

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 Universal) Case No. 09-463-EL-UNC
Service Fund Riders of Jurisdictional Ohio)
Electric Distribution Utilities.)

FINDING AND ORDER

The Commission, considering the Ohio Department of Development's Notice of Intent to file its annual application for adjustment to the Universal Service Fund (USF) riders (on or before October 31, 2009), the pleadings, and the applicable law, finds:

Universal Service Fund Background

- (1) The USF was established, under the provisions of Sections 4928.51 through 4928.58, Revised Code, for the purposes of providing funding for the low-income customer assistance programs, including the consumer education program authorized by Section 4928.56, Revised Code, and for payment of the administrative costs of those programs. The USF is administered by the Ohio Department of Development (ODOD), in accordance with Section 4928.51, Revised Code.¹ The USF is funded primarily by the establishment of a universal service rider on the retail electric distribution service rates of The Cleveland Electric Illuminating Company (CEI), Columbus Southern Power Company (CSP), The Dayton Power & Light Company (DP&L), The Cincinnati Gas & Electric Company, d/b/a Duke Energy Ohio (Duke), Ohio Edison Company (OE), Ohio Power Company (OP), and The Toledo Edison Company (TE) (all of which may be referred to, individually or collectively, as electric utilities). The USF rider rate for each electric utility was initially determined by ODOD and approved by the Commission. The USF riders proposed by ODOD were approved for the three operating companies of FirstEnergy Corp. on July 19, 2000. *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison*

¹ On June 22, 1999, the 123rd Ohio General Assembly passed amended Substitute Senate Bill No. 3 (SB 3). SB 3 required the restructuring of the electric utility industry, which included transfer of responsibility for administration of the percentage of income payment plan (PIPP) program from the individual electric utilities to ODOD. PIPP is one of the low-income customer assistance programs that is funded by the USF. (SB 3 was codified under Chapter 4928, Revised Code.)

Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues, Case No. 99-1212-EL-ETP (Opinion and Order, July 19, 2000). The USF rider rates for the remaining five electric utilities were approved on August 17, 2000, in their respective electric transition plan dockets.²

- (2) Section 4928.52(B), Revised Code, provides that, if, during or after the five-year market development period, ODOD, after consultation with the Public Benefits Advisory Board, determines that revenues in the USF and revenues from federal or other sources of funding for those programs will be insufficient to cover the administrative costs of the low-income customer assistance programs and the consumer education programs and provide adequate funding for those programs, ODOD shall file a petition with the Commission for an increase in the USF rider rates. The same Revised Code section provides that the Commission, after reasonable notice and opportunity for hearing, may adjust the USF riders by the minimum amount necessary to provide the necessary additional revenues. To that end, the Commission has approved USF rider rate adjustments each year, for each the Ohio jurisdictional electric utilities.³
- (3) In accordance with the Stipulation filed on December 8, 2008 (2008 Adjustment Stipulation) and approved by the Commission in Case No. 08-658-EL-UNC, *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 (08-658)*, Opinion and Order (December 17, 2008), ODOD must file a Notice of Intent (NOI), in advance of filing a USF rider adjustment application. The function of the NOI is to provide parties with an opportunity to raise and pursue objections to the specific

² *Cincinnati Gas & Electric Co.*, Case No. 99-1658-EL-ETP; *Columbus Southern Power Co.*, Case No. 99-1729-EL-ETP; *Ohio Power Co.*, Case No. 99-1730-EL-ETP; *Dayton Power & Light Co.*, Case No. 99-1687-EL-ETP; and *Monongahela Power Co.*, Case No. 00-02-EL-ETP.

