FILE

16

RECEIVED-DOCKETING DIV

2008 JUN -2 PM 4:29

PUCO

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. 08-658-EL-UNC

OHIO DEPARTMENT OF DEVELOPMENT
NOTICE OF INTENT TO FILE AN APPLICATION
FOR ADJUSTMENTS TO UNIVERSAL SERVICE FUND RIDERS

By its opinion and order of December 19, 2007 in Case No. 07-661-EL-UNC, the Commission granted the amended application of the Ohio Department of Development ("ODOD") for an order approving adjustments to the Universal Service Fund ("USF") riders of the state's jurisdictional electric distribution utilities ("EDUs"). In granting the amended application, the Commission adopted a stipulation and recommendation ("Stipulation") jointly submitted by its staff, ODOD, and a majority of the other parties to the proceeding.[1] In addition to recommending approval of the 2008 USF rider rates proposed in the amended application, the Stipulation, consistent with the Commission's orders in all prior Section 4928.52(B), Revised Code, USF rider rate adjustment proceedings, required ODOD to file its next annual USF rider rate adjustment application not later than October 31 of the following year (Stipulation, Paragraph 10). The stipulation also provided for the continuation of the notice of intent process first approved by the Commission in Case No. 04-1616-EL-UNC (Opinion and Order dated

[1] The signatory parties were ODOD, The Cleveland Electric Illuminating Company, Columbus Southern Power Company, The Dayton Power and Light Company, Duke Energy Ohio, 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 the Ohio Consumers' Counsel, the only other party to the proceeding, did not join in the Stipulation, but did not contest its adoption by the Commission.

December 8, 2004), whereby ODOD is required to make a preliminary filing by May 31 setting out the methodology it will employ in developing the USF rider revenue requirements and rate design for its subsequent annual application (Stipulation, Paragraph 11).

The notice of intent process is intended to address the potential timing problem associated with securing Commission approval of ODOD's annual USF rider rate adjustment application sufficiently in advance of the EDU January billing cycles in order to implement the new rider rates at the outset of the annual collection period assumed in developing the new rider rates. Although the October 31 filing deadline provides the Commission with sufficient time to act prior to January 1 of the following year if the ODOD application is not contested, the signatories to the Stipulation recognized that this two-month interval may not be adequate if a party to the proceeding wishes to litigate issues raised in its objections to the application (*id.*). However, the signatories also recognized that simply advancing the filing deadline to assure that the new USF rider rates can take effect in January of the following year would require ODOD to calculate the proforma USF rider revenue requirements proposed in the application based predominantly on estimated data, which might well produce a result that is not at all indicative of the revenue requirements that ODOD will ultimately propose once additional actual test-period data becomes available (*id.*). Thus, to afford an objecting party the opportunity to pursue methodological issues it may wish to raise, while avoiding imposing an unnecessary burden on ODOD, the Stipulation established the following process:

> On or before May 31, 2008, 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 rates, and may also include such other matters as ODOD deems appropriate. Upon the filing of the notice of intent, the Commission will open the 2008 USF rider adjustment application docket and will establish a schedule for 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. The Commission will use its best efforts to issue its decision with respect to the issues raised not later than September 30, 2008. ODOD will conform its 2008 USF rider adjustment application to any directives set forth in the Commission's order, or, if the order is not issued sufficiently in advance of the October 31, 2008 filing deadline to permit ODOD to incorporate such directives, ODOD will file an amended application conforming to the Commission's directives.

(*id.*).[2]

Pursuant to this provision of the Stipulation, ODOD hereby submits its notice of intent to submit its annual USF rider adjustment application on or before October 31, 2008.[3] The methodology ODOD intends to employ in developing USF rider revenue requirement and rate design for purposes of its 2008 application are described below.

USF Rider Revenue Requirement Methodology:

The USF rider revenue requirement proposed for each EDU in ODOD's 2008 application will consist of the following elements:

1. Cost of PIPP. The cost of PIPP component of the USF rider revenue requirement will be based on the total cost of electricity consumed by the company's PIPP customers for the 12-month period January 2008 through December 2008 (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 will utilize actual data available through September 2008,

---

[2] As noted in the Stipulation, the objections contemplated by this provision are objections relating to something other than mathematical accuracy of ODOD's calculations. Objections of that nature, which can almost certainly be resolved informally in timely manner under the current process, will still be entertained subsequent to the filing of the application itself (Stipulation, Paragraph 11, n. 2).

