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. 11-3223-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, on behalf of the Ohio Department of Development.

Mike DeWine, 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.

Bruce J. Weston, Interim Ohio Consumers' Counsel, by Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential customers of the Ohio jurisdictional electric utility companies.

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

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

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

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

Colleen L. Mooney, 231 West Lima Street, Findlay, Ohio 45840, on behalf of Ohio Partners for Affordable Energy.

McNees, Wallace & Nurick LLC, by Gretchen J. Hummel and Frank P. Darr, Fifth Third Center, 21 East State Street, 17th Floor, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Bricker & Eckler LLP, by Matthew W. Warnock, 100 South Third Street, Columbus, Ohio 43215, on behalf of the OMA Energy Group.

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 each electric distribution utility (EDU): The 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 The Toledo Edison Company (TE). The USF rider rate for each EDU was initially determined by ODOD and approved by the Commission. The USF riders for each of the EDUs were approved as a part of each EDU'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

1 On June 22, 1999, the 123rd Ohio General Assembly passed Amended Substitute Senate Bill No. 3 (SB 3), which was codified under Chapter 4928, Revised Code. SB 3 required the restructuring of the electric utility industry, including 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 funded by the USF.

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 additional revenues. To that end, the Commission has approved USF rider rate adjustments for each EDU on an annual basis since 2001.

The most recent USF rider adjustments were approved pursuant to the opinion and order issued on December 15, 2010, in *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 (10-725). In that opinion and order, the Commission approved a joint stipulation and recommendation filed on December 7, 2010, by ODOD, the EDUs, Ohio Partners for Affordable Energy (OPAE), and Industrial Energy Users–Ohio (IEU-Ohio), which recommended adjustments to the USF riders of each EDU in accordance with Section 4928.52(B), Revised Code (2010 Adjustment Stipulation).[3] The new USF rider rates became effective on a bills-rendered basis with each EDU's January 2011 billing cycle.

II. History of the Proceeding

On May 31, 2011, ODOD filed a notice of intent (NOI) to file an application to adjust the USF rider of each EDU, in accordance with the terms of the 2010 Adjustment Stipulation approved in 10-725. The NOI indicated that ODOD's subsequent application would request that each of the USF riders be adjusted to more accurately reflect the current costs of operating the PIPP program, the electric partnership program (EPP), which includes the low-income customer energy efficiency programs and consumer education program, and associated administrative costs. On September 2, 2011, ODOD, the EDUs, OPAE, IEU-Ohio, and OMA Energy Group filed a joint stipulation and recommendation for the NOI phase of this proceeding (2011 NOI Stipulation).[4] By opinion and order issued October 3, 2011, the Commission approved the 2011 NOI Stipulation, which addressed the USF rider revenue requirement methodology and the USF rider rate design methodology to be applied in ODOD's subsequent application (2011 NOI Order). Additionally, the Commission granted the motions to intervene that were filed by OCC, OPAE, IEU-Ohio, and OMA Energy Group.

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[3] OPAE did not join in paragraphs 6 and 7 of the 2010 Adjustment Stipulation, regarding the two-step, declining block rate design methodology for the USF riders. Staff did not oppose the 2010 Adjustment Stipulation. Additionally, on December 13, 2010, the Ohio Consumers' Counsel (OCC) filed a letter stating that, as in past years, while it did not agree with the rate design, it would not contest the 2010 Adjustment Stipulation.

[4] OPAE did not join in paragraph 2 of the 2011 NOI Stipulation, regarding the two-step, declining block rate design methodology. Staff did not oppose the 2011 NOI Stipulation. OCC neither supported nor opposed the 2011 NOI Stipulation.

