

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.)

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.

Nancy H. Rogers, 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 and Richard C. Reese, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential customers of the Ohio jurisdictional electric utility companies.

Kathy Kolich, 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.

Marvin I. Resnick, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215-2373, on behalf of Columbus Southern Power Company and Ohio Power Company.

Judi L. Sobecki, Senior Counsel, The Dayton Power & Light Company, 1065 Woodman Drive, Dayton, Ohio 45432, on behalf of The Dayton Power and Light 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.

Colleen Mooney and 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 utility companies). The USF rider rate for each electric utility company was initially determined by ODOD and approved by the Commission. The USF riders proposed by ODOD were approved for the FirstEnergy Corp. electric utility 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, (July 19, 2000). The USF riders for the remaining five electric utility companies 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

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 utility companies 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.)

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.

funding for those programs will be insufficient to cover the administrative costs of the low-income customer assistance programs and the consumer education program and provide adequate funding for those programs, 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 of the Ohio jurisdictional electric utility companies, 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,³ and June 6, 2006 Finding and Order);⁴ Case No. 06-751-EL-UNC (December 20, 2006 Opinion and Order, and January 10, 2007 Finding and Order).

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 Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, 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 electric utility companies in accordance with Section 4928.52(B), Revised Code. Under this Order, the new USF rider rates became effective on a bills-rendered basis with the electric utility companies' January 2008 billing cycles. As part of the December 19, 2007 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.⁵ (*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 (May 2008 Stipulation) that addressed its April 29, 2008 Supplemental Application. On May 28, 2008, the Commission approved the May 2008

³ 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 (November 9, 2005) and Entry on Rehearing (December 21, 2005).

⁴ On June 6, 2006, the Commission approved ODOD's the May 24, 2006 Stipulation with additional 2006 USF rider adjustments. Each electric utility company 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.

⁵ The signatory parties were ODOD, CEI, CSP, DP&L, Duke, OE, OP, TE, Industrial Energy Users - Ohio, and Ohio Partners for Affordable Energy. The Office of the Ohio Consumers' Counsel, the only other party to the proceedings, did not join in the Stipulation, but did not contest its adoption by the Commission.

Stipulation and the corresponding adjustments to the USF riders for CSP and OP. The new USF rider rates for CSP and OP became effective on a bills-rendered basis with their June 2008 billing cycles.

II. History of this Proceeding

On June 2, 2008,⁶ ODOD filed a Notice of Intent to file an application to adjust the USF riders of CEI, CSP, DP&L, Duke, OE, OP, and TE, in accordance with the terms of the November 2007 Stipulation approved in 07-661. First, ODOD's June 2, 2008 Notice of Intent (June 2008 NOI)⁷ indicated that its subsequent application would 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, consumer education programs, and associated administrative costs. The parties submitted a Stipulation and Recommendation for the NOI phase of this proceeding on July 25, 2008 (July 2008 Stipulation). By its Finding and Order signed September 10, 2008 (NOI Order), the Commission approved the July 2008 Stipulation, which addressed the proposed USF rider revenue requirement methodology and the USF rider rate design methodology for ODOD's 2008 USF rider adjustment application.

Next, on October 31, 2008, 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 (SB 3) and Section 4928.52, Revised Code. On November 26, 2008, 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 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 plan (PIPP), the electric partnership 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 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 fall \$5,105,844 short of the annual revenues required to fulfill the objectives identified in Section 4928.52(A), Revised Code. (ODOD Ex. 1 at 5; Joint Ex. 1 at 5-6.) Therefore, ODOD is requesting an increase for the USF riders of DP&L, OE, and TE, and a decrease for the USF riders of CEI, CSP, Duke, and OP. (ODOD Ex. 1 at 5.) By agreement of the parties, a prehearing settlement conference for the Application phase of this proceeding was not conducted. An evidentiary hearing was conducted on December 8, 2008, in accordance with the attorney examiner entry issued November 21, 2008.

⁶ Because the date of May 31, 2008, fell on a Saturday, under Rule 4901-1-07(A), O.A.C., the Notice of Intent was timely filed.

⁷ Exhibit A to the June NOI was filed on June 5, 2008.

