

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 ) Case No. 08-658-EL-UNC  
Service Fund Riders of Jurisdictional Ohio )  
Electric Distribution Utilities. )

FINDING AND ORDER

The Commission, considering the Ohio Department of Development's Notice of Intent to file its annual application for adjustment to the Universal Service Fund riders (on or before October 31, 2008), the pleadings, and the applicable law, finds:

Universal Service Fund Background

- (1) 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.<sup>1</sup> 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 & 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 USF rider rate for each EDU 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*

<sup>1</sup> On June 22, 1999, the 123<sup>rd</sup> 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 is funded by the USF. (SB 3 was codified under Chapter 4928, Revised Code.)

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
Technician                      Date Processed 9-10-08

*Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-EL-ETP (Opinion and Order, July 19, 2000). The USF rider rates for the remaining five EDUs were approved on August 17, 2000 in their respective electric transition plan dockets.<sup>2</sup>

- (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 (PBAB), determines that revenues in the USF and revenues from federal or other sources of funding for those programs will be insufficient to cover the administrative costs of the low-income customer assistance programs and the consumer education programs and provide adequate funding for those programs, ODOD shall file a petition with the Commission for an increase in the USF rider rates. 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. *Id.* To that end, the Commission has approved USF rider rate adjustments, for each the Ohio jurisdictional EDUs, as follows: Case No. 01-2411-EL-UNC (December 20, 2001 Opinion and Order); Case No. 02-2868-EL-UNC (January 23, 2003 Opinion and Order); Case No. 03-2049-EL-UNC (December 3, 2003 Opinion and Order); Case No. 04-1616-EL-UNC (December 8, 2004 Opinion and Order); Case No. 05-717-EL-UNC (December 14, 2005 Opinion and Order,<sup>3</sup> and June 6, 2006 Finding and Order),<sup>4</sup> Case No. 06-751-EL-UNC (December 20, 2006 Opinion and Order, and January 10, 2007 Finding and Order).
- (3) The most recent USF rider adjustments were made on December 19, 2007, and May 28, 2008. *In the Matter of the Application of the Ohio*

---

<sup>2</sup> *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 & Light Co.*, Case No. 99-1687-EL-ETP; and *Monongahela Power Co.*, Case No. 00-02-EL-ETP.

<sup>3</sup> The 2006 USF rider approved for CSP was a blended rate, to accommodate the transfer of the customers in Monongahela Power's Ohio certified territory to CSP, effective January 2006. 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.

<sup>4</sup> On June 6, 2006, the Commission approved ODOD's the May 24, 2006 Stipulation with additional 2006 USF rider adjustments. Each EDU subsequently filed a revised USF rider tariff under Case No. 05-717-EL-UNC, with the following effective dates: CEI - June 16, 2006; CSP - June 8, 2006; DP&L - June 30, 2006; Duke - June 13, 2006; OE - June 16, 2006; OP - June 8, 2006; and TE - June 16, 2006.

*Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, under Case No. 07-661-EL-UNC (07-661). On December 19, 2007, the Commission granted the amended application of ODOD for an order approving adjustments to the USF riders of all the jurisdictional Ohio EDUs, except CSP, 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 2008 billing cycles. As part of the December 19, 2007 Opinion and Order, the Commission approved the November 26, 2007 Stipulation and Recommendation (November 2007 Stipulation) jointly submitted by ODOD, Commission staff (Staff), and a majority of the other parties to the proceeding.<sup>5</sup> (*Id.*) On April 28, 2008, ODOD filed a supplemental application seeking approval of adjustments to the 2008 USF rider rates for CSP and OP, to correct an error in the calculation of the annual revenue requirements that the previously approved USF rider rates were designed to recover. On May 8, 2008, ODOD filed a Supplemental Stipulation and Recommendation that addressed its April 29, 2008 Supplemental Application. On May 28, 2008, the Commission granted the supplemental application of ODOD for an order approving adjustments to the USF riders for CSP and OP. The new USF riders for CSP and OP became effective on a bills-rendered basis with their June 2008 billing cycles.

