

**In the Matter of the Application of the** :  
**Ohio Department of Development for an** : **Case No. 22-0556-EL-USF**  
**Order Approving Adjustments to the** :  
**Universal Service Fund Rider of** :  
**Jurisdictional Ohio Electric Distribution** :  
**Utilities.** :

Ohio Power Company (“AEP Ohio” or “the Company”) files this Reply Brief in response to the argument(s) set forth in the Post-Hearing Brief filed by the Office of the Ohio Consumers’ Counsel (“OCC”). Like the Notice of Intent (“NOI”) process, OCC is the only party that contests the Joint Stipulation and Recommendation that was filed on November 23, 2022 (“Rates Stipulation”). OCC opposes the Rates Stipulation on the same single basis that was already rejected by the Commission – that the PIPP SSO rates for the 2022-2023 delivery year are in excess of the SSO rates for the same time period. In doing so, OCC is once again collaterally attacking the PIPP SSO auction process and results that were previously approved by the Commission. But OCC is now collaterally attacking the October 5, 2022 Opinion and Order (“*NOI Opinion and Order*”) issued as part of the NOI process that addressed the exact same arguments raised by OCC. OCC’s analysis of the three-prong test fails for numerous additional reasons that include factual omissions and misunderstanding of the law. For the reasons more fully explained below and in AEP Ohio’s Initial Brief, the Commission should approve the Stipulation that was not opposed by any other party in this proceeding, which is the product of serious bargaining amongst capable and knowledgeable parties, benefits the public interest, and does not violate any important regulatory principles.

**A. The Commission Should Once Again Reject OCC's Continued Attempts to Untimely and Improper Collaterally Attack Prior Commission Orders and Should be Disregarded.**

As set forth in more detail in the Initial Brief of Ohio Power Company, the Commission should reject OCC's repeated attempts to raise its sole issue of contention in this case – the price of PIPP SSO auctions for the 2022-2023 delivery year – as an improper collateral attack on prior Commission orders, which now includes the *NOI Opinion and Order*. As the Commission found during the NOI process, “at the foundation of each of OCC's arguments and recommendations is that the PIPP generation rates exceeds the SSO blended rates.” *NOI Opinion and Order* at ¶ 44. The Commission approved the NOI Stipulation over OCC's objections by finding that “untimely and impermissible collateral attack on the PIPP RFP Case and the electric distribution utilities' (“EDUs”) RFP PIPP auction cases which the Commission will not entertain.” *NOI Opinion and Order* at ¶ 44. Undeterred by these findings, OCC has raised the very same foundational issue in this rates portion of the USF process; repeating the mantra throughout the entire Post-Hearing Brief. (Post Hearing Brief for Consumer Protection by Office of the Ohio Consumers' Counsel (“OCC Brief”) at pp. 1-2, 4, (Dec. 6, 2022)).

OCC unapologetically continues to raise the same issue in a myriad of cases; ironically, despite failing to raise it at the only appropriate time – as an application for rehearing challenging the Commission's Finding and Order in *In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC (“*PIPP RFP Finding and Order*”), Finding and Order at 5 (Mar. 2, 2016). OCC continues to ignore and not address the *PIPP RFP Finding and Order* and the orders approving the EDUs 2022 PIPP SSO auction results. OCC's attempts are an improper collateral attack on prior rulings, including the *NOI Opinion and Order*. Potentially even more concerning, however, OCC's attack on this second “rates phase” of the USF process, that is reserved for setting the rates that comply with

the processes and rate design set forth during the NOI process, seeks to undermine and render the entire NOI process meaningless.

As OCC admits at the very outset of its Post-Hearing Brief, OCC's true issue is with the law – "[u]nder R.C. 4928.54, electric utilities are conducting competitive auctions to serve PIPP consumers separately from their standard offer consumers. *This law is flawed.* . . ." (OCC Brief at p. 1) (emphasis added). But it has long been held that the Commission is "a creature of statute, [and] has no authority to act beyond its statutory powers. *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51. Rather than continue to collaterally attack Commission orders that comply with Ohio law, if OCC deems a law to be flawed that is a matter than can only be addressed by the General Assembly.

