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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 Companies.	)))))	Case No. 08-658-EL-UNC

RESPONSES OF INDUSTRIAL ENERGY USERS-OHIO TO OCC'S OBJECTIONS

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Pursuant to the Entry issued in this docket on July 8, 2008, Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits this response to the objections of the Office of the Ohio Consumers' Counsel ("OCC") to the June 2, 2008 Application filed by the Ohio Department of Development ("ODOD") for an order approving adjustments to the Universal Service Fund ("USF") Riders.

ODOD proposed to recover the annual USF rider revenue requirement for each electric distribution utility ("EDU") through a USF rider that incorporates a two-step declining block rate design of the type approved by the Public Utilities Commission of Ohio ("Commission") in all prior ODOD applications. Ohio Department of Development Notice of Intent to File an Application for Adjustments to Universal Service Fund Riders (hereinafter "Notice of Intent") at 12. As proposed, as in the past, the first block of the rate will apply to all monthly consumption up to and including 833,000 kWh. *Id.* The second block rate will apply to all consumption above 833,000 kWh per month. *Id.* 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. *Id.* 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. *Id.* 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. *Id.*

OCC objects to the two-block rate design ODOD incorporated into its Application claiming that the two-block rate design causes a shift of USF costs from the industrial class to the residential class. OCC's Objections at 3. OCC further argues that "[t]his shift is not lawful under R.C. 4928.52(C)." *Id.* Section 4928.52(C), Revised Code, states, in pertinent part, that the USF Rider "shall be set in such a manner so as not to shift among the customer classes of electric distribution utilities the costs of funding low-income customer assistance programs."

The implementation of the two-step rider does not run afoul of this statutory provision. As documented in the stipulations accepted in each of the previous USF rider adjustment cases, the impact of using the two-step declining block rider, as opposed to a single per-kWh rate, is *de minimis*, and results in a revenue distribution that is well within the range of estimation error inherent in any inter-customer class cost-of-service analysis and does no violence to the principle of revenue distribution continuity. Further, it must be remembered that the prohibition against shifting the revenue responsibility extends only to the cost of funding low-income customer assistance programs, which constitutes only a portion of the USF rider revenue requirement. Thus, any slight difference in the revenue responsibility resulting through the use of the two-step rider as opposed to a uniform per-kWh rate can be readily accommodated within the other cost categories that comprise the USF rider revenue requirement without raising a meaningful Section 4928.52(C), Revised Code, issue. The language in question should be interpreted as prohibiting a change in cost recovery that would have a material adverse effect on a particular customer class. The two-block USF rider rate design first approved in Case No. 01-2411-EL-UNC has produced no such result.

First, in many instances over the course of the two-step riders' history, the cap on the second block has not come into play, with the result that all customers paid the same rate. Second, in some instances where the second block cap has been triggered, the per-customer impact on the typical residential customer has been so small that, if the USF rider rate were not carried out to seven decimal places, the difference would have been all but lost through rounding. Third, even where the impact of the second block rate cap on the typical residential customer has been measurable, it has not been material, as that term would be used in the context of any traditional revenue responsibility analysis.

Further, the two-step rate design has been endorsed by almost all the parties, including the Commission staff, in every USF rider rate adjustment proceeding throughout the rider's history.

The two-step USF rider rate design was implemented in ODOD's first USF rider adjustment case (Case No. 01-2411-EL-UNC) as a result of negotiations that led to a stipulation agreed to by all parties to that proceeding and approved by the Commission in its December 10, 2001 Order in that docket. The two-step rate was proposed as a means of limiting the substantial financial impact on the state's largest electric consumers that would have resulted if the USF rider revenue requirements were to be recovered through the uniform per-kWh rate design of the USF riders initially approved by the Commission in the electric transition plan ("ETP") cases. In view of the almost imperceptible impact on individual residential customers of moving to the two-step rider (versus the significant impact on the state's largest consumers of continuing to use a single-block rate), IEU-Ohio, ODOD, and the Commission Staff joined with the other parties to the case in endorsing the stipulated two-step rider rate. The Stipulation indicated that the two-step rider "does not violate the Section 4928.52(C) prohibition against a shift among customer classes of the costs of funding low-income customer assistance programs." *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, Joint Exhibit 1 at 5 (December 10, 2001) (hereinafter "First Stipulation"). In approving the First Stipulation, the Commission held that the "Stipulation and proposed customer notice are reasonable and that the two-step declining block USF riders set forth in the Stipulation reflect the minimum level necessary to produce the required revenue for ODOD to cover the administrative costs of the low-income customer assistance programs and the consumer education programs…." *Id.* at Opinion and Order at 8 (December 20, 2001). Accordingly, a stipulation has resolved the issues regarding USF rider adjustment applications in each of the years since the First Stipulation, and has always included the two-step rate. The Commission, has, in fact, approved the two-step rider rate design proposed in the notice of intent in all prior USF rider adjustment proceedings, implicitly finding, by virtue of its approval of the stipulations in those cases, that this rate design does not violate any important regulatory principle or practice.

Declining block rates are commonplace in the utility industry. Indeed, the Ohio legislature recognized the reasonableness of using a declining block rate structure for recovering government-imposed obligations in mandating a three-step declining block rate for the recovery of the kWh tax imposed on the state's electric utilities (*see* Section 5727.81, Revised Code).

Moreover, the volume discount reflected by the cap on the second block of the two-step USF rider rate is supported by principles of fairness and revenue stability. Under the two-step rider rate, the state's largest electric customers pay the identical USF rider per-kWh rate for the first 833,000 kWh consumed as all other customers, <u>including</u> the increment of the under-833,000 kWh block rate attributable to the shifting revenues from the first block to the second block in those instances in which the 1999 PIPP rider rate cap on the second block comes into play. Even at the threshold 833,000 kWh level, these large users are already paying many thousands of dollars per year to support the USF rider revenue requirement, and the largest users, such as those that qualify as self-assessing purchasers under Section 5727.81(C), Revised Code, pay tens of thousands of dollars annually. Rather than ask this relatively small number of customers to pay thousands more annually, it is appropriate for the thousands of other EDU customers, particularly residential customers that can benefit from the programs, to pay pennies more per month in those instances where the second block rate cap is triggered. If an EDU were to lose a large customer, or if a large customer were to scale back its operations, there would be a significant revenue shortfall during the collection period, which would ultimately lead to a higher future rider rate for all customers. Although the risk of a large customer leaving the state remains a risk, the use of the two-block rate design will provide at least some measure of revenue stability that would not be present if the revenues were generated by a uniform per-kWh rate.

OCC has not demonstrated that a change in what has become the traditional USF rider revenue recovery mechanism is warranted.

III. CONCLUSION

Wherefore, for the reasons discussed above, IEU-Ohio requests that the Commission approve the two-step declining block rate as proposed by ODOD.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Responses of Industrial Energy Users-Ohio to OCC's Objections* was served upon the following parties of record this 25th day of July 2008, via electronic transmission, hand-delivery or ordinary U.S. mail, postage prepaid.

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