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 as indicated below:

Company	Current USF Rider		Adjusted Test - Period USF Rider Revenue	Required Annual USF Rider Revenue	Proposed USF Rider	
	First 833,333 kWh	Above 833,333 kWh			First 833,333 kWh	Above 833,333 kWh
CEI	\$0.0009629	\$0.0005680	\$17,094,866	\$15,371,278	\$0.0008495	\$0.0005680
CSP	\$0.0016196	\$0.0001830	\$25,124,368	\$22,985,870	\$0.0013130	\$0.0001830
DP&L	\$0.0008796	\$0.0005700	\$12,148,344	\$19,198,560	\$0.0014757	\$0.0005700
Duke	\$0.0012176	\$0.0004690	\$22,630,983	\$20,386,647	\$0.0010857	\$0.0004690
OE	\$0.0014760	\$0.0010461	\$35,088,007	\$44,050,245	\$0.0019474	\$0.0010461
OP	\$0.0015491	\$0.0001681	\$26,411,260	\$20,263,229	\$0.0010601	\$0.0001681
TE	\$0.0018007	\$0.0005610	\$13,759,454	\$14,323,628	\$0.0018964	\$0.0005610
TOTALS			\$152,257,281	\$156,579,457		

ODOD states that the proposed USF riders, in the table above, reflect the minimum increases or decreases for the electric utility companies necessary to satisfy revenue responsibilities during 2009. (ODOD Ex. 1 at 5, 13 and Ex. J.)

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 electric utility 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 utilizes actual data available through September 2008, and projected data, based on the actual October-December 2007 experience, for the remaining three months of the test period.⁸

⁸ The initial "cost of PIPP" calculation for each electric utility company may be found at Ex. A of ODOD's October 31, 2008 Application.

ODOD submits that the test-period cost of PIPP must be adjusted for the following reasons: (1) certain elements of the tariffed rates of CEL, CSP, DP&L, OE, OP, and TE were adjusted during 2008 pursuant to orders of this Commission; and (2) certain other Commission-approved DP&L rate changes will take effect January 1, 2009. The test-period adjustments are provided in Application Exhibit A1. (ODOD Ex. 1 at 7 and Exs. A, A.1, and A.1.a through A.1.f; ODOD Ex. 3 at 5-9 and Exs. DAS-1 through DAS-7; ODOD Ex. 4 at 3-7 and Exs. DAS-Rev-1 through DAS-Rev-7; Joint Ex. 1 at Appendix A.)

2. Electric Partnership Program and Consumer Education Costs. This element of the total USF rider revenue requirement reflects the costs associated with the low-income customer efficiency programs, now referred to as the "Electric Partnership Program" (EPP), and the consumer education program (CE), which are recovered through the USF rider calculation pursuant to Section 4928.56(A)(2) and (3), Revised Code. ODOD's proposed allowance for these items is \$14,946,196, which is identical to the allowance for these programs previously accepted by the Commission in approving all prior USF rider rate adjustments. This portion of the USF rider revenue requirement is allocated to the electric utility companies based on the ratio of their respective cost of PIPP to the total cost of PIPP.⁹ (June NOI Ex. A; ODOD Ex. 1 at 7 and Ex. B; ODOD Ex. 3 at 9-14; ODOD Ex. 4 at 2-3 and 7.)

3. Administrative Costs. ODOD proposes an allowance for the administrative costs associated with the low-income customer assistance programs of \$2,021,589 for this case. This amount has been determined in accordance with the methodology approved by the Commission in the NOI phase of this case. (NOI Order.) The requested \$2,021,589 allowance for administrative costs has been allocated to the electric utility companies based on the number of PIPP customer accounts as of April 2008, the test period month exhibiting the highest PIPP customer account totals.¹⁰ (ODOD Ex. 1 at 8, and Ex. C; ODOD Ex. 2 at 2-18, and Exs. NS-1 and NS-2; ODOD Ex. 3, at 3 14-15; ODOD Ex. 4 at 8.)

4. December 31, 2008 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 utility company's USF rider will, in actual practice, either over recover or under-recover its associated annual revenue requirement. Over recovery creates a positive PIPP USF account balance for the electric utility company in question, which reduces the amount needed on

⁹ The initial low-income program cost allocations for each electric utility company may be found at Ex. B of ODOD's October 31, 2008 Application.

¹⁰ The initial allocation of administrative costs associated with low-income customer assistance programs for each electric utility company may be found at Ex. C of ODOD's October 31, 2007 Application.

