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 Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities.	)))))	Case No. 10-725-EL-USF

OPINION AND ORDER

The Commission, considering the amended application, the evidence of record, the applicable law, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215-3927, on behalf of the Ohio Department of Development.

Richard Cordray, Ohio Attorney General, by Thomas W. McNamee, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Richard C. Reese, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential customers of the Ohio jurisdictional electric utility companies.

Mathew J. Satterwhite, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215-2373, on behalf of Columbus Southern Power Company and Ohio Power Company.

McNees, Wallace & Nurick, LLC, by Gretchen J. Hummel, Fifth Third Center, 21 East State Street, Suite 1700, Columbus, Ohio 43215-4228, on behalf of the Industrial Energy Users-Ohio.

Carrie Dunn, Attorney, FirstEnergy Corp., 76 South Main Street, Akron, Ohio 44308, on behalf of Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company.

Judi L. Sobecki, Senior Counsel, The Dayton Power and Light Company, 1065 Woodman Drive, Dayton, Ohio 45432, on behalf of The Dayton Power and Light Company.

David C. Rinebolt and Colleen L. Mooney, Counsel, 231 West Lima Street, Findlay, Ohio 45839-1793, on behalf of Ohio Partners for Affordable Energy.

Elizabeth H. Watts, Assistant General Counsel, 155 East Broad Street, 21st floor, Columbus, Ohio 43215, on behalf of Duke Energy Ohio, Inc.

OPINION:

I. Universal Service Fund Background

A universal service fund (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 Cleveland Electric Illuminating Company (CEI), Columbus Southern Power Company (CSP), Dayton Power and Light Company (DP&L), Duke Energy Ohio, Inc. (Duke), Ohio Edison Company (OE), Ohio Power Company (OP), and Toledo Edison Company (TE) (all of which may be referred to, individually or collectively, as electric utility companies). The USF rider rate for each electric utility company was initially determined by ODOD and approved by the Commission. The USF riders for each of the electric utility companies were approved as a part of the company's electric transition plan case.[2]

Section 4928.52(B), Revised Code, provides that if ODOD, after consultation with the Public Benefits Advisory Board (PBAB), 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 program and provide adequate funding for those programs, ODOD shall file a petition with the Commission for an increase in the USF rider rates. The

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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 utility companies 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.)

2 *FirstEnergy Corp.*, Case No. 99-1212-EL-ETP (July 19, 2000); *Cincinnati Gas & Electric Co.*, Case No. 99-1658-EL-ETP (August 17, 2000); *Columbus Southern Power Co.*, Case No. 99-1729-EL-ETP (August 17, 2000); *Ohio Power Co.*, Case No. 99-1730-EL-ETP (August 17, 2000); *Dayton Power and Light Co.*, Case No. 99-1687-EL-ETP (August 17, 2000); and *Monongahela Power Co.*, Case No. 00-02-EL-ETP (August 17, 2000).

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, for each of the Ohio jurisdictional electric utility companies, each year since 2001.

The most recent USF rider adjustments were approved pursuant to the Opinion and Order issued on December 16, 2009, *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. 09-463-EL-UNC (09-463). In the 09-463 Order, the Commission granted the amended application of ODOD for adjustments to the USF riders of all the jurisdictional Ohio electric utility companies in accordance with Section 4928.52(B), Revised Code. Under the 09-463 Order, the new USF rider rates became effective on a bills-rendered basis with the electric utility companies' January 2010 billing cycles. As part of the Order, the Commission approved the Stipulation and Recommendation filed on December 7, 2009 (2009 Adjustment Stipulation) jointly submitted by ODOD, CEI, CSP, DP&L, Duke, OE, OP, TE, Industrial Energy Users-Ohio, and Ohio Partners for Affordable Energy (OPAE).[3]

On December 13, 2009, Ohio Consumers' Counsel (OCC) filed a letter stating that as in past years, while it did not agree with the two-block rate design, OCC would not contest the 2010 Adjustment Stipulation, but does not waive its right to contest the rate design in this or future USF proceedings. Further, OCC notes that it expects ODOD, as it represented to the PBAB, to address unresolved issues regarding the audit of Duke from the 2008 USF proceeding in the near future.

