

FILE

10

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. :

MOTION FOR PROCEDURAL SCHEDULE
OF
THE OHIO DEPARTMENT OF DEVELOPMENT

PUCO

2010 DEC 23 PM 3:12

RECEIVED-DOCKETING DIV

The Ohio Department of Development ("Development") hereby moves for an order establishing a procedural schedule for the purpose of adjudicating certain issues regarding the adequacy of the performance of Duke Energy Ohio, Inc. ("Duke") in connection with the electric percentage of income payment plan ("PIPP") program administered by Development pursuant to Section 4928.53, Revised Code. This motion is filed pursuant to the provisions of the joint stipulation and recommendation (the "NOI Stipulation") filed herein on July 25, 2008, and approved by this Commission in its finding and order in this docket of September 10, 2008.

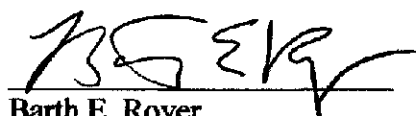
As more fully discussed in the memorandum accompanying this motion, the Supplement to the Notice of Intent ("Supplement") filed herein by Development on April 15, 2009 set forth Development's conclusions with respect to the timeliness and accuracy of Duke's PIPP-related accounting and reporting as measured by an application of agreed-upon procedures ("AUP") performed by the accounting firm Schneider Downs & Co., Inc. ("Schneider Downs"). Although Development determined that Duke's performance as measured by certain of the procedures was satisfactory, Development concluded that Duke's performance in other areas tested by the procedures indicated the existence of systemic problems that may have had a material impact on

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician Sim Date Processed DEC 23 2010

the cost of PIPP recovered from Duke customers through Duke's Universal Service Fund ("USF") rider. Development and Duke have engaged in extensive negotiations in an attempt to resolve these issues without the need for litigation, but have been unable to reach an agreement as to the appropriate remedies. Thus, in accordance with the process contemplated by Commission-approved NOI Stipulation, Development hereby requests that the Commission establish a procedural schedule for the adjudication of the issues identified in the Supplement that remain unresolved.

WHEREFORE, Development respectfully requests that its motion be granted.

Respectfully submitted,



Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 - Phone
(614) 228-0201 - Fax
BarthRoyer@aol.com - Email

Attorney for
The Ohio Department of Development

**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. :

**MEMORANDUM IN SUPPORT
OF
MOTION FOR PROCEDURAL SCHEDULE
OF
THE OHIO DEPARTMENT OF DEVELOPMENT**

I. BACKGROUND

On June 2, 2008, Development filed notice of its intent ("NOI") to file its annual application for adjustments to the USF rider rates of the state's jurisdictional electric distribution utilities. The NOI set forth the revenue requirements and rate design methodology Development proposed to employ in preparing its 2008 application. The NOI also addressed the status of the audits of the PIPP-related accounting and reporting of Columbus Southern Power Company and Ohio Power Company (collectively, "AEP Ohio") and Duke, which were being conducted pursuant to the stipulation adopted by the Commission in Development's 2007 USF rider rate adjustment proceeding, Case No. 07-661-EL-UNC.

As described in the NOI, Development, in accordance with recommendation of the USF Rider Working Group (the "Working Group"), issued a request for proposals ("RFP") to perform the audits in question. As a result of the RFP process, Development retained Schneider Downs to perform an AUP to test the accuracy and timeliness of the PIPP-related accounting and reporting of the AEP companies and Duke and to prepare reports of its findings ("AUP

reports”).¹ Although the audits were underway at the time the NOI was filed, Schneider Downs had not yet prepared the AUP reports. Consequently, Development indicated in its June 2, 2008 NOI that it would file a Supplement to the NOI containing Development’s proposals for addressing any issues identified by Schneider Downs once the AUP reports were completed.

By its September 10, 2008 finding and order, the Commission approved the USF rider revenue requirements and rate design methodology proposed in the NOI, as recommended in the unopposed NOI Stipulation submitted by a majority of the parties to the proceeding. The Commission-approved NOI Stipulation also provided for the filing of the Supplement as proposed in the NOI, and established the process to be followed to address concerns raised by the Schneider Downs’ AUP reports, including requests by Development for additional information and responses to concerns identified in the Supplement by the subject companies. The NOI Stipulation further provided that a separate procedural schedule be established for addressing issues raised by the Supplement and that, if the issues raised by supplement were not resolved before the issuance of the Commission’s order ruling on Development’s 2008 USF rider rate adjustment application, the docket would remain open to accommodate such further proceedings and rate adjustments as might be necessary to resolve those issues.