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 timely make the PIPP reimbursement payment due to the electric utility company. Thus, the amount of any existing positive PIPP USF account balance must be deducted in determining the target revenue level that 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 a bills-rendered basis effective January 1, 2009. Accordingly, the USF rider revenue requirement of each electric utility company will be adjusted by the amount of the electric utility company's projected December 31, 2008 PIPP account balance, so as to synchronize the new riders with the electric utility company's PIPP USF account balance as of their effective date. (ODOD Ex. 1 at 8-9 and Ex. D; ODOD Ex. 3 at 15-17 and Exs. DAS-8 through DAS-14; ODOD Ex. 4 at 8, and Exs. DAS-Rev-8 through DAS-Rev-14.)

5. Reserve. ODOD has entered into agreements of understanding with each of the electric utility companies 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 utility company for the cost of the electricity delivered to PIPP customers that is not received by the electric utility company 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. The fluctuations will, from time to time, result in negative PIPP USF account balances.¹¹ This means that ODOD will be unable to satisfy its monthly payment obligation to the electric utility company on a timely basis and will, therefore, incur carrying charges in those months. To address this problem, ODOD has included an allowance to create a reserve as an element of the USF rider revenue requirement based on each electric utility company's highest monthly deficit during the test period. The Commission approved this methodology in its NOI Order earlier in the proceeding. The proposed reserve component for each electric utility company is set forth in ODOD Ex. 1 at Ex. F. (ODOD Ex. 1, at 9-10 and Ex. F; ODOD Ex. 3 at 17-21; ODOD Ex. 4 at 8-9.)

¹¹ A graph containing the PIPP-related cash flows for the test period may be found at Ex. E of ODOD's October 31, 2008 Application.

6. Allowance for Interest. Next, ODOD notes that, although the methodology for calculating the reserve component is designed to fully fund the electric utility companies' reserves on a pro forma basis by the end of the 2009 collection period, because USF cash flows fluctuate considerably over the course of the year, ODOD projects that it will still incur some carrying charges for late PIPP reimbursement payments to the electric utility companies during 2009. 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 \$323,309.¹² (ODOD Ex. 1 at 10 and Ex. G; ODOD Ex. 3 at 21-22 and Exs. DAS-15 through DAS-21; ODOD Ex. 4 at 9 and Exs. DAS-Rev-15 through DAS-Rev-21.)

7. Allowance for Undercollection. This component of the USF rider revenue requirement is an adjustment 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. In accordance with the methodology approved by the Commission in its NOI Order, the allowance for undercollection for each electric utility company is based on the actual collection experience of that electric utility company. The total requested annual allowance for undercollection is \$2,138,262.¹³ (ODOD Ex. 1 at 10-11 and Ex. H; ODOD Ex. 3 at 22-23 and Exs. DAS-22 through DAS-28; ODOD Ex. 4 at 9-10, and Exs. DAS-Rev-22 through DAS-Rev-28.)

8. Allowance for Audit Costs. As discussed in the direct testimony of ODOD witness Donald A. Skaggs (ODOD Ex. 3) the USF Rider Working Group¹⁴ (the "Working Group") recommended that ODOD engage a qualified, independent third party to conduct audits of the electric utility companies' PIPP-related accounting and reporting. Consistent with the Working Group's recommendation, the audits are staggered with CEI, DP&L, OE, and TE to be audited in 2009. Therefore, ODOD has included a proposed allowance for audit costs of \$40,000 as a component of the USF revenue

¹² The initial proposed interest allowance to be built into the USF rider for each electric utility company may be found at Ex. G of ODOD's October 31, 2007 Application.

¹³ The initial allowance for undercollection for each electric utility company may be found at Ex. H of ODOD's October 31, 2007 Application.

¹⁴ The USF Rider Working Group was created by the stipulation approved by the Commission in 03-2049. The Working Group members are the parties who signed the stipulation, to be chaired by ODOD. Under the terms of the stipulation, non-signatory parties in 03-2049 may also participate in the Working Group.

requirements for those electric utility companies to be audited in 2009, with any difference between the allowance and the actual costs of the audits to be trued up via the December 31, 2009 USF account balance element in ODOD's 2008 USF rider rate adjustment application. The Commission approved this proposal in its NOI Order. (ODOD Ex. 1 at 11; ODOD Ex. 3 at 23-25; ODOD Ex. 4 at 10.)

