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. 06-751-EL-UNC

OPINION AND ORDER

The Commission, considering the amended application, the evidence of record, the arguments of the parties, 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.

Jim Petro, Attorney General of the state of Ohio, Duane W. Luckey, Senior Deputy Attorney General, Public Utilities Section, by Thomas W. McNamee, 180 East Broad Street, 9th Floor, Columbus, Ohio 43215-3793, on behalf of the staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Ann M. Hotz, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential customers of the Ohio jurisdictional electric distribution utilities.

James W. Burk, Senior Attorney, First Energy Corp., 76 South Main Street, Akron, Ohio 44308, on behalf of Ohio Edison Company, The Toledo Edison Company, and The Cleveland Electric Illuminating Company.

Steven T. Nourse, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215-2373, on behalf of Columbus Southern Power Company and Ohio Power Company.

Randall V. Griffin, Chief Regulatory Counsel, The Dayton Power & Light Company, 1065 Woodman Drive, Dayton, Ohio 45432, on behalf of The Dayton Power and Light Company.

Paul A. Colbert, Senior Counsel, Cincinnati Gas & Electric Company, 139 East Fourth Street, 2500 Atrium II, Cincinnati, Ohio 45201-0960, on behalf of The Cincinnati Gas & Electric Company.

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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.

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

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 The Cleveland Electric Illuminating Company (CEI), Columbus Southern Power Company (CSP), The Dayton Power and Light Company (DP&L), The Cincinnati Gas & Electric Company, d/b/a Duke Energy Ohio (Duke), Ohio Edison Company (OE), Ohio Power Company (OP), and The Toledo Edison Company (TE) (all of which may be referred to, individually or collectively, as electric distribution utilities or EDUs). The level of the rider was initially determined by ODOD and approved by the Commission. The USF riders proposed by ODOD were approved for the FirstEnergy Corp. electric distribution utility operating companies on July 19, 2000. *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 of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-EL-ETP, *et al.* (July 19, 2000). The USF riders for the remaining five electric distribution utilities were approved on August 17, 2000 in their respective electric transition plan dockets.[2]

Section 4928.52(B), Revised Code, provides that if, during or after the five-year market development period, ODOD, 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, including general revenue fund appropriations for the Ohio

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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 distribution utilities to ODOD. PIPP is one of the low-income customer assistance programs that are funded by the USF. (SB 3 was codified under Chapter 4928, Revised Code.)

2 *Cincinnati Gas & Electric Co.*, Case No. 99-1658-EL-ETP; *Columbus Southern Power Co.*, Case No. 99-1729-EL-ETP; *Ohio Power Co.*, Case No. 99-1730-EL-ETP; *Dayton Power and Light Co.*, Case No. 99-1687-EL-ETP; and *Monongahela Power Co.*, Case No. 00-02-EL-ETP.

Energy Credit Program,[3] will be insufficient to cover the administrative costs of the low-income customer assistance programs and the consumer education program and to provide adequate funding for those programs, ODOD shall file a petition with the Commission for an increase in the USF riders. In carrying out Section 4928.52(B), Revised Code, the Commission after reasonable notice and opportunity for hearing may adjust the USF riders by the minimum amount necessary to provide the necessary additional revenues. On December 20, 2001, following a petition from ODOD and a hearing on the matter, the Commission approved a stipulation amending the level of the riders for each of the eight EDUs. *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. 01-2411-EL-UNC (01-2411). Again, on January 23, 2003, the Commission approved a stipulation further adjusting the level of the riders for each of the eight electric utilities. *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. 02-2868-EL-UNC (02-2868). Next, on December 3, 2003, the Commission approved a stipulation adjusting the level of the riders for each of the eight electric utilities. *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 (03-2049). Again, on December 8, 2004, the Commission approved a stipulation adjusting the level of the riders for each of the eight electric utilities. *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 (04-1616).

The most recent adjustments were made on December 14, 2005, and June 6, 2006. *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,* under Case No. 05-717-EL-UNC (05-717). On December 14, 2005, the Commission granted the amended application of ODOD for an order approving adjustments to the USF riders of all jurisdictional Ohio EDUs, in accordance with Section 4928.52(B), Revised Code. Under this Order, the new USF riders became effective on a bills-rendered basis with the EDUs' January 2006 billing cycles. *(Id.)* The Commission noted that the 2006 USF rider approved for CSP was a blended rate, to accommodate the transfer of the customers in Monongahela Power Company's Ohio certified territory to CSP, effective January 1, 2006. *(Id.,* at 12; November 28, 2005 Stipulation and Recommendation, at 5.)[4] Also as part of the December 14, 2005 Order, the Commission approved the November 28, 2005 Stipulation and Recommendation jointly submitted by ODOD, Staff, and a majority of the other parties

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[3] The Ohio Energy Credit Program was discontinued as of July 1, 2003 (ODOD October 28, 2005 application at 3, n. 3).

