

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 finds:

- (1) On May 31, 2007, the Ohio Department of Development (ODOD) filed a notice of intent (2007 NOI) to file its annual application for adjustments to the Universal Service Fund (USF) rider rates of the state's jurisdictional electric utilities, *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). The 2007 NOI set forth the revenue requirements and rate design methodology that ODOD proposed to employ in preparing the upcoming USF rate adjustment application. The 2007 NOI also addressed retention of an accounting firm, Schneider Downs, to perform an application of agreed-upon procedures (AUP) to test the accuracy and timeliness of the electric utilities' accounting and reporting procedures and policies for the Percentage of Income Payment Plan (PIPP). In this proceeding, Schneider Downs was scheduled to evaluate the PIPP-related accounting and reporting practices of Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio), and Duke Energy Ohio, Inc. (Duke) as part of the 2008 USF proceedings. On August 20, 2007, all the parties to the proceeding, except the Office of the Ohio Consumers' Counsel (OCC), entered into a Stipulation and Recommendation (2007 NOI Stipulation), addressing all of the issues raised in the 2007 NOI. OCC subsequently filed a letter stating that, although it did not join in the 2007 NOI Stipulation, OCC would not oppose the Stipulation. By Order issued September 5, 2007, the Commission approved the 2007 NOI Stipulation for the NOI phase of the USF proceeding.

- (2) On June 2, 2008, in *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), ODOD filed its NOI initiating the two-phase USF process for 2008. As part of the 2008 NOI, ODOD explained that the audits of CSP, Duke, and OP were underway and the AUP reports were expected by the end of July 2008. To avoid delaying the NOI proceeding, ODOD requested that a separate procedural schedule be established to address the USF rider adjustments for the electric utilities under review, if necessary. On July 25, 2008, a majority of the parties to the 2008 USF proceeding entered into a Stipulation and Recommendation (2008 NOI Stipulation), addressing the issues raised in the 2008 NOI. While OCC did not sign the 2008 NOI Stipulation, in a letter filed with the Commission, OCC stated that it would not contest the Stipulation. By Order signed September 10, 2008, the Commission approved the 2008 NOI Stipulation.
- (3) On October 31, 2008, as amended November 26, 2008, ODOD filed its application to adjust the USF rider rates of all Ohio electric utilities in accordance with Section 4928.52, Revised Code (2008 Adjustment Application). On December 8, 2009, ODOD and the electric utilities filed a Stipulation and Recommendation resolving the issues raised in the 2008 Adjustment Application (2008 Adjustment Stipulation). In the 2008 Adjustment Stipulation, ODOD and the signatory parties thereto agreed, among other things, that in the event that the auditor found that any electric utility's monthly request for reimbursements over the audit period overstated the reimbursement to which the electric utility was lawfully entitled, ODOD would supplement its NOI by proposing a mechanism to recover the identified overpayments and to credit the electric utility's customers appropriately. By Order issued December 17, 2008, the Commission approved the 2008 Adjustment Stipulation.
- (4) On April 15, 2009, as amended May 4, 2009, ODOD filed its Supplement to the 2008 NOI which included the Schneider Downs AUP reports for AEP-Ohio and Duke (2008 NOI Supplement).

- (5) By entry issued April 29, 2009, a procedural schedule was established to address the issues raised in the 2008 NOI Supplement.
- (6) AEP-Ohio filed its response to the 2008 NOI Supplement on May 5, 2009, and supplemented its responses on June 11, 2009. ODOD filed reply comments to AEP-Ohio's response on June 26, 2009. On that same day, OCC also replied to AEP-Ohio's reply comments.
- (7) In response to AEP-Ohio, ODOD stated that, although AEP-Ohio's responses adequately addressed certain of the concerns identified in the 2008 NOI Supplement, certain issues remain with respect to the results of several of the procedures reported by Schneider Downs. Accordingly, ODOD requested that AEP-Ohio file additional information in response to those concerns. AEP-Ohio filed additional information on July 26, 2009.
- (8) On January 19, 2010, ODOD and AEP-Ohio filed with the Commission a joint motion for approval of a settlement agreement. In the motion, ODOD states that, after examining the exceptions reported by Schneider Downs, ODOD, in consultation with the interested members of the USF Working Group, concluded that based on their assessment of the responses and additional information provided by AEP-Ohio, none of the exceptions reported by Schneider Downs had a material impact on the cost of PIPP previously recovered from ratepayers and, therefore, no adjustment to the AEP-Ohio's USF rider rates to credit customers for past overpayments was required. Further, with respect to the PIPP-related practices identified in the 2008 NOI Supplement as problematic, ODOD indicated that it was satisfied that certain commitments made by AEP-Ohio would adequately address those concerns. ODOD proposed to the USF Working Group that it enter into a settlement agreement with AEP-Ohio to memorialize AEP-Ohio's commitments as well as ODOD's conclusion that a USF rider rate adjustment is not required as a result of the Schneider Downs AUP report. The settlement agreement was attached to the motion as Exhibit A.
- (9) In light of ODOD's conclusions, the AEP-Ohio and ODOD settlement agreement states that, in consideration of the terms

