

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Procurement of)
Standard Service Offer Generation for) Case No. 17-2391-EL-UNC
the Customers of Ohio Power Company.)

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

Bruce Weston (0016973)
Ohio Consumers' Counsel

William J. Michael (0070921)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Michael]: (614) 466-1291
william.michael@occ.ohio.gov
(willing to accept service by e-mail)

December 2, 2022

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Procurement of)
Standard Service Offer Generation for) Case No. 17-2391-EL-UNC
the Customers of Ohio Power Company.)

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

The PUCO’s Finding and Order¹ accepting the auction results of Ohio Power Company² and authorizing AEP to file final tariffs fails consumers and is unlawful. The Finding and Order applies only to consumers served by AEP’s standard service offer (“SSO”). PIPP consumers, the most vulnerable Ohioans, will pay electricity prices determined at a separate auction. Recent PIPP auction results³ demonstrate that it is highly likely this upcoming PIPP-specific auction will cause AEP’s at-risk PIPP consumers to be billed more for the standard service offer than other consumers served by AEP’s standard service offer. R.C. 4928.542(B) prohibits exactly that. The Finding and Order also fails to provide the “best value” for consumers who pay for the PIPP program, as R.C. 4928.542(C) requires. It is unconscionable and unlawful to bill low-

¹ Finding and Order (November 2, 2022).

² d/b/a AEP Ohio (“AEP”).

³ Duke PIPP consumers will pay \$0.0315/kWh more than other residential consumers, effective June 1, 2023. *See In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 18-6000-EL-UNC, Finding and Order (September 21, 2022). PIPP consumers of AES Ohio and FirstEnergy currently pay \$0.0386032 and \$0.041 more per kWh, respectively. *See the AES Ohio Revised Tariff Pages*, PUCO Electric No. 17, Revised Sheet No. G10 effective June 1, 2022; *See the Toledo Edison Company Rider GEN*, PUCO Electric No. 8, Sheet 114 effective June 1, 2022. AEP’s next PIPP auction will occur in spring 2023.

income Ohioans more for the same service others are billed less. The Commission should not wait for the next PIPP-specific auction to act, it needs to now.

Accordingly, under R.C. 4903.10, OCC applies for rehearing of the November 2, 2022 Finding and Order, which was unlawful in the following respects:

ASSIGNMENT OF ERROR NO. 1: The PUCO erred by approving AEP's auction results, which exclude at-risk PIPP consumers, effectively charging them higher rates for SSO service than other consumers, in violation of R.C. 4928.542(B) and (C) and principles of statutory construction.

The PUCO should grant rehearing and abrogate or modify its November 2, 2022 Finding and Order to protect at-risk PIPP consumers from being billed more for electric utility service than other utility consumers.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael
William J. Michael (0070921)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Michael]: (614) 466-1291
william.michael@occ.ohio.gov
(willing to accept service by e-mail)

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. MATTER FOR CONSIDERATION	3
III. CONCLUSION.....	7

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Procurement of)
Standard Service Offer Generation for) Case No. 17-2391-EL-UNC
the Customers of Ohio Power Company.)

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

I. INTRODUCTION

The PUCO Finding and Order is unlawful. The PUCO accepted the results of AEP’s standard service offer auction. Rates for AEP’s at-risk PIPP consumers will be set at a separate auction. Previous auction results resulted in prices higher than the SSO auctions and increase the concern that the upcoming PIPP-specific rates will likely be higher than those the PUCO authorized in the Finding and Order for standard service offer consumers.⁴ The PUCO should take steps to protect consumers and make AEP’s auction results comply with Ohio law. R.C. 4928.52(B) states that generation prices charged to PIPP consumers cannot exceed their utility’s standard service offer prices. And the winning bid must result in the “best value” for paying PIPP consumers.⁵ The PUCO should follow the law.

⁴ Duke PIPP consumers will pay \$0.0315/kWh more than other residential consumers, effective June 1, 2023. *See In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 18-6000-EL-UNC, Finding and Order (September 21, 2022). PIPP consumers of AES Ohio and FirstEnergy currently pay \$0.0386032 and \$0.041 more per kWh, respectively. *See the AES Ohio Revised Tariff Pages*, PUCO Electric No. 17, Revised Sheet No. G10 effective June 1, 2022; *See the Toledo Edison Company Rider GEN*, PUCO Electric No. 8, Sheet 114 effective June 1, 2022. AEP’s next PIPP auction will occur in spring 2023.

⁵ R.C. 4928.542(C).

