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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval for Their Transition Plans and for Authorization To Collect Transition Revenues.	)	Case No. 99-1212-EL-ETP Case No. 99-1213-EL-ATA Case No. 99-1214-EL-AAM
In the Matter of the Application of The Cincinnati Gas & Electric Company For Approval of its Electric Transition Plan Approval of Tariff Changes and New Tariffs, Authority to Modify Current Accounting Procedures, and Approval To Transfer its Generating Assets to an Exempt Wholesale Generator.	)	Case No. 99-1658-EL-ETP Case No. 99-1659-EL-ATA Case No. 99-1660-EL-ATA Case No. 99-1661-EL-AAM Case No. 99-1662-EL-AAM Case No. 99-1663-EL-UNC
In the Matter of the Application of the Dayton Power & Light Company for Approval of its Transition Plan, for The Opportunity to Receive Transition Revenues, for Approval to Change Accounting Methods, and Approval to Amend its Tariff.	)	Case No. 99-1687-EL-ETP Case No. 99-1688-EL-AAM Case No. 99-1689-EL-ATA
In the Matter of the Applications of Columbus Southern Power Company And Ohio Power Company for Approval Of Their Electric Transition Plans and For Receipt of Transition Revenues.	)	Case No. 99-1729-EL-ETP Case No. 99-1730-EL-ETP
In the Matter of the Application of Monongahela Power Company dba Allegheny Power for Approval of an Electric Transition Plan.	)	Case No. 00-02-EL-ETP

MEMORANDUM CONTRA OF OHIO PARTNERS FOR AFFORDABLE ENERGY AND THE APPALACHIAN PEOPLE'S ACTION COALITION TO THE INDUSTRIAL ENERGY USERS – OHIO MOTION TO DISAPPROVE APPLICATIONS FOR APPROVAL OF THE UNIVERSAL SERVICE FUND RIDER AND THE ENERGY EFFICIENCY REVOLVING LOAN FUND RIDER AS PROPOSED BY THE OHIO DEPARTMENT OF DEVELOPMENT AND REQUEST FOR EXPEDITED RULING

August 14, 2000

On Friday, August 4, 2000, the Industrial Energy Users – Ohio (IEU) filed a Motion to Disapprove the Applications for Approval of the Universal Service Rider and the Temporary Rider designed to capitalize the Energy Efficiency Revolving Loan Fund as proposed by the Ohio Department of Development (ODOD).[1] Ohio Partners for Affordable Energy (OPAE) and Appalachians People's Action Coalition (APAC)[2] respectfully request that the Commission reject the Motion to Disapprove and further request an expedited ruling in this matter so the remaining transition case settlements, along with appropriate riders for these programs, can be approved.[3]

Sections 4928.51 through 4928.58, Revised Code, create a Universal Service Program to provide essential energy services to elderly, disabled and other low-income households. The provisions collectively establish a Universal Service Fund, determine how the level of the rider is to be determined, authorize the Director of Development to adopt rules for the program, permit the aggregation of bill assistance customers for the purpose of bidding the right to supply said customers, establish a targeted energy efficiency and weatherization program, establish an education program for low-income consumers regarding energy efficiency and energy conservation, and creates a public oversight board to advise the Director regarding the program. A report to the General Assembly is required every two years.

Sections 4928.61 through 4928.63, Revised Code, establish an Energy Efficiency Revolving Loan Fund and program, again creating a fund in the state treasury,

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1 See the Applications filed in Case No. 99-1729-EL-ETP and Case No. 99-1730-EL-ETP on July 13, 2000; in Case No. 99-1658-EL-ETP on July 13, 2000; in Case No. 99-1687-EL-ETP on July 13, 2000; in Case No. 99-1212-EL-ETP filed on July 11, 2000; and, in Case No. 00-02-EL-ETP on July 13, 2000.