[4] For information concerning the transfer itself, see *In the Matter of the Transfer of Monongahela Power Company's Certified Territory in Ohio to the Columbus Southern Power Company,* Case No. 05-765-EL-UNC, Opinion and Order issued November 9, 2005, and Entry on Rehearing issued December 21, 2005.

to the proceeding.[5] By the same Order, the Commission granted ODOD's December 8, 2005 motion, which requested that the docket for 05-717 remain open to permit ODOD to propose additional adjustments to the EDUs' USF rider rates to reflect the impact of increases in EDU rates on the USF rider revenue requirements during the 2006 collection period. (*Id.*) By its June 6, 2006 Order in 05-717, the Commission approved the May 24, 2006 Stipulation and Recommendation submitted by the parties to that proceeding. In accordance with the June 6, 2006 Order in 05-717, a second and final adjustment to the EDU's current USF riders took effect on a bills-rendered basis with the first billing cycle following June 6, 2006.

II. History of this Proceeding

On May 31, 2006, and in accordance with the 2005 Stipulation in 05-717, ODOD filed its Notice of Intent to submit its annual USF rider adjustment application on or before October 31, 2006 (Notice). ODOD's Notice provided the USF rider revenue requirement methodology and the USF rider rate design methodology that would be used in preparing its subsequent USF rider application. On June 29, 2006, the attorney examiner issued an entry that ordered the joining of all seven jurisdictional Ohio electric distribution utilities as parties to this case. By subsequent agreement of the parties, a prehearing settlement conference on ODOD's Notice was not conducted. The parties submitted a Stipulation and Recommendation for the Notice phase of this proceeding on August 17, 2006. By its Finding and Order signed September 6, 2006, the Commission approved the August 17, 2006 Stipulation and Recommendation, which addressed the proposed USF rider revenue requirement methodology and the USF rider rate design methodology, as submitted in ODOD's Notice for its 2006 USF rider application.

On October 31, 2006 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 Ohio's electric restructuring legislation (Amended Substitute Senate Bill 3) and Section 4928.52, Revised Code. On November 22, 2006, ODOD filed an amended application in this case (Amended Application or ODOD Ex. 1), updating its test-period calculations to incorporate additional actual data that had then become available. 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 percentage of income plans (PIPP), the electric partnership program (previously referred to as the low-income customer energy efficiency 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

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5 The signatory parties were ODOD, The Cleveland Electric Illuminating Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Edison Company, Ohio Power Company, The Toledo Edison Company, the Commission staff, Industrial Energy Users–Ohio, and Ohio Partners for Affordable Energy. The Office of Consumers' Counsel, the only other party to the proceedings, did not join in the Stipulation, but did not contest its adoption by the Commission.

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 exceed, by some $7,201,320, the annual revenues required to fulfill the objectives identified in Section 4928.52(A), Revised Code. (ODOD Ex. 1, at 5-6; and Joint Ex. 1, Appendix A.) ODOD is requesting a decrease for the USF riders of CSP, DP&L, Duke, and OP. ODOD is requesting that the USF riders of CEI, OE, and TE be increased. (ODOD Ex. 1, at 13.) By agreement of the parties, a prehearing settlement conference for the Application phase of this proceeding was not conducted. An evidentiary hearing concerning this Amended Application was conducted on December 1, 2006, in accordance with the attorney examiner entry issued November 14, 2006.