II. History of this Proceeding

On May 28, 2010, ODOD filed a Notice of Intent (NOI) to file an application to adjust the USF riders of CEI, CSP, DP&L, Duke, OE, OP, and TE, in accordance with the terms of the 2009 Adjustment Stipulation approved in 09-463. First, ODOD's May 28, 2010 NOI (2010 NOI) indicated that its subsequent application would 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, consumer education programs, and associated administrative costs. The parties submitted a Stipulation and Recommendation for the NOI phase of this proceeding on September 28, 2010 (2010 NOI Stipulation). By its Finding and Order issued October 27, 2010 (2010 NOI Order), the Commission approved the 2010 NOI Stipulation, which addressed the

3 Although Duke did not actually sign the Stipulation, by letter docketed December 8, 2008, Duke stated that it agreed to the terms and conditions identified in the 2008 Adjustment Stipulation and requested that it be added to the stipulation as a signatory party.

proposed USF rider revenue requirement methodology and the USF rider rate design methodology for ODOD's 2011 USF rider adjustment application.

Next, on October 29, 2010, ODOD filed this application (Application) to adjust the USF riders of CEI, CSP, DP&L, Duke, OE, OP, and TE, in accordance with the requirements of SB 3 and Section 4928.52, Revised Code. On November 23, 2010, ODOD filed an amended application in this case, updating its test-period calculations to incorporate additional actual data that had become available (Amended Application, ODOD Ex. 1). ODOD filed the above-captioned Application and Amended Application requesting that each of the USF riders be adjusted to more accurately reflect current costs of operating the PIPP program, the electric partnership program, consumer education programs, and associated administrative costs. Based on its analysis of the revenue that the current USF riders would generate based on test-period sales, projection of monthly USF balances that the current USF riders are projected to produce, and various other factors, ODOD has determined that, on an aggregated basis, the total annual revenues that will be generated by the current USF riders will fall $36,389,467 short of the annual revenues required to fulfill the objectives identified in Section 4928.52(A), Revised Code (ODOD Ex. 1 at 5; Joint Ex. 1 at 5-6). Therefore, ODOD is requesting an increase for the USF riders of CEI, CSP, DP&L, OP, and TE (ODOD Ex. 1 at 5). However, ODOD's analysis reveals that the pro forma revenue that would be generated by the current Duke and OE USF riders will exceed the annual revenues required to carryout the objectives set forth in Section 4928.52(A), Revised Code, and, therefore, ODOD is requesting a reduction of the USF riders of Duke and OE (ODOD Ex. 1 at 5). By entry issued November 17, 2010, a prehearing conference was scheduled for December 2, 2010, and the hearing was scheduled to commence on December 7, 2010. By agreement of the parties, the prehearing conference was cancelled. The evidentiary hearing was held as scheduled.

ODOD's Amended Application:

ODOD proposes in its Amended Application that, having consulted with the PBAB as required by Section 4928.52(B), Revised Code, the USF riders be adjusted so as to generate the required annual revenue as indicated below:

	Current USF Rider				Proposed USF Rider	
Company	First 833,333 kWh	Above 833,333 kWh	Adjusted Test -Period USF Rider Revenue	Required Annual USF Rider Revenue	First 833,333 kWh	Above 833,333 kWh
CEI	$0.0019513	$0.0005680	$31,192,999	$35,891,211	$0.0022667	$0.0005680
CSP	$0.0019994	$0.0001830	$33,660,346	$38,312,674	$0.0022828	$0.0001830
DP&L	$0.0018615	$0.0005700	$23,188,250	$38,515,588	$0.0031756	$0.0005700
Duke	$0.0015704	$0.0004690	$28,075,400	$26,938,926	$0.0015223	$0.0004690
OE	$0.0020252	$0.0010461	$43,415,688	$37,183,947	$0.0016964	$0.0010461
OP	$0.0015873	$0.0001681	$28,372,872	$45,159,421	$0.0025750	$0.0001681
TE	$0.0022427	$0.0005610	$15,586,849	$17,880,104	$0.0026327	$0.0005610
TOTALS			$203,492,405	$239,881,872		

ODOD states that the proposed USF riders, in the table above, reflect the minimum increases for the electric utility companies necessary to satisfy revenue responsibilities during 2010. (ODOD Ex. 1 at 5, 11 and Ex. H.)