- (4) Under the November 2007 Stipulation approved in 07-661, ODOD must file a Notice of Intent, in advance of filing a USF rider adjustment application. The function of the Notice of Intent is to provide parties with an opportunity to raise and pursue objections to the specific methodology ODOD intends to use in developing the USF rider revenue requirement and the USF rider rate design, both of which will be utilized in preparing its application for USF rider adjustments.

---

<sup>5</sup> 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, 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.

History of this Proceeding

- (5) On June 2, 2008, ODOD filed a Notice of Intent to file an application to adjust the USF riders of all jurisdictional Ohio EDUs: CEI, CSP, DP&L, Duke, OE, OP, and TE, in accordance with the terms of the November 26, 2007 Stipulation. First, ODOD's June 2, 2008 Notice of Intent (June 2, 2008 NOI)<sup>6</sup> indicates that its subsequent application will request that each of the USF riders be adjusted to more accurately reflect the current costs of operating the percentage of income payment plan (PIPP) program, the electric partnership program (previously referred to as the low-income customer energy efficiency program), consumer education programs, and associated administrative costs.
- (6) Second, ODOD indicates that it plans to employ the same USF rider revenue requirement and rate design methodology approved by the Commission in 07-661 that incorporates a two-step declining block rate design of the type that has been approved by the Commission in all prior ODOD applications.
- (7) Last, regarding the PIPP-related accounting and reporting audits recommended by the USF Rider Working Group for each EDU, ODOD submits that the third-party audits of CSP, Duke, and OP were currently underway and audit reports were to be issued by the end of July 2008. ODOD submits that in the event that the auditor finds that the monthly requests for reimbursements of any of the subject EDUs over the period of the audit have overstated the reimbursement to which the EDU is lawfully entitled, ODOD will supplement its notice of intent by proposing a mechanism to recover the identified overpayments and to credit the EDU's customers appropriately.
- (8) The Commission notes that the function of the Notice of Intent is to provide parties with an opportunity to raise and pursue objections to the specific methodology ODOD intends to use in developing the USF rider revenue requirement and the USF rider rate design, both of which will be utilized in preparing its application for USF rider adjustments. Accordingly, the Commission will issue two orders in this proceeding: first, regarding the June 2, 2008 NOI including the methodology proposed by ODOD for developing the USF rider revenue requirement, the USF rate design, and the issues raised by the

---

<sup>6</sup> Exhibit A to the June 2, 2008 NOI was filed on June 5, 2008.

parties concerning these items; and, second, regarding ODOD's subsequent application proposing USF rider adjustments, as necessary, for each of the seven EDUs.

- (9) On July 8, 2008, an attorney examiner entry established a case schedule for this proceeding, which included discovery completion on August 1, 2008, and an evidentiary hearing to begin on August 12, 2008. This attorney examiner entry also joined the EDUs as indispensable parties to this proceeding.
- (10) On July 8, 2008, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene and memorandum in support. On July 9, 2008, Ohio Partners for Affordable Energy (OPAE) filed a motion to intervene and memorandum in support. OPAE's motion for intervention was accompanied by a motion to admit David C. Rinebolt to practice *pro hac vice* before the Commission in this proceeding. On July 11, 2008, Industrial Energy Users - Ohio (IEU-Ohio) filed a motion to intervene and memorandum in support.
- (11) On July 18, 2008, OCC timely filed objections and comments in response to ODOD's June 2, 2008 NOI. Responses to OCC's objections were timely filed by IEU-Ohio on July 25, 2008.
- (12) On July 25, 2008, ODOD filed a Joint Stipulation and Recommendation (July 2008 Stipulation) that proposes resolutions for the various issues presented by the June 2, 2008 NOI. ODOD submits that the July 2008 Stipulation addresses all of the issues related to its June 2, 2008 NOI as filed. The signatory parties to the present stipulation are: ODOD, CEL, Duke, CSP, DP&L, OE, OP, TE, Staff,<sup>7</sup> IEU-Ohio, and OPAE. OCC, the only other party to the proceedings, did not join in this stipulation, but does not oppose it as discussed below. The signatory parties submit that approval of the present stipulation will eliminate the need for further filings and proceedings related to ODOD's June 2, 2008 NOI. Next, the signatory parties assert that the July 2008 Stipulation represents a just and reasonable resolution of all issues presented in the June 2, 2008 NOI, as filed, violates no regulatory principle, and is the product of serious bargaining among knowledgeable and capable parties in a cooperative process undertaken by the parties to settle the issues involved. Last, the signatory parties submit that, although the present