Also, R.C. 4928.02(L) requires the Ohio Department of Development (“ODOD”) and the Public Utilities Commission of Ohio (“PUCO”) to protect at-risk Ohioans. AEP’s low-income PIPP consumers are vulnerable to poverty, food and housing insecurity, inflation, and a resurging pandemic. By allowing AEP’s PIPP consumers’ electricity prices to be determined by energy marketer bids in a single PIPP-specific auction that results in higher bills than SSO consumers pay, the PUCO has not protected at-risk consumers from unjust and unreasonable rates.

Eligibility for PIPP benefits had been limited to households with incomes below 150% of the federal poverty guidelines.⁶ But on July 27, 2022, Governor DeWine expanded PIPP eligibility to include households up to 175% of the poverty guidelines, in Executive Order 2022-12D. We appreciate that the Governor’s good intentions. But those good intentions have been compromised by the results of the PIPP electricity auctions. There, the results of bidding by energy marketers exceeds the applicable utility’s standard offer price. So, unfortunately, expanding people’s eligibility for PIPP to 175% of federal poverty guidelines exposes more at-risk consumers to higher generation charges.

In addition, PIPP consumers must meet strict requirements that their payments be made in-full and on-time to avoid accumulating arrearages (i.e., debt).⁷ If their arrearages become due, it will be hard for low-income people to find the money to pay off increased debt. These vulnerable consumers thought enrolling in the PIPP program would protect them. Instead, they are being harmed.

⁶ See O.A.C. 122:5-3-02(B).

⁷ O.A.C 122:5-3-04.

The PUCO must do its part to stop this injustice. Accordingly, OCC objects to the PUCO’s Finding and Order. The PUCO should include PIPP consumers in the standard offer auction instead of holding a separate, PIPP-specific auction.

The PUCO should grant OCC’s Application for Rehearing as further explained below to protect at-risk PIPP consumers from being billed more for electric utility service than other utility consumers.

II. MATTER FOR CONSIDERATION

ASSIGNMENT OF ERROR NO. 1: The PUCO erred by approving AEP’s auction results, which exclude at-risk PIPP consumers, effectively charging them higher rates for SSO service than other consumers, in violation of R.C. 4928.542(B) and (C) and principles of statutory construction.

The Universal Service Fund (“USF”), in R.C. 4928.51 *et seq.*, is the state funding mechanism for electric bill payment assistance through PIPP. The program is administered by the Ohio Department of Development (“ODOD”). ODOD requested that the PUCO design, manage, and supervise the competitive procurement process for PIPP consumers.⁸

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.⁹

⁸ *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.

⁹ *See* R.C. 4928.02(A); R.C. 4928.542.

PIPP-specific auctions have recently resulted in the utility billing vulnerable, low-income consumers at higher rates than other standard service offer consumers.

The Dayton Power and Light Company¹⁰ (“DP&L”) charges PIPP consumers higher rates. DP&L’s PIPP consumers are billed at \$0.1477049, while non-PIPP consumers are billed at a lower rate -- \$.1091017.¹¹ That equals a \$0.0386032 difference, or **\$509.56** more per year for a PIPP consumer using an average of 1,100kWh per month.

FirstEnergy has charged higher rates to low-income PIPP consumers, too. The PUCO authorized a PIPP-specific auction that charged at-risk consumers \$0.084321 per kWh.¹² Meanwhile, FirstEnergy’s SSO consumers are charged just \$0.041 per kWh,¹³ *more than twice as much*. In total, PIPP consumers using an average of 1,100kWh per month are charged **\$571.84** more in a year than consumers serviced by the SSO.

Duke’s PIPP consumers are being charged more than consumers being served under the standard service offer -- \$0.14725/kWh versus \$0.11575/kWh.¹⁴ This means PIPP consumers are charged \$0.0315/kWh *more* for their generation than standard service offer consumers. For a PIPP consumer using an average of 1,100 kWh per month, that equals an estimated excess charge of **\$415.80** per year above Duke’s standard offer.

Based on the recent PIPP-specific auctions described above, AEP’s next PIPP-specific auction will likely cost AEP’s low-income consumers more (just as it did last

¹⁰ d/b/a AES Ohio.

¹¹ See the AES Ohio Revised Tariff Pages, PUCO Electric No. 17, Revised Sheet No. G10 effective June 1, 2022.

¹² See the Toledo Edison Company Rider GEN, PUCO Electric No. 8, Sheet 114 effective June 1, 2022.

¹³ Finding and Order (August 25, 2021) at 3.