On October 31, 2011, ODOD filed its application to adjust the USF riders of the EDUs, in accordance with the requirements of Section 4928.52, Revised Code. On November 30, 2011, ODOD filed an amended application, updating its test period calculations to incorporate additional actual data that became available. In the application and amended application, ODOD requests that each of the USF riders be adjusted to more accurately reflect current costs of operating the PIPP program, EPP, and associated administrative costs. Based on its analysis of the revenues that the current USF rider rates would generate based on test period sales volumes, and utilizing the USF rider revenue requirement methodology approved in the 2011 NOI Order, ODOD has determined that, on an aggregated basis, the total annual revenues generated by the current USF riders will fall short, by some $105,196,541, of the annual revenues required to fulfill the objectives identified in Section 4928.52(A), Revised Code (ODOD Ex. 1 at 4). ODOD requests an increase for the USF riders of CEI, CSP, DP&L, OE, and TE (ODOD Ex. 1 at 4-5). However, ODOD's analysis reveals that the revenues that would be generated by the current USF riders of Duke and OP will exceed the annual revenues required to carry out the objectives set forth in Section 4928.52(A), Revised Code, and, therefore, ODOD requests a reduction for the USF riders of Duke and OP (ODOD Ex. 1 at 5).

By entry issued November 10, 2011, a prehearing conference was scheduled for December 1, 2011, to occur only if requested by any party, and a hearing was scheduled to commence on December 7, 2011. No party filed a request for a prehearing conference, which, accordingly, did not occur. The evidentiary hearing was held as scheduled.

During the evidentiary hearing, 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, the parties to this proceeding, other than Staff, OCC, CSP, and OP, entered into a joint stipulation and recommendation, as filed on December 7, 2011, which would resolve all outstanding issues in this case (2011 Adjustment Stipulation). The 2011 Adjustment Stipulation was admitted into the record as Joint Exhibit 1, which included a copy of the proposed customer notice regarding the adjusted USF riders.

Although Staff, OCC, CSP, and OP are not signatory parties, they do not oppose the 2011 Adjustment Stipulation (2011 Adjustment Stipulation at 1; Tr. at 9). By letter filed December 7, 2011, CSP and OP explain that they did not sign the 2011 Adjustment Stipulation, as certain data that they provided to ODOD may not have been fully incorporated in the analysis upon which their stipulated USF rider rates are based. CSP and OP note that, although the possible discrepancies would have a very minor impact on their USF rider rates, they do not wish to join in the 2011 Adjustment Stipulation until the issue is resolved. CSP and OP further note that ODOD will include any necessary corrections in its supplemental application addressing the impact of underlying rate changes that may result from Commission orders in pending proceedings involving CSP and OP.

Additionally, although OPAE is a signatory party to the 2011 Adjustment Stipulation, OPAE does not join in paragraphs 6 and 7, regarding the two-step, declining block rate design methodology (2011 Adjustment Stipulation at 9).

III. ODOD's Amended Application

In its amended application, ODOD proposes, after consulting with the PBAB as required by Section 4928.52(B), Revised Code, that the USF riders of the EDUs be adjusted so as to generate the required annual revenues as indicated below:

	Current USF Rider				**Proposed USF Rider**	
EDU	**First 833,000 kWh**	**Above 833,000 kWh**	**Adjusted Test Period USF Rider Revenue**	**Required Annual USF Rider Revenue**	**First 833,000 kWh**	**Above 833,000 kWh**
CEI	$0.0022667	$0.0005680	$36,230,261	$52,851,181	$0.0033760	$ 0.0005680
CSP	$0.0022828	$0.0001830	$37,381,113	$46,718,873	$0.0028680	$ 0.0001830
DP&L	$0.0031756	$0.0005700	$38,484,123	$60,661,008	$0.0050775	$ 0.0005700
Duke	$0.0015022	$0.0004690	$26,833,006	$22,191,470	$0.0012231	$ 0.0004690
OE	$0.0016964	$0.0010461	$37,832,683	$83,902,372	$0.0041799	$ 0.0010461
OP	$0.0025750	$0.0001681	$44,945,484	$42,288,237	$0.0024169	$ 0.0001681
TE	$0.0026327	$0.0005610	$17,066,254	$35,356,326	$0.0060155	$ 0.0005610
Totals			$238,772,925	$343,969,466		