ODOD's Amended Application:

ODOD proposes in its Amended Application that, having consulted with the Public Benefits Advisory Board as required by Section 4928.52(B), Revised Code, the USF riders be adjusted so as to generate the required annual revenue 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	$0.0008407	$0.0005680	$15,163,644	$17,502,928	$0.0009950	$0.0005680
CSP	$0.0010459	$0.0001830	$17,639,028	$12,659,864	$0.0007236	$0.0001830
DP&L	$0.0009528	$0.0005700	$13,457,419	$12,704,997	$0.0009297	$0.0005700
Duke	$0.0008982	$0.0004690	$17,149,585	$17,089,619	$0.0008951	$0.0004690
OE	$0.0012214	$0.0010461	$30,107,097	$30,968,679	$0.0012455	$0.0010461
OP	$0.0008635	$0.0001681	$16,407,539	$11,483,050	$0.0005735	$0.0001681
TE	$0.0010652	$0.0005610	$9,083,998	$9,397,851	$0.0011158	$0.0005610
TOTALS			$119,008,309	$111,806,989		

ODOD states that the proposed USF riders reflect the minimum increase for the three utilities for which it is requesting an increase (CEI, OE, and TE) and that the decreases in the USF riders for CSP, DP&L, Duke, and OP will also cause those riders to be reduced to a minimum level necessary to satisfy revenue responsibilities during 2007 (ODOD Ex. 1, at 13).

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 PIPP component of the USF rider revenue requirement is based on the total cost of electricity consumed by that EDU's PIPP customers for the 12-month period January 2006 through December 2006 (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 2006, and projected data, based on the actual October-December 2005 experience, for the remaining three months of the test period.[6] ODOD submits that the test-period cost of PIPP must be adjusted to annualize the impact of the January 2006 EDU rate increases, to recognize the additional EDU rate increases that will take effect January 2007, and to correct for certain anomalies in the test-period data of several of the EDUs. The test-period adjustments are provided in Application Exhibit A1. (ODOD Ex. 1, at 6-7, and Exs. A and A1; ODOD Ex. 3, at 6-9, and Exs. DAS-1 through DAS-19; ODOD Ex. 4, at 2-4, and Exs. DAS-Rev-1 through DAS-Rev-19.)

2. Electric Partnership Program and Consumer Education Costs. The portion of the total USF rider revenue requirement associated with the cost of the low-income customer efficiency programs, now referred to as the "Electric Partnership Program" (EPP), and the consumer education program (CE) included in the USF rider calculation pursuant to Section 4928.56(A)(2) and (3), Revised Code, is $14,946,196, which is identical to the cost for these programs previously accepted by the Commission in approving all prior USF riders. Of the total, $7,050,000 represents the cost of the EPP programs, $6,000,000 represents the cost of the CE program, and the remainder, or $1,896,196, represents the estimate of the Office of Energy Efficiency administrative costs, including the cost of contractual services associated with these programs. This portion 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.[7] (ODOD Ex. 1, at 7, and Ex. B; ODOD Ex. 3, at 9-11; ODOD Ex. 4, at 2-3, 6.)

3. Administrative Costs. ODOD proposes an allowance for the administrative costs associated with the low-income customer assistance programs of $2,738,000 for this case. This amount has been determined in accordance with the methodology approved by the Commission in the Notice phase of this case. (September 6, 2006 Finding and Order.) (Previously, ODOD utilized the same $1,578,000 estimate of the same administrative costs included in the USF rider revenue requirement pursuant to Section 4928.52(A)(3), Revised Code, which was accepted by the Commission in

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6 *See* ODOD's October 31, 2006 Application, Ex. A, for each EDU's initial cost PIPP calculation.

7 *See* ODOD's October 31, 2006 Application, Ex. B, for the initial low-income program cost allocations for each EDU.

approving USF rider adjustments in 02-2868, 03-2049, 04-1616, and 05-717.[8]) The requested $2,738,000 allowance for administrative costs has been allocated to the EDUs based on the number of PIPP customer accounts as of April 2006, the test period month exhibiting the highest PIPP customer account totals.[9] (ODOD Ex. 1, at 8, and Ex. C; ODOD Ex. 2, at 2-13 and Exs. NS-1 and NS-2; ODOD Ex. 3, at 11-12; ODOD Ex. 4, at 6-7.)

4. December 31, 2006 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 distribution utility's USF rider will, in actual practice, either overrecover or underrecover its associated annual revenue requirement. Overrecovery 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 to make the PIPP reimbursement payment due to the EDU. Thus, the amount of any existing positive PIPP USF account balance must be deducted in determining the target revenue level 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 bills-rendered basis effective January 1, 2007. Accordingly, the USF rider revenue requirement of each EDU will be adjusted by the amount of the EDU's projected December 31, 2006 PIPP account balance, so as to synchronize the new riders with the EDU's PIPP USF account balance as of their effective date. (ODOD Ex. 1, at 8-9, and Ex. D; ODOD Ex. 3, at 12-14, and Exs. DAS-20 through DAS-26; ODOD Ex. 4, at 2, 7, and Exs. DAS-Rev-20 through DAS-Rev-26.)

