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. 09-463-EL-UNC

OPINION AND ORDER

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

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.

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.

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.

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.

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

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

Elizabeth H. Watts, Assistant General Counsel, 155 East Broad Street, 21st floor, Columbus, Ohio 43215, on behalf of Duke Energy Ohio.

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), 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 for each of the electric utility companies were approved as a part of the company's electric transition plan case.[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 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. 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);

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 FirstEnergy Corp., Case No. 99-1212-EL-ETP (July 19, 2000); *Cincinnati Gas & Electric Co.*, Case No. 99-1658-EL-ETP (August 17, 2000); *Columbus Southern Power Co.*, Case No. 99-1729-EL-ETP (August 17, 2000); *Ohio Power Co.*, Case No. 99-1730-EL-ETP (August 17, 2000); *Dayton Power and Light Co.*, Case No. 99-1687-EL-ETP (August 17, 2000); and *Monongahela Power Co.*, Case No. 00-02-EL-ETP (August 17, 2000).

Case No. 02-2868-EL-UNC (January 23, 2003 Opinion and Order); Case No. 03-2049-EL-UNC (03-2049) (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); Case No. 07-661-EL-UNC (07-661) (December 19, 2007, Opinion and Order and May 28, 2008 Finding and Order).

The most recent USF rider adjustments were approved pursuant to the Opinion and Order issued on December 17, 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. 08-658-EL-UNC (08-658). In the 08-658 Order, the Commission granted the amended application of ODOD for adjustments to the USF riders of all the jurisdictional Ohio electric utility companies in accordance with Section 4928.52(B), Revised Code. Under the 08-658 Order, the new USF rider rates became effective on a bills-rendered basis with the electric utility companies' January 2009 billing cycles. As part of the Order, the Commission approved the Stipulation and Recommendation filed on December 8, 2008 (2008 Adjustment Stipulation) jointly submitted by ODOD, Commission Staff, CEI, CSP, DP&L, Duke , OE, OP, TE, Industrial Energy Users–Ohio, and Ohio Partners for Affordable Energy (OPAE).[5] On December 12, 2008, Ohio Consumers' Counsel (OCC) filed a letter stating that, while it did not agree with the two-block rate design, OCC would not contest the 2008 Adjustment Stipulation.

II. History of this Proceeding

On June 1, 2009, ODOD filed a Notice of Intent (NOI) 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 2008 Adjustment Stipulation approved in 08-658. First, ODOD's June 1, 2009 NOI (2009 NOI)[6] 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

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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 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 Although Duke did not actually sign the Stipulation, by letter docketed December 8, 2008, Duke stated that it agreed to the terms and conditions identified in the 2008 Adjustment Stipulation and requested that it be added to the stipulation as a signatory party.

6 Exhibit A to the 2009 NOI was filed on August 18, 2009.

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 October 13, 2009 (2009 NOI Stipulation). By its Finding and Order issued October 28, 2009 (2009 NOI Order), the Commission approved the 2009 NOI Stipulation, which addressed the proposed USF rider revenue requirement methodology and the USF rider rate design methodology for ODOD's 2010 USF rider adjustment application.

Next, on November 2, 2009, ODOD filed this 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 (Application). On November 24, 2009, ODOD filed an amended application in this case, updating its test-period calculations to incorporate additional actual data that had become available (Amended Application, ODOD Ex. 1). 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 PIPP program, 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 $51,098,563 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 CEI, CSP, DP&L, Duke, OE, OP and TE (ODOD Ex. 1 at 5). By entry issued November 16, 2009, a prehearing conference was scheduled for December 1, 2009 and the hearing was scheduled to commence on December 7, 2009. By agreement of the parties, the prehearing conference was not conducted; however, the evidentiary hearing was conducted as scheduled.