[3] May 31, 2008 falls on Saturday. Thus, under Rule 4901-1-07(A), Ohio Administrative Code, the notice of intent is due June 2, 2008.

and projected data, based on the actual October-December 2007 experience, for the remaining months of the test period, subject to such adjustments as may be necessary to annualize the impact of EDU rate increases, if any, that will affect the cost of PIPP during the 2009 collection period. If the timing permits, ODOD, as in all prior USF rider rate adjustment proceedings, will file an amended application to incorporate additional actual data for the test period that becomes available subsequent to the preparation of the initial application.

2. Electric Partnership Program Costs.

This USF rider revenue requirement component is intended to recover the cost of the low-income customer energy efficiency programs funded out of the USF pursuant to Section 4928.56(A)(2) and (3), Revised Code. Although once separately designated as the Electric Partnership Program ("EPP") and the consumer education program ("CE"), ODOD now regards the CE program as part of the Electric Partnership Program and refers to these activities, collectively, as the Electric Partnership Program. In all previous USF rider adjustment cases, the Commission has accepted the $14,946,196 EPP allowance first proposed by ODOD when the initial USF riders were established in the EDU electric transition plan ("ETP") proceedings.[4] Although expenditures for these programs have not reached the estimated levels in prior years, ODOD has consistently been required to utilize the EPP surplus 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.

As a result of negotiations with the Office of the Ohio Consumers' Counsel ("OCC") in the notice of intent phase of Case No. 05-717-EL-UNC, ODOD and OCC entered into a

[4] When initially proposed, $7,050,000 of this total represented the estimated cost of the EPP programs, $6,000,000 represented the estimated cost of the CE program, and the remainder, or $1,896,196, represented the estimate of ODOD's Office of Energy Efficiency administrative costs, including the cost of contractual services associated with these programs.

settlement agreement (the "ODOD-OCC Settlement") whereby ODOD agreed to make certain changes in the methodology to be proposed for determining the USF rider revenue requirement in future proceedings.[5] Consistent with the ODOD-OCC Settlement, ODOD's proposed allowance for EPP costs in this case will be based on its projection of payments to EPP providers and the administrative costs associated with ODOD's oversight of the EPP during the 2009 collection period. ODOD's projections support the continued use of the $14,946,196 annual allowance for these costs previously accepted by the Commission, and, thus, it is ODOD's present intention to include this allowance in developing the USF rider revenue requirement for purposes of its application in this case. ODOD will reexamine these projections prior to filing its application, and will include an exhibit in its application setting forth the updated projections, if any. If the updated projections suggest that the $14,946,196 allowance is no longer appropriate, ODOD will revise the requested allowance at that time. As in all prior USF rider rate adjustment applications, ODOD will allocate this component of the revenue requirement among the EDUs based on the ratio of their respective costs of PIPP to the total cost of PIPP.

Under the ODOD-OCC Settlement, the analysis supporting ODOD's current projection of the EPP costs during the collection period is to be filed in conjunction with the notice of intent. Due to certain unforeseen logistical issues, ODOD was unable to obtain all necessary internal approvals of the analysis supporting its projection of 2009 EPP costs in time to include the analysis as an exhibit to the notice of intent. Accordingly, as indicated in Exhibit A attached hereto, ODOD will submit the required analysis on June 3, 2008 as a late-filed exhibit.

[5] The terms of the ODOD-OCC Settlement are set forth in the Commission's December 14, 2005 opinion and order in Case No. 05-717-EL-UNC.

3. Administrative Costs. In establishing the original USF riders and those approved in Case No. 01-2411-EL-UNC, the Commission included an allowance of $1,932,561 for the administrative costs associated with low-income customer assistance programs to be included in the USF rider revenue requirement pursuant to Section 4928.52(A)(3), Revised Code. In the next four annual USF rider adjustment proceedings, Case Nos. 02-2868-EL-UNC, 03-2049-EL-UNC, 04-1616-EL-UNC, and 05-717-EL-UNC, the Commission accepted ODOD's $1,578,000 estimate as the allowance for administrative costs. However, as a part of the ODOD-OCC Settlement, ODOD agreed that, in future USF rider rate adjustment proceedings, ODOD's proposed allowance for administrative costs would be based on the administrative costs incurred during the test period, subject to such adjustment(s), plus or minus, for reasonably anticipated post-test period cost changes as may be necessary to assure, to the extent possible, that the administrative cost component of the USF rider revenue requirement will recover the administrative costs incurred during the collection year. Accordingly, as in Case No. 06-751-EL-UNC and Case No. 07-661-EL-UNC, the requested allowance for administrative costs proposed in ODOD's application in this case will be based on this methodology, and will be supported by an exhibit and testimony submitted in conjunction with the application. As in all prior USF rider rate adjustment proceedings, the requested allowance for administrative costs will be allocated among the EDUs based on the relative number of PIPP customer accounts as of the month of the test period exhibiting the highest PIPP customer account totals.