9. Universal Service Fund Interest Offset. Section 4928.51(A), Revised Code, provides that interest on the USF account balance 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 the ODOD-OCC settlement agreement in the NOI phase of 05-717, ODOD indicated that, in future cases, if it projected that there would be any accrued interest on the fund available at year end, ODOD would offset this interest against the USF rider revenue requirement. ODOD submits, however, that the 2005 state budget bill for the 2006-2007 biennium 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.¹⁵ ODOD further submits that OBM identified the USF as one of the funds that is subject to such interest transfers, even though SB 3 provided that interest on the USF would be credited to the USF. Next, ODOD notes that the 2007 state budget for fiscal years 2008 and 2009 continues to authorize this transfer of interest from the USF.¹⁶ Therefore, there will be no interest available as of December 31, 2007, to be used as an offset to the USF rider revenue requirement. (ODOD Ex. 1 at 11-12.)

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

December 8, 2008 Hearing:

At the hearing held on December 8, 2008, 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 Duke and OCC, entered into a Stipulation and Recommendation that resolved all outstanding issues in this case. Duke did not appear at the hearing. OCC raised no

¹⁵ See Section 312.06 of Am. Sub. HB 66 of the 126th Ohio General Assembly.

¹⁶ See Section 512.03 of Am. Sub. HB 119 of the 127th Ohio General Assembly.

objections at hearing to the December 8, 2008 Stipulation (December 2008 Stipulation), but stated that it would file a letter regarding the December 2008 Stipulation subsequent to the hearing. The December 2008 Stipulation was admitted into the record as Joint Exhibit 1, which included a copy of the proposed customer notice of the adjusted USF riders as Appendix B to Joint Exhibit 1.

On December 8, 2008, Duke filed a letter in this docket stating that Duke agrees to the terms and conditions identified in the December 2008 Stipulation and requests that it be added to the stipulation as a signatory party. On December 12, 2008, OCC filed a letter stating that, while it does not agree to the two-block rate design, OCC will not contest the December 2008 stipulation.

Stipulation and Recommendation:

1. General Terms of Agreement

The December 2008 Stipulation asserts that the methodology for determining the respective USF rider revenue requirements is consistent with the methodology approved by the Commission in its NOI Order. The December 2008 Stipulation also provides, among other things, that the annual USF rider revenue requirements set forth in ODOD's amended application shall be collected by the respective electric utility companies 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 electric utility company 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 electric utility company'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 electric utility company's annual USF rider revenue requirement. (Joint Ex. 1 at 5.)

As shown on the supporting schedules attached to ODOD Ex. 1 and in the December 2008 Stipulation, the resulting riders, for each electric utility company, are as follows:

<u>EDU</u>	<u>First 833,000 kWh</u>	<u>Above 833,000 kWh</u>
CEI	\$0.0008495 / kWh	\$0.0005680 / kWh
CSP	0.0013130 / kWh	0.0001830 / kWh
DP&L	0.0014757 / kWh	0.0005700 / kWh
Duke	0.0010857 / kWh	0.0004690 / kWh
OE	0.0019474 / kWh	0.0010461 / kWh
OP	0.0010601 / kWh	0.0001681 / kWh
TE	0.0018964 / kWh	0.0005610 / kWh

(Joint Ex. 1 at 5.)¹⁷

All parties to the December 2008 Stipulation have stipulated that the two-step declining block USF riders reflect the minimum level necessary to produce the required revenues for 2008. (*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 2008 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 6-7.)

ODOD has also agreed to file, no later than October 31, 2009, an application with the Commission for such adjustments to the USF riders as may be necessary to assure, to the extent possible, that each electric utility company'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 7.)

The signatory parties propose and agree that the Commission should again adopt the "Notice of Intent" process approved in 04-1616, 05-717, 06-751, and 07-661. Specifically, this process provides that on or before May 31, 2009, ODOD shall file with the Commission a notice of 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 parties request that the Commission open the 2009 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 2008 Stipulation requests that the Commission use its best efforts to issue its decision with respect to the issues raised no later than September 30, 2009. Last, the Notice

¹⁷ The specific calculations supporting the stipulated USF rider rates are set forth in ODOD Ex. 4 at Exs. DAS-Rev-36 through DAS-Rev-42.

of Intent process provides that ODOD will modify its 2009 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, 2009 filing deadline to permit ODOD to incorporate such directives, ODOD will file an amended application to do so. (*Id.* at 7-9.)