and mutual promises set forth herein, ODOD and AEP-Ohio agree to the following:

- (a) None of the exceptions reported by Schneider Downs as a result of its application of AUP to test the timeliness and accuracy of AEP-Ohio's PIPP-related accounting and reporting evidence a systemic problem that could have had a material impact on the cost of PIPP recovered through the CSP and OP USF riders during the 2006-2007 period covered by the Schneider Downs review. Thus, no adjustments to the CSP or OP USF riders are required to credit customers for overpayments during the review period.
- (b) As warranted by its June 26, 2009 response to ODOD's conclusion with respect to Procedure #4, AEP-Ohio shall complete the software changes necessary to exclude PAC 2 and inactive PIPP customers' arrearage information in completing the USF-301 reports so as to comply with the applicable arrearage reporting requirements no later than November 1, 2010.
- (c) As warranted by its May 5, 2009 and June 26, 2009 responses to ODOD's conclusion with respect to Procedure #5, AEP-Ohio shall report PIPP customer financial activity on a revenue month basis and shall complete the software changes necessary to comply with the applicable CIR and USF-301 reporting requirements no later than November 1, 2010.
- (d) As warranted by its June 26, 2009 response to ODOD's conclusion with respect to Procedure #16, AEP-Ohio shall, no later than January 2010, implement a policy of pursuing collection procedures with respect to final-billed PIPP customer balances and shall apply this policy retroactively for final-billed PIPP customer balances as of January 1, 2007 and forward.. AEP-Ohio shall remit PIPP amounts collected through

collection procedures to the USF, net of collection fees.

Further, the parties request a Commission order approving the settlement agreement and to close the NOI phase of 08-658 with regard to AEP-Ohio.

- (10) The Commission notes that, in this matter, the Commission's role is limited primarily to facilitating the process by which ODOT 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 cannot decrease the USF rider without the approval of the director of ODOT. Thus, in light of the Commission's limited role in 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 the parties to this matter have filed a settlement agreement resolving the concerns raised in the AUP report, the Commission will consider the filed settlement agreement.
- (11) 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, 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 numerous Commission proceedings. See, e.g., *Ohio-American Water Co.*, Case No. 99-1038-WW-AIR, Order (June 29, 2000); *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Order (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Order (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR, Order (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Order (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:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) 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.*)

- (12) 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.
- (13) After reviewing the January 19, 2010 settlement agreement, the Commission finds that the agreement addresses electric PIPP-related accounting and reporting pursuant to the Stipulations filed and the Orders issued in 07-661 and 08-658. We find that the process involved serious bargaining by knowledgeable, capable parties as counsel for AEP-Ohio and ODOD have voluntarily entered into this agreement. Further, we find that the settlement agreement is in the public interest, as it will revise certain of AEP-Ohio's PIPP-related accounting and reporting procedures without engaging in extensive costly litigation. Last, the settlement agreement does not violate any important regulatory principle or practice. Accordingly, the Commission will approve the January 19, 2010 settlement agreement.

It is, therefore,

ORDERED, That the January 19, 2010 settlement agreement filed by AEP-Ohio and ODOD be approved. It is, further,

ORDERED, That a copy of this Finding and Order be served upon ODOD, all electric utilities, and all other interested persons of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman


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Renee J. Jenkins
Secretary