ODOD states that the proposed USF rider rates set forth above for CEI, CSP, DP&L, OE, and TE reflect the minimum increases necessary to produce the additional revenues required to satisfy the respective USF rider revenue responsibility of those EDUs. The proposed USF rider rates for Duke and OP, which are lower than their current rider rates, also represent the minimum rates necessary to satisfy the respective USF rider revenue responsibility of those EDUs. (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 Ex. 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 PIPP component of the USF rider revenue requirement is intended to reflect the total cost of electricity consumed by the EDU's PIPP customers for the 12-month period of January 2011 through December 2011 (test period), plus pre-PIPP balances, less the monthly installment payments billed to PIPP customers, less payments made by or on behalf of PIPP customers, including agency payments, to the extent that these payments are applied to outstanding PIPP arrearages over the same period. The calculation utilizes actual data available for January 2011 through September 2011, and projected data, based on the actual data for October 2010 through December 2010, for the remaining three months of the test period. ODOD submits that the test period cost of PIPP must be adjusted for the following reasons: (1) to recognize the impact of Commission-approved EDU rate changes that will take effect on January 1, 2012; (2) to annualize the impact of Commission-approved EDU rate changes that took effect during the 2011 test year; (3) to account for projected increases in PIPP enrollment activity during 2012; and (4) to account 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 total adjusted cost of PIPP is $275,915,178. (ODOD Ex. 1 at 6-7, and Ex. A, A.1, A.1.a through A.1.e, and A.2; ODOD Ex. 3 at 6-15 and Ex. DAS-1 through DAS-7; ODOD Ex. 4 at 2-7 and Ex. DAS-Rev-1 through DAS-Rev-7.)

(2) Electric Partnership Program and Consumer Education Costs. This element of the USF rider revenue requirement reflects the costs associated with the low-income customer energy efficiency programs and the consumer education program, referred to collectively as the EPP, and their associated administrative costs, which are recovered through the USF riders pursuant to Section 4928.52(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. ODOD notes that, consistent with the 2011 NOI Order, this component of the USF rider revenue requirement is allocated to the EDUs 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 15-17; ODOD Ex. 4 at 8.)

(3) Administrative Costs. This element of the USF rider revenue requirement represents an allowance for the costs incurred by ODOD in connection with its administration of the PIPP program, which are recovered pursuant to Section 4928.52(A)(3), Revised Code. ODOD states that the proposed allowance for administrative costs of $4,340,247 has been determined in accordance with the standard approved by the Commission in the 2011 NOI Order. The requested allowance for administrative costs has been allocated to the EDUs based on the number of PIPP customer accounts as of May 2011, which is the test period month exhibiting the highest PIPP customer account totals. (ODOD Ex. 1 at 7-8, and Ex. C; ODOD Ex. 2 at 2-14, and Ex. NS-1; ODOD Ex. 3 at 17; ODOD Ex. 4 at 8-9.)

(4) December 31, 2011, PIPP Account Balances. Because the USF rider is based on historical sales and historical PIPP enrollment patterns, the cost of PIPP component of an EDU's USF rider will, in actual practice, either over-recover or under-recover its associated annual revenue requirement over the collection period. Over-recovery creates a positive PIPP USF account balance for the EDU 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, which will impair its ability to make the PIPP reimbursement payments due the EDUs on a timely basis. 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 case, ODOD requests that the proposed USF riders be implemented on a bills-rendered basis effective January 1, 2012. Accordingly, the USF rider revenue requirement of each EDU has been adjusted by the amount of the EDU's projected December 31, 2011, PIPP account balance so as to synchronize the new riders with the EDU's PIPP USF account balance as of their effective date. According to ODOD, this conforms to the methodology approved by the Commission in the 2011 NOI Order. (ODOD Ex. 1 at 8-9 and Ex. D; ODOD Ex. 3 at 17-20 and

Ex. DAS-8 through DAS-14; ODOD Ex. 4 at 9, and Ex. DAS-Rev-8 through DAS-Rev-14.)

(5) Reserve. PIPP-related cash flows fluctuate significantly throughout the year, due, in large measure, to the weather-sensitive nature of electricity sales and PIPP enrollment patterns. These fluctuations will, from time-to-time, result in negative PIPP USF account balances, which means that, in those months, ODOD will have insufficient cash to satisfy its reimbursement obligations to the EDUs on a timely basis. To address this problem, ODOD has included an allowance of $29,368,139 to create a cash reserve as an element of the USF rider revenue requirement, with the amount of the allowance determined based on the EDU's highest monthly deficit during the test period. ODOD notes that the Commission approved this methodology in the 2011 NOI Order. (ODOD Ex. 1 at 9 and Ex. E, F; ODOD Ex. 3 at 20-22; ODOD Ex. 4 at 9-10.)