ODOD's Amended Application:

ODOD proposes in its Amended Application that, having consulted with the PBAB 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:

	Current USF Rider				Proposed USF Rider	
Company	First 833,333 kWh	Above 833,333 kWh	Adjusted Test -Period USF Rider Revenue	Required Annual USF Rider Revenue	First 833,333 kWh	Above 833,333 kWh
CEI	$0.0008495	$0.0005680	$14,178,125	$30,219,778	$0.0019513	$0.0005680
CSP	$0.0013130	$0.0001830	$21,686,407	$32,763,668	$0.0019994	$0.0001830
DP&L	$0.0014757	$0.0005700	$18,183,317	$22,570,174	$0.0018615	$0.0005700
Duke	$0.0010857	$0.0004690	$19,236,283	$26,991,896	$0.0015704	$0.0004690
OE	$0.0019474	$0.0010461	$41,157,121	$42,461,053	$0.0020252	$0.0010461
OP	$0.0010601	$0.0001681	$19,083,486	$27,505,595	$0.0015873	$0.0001681
TE	$0.0018964	$0.0005610	$13,323,864	$15,435,002	$0.0022427	$0.0005610
TOTALS			$146,848,603	$197,947,166		

ODOD states that the proposed USF riders, in the table above, reflect the minimum increases for the electric utility companies necessary to satisfy revenue responsibilities during 2010. (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 the 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 2009 through December 2009 (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 2009, and projected data, based on the actual October-December 2008 experience, for the remaining three months of the test period.[7] ODOD submits that the test-period cost of PIPP must be adjusted for the following reasons: (1) to annualize for the rate changes during 2009 pursuant to orders of this Commission; (2) to adjust for Commission-approved increases in the various elements of the

7 The initial "cost of PIPP" calculation for each electric utility company may be found at Ex. A of the Application.

tariffs of CSP, DP&L and OP to be effect January 1, 2010; and (3) to account for projected increases in PIPP enrollment activity for the year 2010. The test-period adjustments are provided in the Application at Exhibits A.1 and A.2. (ODOD Ex. 1 at 6 and Exs. A, A.1, A.1.a through A.1.f, and A.2; ODOD Ex. 3 at 6-11 and Exs. DAS-1 through DAS-7; ODOD Ex. 4 at 2-5 and Exs. DAS-Rev-1 through DAS-Rev-7.)

(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 Sections 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.[8] (2009 NOI Ex. A; ODOD Ex. 1 at 6-7 and Ex. B; ODOD Ex. 3 at 11-13; ODOD Ex. 4 at 5-6.)

(3) Administrative Costs. ODOD proposes an allowance for the administrative costs associated with the low-income customer assistance programs of $2,154,000 for this case. This amount has been determined in accordance with the methodology approved by the Commission in the NOI phase of this case (2009 NOI Order). The requested $2,154,000 allowance for administrative costs has been allocated to the electric utility companies based on the number of PIPP customer accounts as of March 2009, the test period month exhibiting the highest PIPP customer account totals.[9] (ODOD Ex. 1 at 7, and Ex. C; ODOD Ex. 2 at 2-15, and Exs. NS-1 and NS-2; ODOD Ex. 3, at 13; ODOD Ex. 4 at 6.)

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8 The initial low-income program cost allocations for each electric utility company may be found at Ex. B of ODOD's November 2, 2009 Application.

9 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 November 2, 2009 Application.

(4) December 31, 2009 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 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, 2010. 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, 2009 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 7-8 and Ex. D; ODOD Ex. 3 at 13-16 and Exs. DAS-8 through DAS-14; ODOD Ex. 4 at 6-7, 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.[10] 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 2009 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 8-9 and Ex. F; ODOD Ex. 3 at 16-19; ODOD Ex. 4 at 7.)

(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 2010 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 2010. 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 $284,293.[11] (ODOD Ex. 1 at 9-10 and Ex. G; ODOD Ex. 3 at 19-21 and Exs. DAS-15 through DAS-21; ODOD Ex. 4 at 7-8 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

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[10] A graph containing the PIPP-related cash flows for the test period may be found at Ex. E of the Application.