2 APAC is a party only in Case No. 99-1729-EL-ETP and Case No. 99-1730-EL-ETP.

3 The riders in the First Energy transition case setting riders for the Cleveland Electric Illuminating Company, Ohio Edison and Toledo Edison have already been approved rendering this motion moot. See Case No. 99-1212-EL-ETP, In the Matter of the Application of FirstEnergy Corp. for Approval of Transition Plan, Opinion and Order at page 11 (July 19, 2000).

specifying the method for calculating the rider to be applied to customer bills to capitalize the fund, and defining the types of technologies for which loans can be made. The Director of Development is further authorized to adopt rules as necessary to carry out these provisions. A provision of Section 4928.61, Revised Code, also requires utility companies to make an election regarding the use of funds in base rates for demand side management programs.[4]

These provisions of the Revised Code provide a detailed process for the development of the respective programs, the funding for the programs, and the authority to design and operate the programs. OPAE and APAC believe that the Department has properly carried out its responsibilities under the statute. The Department intervened in each of the respective transition cases filed by Ohio utilities. Provisions were incorporated in each of the settlements regarding the rider levels. The Department developed, after extensive consultation, a package of rules to implement the Universal Service Program. And, the Department has begun to take steps to develop and implement the loan fund program required by statute in a manner consistent with the timeframe in which revenues will be available to the fund.

In addition, OPAE and APAC note their support of the efforts of the staff of the Public Utilities Commission of Ohio (PUCO) in assisting the Department in developing the proposed riders. The PUCO provided data from the OSCAR report and other relevant information regarding the current riders, and assisted the Department in working with utilities to resolve gaps or anomalies in the data.

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[4] Section 4928.61 (D), Revised Code, reads as follows: "Any moneys collected in rates for non-low-income customer energy efficiency programs, as of the effective date of this section and not contributed to the energy efficiency revolving loan fund under division (B)(1) of this sections hall be contributed into the Universal Service Fund..., or be returned to the ratepayers in the form of a rate reduction at the option of the affected electric distribution utility." OPAE and APAC encourage the Commission to ensure this occurs in the context of the settlements.

Finally, the utility companies themselves have provided the Department with assistance in determining the actual costs associated with bill assistance to permit a determination of adequate revenues and provided other invaluable assistance that resulted in the Universal Service Riders proposed in the applications.

I. The Universal Service Riders Proposed by the Department of Development are Appropriate Under the Statute and Under the Settlements.

Section 4928.52, Revised Code, defines the elements ODOD should include in determining the level of the Universal Service Rider during both the transition period and beyond. The initial rider, in the words of the statute, "...shall be the sum of all of the following: (1) the level of the percentage of income payment plan program rider in existence on the effective date of this Section; (2) an amount equal to the level of funding for low-income customer energy efficiency programs provided through electric utility rates in effect on the effective date of this section; (3) any additional amount necessary and sufficient to fund...administrative costs of the low-income customer assistance programs and the consumer education program...."[5] Further, the section permits ODOD to recommend modifications to the initial riders if the Director finds that "...revenues in the Universal Service Fund...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...."

Like many aspects of SB 3, this provision was ultimately superceded by settlements entered into by the parties. Though only one settlement has been approved, all remaining settlements contain substantively identical language regarding these riders. The language is as follows:

> The Universal Service Rider and Energy Efficiency Revolving Loan Fund Rider will be as determined by the

[5] Section 4928.52(A), Ohio Revised Code.

Ohio Department of Development and approved by the Commission.[6]

The relevant test to consider when the Commission is considering a stipulation is as follows:

(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?

Cincinnati Gas & Elec. Co., FirstEnergy Corp. and Columbus & Southern Ohio Elec. Co., Case No. 84-1187-EL-UNC (November 26, 1985), and Cleveland Electric Illuminating Co., Case No. 82-485-EL-AIR (March 30, 1983).

IEU has filed briefs attesting that these regulatory principals have been met in each of these cases. Since the organization is on record in support of the stipulations, it is a bit late in the process to challenge the outcome now. But even if IEU were to argue that their support of the settlements was generic, the Commission still should find that these rider levels meet the criteria established by the above-referenced test.