The Amended Application (ODOD Ex. 1) and the testimony of Nick Sunday (ODOD Ex. 2) and Donald A. Skaggs (ODOD Exs. 3 and 4) state that the USF revenue requirement, which the proposed USF riders are designed to generate, consists of the following elements:

(1) Cost of PIPP. The cost of the PIPP component of the USF rider revenue requirement is based on the total cost of electricity consumed by that electric utility company's PIPP customers for the 12-month period January 2010 through December 2010 (the test period), plus pre-PIPP balances, less all payments made by or on behalf of PIPP customers, including agency payments, over the same period. The calculation utilizes actual data available through September 2010, and projected data, based on the actual October-December 2009 experience, for the remaining three months of the test period.[4] ODOD submits that the test-period cost of PIPP must be adjusted for the following reasons: (1) to annualize for the rate changes during

[4] The initial "cost of PIPP" calculation for each electric utility company is presented at ODOD Ex.1 at Ex. A.

2010, pursuant to orders of this Commission; (2) to correct the calculation of DP&L's test period cost of PIPP annualizing the impact of Commission approved increases in DP&L's rates; (3) to account for projected increases in PIPP enrollment activity for the year 2011; and (4) to normalize for Duke's one-time accounting measure to remedy prior misallocations of PIPP customer payments between the gas and electric components of PIPP customer bills. The test-period adjustments are provided in the Amended Application at Exhibits A.1 and A.2. (ODOD Ex. 1 at 6 and Exs. A, A.1, A.1.a through A.1.f, and A.2; ODOD Ex. 3 at 6-18 and Exs. DAS-1 through DAS-7; ODOD Ex. 4 at 2-7 and Exs. DAS-Rev-1 through DAS-Rev-7.)

(2) Electric Partnership Program and Consumer Education Costs. This element of the total USF rider revenue requirement reflects the costs associated with the low-income customer efficiency programs, now referred to as the "Electric Partnership Program" (EPP), and the consumer education program (CE), which are recovered through the USF rider calculation pursuant to Sections 4928.56(A)(2) and (3), Revised Code. ODOD's proposed allowance for these items is $14,946,196, which is identical to the allowance for these programs previously accepted by the Commission in approving all prior USF rider rate adjustments. This portion of the USF rider revenue requirement is allocated to the electric utility companies based on the ratio of their respective cost of PIPP to the total cost of PIPP. (ODOD Ex. 1 at 7 and Ex. B; ODOD Ex. 3 at 18-20; ODOD Ex. 4 at 7-8.)

(3) Administrative Costs. ODOD proposes an increase in the allowance for the administrative costs associated with the low-income customer assistance programs to $4,116,864 for this case. This amount has been determined in accordance with the methodology approved by the Commission in the NOI phase of this case (2010 NOI Order). The requested $4,116,864 allowance for administrative costs has been allocated to the electric utility companies based on the number of PIPP customer accounts as of April 2010, the test period month exhibiting the highest PIPP customer account totals.[5] (ODOD

[5] The initial allocation of administrative costs associated with low-income customer assistance programs for each electric utility company may be found at Ex. C of ODOD's October 29, 2010 Application.

Ex. 1 at 7-8, and Ex. C; ODOD Ex. 2 at 2-17, and Exs. NS-1 and NS-2; ODOD Ex. 3, at 20; ODOD Ex. 4 at 8-9.)

(4) December 31, 2010 PIPP Account Balances. Because the USF rider is based on historical sales and historical PIPP enrollment patterns, the "cost of PIPP" component of an electric utility company's USF rider will, in actual practice, either over-recover or under-recover its associated annual revenue requirement. Over-recovery creates a positive PIPP USF account balance for the electric utility company in question, which reduces the amount needed on a forward-going basis to satisfy the USF rider revenue requirement. Conversely, where under-recovery has created a negative PIPP USF account balance as of the effective date of the new riders, there will be a shortfall in the cash available to ODOD to timely make the PIPP reimbursement payment due to the electric utility company. Thus, the amount of any existing positive PIPP USF account balance must be deducted in determining the target revenue level that the adjusted USF rider is to generate, while the deficit represented by a negative PIPP USF account balance must be added to the associated revenue requirement. In this application, ODOD is requesting that its proposed USF riders be implemented on a bills-rendered basis effective January 1, 2011. Accordingly, the USF rider revenue requirement of each electric utility company will be adjusted by the amount of the electric utility company's projected December 31, 2010 PIPP account balance, so as to synchronize the new riders with the electric utility company's PIPP USF account balance as of their effective date. (ODOD Ex. 1 at 8-9 and Ex. D; ODOD Ex. 3 at 20-23 and Exs. DAS-8 through DAS-14; ODOD Ex. 4 at9, and Exs. DAS-Rev-8 through DAS-Rev-14.)

