

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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DOCKETING DIVISION
PUCO

In the Matter of the Application of)	
FirstEnergy Corp. on Behalf of)	
Ohio Edison Company, The	)	Case No. 99-1212-EL-ETP
Cleveland Electric Illuminating	)	Case No. 99-1213-EL-ATA
Company and The Toledo Edison	)	Case No. 99-1214-EL-AAM
Company for Approval for Their)	
Transition Plans and for Authorization)	
To Collect Transition Revenues.)	
 In the Matter of the Application of)	
The Cincinnati Gas & Electric Company	)	Case No. 99-1658-EL-ETP
For Approval of its Electric Transition Plan	)	Case No. 99-1659-EL-ATA
Approval of Tariff Changes and New	)	Case No. 99-1660-EL-ATA
Tariffs, Authority to Modify Current	)	Case No. 99-1661-EL-AAM
Accounting Procedures, and Approval	)	Case No. 99-1662-EL-AAM
To Transfer its Generating Assets to an	)	Case No. 99-1663-EL-UNC
Exempt Wholesale Generator.)	
 In the Matter of the Applications of)	
Columbus Southern Power Company	)	Case No. 99-1729-EL-ETP
And Ohio Power Company for Approval	)	Case No. 99-1730-EL-ETP
Of Their Electric Transition Plans and)	
For Receipt of Transition Revenues.)	
 In the Matter of the Application of)	
Monongahela Power Company dba	)	Case No. 00-02-EL-ETP
Allegheny Power for Approval of an)	
Electric Transition Plan.)	

MEMORANDUM OF SUPPORT
MOTION OF OHIO PARTNERS FOR AFFORDABLE ENERGY TO REQUIRE
COMPLIANCE WITH SECTIONS 4928.51 and 4928.52 O.R.C.

Ohio Partners for Affordable Energy, a party in the above referenced cases, respectfully provides this Memorandum in Support of our motion requesting that the Public Utilities Commission of Ohio ("PUCO" or "Commission") order the Columbus Southern Power Company and the Ohio Power Company ("AEP"); The Cincinnati Gas & Electric Company ("CG&E"); Cleveland Electric Illuminating Company, Ohio Edison and Toledo Edison

("FirstEnergy"); and, Monongahela Power (collectively "the Companies") to remit the funds collected under the Universal Service Rider to the Universal Service Fund. Failure of the Companies to remit the funds collected under the Universal Service Rider to the Universal Service Fund is unreasonable and unlawful under Sections 4928.51 and 4928.52, Revised Code.

On July 13, 2000, as amended on July 17, 2000, the Ohio Department of Development (ODOD) filed applications in the above-captioned cases for approval of Universal Service Fund Riders (USF Riders). Section 4928.52, Revised Code, provides that the USF Riders were to be effective on July 1, 2000. However, because of delays in the rulemaking associated with the program, ODOD requested in the July 13 filing that the USF Riders be effective on September 1, 2000. The Commission subsequently approved the riders in an Entry dated August 17, 2000.¹

The Companies complied with the Commission Entry and, to the best of OPAE's knowledge, began collecting the Commission-approved USF Rider on all bill rendered after the September 1, 2000 effective date.² Unfortunately, while it is clear that all the Companies are collecting the USF Rider under approved tariffs, none of the revenues from the USF Rider has been remitted to the

¹ In that Entry the Commission also denied a Motion to Disapprove the riders filed by the Industrial Energy Users - Ohio (IEU-OH). IEU-OH, in conjunction with Ohio Council of Retail Merchants and Ohio Manufacturers' Association subsequently filed an application for rehearing, which was granted in part and denied in part by Entry of the Commission dated September 20, 2000. The issues raised in the application for rehearing are not relevant to the present motion.

² The one exception was the Dayton Power & Light Company, which requested and received permission to delay collection of the USF Rider until January 1, 2001 for reasons that are unclear. A motion against the Company would not be proper unless and until they fail to remit USF Rider revenues to the Director on February 15, 2001. OPAE trusts the Company will comply with the law.

Director of the Department of Development and deposited into the Universal Service Fund in the State Treasury.³

Amd. Sub. S.B. 3 created a comprehensive program to ensure low-income consumers were afforded continuing access to essential electric service.⁴ Critical to this was the creation of several funding mechanisms for "low-income customer assistance programs," which are defined to include bill assistance, energy efficiency and consumer energy education programs.⁵

The statute specifies that "[b]eginning July 1, 2000, the Universal Service Rider shall replace the Percentage of Income Payment Plan Rider in existence on the effective date of this section...."⁶ This provision, on its face, requires electric distribution utilities (EDUs) as the entities having sole control over billing consumers for electric services, to impose and collect the amount of the USF rider as required. The Commission approved the USF Riders currently being collected by the Companies in an Entry issued on August 17, 2001.

Section 4928.51 O.R.C. creates a Universal Service Fund in the State Treasury, "...into which shall be deposited all Universal Service Revenues remitted to the Director of Development...." Section 4928.52(B) defines Universal Service Revenues to include:

- (1) Revenues remitted to the Director after collection by an electric distribution utility beginning July 1, 2000, attributable to the collection from customers of the Universal Service Rider prescribed under Section 4928.52 of the Revised Code.