³ Case No. 01-2411-EL-UNC, Opinion and Order (December 20, 2001); Case No. 02-2868-EL-UNC, Opinion and Order (January 23, 2003); Case No. 03-2049-EL-UNC, Opinion and Order (December 3, 2003); Case No. 04-1616-EL-UNC, Opinion and Order (December 8, 2004); Case No. 05-717-EL-UNC, Opinion and Order (December 14, 2005, and Finding and Order (June 6, 2006); Case No. 06-751-EL-UNC, Opinion and Order (December 20, 2006), and Finding and Order (January 10, 2007); Case No. 07-661-EL-UNC, Opinion and Order (December 19, 2007) and Finding and Order (May 28, 2008).

methodology ODOD intends to use in developing the USF rider revenue requirement and the USF rider rate design, both of which will be utilized in preparing its application for USF rider adjustments.

History of this Proceeding

- (4) On June 1, 2009, ODOD filed its NOI (2009 NOI) to file an application to adjust the USF riders of all jurisdictional Ohio electric utilities: CEI, CSP, DP&L, Duke, OE, OP, and TE, in accordance with the terms of the 2008 Adjustment Stipulation approved by the Commission pursuant to the Order issued on December 17, 2008 in 08-658. As noted in the 2009 NOI, on August 18, 2009, ODOD filed Exhibit A which supports its proposed allowance for the costs associated with the Electric Partnership Program (EPP).
- (5) First, ODOD's 2009 NOI indicates that its subsequent application will request that each of the USF riders be adjusted to more accurately reflect the current costs of operating the percentage of income payment plan (PIPP) program, the electric partnership program (previously referred to as the low-income customer energy efficiency program), consumer education programs, and associated administrative costs.
- (6) Second, ODOD indicates that it plans to employ in this case the same USF rider revenue requirement and rate design methodology approved by the Commission in prior USF proceedings, which incorporates a two-step declining block rate design of the type that has been approved by the Commission in all prior ODOD applications.
- (7) Lastly, regarding the PIPP-related accounting and reporting audits for each electric utilities, ODOD submits that now that each electric utility has been audited, based on the experience gained from the process, the agreed-upon audit procedures should be refined to provide a more in-depth analysis of the particular areas of risk, and, at least for this year, all of the electric utilities should be subject to an audit under the new agreed-upon procedures and to an allowance included in the USF rider revenue requirement for the costs of such studies. ODOD notes that the third-party audits of OP, CSP, and Duke are currently underway pursuant to 08-658. In the event that the auditor finds that the monthly requests for

reimbursements of any of the subject electric utilities over the period of the audit have overstated the reimbursement to which the electric utility is lawfully entitled, ODOD will supplement next year's application to propose a mechanism to recover the identified overpayments and to credit the electric utilities' customers appropriately.

- (8) The Commission notes that the function of the NOI is to provide parties with an opportunity to raise and pursue objections to the specific methodology ODOD intends to use in developing the USF rider revenue requirement and the USF rider rate design, both of which will be utilized in preparing its application for USF rider adjustments. Accordingly, the Commission will issue two orders in this proceeding: one, regarding the 2009 NOI including the methodology proposed by ODOD for developing the USF rider revenue requirement, the USF rate design, and the issues raised by the parties concerning these items; and one regarding ODOD's subsequent application proposing USF rider adjustments, as necessary, for each of the seven electric utilities.
- (9) By entry issued on September 4, 2009, the procedural schedule was established for this proceeding, which included an evidentiary hearing to begin on October 14, 2009, if necessary. The September 4, 2009 entry also joined the electric utilities as indispensable parties to this proceeding.
- (10) On September 9, 2009, Ohio Partners for Affordable Energy (OPAE) filed a motion to intervene and memorandum in support. OPAE's motion for intervention was accompanied by a motion to admit David C. Rinebolt to practice *pro hac vice* before the Commission in this proceeding. On September 14, 2009, Industrial Energy Users – Ohio (IEU) filed a motion to intervene and memorandum in support. On September 18, 2009, Ohio Consumers' Counsel (OCC) filed a motion to intervene and memorandum in support.
- (11) The Commission finds that OPAE, IEU, and OCC each have a real and substantial interest in this case and, therefore, their respective motions for intervention should be granted. Further, the motion to admit Mr. Rinebolt to practice *pro hac vice* before the Commission in this proceeding should be granted.