(6) Allowance for EDU Audit Costs. As described in the NOI, during 2012, ODOD will engage a qualified auditor to perform an application of agreed-upon procedures to test each EDU's PIPP-related accounting and reporting to assure that the ODOD-EDU interface is functioning in accordance with ODOD's expectations and to identify any systemic problems that could indicate that the cost of PIPP recovered from ratepayers through the USF riders of the respective EDUs had been overstated. According to ODOD, consistent with the 2011 NOI Order, an allowance of $40,000 has been included in the USF revenue requirement of each EDU to cover the cost of these audits. (ODOD Ex. 1 at 9; ODOD Ex. 3 at 22-23.)

(7) 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 revenue. ODOD states that, in accordance with the methodology approved by the Commission in the 2011 NOI Order, the allowance for undercollection for each EDU is based on the collection experience of that EDU. The total requested allowance for undercollection is $5,347,741. (ODOD Ex. 1 at 10 and Ex. G;

ODOD Ex. 3 at 23-25 and Ex. DAS-15 through DAS-21; ODOD Ex. 4 at 10, and Ex. DAS-Rev-15 through DAS-Rev-21.)

ODOD requests that the Commission find that the USF rider rate adjustments proposed in the amended application represent the minimum adjustments necessary to provide the revenues necessary to satisfy the respective USF rider revenue requirements. ODOD further requests that the Commission direct the EDUs to incorporate the new USF rider rates in their tariffs. (ODOD Ex. 1 at 12.)

IV. Joint Stipulation and Recommendation

In the 2011 Adjustment Stipulation, the signatory parties agree that the methodology for determining the respective USF rider revenue requirements is consistent with the methodology approved by the Commission in the 2011 NOI Order (Joint Ex. 1 at 4).

The 2011 Adjustment Stipulation also provides, among other things, that the annual USF rider revenue requirements set forth in the stipulation shall be collected by the respective EDUs 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 EDU, 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 EDU'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 EDU's annual USF rider revenue requirement. The signatory parties agree that the resulting rider rates for each EDU should be as follows:

EDU	First 833,000 Kwh	Above 833,000 Kwh
CEI	$0.0033760	$ 0.0005680
CSP	$0.0028680	$ 0.0001830
DP&L	$0.0050775	$ 0.0005700
Duke	$0.0012231	$ 0.0004690
OE	$0.0041799	$ 0.0010461
OP	$0.0024169	$ 0.0001681
TE	$0.0060155	$ 0.0005610

(Joint Ex. 1 at 4.)

The signatory parties agree that the USF rider rates set forth above for CEI, CSP, DP&L, OE, and TE reflect the minimum increases required to produce the additional revenues necessary to satisfy the respective annual USF rider revenue requirements listed below for those EDUs. Further, the signatory parties agree that the USF rider rates set forth above for Duke and OP are lower than the current USF rider rates and represent the minimum rates necessary to satisfy the respective annual USF rider revenue requirements listed below for those EDUs. As part of the 2011 Adjustment 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 OP. (Joint Ex. 1 at 5.)

All signatory parties to the 2011 Adjustment Stipulation, except OPAE, have stipulated that the two-step, declining block USF riders reflect the minimum level necessary to produce the required revenues (Joint Ex. 1 at 4-5). Further, the signatory parties to the 2011 Adjustment Stipulation agree that, as set forth in ODOD's amended application and supported by the testimony of ODOD witnesses Sunday and Skaggs, the annual USF rider revenue requirement for each EDU should be as follows:

EDU	USF Revenue Requirement
CEI	$52,851,181
CSP	$46,718,873
DP&L	$60,661,008
Duke	$22,191,470
OE	$83,902,372
OP	$42,288,237
TE	$35,356,326

(Joint Ex. 1 at 3).