4. December 31, 2008 PIPP Account Balances. Because the USF rider rates are calculated based on historical sales and historical PIPP enrollment patterns, the USF riders will, in actual practice, either over-recover or under-recover the target revenue requirements. Over-recovery creates a positive PIPP USF account balance for the EDU in question, thereby reducing

the amount needed on a forward-going basis. 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 that 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 its application in this case, ODOD will request that its proposed USF riders be implemented on a bills-rendered basis effective January 1, 2009. Accordingly, the USF rider revenue requirement of each company will be adjusted by the amount of the company's projected December 31, 2008 PIPP account balance, so as to synchronize the new riders with the EDU's PIPP USF account balance as of their effective date.

5. Reserve. ODOD has entered into agreements of understanding with each of the EDUs pursuant to Rule 122:12-2-01(A), Ohio Administrative Code. These agreements provide, *inter alia*, that ODOD will be assessed a carrying charge on all ODOD monthly payments reimbursing the EDU for the cost of electricity delivered to PIPP customers that are not received by the EDU by the specified due date. Due, in large measure, to the weather-sensitive nature of electricity sales and PIPP enrollment behavior, PIPP-related cash flows fluctuate throughout the year. These fluctuations will, from time-to-time, result in negative PIPP USF account balances, which, in turn, 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 Case No. 01-2411-EL-UNC, 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 deficiency in a given company's PIPP account balance. This reserve

component was calculated by taking two-thirds of the combined three highest monthly deficits in the test period in that case and dividing by three, a measure intended to build the reserve over a three-year period. However, for most EDUs, the first-year reserve accrual was not actually funded because the actual cost of PIPP exceeded the cost of PIPP upon which the USF riders approved in Case No. 01-2411-EL-UNC were based, forcing ODOD to utilize revenues earmarked for the reserve (as well as revenues earmarked for EPP) to meet its monthly reimbursement obligations. Despite these reserve deficiencies, ODOD, did not seek an increase in the reserve component of the riders of these EDUs in Case No. 02-2868-EL-UNC. However, in Case No. 03-2049-EL-UNC, the test-period data again showed that, for a number of the EDUs, the two-year reserve accrual target had not actually been funded, which meant that no reserve had been created for these companies. Accordingly, in that proceeding, the Commission accepted ODOD's proposal to address these increasing reserve deficits by creating a new reserve deficiency component in the USF rider revenue requirement rather than by changing the manner in which the reserve components were calculated.

ODOD, in an attempt to mitigate the rate impact on EDU customers, continued to employ this reserve methodology in Case Nos. 04-1616-EL-UNC and 05-717-EL-UNC, notwithstanding that this approach had proved ineffective in eliminating the reserve shortfalls. However, in its application in Case No. 06-751-EL-UNC, ODOD was ultimately forced to abandon this methodology, and, in lieu thereof, the Stipulation adopted by the Commission in that case specified that the required reserve was to be based on the EDU's highest monthly deficit during the test period and that the reserve deficit component of the USF revenue requirement be eliminated. This same approach was again approved by the Commission in Case 07-661-EL-UNC, and will be utilized by ODOD in its application in this case.

6. Allowance for Interest Expense. Although the methodology for calculating the reserve component is designed to fully fund the EDU reserves on a pro forma basis by the end of the collection period, because USF cash flows fluctuate considerably over the course of the year, ODOD anticipates that it may still incur carrying charges as the result of late PIPP reimbursement payments to the EDUs. Thus, ODOD will again propose to include an allowance for these interest costs as a component of the USF rider revenue requirement. As in past applications, this proposed allowance will be calculated based on a cash-flow analysis that will project the daily PIPP USF account balances that the proposed USF riders will produce during the test period. ODOD will then determine the number of late payment days these balances represent and apply the daily interest charge specified in the agreements of understanding to determine the interest costs ODOD will incur.