(5) Reserve. Pursuant to Rule 122:5-3-05(B), Ohio Administrative Code (O.A.C.), effective November 1, 2010, ODOD will be assessed interest on all ODOD monthly payments to reimburse the electric utility company for the cost of the electricity delivered to PIPP customers that is not received by the specified due date. The interest rate used to compute carrying charges on late ODOD payments will be the statutory interest rate applicable to state agencies. Due, in large measure, to the weather-sensitive nature of electricity sales and PIPP enrollment behavior, PIPP-related cash flows fluctuate

throughout the year. The fluctuations will, from time to time, result in negative PIPP USF account balances.[6] This means that ODOD will be unable to satisfy its monthly payment obligation to the electric utility company on a timely basis and will, therefore, incur carrying charges in those months. To address this problem, ODOD has included an allowance to create a reserve as an element of the USF rider revenue requirement based on each electric utility company's highest monthly deficit during the test period. The Commission approved this methodology in its 2010 NOI Order earlier in the proceeding. The proposed reserve component for each electric utility company is set forth in ODOD Ex. 1 at Ex. F. (ODOD Ex. 1, at9 and Ex. F; ODOD Ex. 3 at 23-26; ODOD Ex. 4 at 9.)

(6) Allowance for Undercollection. This component of the USF rider revenue requirement is an adjustment to recognize that, due to the difference between amounts billed through the USF rider and the amounts actually collected from customers, the rider will not generate the target revenues. In accordance with the methodology approved by the Commission in its 2010 NOI Order, the allowance for undercollection for each electric utility company is based on the collection experience of that electric utility company. The total requested annual allowance for undercollection is $3,250,702[7] (ODOD Ex. 1 at 9 and Ex. G; ODOD Ex. 3 at 26-27 and Exs. DAS-15 through DAS-21; ODOD Ex. 4 at 9, and Exs. DAS-Rev-15 through DAS-Rev-28.)

ODOD is requesting that the Commission approve the proposed adjustments to the USF riders. ODOD further requests that the Commission direct the electric utility companies to incorporate the new USF riders into their tariffs.

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6 A graph containing the PIPP-related cash flows for the test period may be found at Ex. E of the Application.

7 The initial allowance for undercollection for each electric utility company may be found at Ex. G of the Application.

December 7, 2010 Hearing:

At the hearing held on December 7, 2010, ODOD's Amended Application (ODOD Ex. 1), the testimony of Nick Sunday (ODOD Ex. 2), and the testimony and supplemental testimony of Donald A. Skaggs (ODOD Ex. 3 and ODOD Ex. 4, respectively) were admitted into the record without objection. In addition, all parties to this proceeding, other than OCC and Staff, entered into a Stipulation and Recommendation (2010 Adjustment Stipulation) that resolved all outstanding issues in this case. Although a signatory party to the 2010 Adjustment Stipulation, OPAE does not join in the declining block rate design (Items 6 and 7 of the Stipulation). The 2010 Adjustment Stipulation was admitted into the record as Joint Exhibit 1, which included a copy of the proposed customer notice of the adjusted USF riders as Appendix B to Joint Exhibit 1 and a corrected Ex. DAS-Rev-31 as Appendix A. Although Staff is not a signatory to the Stipulation, Staff does not oppose the Stipulation (Joint Ex. 1 at 1). By letter filed December 10, 2010, OCC states that it did not sign the Stipulation because it does not agree with the second block in the rate design.

Stipulation and Recommendation:

The 2010 Adjustment Stipulation asserts that the methodology for determining the respective USF rider revenue requirements is consistent with the methodology approved by the Commission in the 2010 NOI Order (Joint Ex. 1 at 4). The Stipulation acknowledges that subsequent to the filing of supplemental testimony by ODOD witness Skaggs, an error was identified in the rider rate calculation for Duke at ODOD Ex. 4, Ex. DAS-Rev-31. Attached to the Stipulation is Corrected Ex. DAS-Rev-31.

