

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Ohio )  
Development Services Agency for an Order )  
Approving Adjustments to the Universal ) Case No. 13-1296-EL-USF  
Service Fund Riders of Jurisdictional Ohio )  
Electric Distribution Utilities. )

OPINION AND ORDER

The Commission, considering the Ohio Development Services Agency's (ODSA) Notice of Intent (NOI) to file its annual application for adjustment to the Universal Service Fund (USF) riders, the pleadings, and the applicable law, finds:

APPEARANCES:

Bricker & Eckler LLP, by Dane Stinson and J. Thomas Siwo, 100 S. Third Street, Columbus, Ohio 43215-4291, on behalf of the ODSA.

Mike DeWine, Attorney General of the State of Ohio, by Thomas W. McNamee, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the Staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Ohio Consumers' Counsel, by Joseph P. Serio, 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.

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

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

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

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

## I. UNIVERSAL SERVICE FUND BACKGROUND

The 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 Development Services Agency (ODSA), in accordance with Section 4928.51, Revised Code. 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), Dayton Power & Light Company (DP&L), Duke Energy Ohio, Inc. (Duke), Ohio Edison Company (OE), Ohio Power Company (OP),<sup>1</sup> and 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 ODSA and approved by the Commission.<sup>2</sup>

Section 4928.52(B), Revised Code, provides that, if ODSA, 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 to provide adequate funding for those programs, ODSA shall file a petition with the Commission for an increase in the USF rider rates. Section 4928.52(B), Revised Code, also provides that the Commission, after reasonable notice and opportunity for hearing, may adjust the USF riders by the minimum amount required to provide the necessary additional revenues. To that end, the Commission has approved USF rider rate adjustments each year for each of the Ohio jurisdictional electric utilities.<sup>3</sup>

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<sup>1</sup> By Entry issued on March 7, 2012, in Case No. 10-2376-EL-UNC, *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company (CSP) for Authority to Merge and Related Approvals*, the Commission approved and confirmed the merger of CSP into OP, effective December 31, 2011.

<sup>2</sup> *FirstEnergy Corp. on Behalf of Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company*, Case No. 99-1212-EL-ETP, Order (July 19, 2000); *Cincinnati Gas & Electric Co.*, Case No. 99-1658-EL-ETP, Order (August 31, 2000); *Columbus Southern Power Co.*, Case No. 99-1729-EL-ETP, Order (September 28, 2000); *Ohio Power Co.*, Case No. 99-1730-EL-ETP, Order (September 28, 2000); *Dayton Power & Light Co.*, Case No. 99-1687-EL-ETP, Order (September 21, 2000); and *Monongahela Power Co.*, Case No. 00-02-EL-ETP, Order (October 5, 2000).

<sup>3</sup> 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); Case No. 08-658-EL-UNC, Opinion and Order (December 17, 2008); Case No. 09-463-EL-UNC, Opinion and Order (December 16, 2009); Case No. 10-725-EL-USF, Opinion and Order (December 15, 2010); Case No. 11-3223-EL-USF,

In accordance with the Stipulation filed on November 30, 2012 (2012 Adjustment Stipulation) and approved by the Commission 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. 12-1719-EL-USF, Opinion and Order (December 12, 2012) (12-1719 Adjustment Order), ODSA 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 methodology ODSA 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.

## II. HISTORY OF THIS PROCEEDING

On May 31, 2013, ODSA filed its NOI (2013 NOI) to file an application to adjust the USF riders of all jurisdictional Ohio electric utilities, CEL, DP&L, Duke, OE, OP, and TE, in accordance with the terms of the 2012 Adjustment Stipulation approved by the Commission pursuant to the 12-1719 Adjustment Order. The 2013 NOI included ODSA's Exhibit A, as revised, in support of its proposed allowance for the 2014 costs associated with the Electric Partnership Program (EPP) (Tr. at 10-11).<sup>4</sup>

To summarize, ODSA's 2013 NOI indicates that its subsequent adjustment application will request that each of the USF riders be revised to more accurately reflect the current costs of operating the Percentage of Income Payment Plan Plus (PIPP) program, EPP including consumer education programs, and associated administrative costs and to reflect known and measurable changes that take effect during the test period and the post-test period. ODSA also proposes an adjustment to capture the impact of the anticipated increase in PIPP enrollment, a reserve component to address PIPP-related cash flow fluctuations as a result of the weather-sensitive nature of electric service. ODSA proposes, as approved by the Commission in each proceeding since 2006, that the reserve will be based on the highest monthly deficit during the test period.