7. Allowance for Undercollection. As in past applications, ODOD will propose to include a component in the USF rider revenue requirement to recognize that, due to the difference between amounts billed through the USF rider and the amounts actually collected from customers, the rider will not generate the target revenues. The proposed allowance for undercollection for each EDU will again be based on the actual collection experience of that company.

8. EDU Audit Costs. The stipulations accepted by the Commission in Case Nos. 04-1616-EL-UNC, 05-717-EL-UNC, and 06-751-EL-UNC provided for the continuation the USF Rider Working Group (the "Working Group") formed pursuant to the stipulation approved by the Commission in Case No. 03-2049-EL-UNC. The Case No. 04-1616-EL-UNC stipulation expressly charged the Working Group with the task of developing a systematic audit process to assure the accuracy of the data submitted by the EDUs to ODOD. The Working Group

subsequently determined that, before issuing a request for proposals for an independent auditor to conduct actual audits of the respective EDU's PIPP-related accounting and reporting, the appropriate initial step was to retain a qualified firm to perform a review and analysis of each EDU's PIPP-related accounting practices and internal and external audit procedures to determine whether those practices and procedures were adequate to assure the accuracy and validity of the monthly data and remittances submitted by the EDUs to ODOD, and, if those practices and procedures were found to be insufficient, to recommend accounting practices and audit procedures that would satisfy this objective. Accordingly, an allowance for the cost of these independent reviews were included as a revenue requirement component in Case No. 05-717-EL-UNC, subject to a true-up in Case No. 06-751-EL-UNC to reflect the actual costs ultimately incurred.

Consistent with the recommendation of Schneider Downs, the firm that conducted the reviews of each EDU's PIPP-related accounting and audit procedures, the Working Group agreed that ODOD should proceed to issue an RFP for audits of the EDUs PIPP-related accounting and reporting, but that the audits should be staggered, with The Cleveland Electric Illuminating Company (CEI), The Dayton Power and Light Company ("DPL"), Ohio Edison Company ("OE"), and the Toledo Edison Company ("TE") to be audited in 2007, and Columbus Southern Power Company ("CSP"), Duke Energy Ohio ("Duke"), and Ohio Power Company ("OP"), be audited in 2008. Thus, consistent with the stipulations that resolved both proceedings, the approved USF rider revenue requirements in Case No. 06-751-EL-UNC and Case No. 07-661-EL-UNC included an allowance for the cost of these audits.[6]

[6] Although initially characterized as an "audit" in the initial RFP, the work performed by the firm awarded the contract was actually and "application of agreed-upon procedures" designed to test the subject EDU's performance in various areas. This distinction was specifically recognized in the RFP issued earlier this year for the CSP, Duke, and OP studies.

Under the staggered cycle, the PIPP-related reporting and accounting practices and procedures of CEI, DPL, OE, and TE will again be subject to review in 2009. Accordingly, in its application in this case, ODOD will again propose that an allowance be included in the respective USF rider revenue requirements of these EDUs for the cost of these studies. Any difference between the allowance for the cost of these studies and the actual costs of the studies will be trued-up in next year's application by virtue of the projected year-end balance component of the revenue requirement.

10. Universal Service Fund Interest Offset. Section 4928.51(A), Revised Code, provides that interest on the USF shall be credited to the fund. Although the fund has, from time to time, generated interest income, ODOD was routinely 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. Thus, historically, ODOD did not consider the availability of USF interest income in determining the USF rider revenue requirements. The ODOD-OCC Settlement in the notice of intent phase of Case No. 05-717-EL-UNC provided that, in developing the proposed USF rider revenue requirement in future USF rider rate adjustment applications, ODOD would offset the projected USF interest balance, if any, at the end of the test period so as to flow back this interest to customers over the collection period. Accordingly, ODOD specifically identified this USF interest offset as a part of the revenue requirements methodology proposed in its notice of intent in Case No. 06-751-EL-UNC. However, Section 312.06 of the 2005 state budget bill, HB 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. OBM identified the Universal Service Fund ("USF") as one of the funds that is subject to such interest

transfers, notwithstanding that SB 3 provided that interest on the USF would be credited to the USF. Although ODOD opposed the use of USF interest for other purposes, OBM did not reverse its position and has periodically siphoned off all USF interest. Thus, there was no interest available as of December 31, 2006 to be used as an offset in determining the USF rider revenue requirements in Case No. 06-751-EL-UNC.