- (12) As part of its September 18, 2009 filing, OCC filed comments to ODOD's 2009 NOI, wherein OCC raised three issues. First, OCC objects to the two-step declining block USF rate design as OCC argues that it causes a shift of USF costs from the industrial class to the residential class in violation of Section 4928.52(C), Revised Code. Next, OCC noted that it had not been provided a complete copy of the EPP impact evaluation referenced in Exhibit A to the 2009 NOI. Finally, as to the audit process, OCC agrees that ODOD should refine the audit process to provide a more in-depth analysis of particular areas of risk, at least for this year, and that all of the electric utilities should be subject to an audit under the new agreed-upon procedures. Further, OCC expresses concern as to a lack of consistency in the reporting between ODOD's client information system and the Commission's Ohio Statistics on Customer Accounts Receivable (OSCAR) report. OCC recommends that the Commission schedule an OSCAR reporting workshop within the next six months to resume dialogue with interested stakeholders and set a date when the new OSCAR reporting standards will be effective.
- (13) The Commission notes that OCC's comments regarding the OSCAR report are irrelevant to the method for developing the USF rider revenue requirement or the rate design at issue in this phase of the USF proceedings. Further, the Commission directed the Staff to work with interested stakeholders to get input on the appropriate measurements for evaluating the new gas PIPP program and other residential customer service issues.⁴ The Commission is aware that the Staff is and has been working with interested stakeholders, including the OCC, as directed.
- (14) No other party filed objections or comments to the 2009 NOI and no party filed a request for a hearing in this matter.
- (15) IEU filed a response to OCC's comments regarding the two-step declining block USF rate design on September 25, 2009. IEU reasons that the two-step declining block rate design has been approved by the Commission in all prior ODOD

⁴ Case No. 08-723-AU-ORD, *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, 4901:1-29-12 of the Ohio Administrative Code*, Entry on Rehearing (April 1, 2009) at 46.

applications. Further, IEU explains that despite OCC's claims that the two-block rate design causes a shift of USF costs from the industrial class to the residential class, the implementation of the two-block design is not a violation of Section 4928.52(C), Revised Code. In the response, IEU notes that as documented in the stipulations accepted in each of the previous USF rider adjustment cases, the impact of using the two-step declining block rider, as opposed to a single per kilowatt per hour (kWh) rate, is *de minimis*, and results in a revenue distribution that is well within the range of estimation of error inherent in any inter-customer class cost-of-service analysis and does not negatively impact the principle of revenue distribution continuity.

- (16) On October 13, 2009, ODOD filed a Joint Stipulation and Recommendation (2009 NOI Stipulation) that proposes resolutions for the various issues presented by the 2009 NOI. ODOD submits that the 2009 NOI Stipulation addresses all of the issues related to its 2009 NOI as filed. The signatory parties to the 2009 NOI Stipulation are: ODOD, CEL, Duke, CSP, DP&L, OE, OP, TE, IEU, and OPAE.⁵ OCC and Staff, the only other parties to the case, did not join in this stipulation, but do not oppose it.⁶ See 2009 NOI Stipulation at 2-3, fn. 4. The signatory parties submit that approval of the 2009 NOI Stipulation will eliminate the need for further filings and proceedings related to ODOD's June 1, 2009 NOI. Next, the signatory parties assert that the 2009 NOI Stipulation represents a just and reasonable resolution of all issues presented in the 2009 NOI, as filed; violates no regulatory principle; and is the product of serious bargaining among knowledgeable and capable parties in a cooperative process undertaken by the parties to settle the issues involved. Lastly, the signatory parties submit that, although the 2009 NOI Stipulation is not binding on the Commission, it is entitled to careful consideration because it is sponsored by parties representing a wide range of interests, and is not opposed by any party. On October 22, 2009, OCC filed a letter in the docket reiterating its position regarding the two-step

⁵ OPAE, although a signatory to the 2009 NOI Stipulation, does not join in paragraph 2 of the stipulation regarding the USF rider rate design methodology (See Finding 19). OPAE, however, will not oppose the adoption of the 2009 NOI Stipulation.

