has managed and supervised each annual auction since. Moreover, the Commission expressly found that the bids it accepted for each EDU’s PIPP electric supply during the test year³ complied with R.C. 4928.542.⁴ See *In the Matter of the Procurement of Percentage of Income Payment Plan Program Generation for Customers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 16-936-EL-UNC, Finding and Order (April 6, 2022) at ¶ 6, and Finding and Order (February 10, 2021) at ¶ 6; *In the Matter of the Procurement of Percentage of Income Payment Plan Program Generation for Customers of Duke Energy Ohio*, Case No. 16-940-EL-UNC (May 4, 2022) at ¶ 6,

² *In the Matter of the Implementation of Sections 4928.54 and 4928.544*, Case No. 16-247-EL-UNC, Finding and Order (March 2, 2016) (“*RFP Auction Case*”).

³ The cases that follow show that the 2021 auction process resulted in PUCO-approved low bids for PIPP electricity supply for June 1, 2021 through May 31, 2022. The 2022 auction process resulted in PUCO-approved low bids for PIPP electricity supply for June 1, 2022 through May 31, 2023. The USF test period is calendar year 2022, and is used to set USF rider rates for calendar year 2023.

⁴ Tr. 80- 81 (Williams Cross-examination).

and Finding and Order (April 27, 2021) at ¶ 6; *In the Matter of the Procurement of Percentage of Income Payment Plan Program Generation for Customers of Ohio Power Company*, Case No. 16-1031-EL-UNC (May 4, 2022) at ¶ 7, and Finding and Order (May 5, 2021) at ¶ 7; and *In the Matter of the Procurement of Percentage of Income Payment Plan Program Generation for Customers of Dayton Power and Light Company* [AES Ohio], Case No. 17-1163-EL-UNC (May 18, 2022) at ¶ 7, and Finding and Order May 5, 2021) at ¶ 7 (collectively, the “EDU Auction Cases”).

Development has no authority to alter the PUCO-approved bids to provide PIPP generation and must use the EDUs’ resulting PIPP generation rates to calculate the USF rider rate, just as it must accept the EDUs’ distribution rates set in their distribution rate cases.

On brief, OCC argued that inclusion of the PUCO-approved PIPP generation rates in the Cost of PIPP violated R.C. 4928.542.⁵ Development and the Stipulating EDUs⁶ argued that OCC’s argument was an improper collateral attack on the *PIPP RFP Case* and the EDU Auction Cases.⁷ In its Reply Brief, OCC contested Development’s and the Stipulating EDUs’ position.⁸ Upon considering all arguments, the Commission found “OCC’s opposition to the 2022 NOI Stipulation based on the PIPP generation rates...to be an untimely and impermissible collateral attack on the PIPP RFP Case and the EDU [Auction Cases] which the Commission will not entertain.”⁹

In its Application for Rehearing, OCC continues to argue that the PUCO-approved PIPP generation rates are at issue in this proceeding as part of the Cost of PIPP, and that they violate R.C. 4928.542.¹⁰ Because OCC has raised no new argument that the Commission has not already fully considered and addressed, its Assignment of Error No.3 should be denied. See, e.g., *In re Application*

⁵ See Order at ¶ 41

⁶ Ohio Power Company, AES Ohio and Duke Energy Ohio.

⁷ Development Brief at 7, Order at ¶ 40.

⁸ OCC Reply Brief at 23.

⁹ Order at ¶ 44.

¹⁰ OCC Application for Rehearing at 14-18.

of *Columbus Southern Power*, Case No. 10-1261-EL-UNC, Entry on Rehearing (March 9, 2011); *In re Application of Ohio American Water Co.*, Case No. 09-391-WS-AIR, Entry on Rehearing (June 23, 2010).

In its Assignment of Error No. 1, OCC argues that the plain language of R.C. 4928.542 requires that PIPP generation prices be reduced to the level of standard service offer (“SSO”). Alternatively, OCC argues that, if the statute is deemed ambiguous, it must be construed *in pari materia* with R.C. 4928.02(L),¹¹ to reach the same result. Because the bids the PUCO accepted as compliant with R.C. 4928.542 in the EDU Auction Cases are beyond the scope of this proceeding (Assignment of Error No. 3), it necessarily follows that arguments regarding the statute’s interpretation also are beyond the scope of this proceeding.

In Assignment of Error No. 2, OCC argues that the Stipulation approved by the Order does not benefit consumers because the PIPP generation prices are higher than SSO prices. OCC’s argument simply is another collateral attack on the PIPP generation prices approved in the EDU Auction Cases, and cannot be entertained in this proceeding. The PIPP generation costs were found to be reasonable and compliant with R.C. 4928.542 in the EDU Auction Cases. The Stipulation is in the public interest and benefits consumers because it sets a reasonable USF rider rate based upon the evidence of record and assures continued adequate funding for low-income customer assistance.

B. The Commission should deny Assignment of Error No. 4 because its Order fully considered and addressed whether the Stipulation was the product of serious bargaining.

In its Assignment of Error No. 4, OCC argues that the Stipulation was not the product of serious bargaining. OCC raised these same arguments at hearing and on brief, and the Commission denied them.¹² Because OCC has raised no new argument that the Commission has not already fully

¹¹ R.C. 4928.02(L) provides that it is state policy to “[p]rotect at-risk populations.”

¹² Order at ¶¶ 33-35.

considered and addressed, its Assignment of Error No. 4 should be denied. See, *e.g.*, *In re Application of Columbus Southern Power*, Case No. 10-1261-EL-UNC, Entry on Rehearing (March 9, 2011); *In re Application of Ohio American Water Co.*, Case No. 09-391-WS-AIR, Entry on Rehearing (June 23, 2010).

III. CONCLUSION

For the foregoing reasons, Development respectfully requests that OCC's Application for Rehearing be denied.

Respectively submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Memorandum Contra the Office of the Ohio Consumers' Counsel's Application for Rehearing* has been served upon the following parties by electronic mail this 14th day of November 2022.



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Summary: Text Ohio Department of Development's Memorandum Contra The
Office of The Ohio Consumers' Counsel's Application for Rehearing electronically
filed by Teresa Orahod on behalf of Dane Stinson