---

<sup>7</sup> Rule 4901-1-10(C), O.A.C., provides that Staff is a party for the purpose of entering into this Stipulation.

stipulation is not binding on the Commission, it is entitled to careful consideration because it is sponsored by parties representing a wide range of interests, including Staff, and is not opposed by any party.

- (13) On August 4, 2004, OCC filed a letter in this docket stating that OCC did not sign the July 2008 Stipulation, but will not oppose it. OCC notes that the Stipulation supports the two-block rate design, which OCC has stated in the past that it does not support, and OCC does not concede that the two-block rate design is lawful under Section 4928.52(C), Revised Code. OCC asserts that, while it is not contesting the present stipulation on this issue, OCC does not waive its right to contest this or any rate design proposed by ODOD in future cases regarding the USF Rider. OCC also reserves the right to pursue its concerns related to costs for the Electric Partnership Program (EPP) in the second phase of this proceeding.
- (14) On August 12, 2008, a brief hearing was conducted for the Notice of Intent phase of this proceeding in accordance with the case schedule issued on July 8, 2008. Appearances were entered by ODOD, CSP, DP&L, Duke, IEU-Ohio, OCC, OP, OPAE, and Staff. Motions for intervention previously submitted by OCC, IEU-Ohio, and OPAE were granted at hearing. OPAE's earlier motion to admit David C. Rinebolt to practice *pro hac vice* before the Commission in this proceeding was granted at hearing. The July 25, 2008 Stipulation was admitted in evidence as Joint Exhibit 1.

#### July 2008 Stipulation - USF Rider Revenue Requirement Methodology

- (15) The present stipulation provides that the USF rider revenue requirement, to be recovered by the USF rider rates of the Ohio EDUs during the 2009 collection period, should include the following elements, each of which will be determined in the manner proposed in ODOD's June 2, 2008 NOI, and which is consistent with prior revenue requirement methodology approved by this Commission: (a) cost of PIPP; (b) Electric Partnership Program (EPP) costs; (c) administrative costs; (d) December 31, 2008 PIPP account balances; (e) reserve; (f) allowance for interest expense; (g) allowance for undercollection; (h) EDU audit costs; and (i) Universal Service Fund interest offset.

#### July 2008 Stipulation - USF Rider Rate Design Methodology

- (16) This stipulation also provides that ODOD should use the current rate design methodology, as previously approved by the Commission in

all prior ODOD applications, to recover the annual USF rider revenue requirement, as determined in these proceedings. This rate design is a two-step declining block rate design, the first block of which applies to all monthly consumption up to and including 833,000 kWh per month. The second block of the rate, which applies to all consumption over 833,000 kWh per month, will be set at the lower of the PIPP rider rate in effect in October 1999 or the per kWh rate that would apply if the EDU's annual USF rider rate were to be recovered through a single block volumetric (per kWh) rate. The first block rate will be set at the level necessary to produce the remainder of the EDU's annual USF rider revenue requirement. The signatory parties submit that this rate design methodology provides for a reasonable contribution by all customer classes to the USF revenue requirement.<sup>8</sup>