5. Reserve. ODOD has entered into agreements of understanding with each of the electric distribution utilities pursuant to Rule 122:12-2-01(A), Ohio Administrative Code (O.A.C.). These agreements provide, among other things, that ODOD will be assessed a carrying charge on all ODOD monthly payments reimbursing the electric distribution utility for the cost of electricity delivered to PIPP customers that are not received by the electric distribution utility by the specified due date (as stated in the agreement). 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

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8 This compares to the allowance for administrative costs of $1,932,561 accepted by the Commission in approving the original USF riders and those established in Case No. 01-2411-EL-UNC.

9 *See* ODOD's October 31, 2006 Application, Ex. C, for the initial allocation of administrative costs, associated with low-income customer assistance programs, for each EDU.

balances.[10] This means that ODOD will be unable to satisfy its monthly payment obligation to the EDU on a timely basis and will, therefore, incur carrying charges. To address this situation, the Commission, in its order in 01-2411, approved ODOD's proposal to include a component in the USF rider to establish a reserve to serve as a cushion in those months where there would otherwise be a deficit in a given EDU's PIPP account balance. This reserve component was calculated by taking two-thirds of the combined three highest monthly deficits in the test year in that case and dividing by three, a measure intended to have the effect of building the reserve over a three-year period.[11] In its Notice, ODOD proposed to continue to calculate the reserve component in this manner. However, as explained in the October 31, 2006 testimony of ODOD witness Donald A. Skaggs, ODOD is now proposing to establish the required reserve based on the EDU's highest monthly deficit during the test period and to eliminate the reserve deficiency component of the USF revenue requirement, the method by which ODOD has previously attempted to recover reserve shortfalls. ODOD requests that the Commission permit these departures from the revenue requirement methodology approved in the Commission's September 6, 2006 Order. The proposed reserve component for each EDU derived through this new methodology is set forth in Application Exhibit F. (ODOD Ex. 1, at 9-10, and Ex. F; ODOD Ex. 3, at 14-21; ODOD Ex. 4, at 8.)

6. Allowance for Interest. Next, ODOD notes that even if the methodology now proposed for calculating the reserve component is approved, ODOD projects that it will still incur some carrying charges for late PIPP reimbursement payments to the EDUs during 2007. Thus, ODOD has again included an allowance for these interest costs as a component of the USF rider revenue requirement. This allowance was calculated based on a cash-flow analysis that projected the daily PIPP USF account balances that the proposed USF riders would produce. ODOD then determined the number of late payment days these balances would represent and applied the daily interest charge specified in the agreements of understanding to determine the interest costs ODOD will incur. The total requested annual allowance for interest is $134,894.[12] (ODOD Ex. 1, at 10, and Ex. G; ODOD Ex. 3, at 21-22, and Exs. DAS-27 through DAS-33; ODOD Ex. 4, at 8, and Exs. DAS-Rev-27 through DAS-Rev-33.)

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10 *See* ODOD's October 31, 2006 Application, Ex. E, a graph with the PIPP-related cash flows for the test period.

11 *See* ODOD's October 31, 2006 Application, Ex. F, for the calculation that established the annual reserve requirement for each EDU.

12 *See* ODOD's October 31, 2006 Application, Ex. G, for the initial proposed interest allowance to be built into the USF rider for each EDU.

7. Allowance for Undercollection. This component of the USF rider revenue requirement is an adjustment to recognize that, due to the difference between amounts actually collected from customers, the rider will not generate the target revenues. In accordance with the methodology approved by the Commission in its September 6, 2006 Order, the allowance for undercollection for each company is based on the actual collection experience of that company. The total requested annual allowance for undercollection is $2,303,393.[13] ODOD Ex. 1, at 11 and Ex. H; ODOD Ex. 3, at 22-23 and Exs. DAS-34 through DAS-40; ODOD Ex. 4, at 8-9 and Exs. DAS-Rev-34 through DAS-Rev-40.)