It is further agreed that the new USF riders be filed within seven days of the Commission's order adopting the 2011 Adjustment Stipulation and that the new USF riders be effective upon filing with the Commission and apply on a bills-rendered basis beginning with the first billing cycle of the month following their effective date. The signatory parties agree that each EDU shall notify customers of the adjustments to their respective USF riders by means of the customer notice attached to the 2011 Adjustment Stipulation as Appendix A. (Joint Ex. 1 at 5-6.)

The 2011 Adjustment Stipulation states that the USF riders must actually generate sufficient revenues to enable ODOD to meet its specific USF-related statutory and contractual obligations on an ongoing basis. To this end, ODOD has also agreed to file, no later than October 31, 2012, an application with the Commission for such adjustments to the USF riders as may be necessary to assure, to the extent possible, that each EDU'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 parties to this proceeding. (Joint Ex. 1 at 6.)

The signatory parties propose and agree that ODOD should again follow the NOI process first adopted by the Commission in Case No. 04-1616-EL-UNC.[5] Specifically, this process provides that, on or before May 31, 2012, 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 set forth the methodology that ODOD intends to employ in calculating the USF rider revenue requirement and in designing the USF rider rates and may also include such other matters as ODOD deems appropriate. Upon the filing of the NOI, the parties request that the Commission open the USF rider adjustment application docket for 2012 and establish a 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 2011 Adjustment Stipulation requests that the Commission use its best efforts to issue its decision with respect to any objections raised in the NOI phase of the USF proceeding by no later than September 30, 2012. The NOI process provides that ODOD will conform its 2012 USF rider adjustment application to any directives set forth in the Commission's order, or, if the order is not issued sufficiently in advance of the October 31, 2012, filing deadline to permit ODOD to incorporate such directives, ODOD will file an amended application to do so. (Joint Ex. 1 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 formed pursuant to the stipulation approved by the Commission in Case No. 03-2049-EL-UNC, which is charged with developing, reviewing, and recommending such cost control measures.[6] Although recommendations made by the 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. (Joint Ex. 1 at 8.)

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5 *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. 04-1616-EL-UNC, Opinion and Order (December 8, 2004).

6 *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. 03-2049-EL-UNC, Opinion and Order (December 3, 2003).

V. 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 EDUs implement their respective USF rider rates. 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 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, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), *citing Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented 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. *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, 1994); *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.*, 68 Ohio St.3d 559 (1994), *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 2011 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 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 program and provide adequate funding for those programs. We find that the process involved serious bargaining by knowledgeable, capable parties. The 2011 Adjustment Stipulation is unopposed and is sponsored by most of the parties, representing a wide range of interests, and these parties are represented by able counsel. Further, we find that the 2011 Adjustment Stipulation is in the public interest by providing for adequate funding of the low-income customer assistance programs and the consumer education program offered by ODOD. Lastly, the 2011 Adjustment Stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission finds that the 2011 Adjustment Stipulation and the USF rider rates established therein for CEI, CSP, DP&L, Duke, OE, OP, and TE should be approved.

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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) The USF was established pursuant to 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.

(2) The USF is administered by ODOD, in accordance with Section 4928.51, Revised Code.

(3) ODOD filed an application on October 31, 2011, to adjust the USF riders of the EDUs, in accordance with the requirements of Section 4928.52, Revised Code.

(4) On November 30, 2011, ODOD filed an amended application.

(5) The hearing on this matter was held on December 7, 2011.

(6) At the hearing, the 2011 Adjustment Stipulation was submitted, intending to resolve all issues in this case. No party opposes the 2011 Adjustment Stipulation.

(7) The 2011 Adjustment Stipulation and proposed customer notice are reasonable and should be adopted.

(8) The two-step, declining block USF rider rates set forth in the 2011 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 program and provide adequate funding for those programs.

ORDER:

It is, therefore,

ORDERED, That the 2011 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 be 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 EDU 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 the 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 EDUs 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 cases under the USF purpose code. It is, further,

ORDERED, That a copy of this opinion and order be served upon ODOD, all jurisdictional Ohio electric distribution utilities, and all other parties and interested persons of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler

Todd A. Snitchler, Chairman

Paul A. Centolella

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Andre T. Porter

Cheryl L. Roberto

Cheryl L. Roberto

SJP/GNS/sc

Entered in the Journal

DEC 14 2011

Betty McCauley

Betty McCauley
Secretary