#### July 2008 Stipulation - EDU Audits

- (17) The present stipulation also provides that ODOD shall file a supplement to its June 2, 2008 NOI that will include the Schneider Downs reports of the results of its application of agreed-upon (audit) procedures to test the reasonableness and reliability of the PIPP-related accounting and reporting of CSP, Duke, and OP. (*Id.* at 6-7.) Next, in the NOI supplement, ODOD would address any issues that might be raised by the Schneider Downs reports, and may include requests that the subject EDUs provide additional information relating to any such issues. Further, the subject EDUs shall file written responses to the measures proposed by ODOD in the NOI supplement, and shall provide requested information, subject to the scope of discovery set forth in Rule 4901-1-16, O.A.C. Last, the signatory parties recommend that a separate procedural schedule be established for addressing any issues raised by the NOI supplement and the responses thereto. The signatory parties submit that they will propose a recommended schedule once the Schneider Downs reports have been issued.

#### July 2008 Stipulation - ODOD-EDU Agreements

- (18) The signatory parties note that the November 2007 Stipulation, as approved by the Commission's December 19, 2007 Opinion and Order

---

<sup>8</sup> Although it is a signatory party to this Stipulation, OPAE does not join in this specific paragraph of the Stipulation. OPAE, however, will not oppose the adoption of the stipulated USF rider rate design methodology for purposes of this proceeding. (*Id.* at 6.)

in 07-661, established milestone dates for renegotiating the current ODOD-EDU agreements relating to the operation of the electric PIPP program and provided that the new agreements would be effective October 1, 2008. The November 2007 Stipulation also recognized that ODOD, in conjunction with other stakeholders, was engaged in a PIPP rule reform initiative, and that the new ODOD-EDU agreements might need to be revised to conform to the PIPP rules ultimately adopted by ODOD. The signatory parties further note that, although ODOD anticipates issuing its proposed electric PIPP rules in the near future, the proposed rules have not yet been released. The signatory parties agree that, under these circumstances, the milestone dates approved by the Commission in 07-661 for renegotiating the ODOD-EDU agreements should be vacated, and that, rather than proposing new milestone dates at this time, the new timeline should be determined subsequent to the completion of the ODOD rulemaking proceeding, or, if appropriate, in the context of ODOD's 2009 USF rider adjustment proceeding.

#### Commission Discussion

- (19) 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.*)

- (20) We find that this matter is properly before the Commission in accordance with Section 4928.52(B), Revised Code, and Rule 4901-1-30, O.A.C.
- (21) After reviewing the July 2008 Stipulation, the Commission finds that the present stipulation adopts the proposed USF rider revenue requirement methodology and USF rider rate design methodology, as submitted in ODOD's Notice of Intent for its 2008 USF rider application. We find that the process involved serious bargaining by knowledgeable, capable parties. Counsel for the applicant, 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 administered by ODOD. Last, the present stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission will approve the present stipulation.

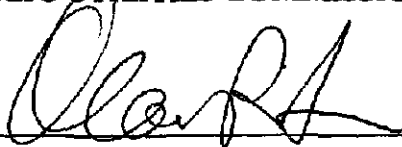
ORDER:

It is, therefore,

ORDERED, That the July 2008 Stipulation and Recommendation submitted by the parties is approved. It is, further,

ORDERED, That a copy of this Finding and Order be served upon ODOD, all electric distribution utilities, and all intervening parties of record in this case.

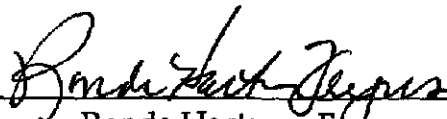
THE PUBLIC UTILITIES COMMISSION OF OHIO



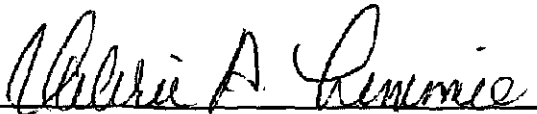
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie




Cheryl L. Roberto

JKS:ct

Entered in the Journal

SEP 10 2008



Renee J. Jenkins  
Secretary