[11] The initial proposed interest allowance to be built into the USF rider for each electric utility company may be found at Ex. G of the Application.

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 2009 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 $2,537,843.[12] (ODOD Ex. 1 at 10 and Ex. H; ODOD Ex. 3 at 21-22 and Exs. DAS-22 through DAS-28; ODOD Ex. 4 at 8, 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 Group[13] (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 were staggered in connection with the USF proceedings in 07-661 and 08-658. The 2009 NOI Order also provided that each electric utility companies' PIPP-related accounting and reporting be audited in 2010. Therefore, ODOD included a proposed allowance for audit costs as a component of the USF revenue requirements for those electric utility companies. However, after the application was filed, in consultation with the Working Group, ODOD elected not to proceed with the audits of each of the electric utility companies, except for Duke. Accordingly, ODOD withdraws its request that an allowance for audit costs be included in the USF rider revenue requirement of CEI, CSP, DP&L, OE, OP, and TE. ODOD continues to request an allowance of $150,000 for the cost of the Duke audit with any difference between the allowance and the actual cost of the audit to be trued up via the December 31, 2010 USF account balance element in next year's rider rate adjustment application. (ODOD Ex. 1 at 10-11 and Ex. I; ODOD Ex. 3 at 22-23; ODOD Ex. 4 at 8-10.)

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12 The initial allowance for undercollection for each electric utility company may be found at Ex. H of the Application.

13 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.

(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.[14] 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 state budget for fiscal years 2010 and 2011 continues to authorize this transfer of interest from the USF.[15] Therefore, there will be no interest available as of December 31, 2009, 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 7, 2009 Hearing:

At the hearing held on December 7, 2009, 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 OCC and Staff, entered into a Stipulation and Recommendation (2009 Adjustment Stipulation) that resolved all outstanding issues in this case. Although a signatory party to the 2009 Adjustment Stipulation, OPAE does not join in the declining block rate design. The 2009 Adjustment Stipulation was admitted into the record as Joint

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

15 *See* Section 512.10 of Am. Sub. HB 1 of the 128th Ohio General Assembly.

Exhibit 1, which included a copy of the proposed customer notice of the adjusted USF riders as Appendix B to Joint Exhibit 1. Although Staff is not a signatory to the Stipulation, Staff does not oppose the Stipulation (Joint Ex. 1 at 1). By letter filed December 14, 2009, OCC states that it did not sign the stipulation because it does not agree with the second block in the rate design.

Stipulation and Recommendation:

The 2009 Adjustment Stipulation asserts that the methodology for determining the respective USF rider revenue requirements is consistent with the methodology approved by the Commission in the 2009 NOI Order except that, as explained in the supplemental testimony of ODOD witness Skaggs, ODOD has withdrawn its request for an allowance for the cost of audits for CEI, CSP, DP&L, OE, OP and TE (Joint Ex. 1 at 4).

The 2009 Adjustment 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 4.)

As shown on the supporting schedules attached to ODOD Ex. 1 and in the 2009 Adjustment Stipulation, the resulting riders, for each electric utility company, are as follows:

EDU	First 833,000 kWh	Above 833,000 kWh
CEI	$0.0019513 / kWh	$0.0005680 / kWh
CSP	0.0019994 / kWh	0.0001830 / kWh
DP&L	0.0018615 / kWh	0.0005700 / kWh
Duke	0.0015704 / kWh	0.0004690 / kWh
OE	0.0020252 / kWh	0.0010461 / kWh
OP	0.0015873 / kWh	0.0001681 / kWh
TE	0.0022427 / kWh	0.0005610 / kWh

(Joint Ex. 1 at 4.) [16]

All signatory parties to the 2009 Adjustment Stipulation, except OPAE, have stipulated that the two-step declining block USF riders reflect the minimum level necessary to produce the required revenues for 2010 (*Id.* at 4-5). Further, the signatory parties to the 2009 Adjustment Stipulation agree that, as set forth in ODOD Ex. 1 and supported by the testimony of ODOD witnesses Sunday and Skaggs, the annual USF rider revenue requirement for each electric utility company shall be as follows:

EDU	USF Revenue Requirement
CEI	$ 30,219,778
CSP	32,763,668
DP&L	22,570,174
Duke	26,991,896
OE	42,461,053
OP	27,505,595
TE	15,435,002

(Joint Ex. 1 at 3).