The state budget bill for fiscal years 2008 and 2009 continued to authorize this transfer of interest from the USF (*see* Section 512.03 of HB 119). Thus, as in Case No. 06-751-EL-UNC, there was no USF interest available to ODOD as of the end of the 2007 test period in Case No. 07-661-EL-UNC to be used as an offset to the USF rider revenue requirement, nor will any such interest be available to ODOD for this purpose as of December 31, 2008. Thus, ODOD cannot include a USF interest offset to the USF revenue requirements that will be proposed in its application in this case.

<u>USF Rider Rate Design Methodology</u>:

ODOD will propose to recover the annual USF rider revenue requirement for each EDU through a USF rider that incorporates a two-step declining block rate design of the type approved by the Commission in all prior ODOD applications. The first block of the rate will apply to all monthly consumption up to and including 833,000 Kwh. The second rate block will apply to all consumption above 833,000 Kwh per month. For each EDU, the rate per Kwh for the second block will be set at the lower of the Percentage of Income Payment Plan ("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 rate will 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 EDU's October 1999 PIPP charge exceeds 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 both consumption blocks will be the same.

Other Matters:

Because the reports of the results of the Schneider Downs studies of the PIPP-related accounting and reporting practices and procedures of CEI, DPL, OE, and TE had not been issued at the time the notice of intent was filed in Case No. 07-661-EL-UNC, ODOD proposed to supplement its notice of intent in that case to address any issues raised by the Schneider Downs findings. That procedure was, in fact, followed, and issues arising from the reports were ultimately resolved by the Stipulation in that case.

As a result of the RFP issued earlier this year, Schneider Downs was selected to perform the independent analysis of the PIPP-related accounting and reporting practices and procedures of CSP, Duke, and OP. However, under the revised schedule, the Schneider Downs reports of the results of its application of agreed-upon procedures are not due until the end of July 2008. Accordingly, ODOD again proposes to supplement its notice of intent to address issues raised by the reports, including proposing a mechanism to recover any identified overpayments and to credit the EDU's customers appropriately.

WHEREFORE, consistent with the terms of the Stipulation approved by the Commission in Case No. 07-661-EL-UNC, ODOD respectfully requests that the Commission:

1. Accept this notice of intent for filing and open ODOD's 2008 USF rider adjustment application docket;

2. Find that all jurisdictional Ohio electric distribution utilities are indispensable parties to this proceeding and join them as such;

3. Establish a schedule for the filing of motions to intervene, the filing of objections or comments regarding matters set forth in the notice of intent, the filing of responses to any such objections or comments, and, if a hearing is requested, a schedule for discovery, the filing of testimony, and the commencement of the hearing;

4. Use its best efforts to issue its decision with respect to issues raised not later than September 30, 2008 to permit ODOD to conform its 2008 USF rider adjustment application to Commission's resolution of those issues;

5. Authorize ODOD to file a supplement to its notice of intent to address issues raised by the auditor's reports of its studies of the PIPP-related accounting and reporting practices and procedures of CSP, Duke, and OP; and

6. Cause a copy of all entries issued in this docket to be served upon all parties of record in Case No. 06-751-EL-UNC.

Respectfully submitted,

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 – Telephone
(614) 228-0201 – Fax

Attorney for
Ohio Department of Development

EXHIBIT A

ELECTRIC PARTNERSHIP PROGRAM
Analysis of Projected Costs for 2009

(To be late-filed under separate cover)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Intent has been served upon the following parties by first class mail, postage prepaid, this 2nd day of June 2008.

Barth E. Royer

Marvin I. Resnik
Steven T. Nourse
AEP Service Corporation
1 Riverside Plaza
Columbus, Ohio 43215

Randall Griffin
Judi Sobecki
The Dayton Power & Light Company
MacGregor Park
1065 Woodman Avenue
Dayton, Ohio 45432

Paul Colbert
Duke Energy
155 East Broad Street
Columbus, Ohio 43215

Arthur Korkosz
Kathy Kolich
FirstEnergy Corp.
76 South Main Street
Akron, Ohio 44308

Janine Migden-Ostrander
Ann Hotz
Ohio Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215-3485

Samuel C. Randazzo
Gretchen J. Hummel
McNees, Wallace & Nurick
Fifth Third Center
Suite 910
21 East State Street
Columbus, Ohio 43215

David C. Rinebolt, Esq.
Ohio Partners for Affordable Energy
PO Box 1793
Findlay, Ohio 45839-1793