The 2010 Adjustment Stipulation also provides, among other things, that the annual USF rider revenue requirements set forth in ODOD's Amended Application shall be collected by the respective electric utility companies through a USF rider that incorporates a declining block rate design consisting of two consumption blocks. The first block of the rate is to apply to all monthly consumption up to and including 833,000 kWh. The second rate block is to apply to all consumption above 833,000 kWh per month. For each electric utility company, the rate per kWh for the second block is to be set at the lower of the PIPP charge in effect in October 1999, or the per kWh rate that would apply if the electric utility company's annual USF rider revenue requirement were to be recovered through a single block per kWh rate. The rate for the first block is to be set at the level necessary to produce the remainder of the electric utility company's annual USF rider revenue requirement. (Joint Ex. 1 at 4.)

As shown on the supporting schedules attached to ODOD Ex. 1 and in the 2010 Adjustment Stipulation, the resulting riders, for each electric utility company, are as follows:

EDU	First 833,000 kWh	Above 833,000 kWh
CEI	$0.0022667 / kWh	$0.0005680 / kWh
CSP	0.0022828 / kWh	0.0001830 / kWh
DP&L	0.0031756 / kWh	0.0005700 / kWh
Duke	0.0015022 / kWh	0.0004690 / kWh
OE	0.0016964 / kWh	0.0010461 / kWh
OP	0.0025750 / kWh	0.0001681 / kWh
TE	0.0026327 / kWh	0.0005610 / kWh

(Joint Ex. 1 at 3, 5; Appendix B.) [8]

The signatory parties stipulated that the USF rider rates set forth above for CEI, CSP, DPL, OP, and TE reflect the minimum increases required to produce the additional revenues necessary to satisfy the respective annual USF rider revenue requirement listed below for the electric utility. Further, the signatory parties stipulated that the USF rider rates set forth above for Duke and OE are lower than the current USF rider rates and represent the minimum rates necessary to satisfy the Duke and OE annual USF rider revenue requirements listed below. As part of the Stipulation, in accordance with the requirements of Section 4928.52(B), Revised Code, ODOD consents to the resulting USF rider rate decreases for Duke and OE.

All signatory parties to the 2010 Adjustment Stipulation, except OPAE, have stipulated that the two-step declining block USF riders reflect the minimum level necessary to produce the required revenues for 2010 (*Id.* at 3-6). Further, the signatory parties to the 2010 Adjustment Stipulation agree that, as set forth in ODOD Ex. 1 and supported by the testimony of ODOD witnesses Sunday and Skaggs, the annual USF rider revenue requirement for each electric utility company shall be as follows:

EDU	USF Revenue Requirement
CEI	$ 35,891,211
CSP	38,312,674
DP&L	38,515,588
Duke	26,938,926
OE	37,183,947
OP	45,159,421
TE	17,880,104

(Joint Ex. 1 at 4).

[8] The specific calculations supporting the stipulated USF rider rates are set forth in ODOD Ex. 4 at Exs. DAS-Rev-29 through DAS-Rev-35; Joint Ex. 1 at Corrected DAS-Rev-31.

It is similarly agreed that the new rider rates be filed within seven days of the Commission's order adopting the 2010 Adjustment Stipulation and that the new USF riders be effective upon filing with the Commission and apply on a bills-rendered basis in the first billing cycle of the month following their effective date. The signatory parties also agree that each electric utility company shall notify customers of the adjustment to their respective USF riders by means of the customer notice attached to the 2010 Adjustment Stipulation as Appendix A. (*Id.* at 6.)

ODOD has also agreed to file, no later than October 31, 2011, an application with the Commission for such adjustments to the USF riders as may be necessary to assure, to the extent possible, that each electric utility company's USF rider will generate its associated revenue requirement, but not more than its associated revenue requirement, during the annual collection period following Commission approval of such adjustments. ODOD has agreed to serve copies of such application upon all other signatory parties. (*Id.* at 6-7.)