The settlement language was clearly the result of bargaining of capable parties. Multiple parties were involved in these cases for the primary reason of ensuring

[6] See In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Transition Plan and Authorization to Collect Revenues, Case No. 99-1658-EL-ETP, stipulation at page 15 (May 8, 2000); In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Transition Plan and Application for Receipt of Transition Revenues, Case No. 99-1729-EL-ETP and In the Matter of the Application of Ohio Power Company for Approval of its Electric Transition Plan and Application for Receipt of Transition Revenues, Case No. 99-1730-EL-ETP, stipulation at page 11 (May 5, 2000); and, In the Matter of the Application of the Dayton Power and Light Company for Approval of Their Electric Transition Plan and for Authorization to Collect Transition Revenues, Case No. 99-1687-EL-ETP, stipulation at page 16 (June 1, 2000). The language in the Monongahela Power Company transition plan varies slightly. See In the Matter of the Application of Monongahela Power Company for Approval of Transition Plan, Pursuant to §4928.31, Revised Code and for the Opportunity to Receive Transition Revenues as Authorized Under §§4928.31 to 4928.40, Revised Code, Case No. 00-02-EL-ETP, stipulation at page 13 (June 22, 2000).

adequate funding for these programs, including APAC, OPAE, ODOD, and five community action agencies.[7] The IEU was represented by a similar number of attorneys.

The settlement clearly benefits ratepayers collectively. The proposed riders will save a $1,906,550 million statewide in the first year compared to current rider levels.[8] The energy savings investments should produce reductions in the cost of bill assistance that will compound over the life of the measures, further reducing the cost of providing essential energy services. And, most importantly, the most vulnerable customers – the disabled, the elderly and other low-income households – will have access to energy at something resembling an affordable rate.

Finally, the settlement does not violate any important regulatory principal, primarily because it implements the spirit and meaning of the statutory provisions. While the riders that are the subject of this proceeding were obviously developed in a manner that bypasses the express requirements of the statute, they do introduce an element of equity that was lacking in the PIPP rider they replace. The new riders correct unsupportable variations in the existing utility PIPP riders. Obviously, OPAE would be supportive of establishing the riders at the current levels, which would yield a total of $66,489,122 in revenues. However, we are willing to live with the slightly lower number in order to achieve equity.

IEU also levels substantive attacks against the decisions made by the Department. It argues that neither the bases nor the reasons for the differences in riders from current PIPP riders are apparent in the applications. Attachments C and D to the

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[7] Depending on the case, these included Ashtabula County Community Action Agency, the Corporation for Ohio Appalachian Development, Cincinnati-Hamilton Community Action Agency, SCOPE, NHS-Toledo and WSOS Community Action Agency.

[8] See Letter of June 26, 2000 from John Riordan, Deputy Director, Community Development Division, ODOD to Dan Neff, Chairman of the Public Benefits Advisory Board, Attachment 1 to the Industrial Energy Users – Ohio <u>Motion to Disapprove</u> (August 4, 2000).

ODOD Applications, as well as the letter for Deputy Director Reardon to the Chair of the Public Benefits Advisory Board attached to the IEU motion clearly state the reasons or bases for the change.[9] The existing PIPP riders vary widely in absolute levels, ranging from 0.0000400 to 0.0010461. As stated above, these levels bear no rational relationship to the relative costs of providing PIPP in each utility service territory. One can understand how the General Assembly could properly assume the PIPP riders to be equitable and capable as serving as a proxy for the new rider, but it is clearly not as Attachment C to the petitions indicates.[10]

This presented ODOD with the choice of either proposing Universal Service Riders that perpetuated the inequities, or modifying the riders to better reflect the costs of providing the Universal Service Program in each utility service territory. The Department chose the latter and should be commended for the choice.

IEU next directs its comments to the proposed education program for consumers eligible to participate in the Universal Service Program as authorized by Section 4928.56, Revised Code.[11] IEU apparently confuses the Consumer Education program authorized elsewhere in the legislation, which is designed to acquaint customers with the notion of 'choice', with the program authorized in Section 4928.56 that according to the statute "...shall provide information to consumers regarding energy efficiency and energy conservation." These programs are not the same. OPAE members currently provide consumer education on energy efficiency and energy conservation under the Home Weatherization Assistance Program. The costs per household to provide those types of case management services are much higher on a per household basis than the costs contemplated by the "Ohio Energy Choice" Consumer Education effort. The OEU

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[9] See Note 1.
[10] Ibid.
[11] See Industrial Energy Users – Ohio, Memorandum of Support, August 4, 2000, page 5.

argument compares apples to oranges and is therefore irrelevant. Moreover, the IEU motion provides no showing that funding proposed by the Department for this program is unreasonable, leaving unsubstantiated the assertion that "...it seems clear that the level of consumer education dollars included in the USF rider is too high."[12] This argument should therefore be rejected.