**B. The Stipulation was a Product of Serious Bargaining Amongst Capable and Knowledgeable Parties.**

OCC does not contest that there was a settlement process and that the parties and their counsel involved in this case, including signatories to the Stipulation, are well-versed and knowledgeable about the NOI process. (ODOD Ex. 5 at pp. 3-4). OCC once again asserts that Rates Stipulation lacks diversity of parties specifically because "ODOD is a state agency . . . with responsibilities for businesses, communities and tourism." (OCC Brief at pp. 5-6). But the Chief of the Community Services Division of ODOD testified that ODOD "represent[s] the interest[s] of the PIPP customers and the ratepayers of Ohio." (Tr. at p. 11). OCC challenges this statement by arguing that the ODOD witness, that is not a lawyer, couldn't cite any authority to support the assertion that ODOD represents the interests of PIPP customers while on the witness stand. (OCC Brief at p. 6). But despite citations to the statute during the NOI phase of this process, OCC neglects to mention that the community services division of ODOD, "shall [s]erve as a statewide advocate for social and economic opportunities for low-income persons."

R.C. 122.68(G). Moreover, there was no need to have discussions about the bill impacts of the Amended Application on the residential customers (OCC Brief at p. 6) because ODOD was charged with calculating the USF rates consistent with the NOI process that was already approved by the Commission.

As it did during the NOI phase, OCC once again holds itself out as the only representative permitted to speak and advocate for the interests of residential consumers in proceedings before the Commission.” Not only is that legally and factually incorrect, but the Commission has repeatedly rejected that OCC is a necessary party to stipulations. Just two months ago in this very proceeding, the Commission upheld a Stipulation where OCC raised the very same issues and the Commission reiterated once again that “[t]he Commission has repeatedly and consistently determined that we will not require any single party, including OCC, to agree to a stipulation in order to meet the first part of the three-part test.” *NOI Opinion and Order* at ¶35; *see also, In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electricity Security Plan*, Case No. 16-395-EL-SSO, Opinion and Order at ¶ 21 (Oct. 20, 2017); *In Re the Application of Campbell Supply Soup Company L.L.C. for the Approval of a Reasonable Arrangement for its Napoleon, Ohio Plant*, Case No. 21-1047-EL-AEC, Opinion and Order at ¶ 51 (June 1, 2022) (upholding stipulation opposed by OCC, recognizing that no single party holds a veto right with respect to the first prong of the three-part test for examining stipulations).

OCC also complains that there was no bargaining because the Stipulation largely adopts the Amended Application. (OCC Brief at p. 5). But OCC does not dispute that there were settlement discussions and that all parties were invited (ODOD Ex. 5 at p. 3); in fact, the meeting was moved to accommodate OCC despite having not indicated any objections to the Amended

Application. (ODOD Ex. 6). Moreover, despite the fact that a virtually identical stipulation has been used for decades with no issues, the language was modified to allow an opportunity to decrease rates. (Tr. at p. 12). But it makes sense why there was so little change between the Amended Application and the Stipulation; after all, any rate design issues were already resolved as part of the NOI phase of this proceeding. Indeed, during the NOI phase of this proceeding, the Commission refused to find that there was no serious bargaining simply because the stipulation virtually adopts the application that applies the same provisions previously approved by the Commission. *NOI Opinion and Order* at ¶ 35.

The Commission should find that the Stipulation meets the first prong of the settlement test because the Stipulation is the result of serious bargaining amongst capable and knowledgeable parties.