Next, ODSA, consistent with the Commission approved ODSA-OCC settlement agreement filed on August 26, 2005, 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. 05-717-EL-UNC, proposes an EPP allowance of \$14,946,196 based on its projection of payments to service providers and associated administrative costs during the 2014 collection period (See Exhibit A to the 2013

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Opinion and Order (December 14, 2011); and Case No. 12-1719-EL-USF, Opinion and Order (December 12, 2012).

<sup>4</sup> EPP includes the programs previously referred to as the low-income customer energy efficiency program and consumer education programs.

NOI application).<sup>5</sup> As in prior USF rider adjustment proceedings, ODSA will allocate this component of the revenue requirement among the electric utilities based on each electric utility's ratio of the cost of PIPP to the total cost of PIPP.

ODSA, consistent with the ODSA-OCC settlement agreement, as approved in each USF NOI proceeding since Case No. 05-717-EL-UNC, proposes an allowance for administrative costs based on the administrative costs incurred during the test period, subject to adjustments for reasonably anticipated post-test period costs, to assure, to the extent possible that the administrative cost incurred are collected during the collection year. The requested allowance for administrative costs will be allocated among the electric utilities based on the relative number of PIPP customer accounts as of the month of the test period exhibiting the highest PIPP customer account totals.

As in the past, ODSA proposes to include in the USF revenue requirement an allowance for under-collection, as a result of the difference between the amounts billed through the rider and the amount collected from customers. The allowance will be based on each electric utility's actual collection experience as projected through December 31, 2013. ODSA's exposure to carrying charges for late reimbursement payments to the electric utilities is insignificant and, therefore, ODSA does not propose an allowance for interest costs.

Last, ODSA indicates that it plans to employ 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. More specifically, as proposed, the first block of the rate will apply to all monthly consumption up to and including 833,000 kilowatt hours (kWh). The second block rate will apply to all consumption above 833,000 kWh per month. For each electric utility, the rate per kWh for the second block will be set at the lower of the PIPP rate in effect in October 1999 or the per kWh rate that would apply if the electric utility's annual USF rider revenue requirement were to be recovered through a single block per kWh rate. The rate for the first block rate will be set at the level necessary to produce the remainder of the electric utility's annual USF rider revenue requirement. Thus, in those instances where the electric utility's October 1999 PIPP charge exceeds the per kWh rate that would apply if the electric utility's annual USF rider revenue requirement were to be recovered through a single block per kWh rate, the rate for both consumption blocks will be the same.

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 ODSA intends to use in developing the USF rider revenue requirement and the USF rider rate design, to be

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<sup>5</sup> Tr. at 10-11.

utilized in preparing the USF rider adjustments. Accordingly, the Commission will issue two orders in this proceeding: one regarding the 2013 NOI, including the methodology proposed by ODSA for developing the USF rider revenue requirement, the USF rate design, and the issues raised by the parties concerning these items; and one regarding ODSA's subsequent application proposing USF rider adjustments, as necessary, for each of the six electric utilities.

By entry issued on July 11, 2013, the procedural schedule was established for the NOI phase of the case, which included an evidentiary hearing to be held on September 9, 2013. The July 11, 2013, entry also joined the electric utilities as indispensable parties to this proceeding.

Motions to intervene in the proceeding were filed by and intervention was granted by entry issued on August 15, 2013, to Ohio Partners for Affordable Energy (OPAE), Industrial Energy Users-Ohio (IEU), and the Office of the Ohio Consumers' Counsel (OCC).

Pursuant to the procedural schedule, objections or comments on the 2013 NOI application were due by July 29, 2013, and responses to objections or comments were due by August 5, 2013. No objections to the NOI application were filed. No party filed a request for a prehearing conference and no objections were filed to ODSA's 2013 NOI application. The hearing on the NOI was held, as scheduled, on September 9, 2013.

### III. JOINT STIPULATION AND RECOMMENDATION

On September 6, 2013, ODSA filed a Joint Stipulation and Recommendation (Joint Ex. 1 or 2013 NOI Stipulation) that proposes to address all of the issues related to its 2013 NOI. The signatory parties to the 2013 NOI Stipulation are: ODSA, IEU, CEI, OE, TE, DP&L, and OPAE.<sup>6</sup> The remaining parties to the proceeding, Duke, OP, OCC and Staff did not sign the 2013 NOI Stipulation. However, OCC and Staff state that they do not oppose the Stipulation (Tr. at 8, 9-10).<sup>7</sup> By letters filed on September 9, 2013 and September 11, 2013, respectively, Duke and OP state that they do not oppose the 2013 NOI Stipulation.