8. Audit Costs. As discussed in the direct testimony of ODOD witness Donald A. Skaggs, the USF Rider Working Group (the Working Group), created by the stipulation approved by the Commission in 03-2049, has recommended that ODOD engage a qualified, independent third party to conduct audits of the EDU PIPP-related accounting and reporting. Consistent with the Working Group's recommendation, the audits will be staggered, with CEI, DP&L, OE and TE to be audited in early 2007 and CSP, Duke, and OP to be audited in 2008. Therefore, ODOD has included a proposed allowance for audit costs of $40,000 as a component of the USF revenue requirements for those EDUs to be audited in 2007. (ODOD Ex. 1 at 11 and Ex. I; ODOD Ex. 3, at 23-25; ODOD Ex. 4, at 9.)

9. Universal Service Fund Interest Offset. Section 4928.51(A), Revised Code, provides that interest on the USF shall be credited to that fund. Although this fund has, from time to time, generated interest income, ODOD has, in the past, routinely been forced to utilize such income to cover shortfalls resulting from the amounts by which the actual cost of PIPP, during the collection periods, have exceeded the test period cost of PIPP built into the USF rider rates. In its Notice, ODOD indicated that, if it projected that there would be any accrued interest on the fund available at year-end 2006, ODOD would offset this interest against the USF rider revenue requirement. ODOD notes, however, that Section 312.06 of the 2005 state budget bill, H.B. 66, authorized the Office of Budget and Management (OBM), through June 30, 2007, to transfer interest earned on various funds within the state treasury to the General Revenue Fund. ODOD further notes that OBM identified the USF as one of the funds that is subject to such interest transfers, even though S.B. 3 provided that interest on the USF would be credited to the USF. Last, ODOD submits that although it opposed the use of USF interest for other purposes, OBM has not reversed its position and has periodically withdrawn all of the USF interest. Therefore, there will be no fund interest available as of December 31, 2006 to be used as an offset. (ODOD Ex. 1 at 11-12.)

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13 *See* ODOD's October 31, 2006 Application, Ex. H, for the initial allowance for undercollection for each EDU.

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

Stipulation and Recommendation:

At the hearing held on December 1, 2006, 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 Staff and OCC, entered into a Stipulation and Recommendation that resolved all outstanding issues in this case. OCC and Staff raised no objections to the December 1, 2006 Stipulation, but were unable to sign it at the hearing. The December 1, 2006 Stipulation was admitted into the record as Joint Exhibit 1, with a copy of the proposed customer notice of the adjusted USF riders as an appendix to Joint Exhibit 1.

On December 6, 2006, ODOD filed a letter in this proceeding to clarify a minor inconsistency in the DP&L revenue requirement set forth on page 4 of Joint Ex. 1 and the same information set forth in Joint Ex. 1, at Appendix A (which corrected the revenue requirements originally provided on ODOD Ex. 1, page 6).

Also on December 6, 2006, OCC filed a letter in this proceeding stating that OCC did not sign the December 1, 2006 Stipulation for two reasons. First, the Stipulation fails to address the audit arrangement that was agreed to by the parties, including OCC, in the Stipulation filed in 04-1616 (2004 Stipulation). OCC submits that the 2004 Stipulation required ODOD, among other things, to continue to consider "the development of a systematic audit process[es] to assure the accuracy of the data submitted by the EDUs to ODOD." (2004 Stipulation, ¶ 11.) OCC asserts that, although the audit process has proceeded and audits of the EDUs are scheduled, the December 1, 2006 Stipulation does not reflect the parties' commitment to an ongoing audit process. Next, OCC submits that the second reason it did not sign the December 1, 2006 Stipulation is that it continues to not agree with the two-block rate design, and does not concede that it is lawful under Section 4928.52(C), Revised Code. While OCC is not contesting this Stipulation on this issue, OCC states that it does not waive its right to contest this or any rate design proposed by ODOD in future cases regarding the Universal Service Fund Rider.

On December 19, 2006, Staff filed a letter in this docket which states:

> The Staff has nearly completed its review of the filings in the above referred case. All the filings have been verified for all the companies except Columbus Southern Power. Staff would endorse the settlement which has been filed in the above-referred docket as to all other companies and would ask that the Commission proceed to issue an order with respect to those companies. At this time, Staff is still reviewing the filings for Columbus

Southern Power. Although the Staff does not expect that the result of this review will be problematic, the Staff cannot at this time recommend that the Commission move to a decision on that aspect of the filing. Staff will submit another letter when its review of Columbus Southern Power is completed.