¹⁴ See the Duke Energy Ohio Retail Capacity Rider and Retail Energy Rider, PUCO Electric No. 19, Sheet(s) 111 and 112 effective June 1, 2022.

year).¹⁵ AEP PIPP consumers are being charged \$0.087450 more per kWh than consumers served by the SSO.¹⁶ That equals an estimated excess charge of **\$1,154.40** per year for consumers using an average of 1,100 kWh per month.¹⁷ By authorizing SSO specific rates, the Finding and Order effectively allows the utility to charge low-income PIPP consumers higher prices than other residential consumers. This is unlawful.

Per R.C. 4928.542(B), 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. And a winning bid shall result in the **best value** for persons paying the universal service rider, under R.C. 4928.542(C).¹⁸

The PUCO has found¹⁹ that cost savings need accrue only “over the long term,”²⁰ rather than after every auction. The PUCO’s interpretation is wrong.

First and foremost, the PUCO must apply, not interpret, an unambiguous statute. R.C. 4928.542 is unambiguous, which requires the PUCO to apply its plain meaning (not construe it) that each auction must reduce rates for low-income PIPP consumers and provide the best value for consumers paying for the PIPP program. The PUCO’s

¹⁵ See Ohio Power Company Revised Tariff Pages, PUCO Electric No. 21, Revised Sheet No. 101-1 effective June 1, 2022.

¹⁶ *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.

¹⁷ *Id.*

¹⁸ Also, a winning bid must be designed to provide a reliable electricity supplier to PIPP customers, per R.C. 4928.542.

¹⁹ 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).

²⁰ *Id.*

conclusion that the savings for PIPP consumers need only accrue over the long term requires the PUCO to add words to the statute. It has no authority to do so.²¹

Even assuming arguendo that the statute is ambiguous (it's not), the PUCO has wrongly construed it. 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 stated that "[p]ursuant to rules of statutory interpretation, statutes are to be interpreted based on the plain language of the statute...."²² 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."²³ Nothing in R.C. 4928.542 indicates "shall" means something other than its ordinary, mandatory usage. R.C. 4928.542 says nothing about bids reducing rates "over the long term." Adding this caveat violates Ohio's rules of construction.

Unfortunately for PIPP consumers, ODOD and the PUCO are failing to require compliance with the law. 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 AEP standard service offer, per R.C. 4928.542.

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. That could be done in this case by combining PIPP consumers' service into the standard-offer

²¹ *Columbus-Suburban Coach Lines v. Pub. Util. Comm.*, (1969), 20 Ohio St.2d 125, 254 N.E.2d 8, 10.

²² *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.

²³ *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 108, 271 N.E.2d 834 (1971).

auctions. Alternatively, the PUCO could schedule multiple PIPP auctions to reduce the volatility caused by auctioning off the entire PIPP load at once.

These approaches are 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” If the PIPP auction results are accepted, utilities (in this case, AEP) – not low-income, vulnerable PIPP consumers – should be required to pay the difference between the SSO auction results and the PIPP auction results. This is 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.²⁴

The PUCO approved AEP’s auction results, excluding at-risk PIPP consumers to a separate auction. As previous PIPP-specific auction results show, this could cause them to be charged higher rates. If that occurs, it is a violation of R.C. 4928.542.

III. CONCLUSION

“[T]he purpose of the PUCO * * * is to protect the customers of public utilities.”²⁵ The PUCO can protect consumers by granting rehearing and rejecting or modifying the Finding and Order in this case so that electricity service rates for low-income PIPP consumers do not exceed the standard service offer and provide the best value to

²⁴ Further, PIPP consumers could benefit from inclusion in the SSO auctions because the laddering and multiple auctions that occur with SSO procurement reduce volatility in price and can provide a better price.

²⁵ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 372 (2009) (Pfeifer, J. dissenting).

consumers. Requiring AEP to procure generation for PIPP consumers at the same auction as consumers on the SSO would best ensure these outcomes.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ William J. Michael
William J. Michael (0070921)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Michael]: (614) 466-1291
william.michael@occ.ohio.gov
(willing to accept service by e-mail)

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 2nd day of December 2022.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

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

SERVICE LIST

thomas.lindgren@ohioago.gov
talexander@beneschlaw.com
slessor@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylereohn@BKLawfirm.com
glpetrucci@vorys.com

stnourse@aep.com
Rocco.DAscenzo@duke-energy.com
Jeanne.Kingery@duke-energy.com
Larisa.Vaysman@duke-energy.com
joe.oliker@igs.com
michael.nugent@igs.com
bethany.allen@igs.com
whitt@whitt-sturtevant.com

Attorney Examiners:

sarah.parrot@puco.ohio.gov
matthew.sandor@puco.ohio.gov
greta.see@puco.ohio.gov

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/2/2022 3:28:36 PM

in

Case No(s). 17-2391-EL-UNC

Summary: App for Rehearing Application for Rehearing by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Michael, William J.