In fact, while IEU implicitly questions virtually all aspects of the programs designed to assist elderly, disabled and other low-income customers, IEU presents no evidence in its motion refuting the authority of the Director to design and implement the program, nor any evidence that the proposed funding levels are inappropriate given the needs for assistance in the State of Ohio. The regulations governing the program recently approved by the Joint Committee on Agency Rule Review (JCARR), explicitly require that any measure funded under the targeted energy efficiency program provide a savings to investment ratio of greater than one, meaning they save more in reduced energy consumption than they cost to purchase and install.[13] The education program will be interwoven with the weatherization/energy efficiency components, as it is in all well designed energy efficiency and conservation programs.

All told, the IEU challenge to these riders is at best without merit, and at worst is moot. In either case, the motion should be rejected.

II. The Temporary Riders Proposed by the Department of Development to Capitalize the Energy Efficiency Revolving Loan Fund are Appropriate Under the Statute and Under the Settlements.

The arguments of Section I regarding the language of the settlements and the fact that they meet the three part test enunciated in Cincinnati Gas & Elec. Co., FirstEnergy Corp. and Columbus & Southern Ohio Elec. Co., Case No. 84-1187-EL-UNC (November

[12] Ibid., at page 6.
[13] See Section 122:12-2-06, Ohio Administrative Code.

26, 1985), and Cleveland Electric Illuminating Co., Case No. 82-485-EL-AIR (March 30, 1983) apply equally to the Temporary Riders.

One additional argument must be made. These riders, as the product of settlement, can certainly not violate any established regulatory principal because they are in fact implementing a new program created by the General Assembly in a piece of legislation which greatly altered many regulatory principals. ODOD has no discretion in whether or not to implement the Energy Efficiency Revolving Loan Fund; it must implement it. Section 4928.61(B)(1) requires the collection of $100 million during a ten year period, with a rider estimated to produce $15 million per year during the first five years and $5 million per year the second five. If the $100 million figure is reached sooner the authority for the rider expires. The section specifically states that "[t]he rider shall be imposed beginning on the starting date of competitive retail electric service...." Whether or not IEU has questions or concerns regarding the program is not relevant to this issue. Nor is IEU's concern that the rider is a volumetric charge. The statute specifically requires that "[t]he rider shall be a uniform amount statewide, determined by the Director of Development...."[14]

III. Conclusion

The development of legislation to restructure Ohio's electric utility industry was a long and complex affair. The legislation is particularly explicit regarding the structure of both the Universal Service Program and the Energy Efficiency Revolving Loan Fund. These provisions collectively cover more sections and contain more explicit requirements than do the sections covering transition costs. Transition costs will cost ratepayers more than $10 billion. These programs will cost ratepayers about what they have been paying in current rates.

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[14] Section 4928.61(B)(1)

It is not the place of IEU to second guess the legislature, nor their own stance at the settlement table. Nor does the Commission have the ability to act as a super-legislature and disregard the explicit will of the General Assembly regarding these programs, or act in an oversight capacity as they did in the past regarding utility demand side management programs.

Timing is critical in the imposition of these riders in order to meet the requirements of the statute. Negotiations have already delayed the imposition of the Universal Service Rider for two months, from July 1st to September 1st, denying the Universal Service Fund revenue during the two months with the highest energy consumption of any during the year. This will probably delay the availability of funding for important energy efficiency activities that could have saved vulnerable households and ratepayers dollars. The Temporary Rider is limited in scope and length, and any delay will likely prevent it from raising the $100 million required by the legislation. A rapid determination on this issue, in order to permit final orders to be issued in transition cases is also important.

It is, therefore, respectfully requested for the reasons set forth herein that the Commission deny the Motion to Disapprove filed by IEU, that the Commission incorporate the rider requested by ODOD in the applications into the final orders in the pending transition cases, and that the Commission issue an expedited ruling in this matter.

Respectfully Submitted,

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The undersigned certifies that an original and 10 copies of the foregoing comments were filed with the Docketing Division of the Public Utilities Commission of Ohio and that the parties listed below were served via electronic transmission, hand-delivery, or first class mail, postage prepaid, this 14th day of August, 2000.

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