³ Based on personal communication with Victoria Mroczek, Director, Office of Community Services, Ohio Department of Development, January 23, 2001.

⁴ See generally Sections 4928.02(A), 4928.02(H) and 4928.51 et seq., O.R.C.

⁵ The term "low-income customer assistance programs" is defined in Section 4928.01(16), O.R.C.

⁶ Section 4928.52(A), O.R.C.

This provision is reflected into the regulations approved by the Joint Committee on Agency Rule Review. Section 122:12-2-02(A) requires electric distribution utilities to:

On a date negotiated by the Director and each of the electric distribution utilities, but not later than October 15, 2000, and on the same date of every month thereafter, unless otherwise directed by the Commission, each of the electric distribution utilities shall remit all fund revenues collected to the Director in accordance with the terms of the agreement. The Director will deposit the remitted Fund money into the Fund.

The statute clearly creates an affirmative duty on the utilities to remit the funds to the Director.⁷ The lack of a final negotiated date as referenced by the regulations does not eliminate this duty, nor does the lack of an agreement. To find otherwise would permit the Companies to frustrate the intent of the law to fund low-income customer assistance programs by simply refusing to enter into an agreement transferring the funds collected from customers. Moreover, the statute clearly did not authorize the Companies to unjustly enrich themselves by pocketing the funds collected on behalf of the Universal Service Fund from customers. Simply put, the Companies should transfer the funds collected since September to the Director. Failure to transfer the funds by the 15th of the month after collection is unreasonable and unlawful.

The failure of the Companies to comply with the law is having a domino effect on the entire Universal Service Program, on customers in general, and on low-income customers in particular.

⁷ Nor has the Commission issued an entry or order eliminating the requirement to make these payments as provided for in the Ohio Administrative Code.

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First, Section 4928.51(A), Revised Code, requires the interest from the Universal Service Fund to be credited to the Fund. There can be no interest collected when there is no revenue. Apparently, the Companies feels entitled to the interest since they are refusing to turn over the USF Rider revenues. In any event, customers are not benefiting from the interest, which would serve to reduce the cost they must pay to support the program.

Second, any attempt that the Department may have made to aggregate customers under Section 4928.54, Revised Code, and bid them to achieve lower rates has likewise ground to a halt. California utilities are discovering that lack of cash can be a severe impediment to securing power supplies. ODOD is in a similar situation. Ultimately, it is customers that suffer, because ODOD is unable to take advantage of a competitive market to reduce the cost of bill assistance and control the level of the USF Rider as envisioned by the General Assembly.

Third, efforts by ODOD to implement the energy efficiency component of low-income customer efficiency programs have also ground to a halt. Lack of funds means there is no money to contract with providers for energy efficiency services. Customers will ultimately pay a higher cost for the Universal Service Program because of the failure to make cost-effective energy efficiency investments now means a delay in the savings associated with these measures.

Fourth, efforts to move forward with consumer energy education programs authorized by Section 4928.56, Revised Code, are also in limbo for lack of funds. Customers again are the losers because they will fail to reap the savings associated with these efforts.

Overall, low-income customers will suffer the most from failure to implement these provisions due to the unreasonable and unlawful withholding of funds by the Companies. Natural gas prices are up as much as 123% this year. These increases are making energy bills unaffordable for many low-income customers and forcing them onto the natural gas and electric Percentage Income Payment Plans. If ODOD was able to implement the Universal Service Program, aggregation could reduce the arrearages these customers build up from not paying their total electric bill.⁸ The targeted energy efficiency program would reduce use and therefore arrearages. And, the education component of the program would have affected consumption of all fuels. Failure to rapidly implement this program because of the withholding of funds by the Companies simply adds insult to the very real injury high energy prices cause to low-income customers.

Conclusion

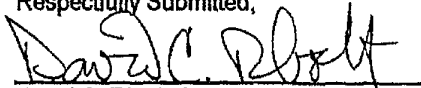
The provisions of Amd. Sub. S.B. 3 dealing with low-income customer assistance programs are more extensive than virtually any other provision of the statute. They are also very clear on their face. The USF Rider replaces the old PIPP Rider. EDUs are to collect the USF Rider and remit it to the Director for deposit into the Universal Service Fund. Interest from the fund is to be credited to the fund. Revenue from the Fund is to be used to fund bill payment assistance, targeted energy efficiency and consumer education. This

⁸ As anyone who has looked at the data knows, since electric PIPP customers pay a lower percentage of income - 3 to 5% - for electricity than for natural gas, electric PIPP arrearages are often higher than natural gas PIPP arrearages.

combination of services will, over the long term, result in the lowest possible cost to customers for providing essential energy services to the most vulnerable elderly, disabled and other low-income customers. None of this can be accomplished while AEP, CG&E, FirstEnergy and Monongahela Power sit on their wallets and refuse to turn over the customer dollars they have collected that are designated to fund these programs.

OPAE requests that the Commission fund the withholding of funds by the utilities to be unreasonable and unlawful and direct the immediate remittance of USF Rider collections to the Director of Development.

Respectfully Submitted,



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