The signatory parties propose and agree that the Commission should again adopt the "NOI" process approved since the 2004 USF proceeding. Specifically, this process provides that on or before May 31, 2011, ODOD shall file with the Commission a NOI to submit its annual USF rider adjustment application, and shall serve the NOI on all parties to this proceeding. The NOI shall specify the methodology ODOD intends to employ in calculating the USF rider revenue requirement and in designing the USF rider revenue rates and may also include such other matters as ODOD deems appropriate. Next, upon the filing of ODOD's NOI, the parties request that the Commission open the 2011 USF rider application docket and establish a case schedule that would include the filing of objections or comments, responses to the objections or comments, and, if a hearing is requested, a schedule for discovery, the filing of testimony, and the commencement of the hearing. Further, the 2010 Adjustment Stipulation requests that the Commission use its best efforts to issue its decision with respect to the issues raised in the NOI phase of the USF proceeding by no later than September 30, 2011. Last, the NOI process provides that ODOD will modify its 2011 USF rider adjustment application to conform to any directives set forth in the Commission's order, or, if the order is not issued sufficiently in advance of the October 31, 2011, filing deadline to permit ODOD to incorporate such directives, ODOD will file an amended application to do so. (*Id.* at 7-8.)

In addition, the signatory parties note that they support initiatives intended to control the costs that ultimately must be recovered through the USF rider. To further this objective, the signatory parties agree to the continuation of the USF Rider Working Group, as formed pursuant to the 2003 USF proceeding, Case No. 03-2049-EL-UNC, which is charged with developing, reviewing, and recommending such cost-control measures. Although recommendations made by this Working Group shall not be binding upon any signatory party, the signatory parties agree to give due consideration to such recommendations and will not unreasonably oppose the implementation of such recommendations. (*Id.* at 8-9.)

Commission Review:

The Commission notes that, unlike other proceedings before the Commission where we are charged with balancing the interest of the utilities and the public, in this matter the Commission's role is limited primarily to facilitating the process by which ODOD files for and the electric utilities implement their respective USF rider rate. In USF proceedings, in accordance with Section 4928.52(B), Revised Code, the Commission cannot decrease the USF rider without the approval of the director of ODOD. Thus, in light of the Commission's limited role in these USF proceedings, our evaluation of the issues raised in this proceeding and the Commission Staff's participation in this case is restricted. Given that there are no issues to be litigated and most of the parties to this matter have filed a stipulation resolving all the issues raised in this case, the Commission will consider the stipulation filed.

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although 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.*).

After reviewing the 2010 Adjustment Stipulation and the evidence presented, the Commission finds that the stipulation and proposed customer notice are reasonable and that the two-step declining block USF rider rates set forth in the 2010 Adjustment Stipulation reflect the minimum level necessary to produce the required revenues for ODOD to cover the administrative costs of the low-income customer assistance programs and the consumer education programs and provide adequate funding for those programs. We find that the process involved serious bargaining by knowledgeable, capable parties. Counsel for the applicant, and all intervenors, except the Staff and OCC, have entered into the 2010 Adjustment Stipulation. Further, we find that the stipulation is in the public interest by providing for adequate funding of the low-income customer assistance programs and the consumer education programs offered by ODOD. Lastly, the stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission will approve the 2010 Adjustment Stipulation and the USF riders established therein for CEI, CSP, DP&L, Duke, OE, OP, and TE.

Finally, to facilitate the retrieval of USF cases in the future, the Commission directs ODOD to continue to file future USF cases with the "USF" purpose code.

ORDER:

It is, therefore,

ORDERED, That the 2010 Adjustment Stipulation and the proposed customer notice submitted by the signatory parties be approved. It is, further,

ORDERED, That CEI, CSP, DP&L, Duke, OE, OP, and TE are authorized to file in final form four complete copies of their tariffs consistent with this Opinion and Order, within seven days after the date of this order. Each electric utility company authorized above shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further, ORDERED, That the effective date of the new tariffs be a date not earlier than both the date of this Opinion and Order and the date upon which the copies of the final tariffs are filed with this Commission. The new USF riders shall be effective upon filing with the Commission and apply on a bills-rendered basis in the first billing cycle of the month following their effective date. It is, further,

ORDERED, That the electric utility companies authorized above notify all customers affected by the tariff by the customers' first bill that will include the new USF rider rate. It is, further,

ORDERED, That ODOD file all subsequent USF rider NOI and adjustment applications under the USF purpose code. It is, further,

ORDERED, That a copy of this entry be served upon ODOD, all Ohio jurisdictional electric utility companies, and all other interested persons of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

GNS/vrm

Entered in the Journal
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Reneé J. Jenkins
Secretary