December 1, 2006 Stipulation:

The December 1, 2006 Stipulation asserts that the methodology for determining the respective USF rider revenue requirements is consistent with the methodology approved by the Commission in its September 6, 2006 Opinion and Order, with the exception of the change in the manner by which the reserve component is calculated and the related elimination of the reserve deficiency component, as described in the testimony of ODOD witness Donald A. Skaggs. (ODOD Ex. 3, at 20.) The present Stipulation also asserts that no signatory party objects to the above changes, on the condition that ODOD shall file a report indicating the USF Reserve balance for each of the EDUs as of June 30, 2007.

The December 1, 2006 Stipulation also provides, among other things, that the annual USF rider revenue requirements set forth above 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. Thus, in those instances where the October 1999 PIPP charge exceeds the per kWh rate that would apply if the EDU's annual rider were to be recovered through a single block per kWh rate, the rate for both consumption blocks will be the same. (Joint Ex. 1, at 4-5.)

As shown on the supporting schedules attached to ODOD Ex. 1 and in the December 1, 2006 Stipulation, the resulting riders, for each EDU, are as follows:

EDU	First 833,000 kWh	Above 833,000 kWh
CEI	$0.0009950	$0.0005680
CSP	0.0007236	0.0001830
DP&L	0.0009297	0.0005700
Duke	0.0008951	0.0004690
OE	0.0012455	0.0010461
OP	0.0005735	0.0001681
TE	0.0011158	0.0005610

(Joint Ex. 1, at 4-5.)

All parties to the December 1, 2006 Stipulation have stipulated that the two-step declining block USF riders reflect the minimum level necessary to produce the required revenues for 2007, following Commission approval. (*Id.*, at 5.)

It is similarly agreed that the new rider rates be filed within seven days of the Commission's order adopting the December 1, 2006 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. (*Id.*, at 6.)

ODOD has also agreed to file, no later than October 31, 2007, 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 signatory parties. (*Id.*, at 6-7.)

The signatory parties propose and agree that the Commission should again adopt the "Notice of Intent" process approved in 04-1616 and 05-717. Specifically, this process provides that on or before May 31, 2007, ODOD shall file with the Commission a notice of its intent to submit its annual USF rider adjustment application, and shall serve the notice of intent on all parties to this proceeding. The Notice of Intent 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 Notice of Intent, the Commission will open the 2007 USF rider adjustment application docket and will 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 December 1, 2006 Stipulation requests that the Commission use its best efforts to issue its decision with respect to the issues raised no later than September 30, 2007. Last, the Notice of Intent process provides that ODOD will modify its 2007 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, 2007 filing deadline to permit ODOD to incorporate such directives, ODOD will file an amended application to do so. (*Id.*, at 7-8.)

Next, 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 in accordance with the stipulation approved by the Commission in 03-2049, 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.)

Finally, and in keeping with the cost-control objective described in paragraph 12 of the December 1, 2006 Stipulation, the signatory EDUs will continue to honor the term of the stipulation in 03-2049 that provides that no security deposit will be required from a reconnecting PIPP customer. (*Id.*, at 9.)

Commission Review:

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 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 December 1, 2006 Stipulation and the evidence presented, the Commission finds that the present stipulation and proposed customer notice are reasonable, as to CEI, DP&L, Duke, OE, OP, and TE, and that the two-step declining block USF riders set forth in the December 1, 2006 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, the Commission's staff, and all intervenors other than OCC have entered into this stipulation. Further, we find that the present stipulation is in the public interest by providing for adequate funding of the low-income customer assistance programs and the consumer education programs performed by ODOD. Lastly, the present stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission will approve the present stipulation, as to CEI, DP&L, Duke, OE, OP, and TE. The Commission will issue a supplemental order with regard to CSP after Staff has completed its review.

ORDER:

It is, therefore,

ORDERED, That the December 1, 2006 Stipulation and Recommendation and the proposed customer notice submitted by the parties are approved, as to CEI, DP&L, Duke, OE, OP, and TE. It is, further,

ORDERED, That CEI, DP&L, Duke, OE, OP, and TE are authorized to file in final form four complete copies of tariffs consistent with this Opinion and Order, within seven days after the date of this order. Each electric distribution utility 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 shall 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 distribution utilities authorized above shall notify all customers affected by the tariff by the customers' first billing including the new USF rider rate. It is, further,

ORDERED, That a copy of this entry be served on ODOD, all Ohio jurisdictional electric distribution utilities, and all intervening parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Valerie A. Lemmie

Donald L. Mason

JKS:ct

Entered in the Journal

DEC 20 2006

Reneé J. Jenkins
Secretary