⁶ Rule 4901-1-10(C), O.A.C., provides that Staff is a party for the purpose of entering into this Stipulation.

declining block rate design. In the letter, OCC also confirmed that OCC is not contesting the 2009 NOI Stipulation on this issue in this case.

2009 NOI Stipulation – USF Rider Revenue Requirement Methodology

- (17) The 2009 NOI Stipulation provides that the USF rider revenue requirement, to be recovered by the USF rider rates of the Ohio electric utilities during the 2010 collection period, should include the following elements, each of which will be determined in the manner proposed in ODOD's June 1, 2009 NOI, and which is consistent with prior revenue requirement methodology approved by this Commission: (a) cost of PIPP; (b) EPP costs; (c) administrative costs; (d) December 31, 2009 PIPP account balances; (e) reserve; (f) allowance for interest expense; (g) allowance for undercollection; (h) electric utility audit costs; and (i) Universal Service Fund interest offset.

2009 NOI Stipulation – USF Rider Rate Design Methodology

- (18) The 2009 NOI Stipulation also provides that ODOD should use the current rate design methodology, as previously approved by the Commission in all prior ODOD applications, to recover the annual USF rider revenue requirement, as determined in these proceedings. This rate design is a two-step declining block rate design; the first block of which applies to all monthly consumption up to and including 833,000 kWh per month. The second block of the rate, which applies to all consumption over 833,000 kWh per month, will be set at the lower of the PIPP rider rate in effect in October 1999 or the per kWh rate that would apply if the electric utilities' annual USF rider rate were to be recovered through a single-block volumetric (per kWh) rate. The first block rate will be set at the level necessary to produce the remainder of the electric utilities' annual USF rider revenue requirement. The signatory parties submit that this rate design methodology provides for a reasonable contribution by all customer classes to the USF revenue requirement.

Commission Discussion

- (19) Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although it is not binding on the Commission, the terms of such agreements are accorded substantial weight. See *Consumers' Counsel v. Pub.*

Util. Comm'n (1992), 64 Ohio St.3d 123, at 125, citing *Akron v. Pub. Util. Comm'n* (1978), 55 Ohio St.2d 155. This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Ohio-American Water Co.*, Case No. 99-1038-WW-AIR (June 29, 2000); *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm'n* (1994), 68 Ohio St.3d 559 (citing *Consumers' Counsel, supra*, at 126). The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.*)

- (20) We find that this matter is properly before the Commission in accordance with Section 4928.52(B), Revised Code, and Rule 4901-1-30, O.A.C.
- (21) After reviewing the 2009 NOI Stipulation, the Commission finds that the stipulation adopts the proposed USF rider

revenue requirement methodology and USF rider rate design methodology, as submitted in ODOD's Notice of Intent for its 2009 USF rider application. We find that the process involved serious bargaining by knowledgeable, capable parties. Counsel for the applicant and all intervenors, except OCC and Staff, have entered into this stipulation. Further, we find that the 2009 NOI Stipulation is in the public interest by providing for adequate funding of the low-income customer assistance programs and the consumer education programs administered by ODOD. Last, the stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission will approve the 2009 NOI Stipulation.

ORDER:

It is, therefore,

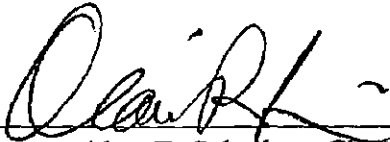
ORDERED, That the motions to intervene filed by OPAE, IEU, and OCC be granted. It is, further,

ORDERED, That the motion to permit Mr. Rinebolt to practice *pro hac vice* before the Commission in this proceeding be granted. It is, further,

ORDERED, That the 2009 NOI Stipulation filed on October 13, 2009 be approved. It is, further,


ORDERED, That a copy of this Finding and Order be served upon ODOD, all electric utilities, and all parties of record in this case.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


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Entered in the Journal

OCT 28 2009



Renee J. Jenkins
Secretary