It is similarly agreed that the new rider rates be filed within seven days of the Commission's order adopting the 2009 Adjustment 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. The signatory parties also agree that each electric utility company shall notify customers of the adjustment to their respective USF riders by means of the customer notice attached to the 2009 Adjustment Stipulation as Appendix A. (*Id.* at 5-6.)

ODOD has also agreed to file, no later than October 31, 2010, 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

[16] 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.

associated revenue requirement, but not more than its associated revenue requirement, during the annual collection period following Commission approval of such adjustments. ODOD has agreed to serve copies of such application upon all other signatory parties. (*Id.* at 6.)

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, 07-661 and 08-658. Specifically, this process provides that on or before May 31, 2010, 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 2010 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 2009 Adjustment Stipulation requests that the Commission use its best efforts to issue its decision with respect to the issues raised no later than September 30, 2010. Last, the Notice of Intent process provides that ODOD will modify its 2010 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, 2010, filing deadline to permit ODOD to incorporate such directives, ODOD will file an amended application to do so. (*Id.* at 7-8.)

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 8.)

Finally, and in keeping with the cost-control objective described above, 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 8.)

Commission Review:

The Commission notes that unlike other proceedings before the Commission where we are charged with balancing the interest of the utilities and the public, in this matter the Commission's role is limited primarily to facilitating the process by which ODOD files for and the electric utilities implement their respective USF rider rate. In USF proceedings, in accordance with Section 4928.52(B), Revised Code, the Commission can not decrease the USF rider without the approval of the director of ODOD. Thus, in light of the Commission's limited role in these USF proceedings, our evaluation of the issues raised in this proceeding and the Commission Staff's participation in this case is restricted. Given that there are no issues to be litigated and most of the parties to this matter have filed a stipulation resolving all the issues raised in this case, the Commission will consider the stipulation filed.

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 2009 Adjustment Stipulation and the evidence presented, the Commission finds that the stipulation and proposed customer notice are reasonable, and that the two-step declining block USF rider rates set forth in the 2009 Adjustment 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, and all intervenors, except the Staff and OCC, have entered into the 2009 Adjustment Stipulation. Further, we find that the 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 stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission will approve the 2009 Adjustment Stipulation and the USF riders established therein for CEI, CSP, DP&L, Duke, OE, OP, and TE. While the Commission grants the allowance for a second audit for Duke, should the parties agree to one, the Commission notes that the implementation of Gas PIPP Plus is scheduled for November 1, 2010.[17] Given the tremendous effort associated with the implementation of the Gas PIPP Plus Program, the Commission wishes to make clear that it will not permit a delay of Duke's Gas PIPP Plus Program due to a second audit and the parties should be mindful of this in their deliberations of whether to move forward with a second audit.

Finally, to facilitate the retrieval of USF cases in the future, the Commission directs ODOD to file future USF cases in a new purpose code "USF" as opposed to "UNC."

ORDER:

It is, therefore,

ORDERED, That the 2009 Adjustment Stipulation and the proposed customer notice submitted by the signatory parties be 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,

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17 Gas PIPP Plus is the payment plan adopted by the Commission to become effective November 1, 2010.

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 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 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 ODOD file all subsequent USF rider NOI and adjustment applications under the USF purpose code. 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

GNS/vrm

Entered in the Journal
DEC 16 2009

Reneé J. Jenkins
Secretary