In addition, 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 9.)

Next, under paragraph 15 of the December 2008 Stipulation, the signatory parties recognize that the electric utility companies currently have cases pending before the Commission that may result in rate increases during the 2009 collection period. Accordingly, the signatory parties recommend that the Commission allow this docket to remain open so that ODOD may file supplemental applications seeking approval of additional rate adjustments, as may be necessary, to reflect the impact of changes to the USF rider revenue requirements of the respective electric utility companies during the 2009 collection period resulting from Commission decisions in the pending Electric Security Plan and Market Rate Offer cases. (*Id.*)

2. Review of Electric Utility Company Audit Results

Further, under paragraph 16 of the December 2008 Stipulation, the signatory parties note that the July 2008 Stipulation, as adopted by the Commission in its NOI Order, contemplated that ODOD would file a supplement to its June 2008 NOI, which would include the reports by Schneider Downs of the results of its application of agreed-upon procedures designed to test the accuracy and timeliness of the PIPP-related accounting and reporting of CSP, Duke, and OP, and ODOD's conclusions regarding the Schneider Downs' findings. The signatory parties also note that Schneider Downs has issued its reports and the Working Group has conducted an exit interview of the Schneider Downs' personnel responsible for the reports, but ODOD has not yet filed the supplement to its NOI. Due to these circumstances, the signatory parties recommend that the NOI supplement remain on a separate procedural track from the current Application phase of this proceeding. The signatory parties state that they have agreed to submit a proposed procedural schedule to address any unresolved issues, once the NOI supplement has been filed in this proceeding. Last, in the event that it is ultimately determined that any identified PIPP-related accounting or reporting deficiencies resulted in

overpayments to the subject electric utility companies, the signatory parties recommend that proposed adjustments, to credit customers for such overpayments, be raised through a separate supplemental application filed by ODOD in this docket or in conjunction with a supplemental application filed in accordance with paragraph 15 of the December 2008 stipulation. (*Id.* at 9-10.)

3. Security Deposits

Finally, and in keeping with the cost-control objective described in paragraph 13 of the December 2008 Stipulation, the signatory electric utility companies 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 2008 Stipulation and the evidence presented, the Commission finds that the present stipulation and proposed customer notice are reasonable, and that the two-step declining block USF riders set forth in the December 2008 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, 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 December 2008 Stipulation and the USF riders established therein for CEI, CSP, DP&L, Duke, OE, OP, and TE.

ORDER:

It is, therefore,

ORDERED, That the December 2008 Stipulation and the proposed customer notice submitted by the parties are approved. It is, further,

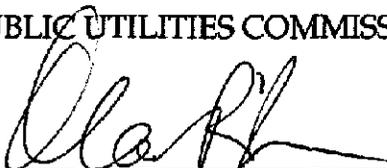
ORDERED, That CEI, CSP, DP&L, Duke, OE, OP, and TE are authorized to file in final form four complete copies of their tariffs consistent with this Opinion and Order, within seven days after the date of this order. Each electric utility company authorized above shall file one copy in its TRF docket (or 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 utility companies authorized above shall notify all customers affected by the tariff by the customers' first bill that will include the new USF rider rate. It is, further,

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

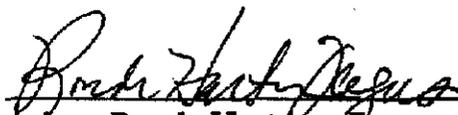
THE PUBLIC UTILITIES COMMISSION OF OHIO



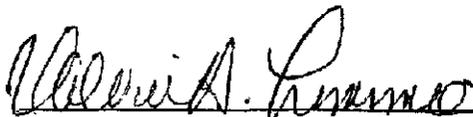
Alan R. Schriber, Chairman



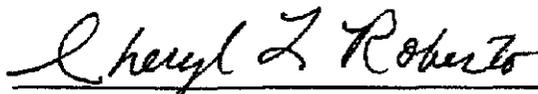
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

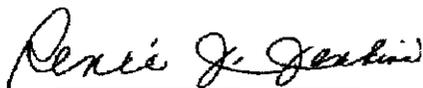


Cheryl L. Roberto

JKS:ct

Entered in the Journal

DEC 17 2008



Renee J. Jenkins
Secretary