**C. The Stipulation Benefits the Public Interest and Should be Approved.**

In arguing that the Stipulation fails the second prong of the test for examining stipulations, OCC does not contest that the Rates Stipulation is consistent with the Commission-approved NOI process. OCC also ignores the benefits of timely resolving the USF proceeding through the Rates Stipulation so that Ohio's most vulnerable customers have access to the PIPP Plus program commencing on January 1, 2023. (ODOD Ex. 5 at p. 4). In fact, OCC's obstreperous tactics in this case only serve to jeopardize the timely resolution of the USF Rider for the 2023 year so that it is sufficiently funded, and low-income customers can avail themselves of the benefits of the PIPP Plus program. Nor does OCC acknowledge the benefit of affording ODOD the opportunity, after consulting with Signatory Parties, to commence a subsequent proceeding to address potential changes to the residential rates should rates decrease.

(Rates Stipulation at ¶ 9; Tr. at p. 12). And ODOD indicated that it would not object to consulting with Staff and OCC prior to making such a filing as well. (Tr. at p. 54).

Once again, as it did during the NOI phase of this proceeding, OCC relies on a single reason why it believes the Rates Stipulation fails the second prong and does not benefit the public interest – the Rates Stipulation incorporates the Commission-approved PIPP SSO generation rates for the 2022-2023 delivery year. (OCC Brief at pp. 8-12). As the Commission found in the underlying NOI phase of this case and as discussed *supra*; however, the 2022-2023 PIPP SSO auction rates are not a proper consideration in this matter.

**D. The Stipulation Does Not Violate Any Important Regulatory Principles or Practices.**

Without citing to R.C. 4928.542, OCC attempts to craftily argue that the Rates Stipulation violates various Ohio policies for “just and reasonable” rates (R.C. 4905.22), “reasonably priced retail electric service” (R.C. 4928.02(A)), and customers’ ability to understand their services (R.C. 4928.10). (OCC Brief at pp. 12-13). But OCC’s sleight of hand is obvious – the basis of each of these arguments is that the rates set forth in the Rates Stipulation incorporate the 2022-2023 delivery year rates that are higher than the SSO rate for the same time period. (OCC Brief at pp. 12-13). But none of the statutes cited by OCC mandates that the PIPP SSO auction must be lower than the SSO on a kWh basis each year. Indeed, the Commission expressly rejected this argument during the NOI phase acknowledging that addressed the possibility of this situation and designed the RFP auction process “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).” *NOI Opinion and Order* at ¶ 45 (quoting *PIPP RFP Opinion and Order* at 5).

OCC fatally ignores that the Rates Stipulation is compliant with and in accordance with the NOI process that was approved by the Commission. (ODOD Ex. 5 at p. 4). The rates

contained in the Rates Stipulation result from selecting the lowest bid from a competitive auction process and “represent the minimal rates necessary to collect the EDUs’ USF rider revenue requirement.” (ODOD Ex. 5 at p. 4). The rates set forth in the Rates Stipulation, that are compliant with the *NOI Opinion and Order*, as well as the Commission-approved competitive procurement process set forth in the *PIPP RFP Case*, are necessarily just and reasonable and result in reasonably priced retail electric service. At their core, OCC’s policy arguments are yet another example of OCC attempting to wage an improper collateral attack and relitigate the underlying PIPP SSO auction process that was established in 2016, the results of the EDUs’ PIPP SSO auctions, and the *NOI Opinion and Order*.<sup>1</sup>

#### **E. CONCLUSION**

For the aforementioned reasons, the Commission should approve the Rates Stipulation, which meets the three-prong test for evaluating a stipulation and is consistent with the *NOI Opinion and Order*.

Respectfully submitted,

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<sup>1</sup> OCC filed an Application for Rehearing (“AfR”) in response to the NOI Opinion and Order, which was denied by operation of law when the Commission did not grant or deny the AfR prior to December 5, 2022. *See*, R.C. 4903.10

### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was e-filed with the Public Utilities Commission of Ohio on December 8, 2022. The PUCO's e-filing system will electronically service notice of the filing of this document on the following parties:

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