The signatory parties assert that the 2013 NOI Stipulation represents a just and reasonable resolution of all issues presented in the 2013 NOI, does not violate any regulatory principle, and is the product of serious bargaining among knowledgeable and

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<sup>6</sup> OPAE, although a signatory to the 2013 NOI Stipulation, does not join in section 2 of the 2013 NOI Stipulation regarding the USF two-step declining block rider rate design methodology.

<sup>7</sup> Pursuant to Rule 4901-1-10(C), O.A.C., Staff is a party in this proceeding for the purpose of entering into this Stipulation.

capable parties in a cooperative process in which all parties were provided the opportunity to participate. Lastly, the signatory parties offer that, although the 2013 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. The 2013 NOI Stipulation also specifically provides that, the signatory parties waive any right to a hearing and request that the Commission issue an order adopting the Stipulation.

A. 2013 NOI Stipulation - USF Rider Revenue Requirement Methodology

The 2013 NOI Stipulation provides that the USF rider revenue requirement, to be recovered by the USF rider rates of the Ohio electric utilities during the 2014 collection period, should include the following elements, each of which will be determined in the manner proposed in ODSA's 2013 NOI application, and which is consistent with prior revenue requirement methodology approved by this Commission: (a) cost of PIPP; (b) EPP costs and, if updated projections for the EPP allowance suggest the EPP allowance is no longer appropriate, ODSA will, consistent with its obligations, perform any necessary adjustments and document the basis for the adjustment in the adjustment phase of this USF proceeding; (c) administrative costs; (d) December 31, 2013, PIPP account balances; (e) reserve; (f) allowance for undercollection; (g) no cost for electric utility audits to be conducted; and (h) USF interest offset.

B. 2013 NOI Stipulation - USF Rider Rate Design Methodology

The 2013 NOI Stipulation also provides that ODSA should use the current rate design methodology, as previously approved by the Commission in all prior ODSA applications, to recover the annual USF rider revenue requirement, in this proceeding. 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 utility's 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 utility's 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 and does not violate Section 4928.52(C), Revised Code.<sup>8</sup>

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<sup>8</sup> Although a signatory to the Stipulation, OP&E does not join in this provision of the Stipulation.

#### IV. COMMISSION DISCUSSION

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 that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.*) 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.

After reviewing the 2013 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 ODSA's 2013 NOI USF rider application. We find that the process involved serious bargaining by knowledgeable, capable parties.

The parties to this case have been actively participating in the USF proceedings and numerous other Commission proceedings for several years. The Commission notes that most of the parties to this USF proceeding are signatories to the 2013 NOI Stipulation and even the non-signatory parties do not oppose the Stipulation. Further, we find that the 2013 NOI Stipulation is in the public interest as it provides ODSA with a process to ensure adequate funding for the low-income customer assistance programs and the consumer education programs administered by ODSA. Last, the Commission concludes the Stipulation does not violate any important regulatory principle or practice. In each USF NOI proceeding since adoption of the two-step declining block rate design, the Commission has adopted the stipulation endorsing the same rate design. We observe that the magnitude of the impact of utilizing a two-step declining block USF rate design, as opposed to a uniform USF rate per kWh, when the second block is activated, is insufficient to constitute a material shift among customers or the customer classes to violate Section 4928.52(C), Revised Code. As such, the Commission approves the 2013 NOI Stipulation in its entirety.

ORDER:

It is, therefore,

ORDERED, That the 2013 NOI Stipulation filed on September 6, 2013, be approved in its entirety. It is, further,

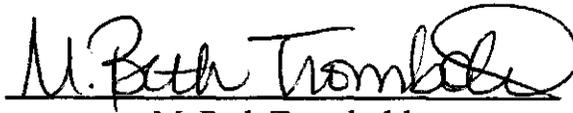
ORDERED, That a copy of this Opinion and Order be served upon ODSA, the electric-energy list serve, and all persons of record in this case.

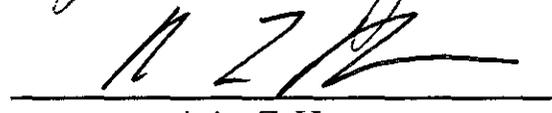
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Smithler, Chairman

  
Steven D. Lesser

  
Lynn Slaby

  
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Asim Z. Haque

GNS/vrm

Entered in the Journal

**OCT 02 2013**

  
Barcy F. McNeal  
Secretary