On April 15, 2009, Development filed the Supplement setting forth its conclusions with respect to the adequacy of performance of the AEP Ohio and Duke as measured by the results of the AUP set forth in the Schneider Downs’ AUP Reports. Development concluded that their performance during the 2006-2007 period covered by the Schneider Downs’ review was

¹ Although Development and the parties have generally characterized the analysis performed by Schneider Downs as an “audit,” it is understood that the AUP process is not, strictly speaking, an “audit,” as that term is used in accounting parlance. Rather, the AUP process is designed to test the adequacy of the EDU’s performance in specific identified areas through the use of sampling techniques. However, the terms are used interchangeably herein.

satisfactory as measured by the results of certain of the procedures, but that exceptions reported by Schneider Downs in connection with other of the procedures indicated the existence of systemic problems, some of which may have had a material impact on the cost of PIPP recovered from ratepayers through their respective USF riders.

Pursuant to the procedural schedule set forth in the attorney examiner's entry of April 29, 2009, a series of filings ensued, including Duke's response to the Supplement filed May 4, 2009, Development's reply to the Duke response filed June 26, 2009, and Duke's second response filed on July 24, 2009. AEP Ohio also filed responses to the Supplement and Development's June 26, 2009 reply in accordance with the procedural schedule.

On September 30, 2009, Development convened a meeting of interested members of the Working Group and AEP Ohio representatives to present its conclusions with respect to the AEP Ohio issues identified in the Supplement.² Development reported that, based on its assessment of the responses and additional information provided by AEP Ohio, it had concluded that none of the exceptions reported by Schneider Downs had a material impact on the cost of PIPP previously recovered from AEP Ohio ratepayers, and that, therefore, no adjustments to the AEP Ohio USF rider rates to credit customers for past overpayments was required. Further, with respect to the PIPP-related practices identified in the Supplement as problematic, Development indicated that it was satisfied that certain commitments made by AEP Ohio would adequately address those concerns. Accordingly, Development proposed that it enter into a settlement agreement with AEP Ohio to memorialize the AEP Ohio commitments as well as Development's conclusion that no USF rider rate adjustments were required as a result of the Schneider Downs' AUP report. Development further proposed that a motion be filed with the Commission seeking

² In addition to Development and AEP personnel, representatives of OCC, Ohio Partners for Affordable Energy, and Industrial Energy Users-Ohio attended the meeting.

approval of this settlement agreement. No participant in the meeting objected to these proposals. Development and AEP Ohio subsequently entered into such a settlement agreement, which was submitted to the Commission by a joint Development-AEP Ohio motion on January 19, 2010. The Commission approved the settlement agreement in its finding and order of February 24, 2010, and closed the NOI phase of this case as it related to AEP Ohio.

Immediately following the AEP Ohio meeting, Development convened a meeting with same interested members of the Working Group and Duke representatives to present its conclusions with respect to the Duke issues identified in the Supplement. Development advised the participants in the Duke meeting that, although Duke's filed responses satisfied some concerns identified in the Supplement, several open issues remained as a result of exceptions reported by Schneider Downs, and that certain of these exceptions appeared to evidence systemic problems that may have had a material impact on the cost of PIPP previously recovered from Duke electric ratepayers. The Duke representatives at the meeting indicated a willingness to supply additional information bearing on these issues and agreed to work with Development in an attempt to resolve the remaining open issues without need for litigation.

Although Development and Duke representatives met on numerous occasions subsequent to the September 30, 2009 Working Group meeting, no agreement has been reached with respect to a number of the issues raised by exceptions reported by Schneider Downs, including several issues where the exceptions clearly indicate that Duke's unsatisfactory performance has resulted in overpayments by Duke's customers. Moreover, although Duke has represented that it will make certain changes that may adequately address other concerns regarding Duke's PIPP-related practices, Duke has, to date, been unwilling to memorialize those commitments in a settlement agreement of the type entered into by Development and AEP Ohio. In view of these

circumstances, Development has filed the foregoing motion for a procedural schedule in accordance with the process contemplated by the Commission-approved NOI Stipulation for bringing issues identified in the Supplement before the Commission for adjudication.

II. PROPOSED PROCEDURAL SCHEDULE

Development proposes the following procedural schedule, which works off the date the Commission issues an entry approving a procedural schedule:

Day 1: Commission issues entry approving a procedural schedule; period for discovery commences.

Day 90: Period for serving discovery concludes.³

Day 104: Prefiled testimony of Development witnesses due.

Day 114: Prefiled testimony of Duke and intervenor witnesses due.

Day 115: Prehearing Conference.

Day 121: Hearing commences.

Briefing schedule to be determined by the presiding attorney examiner at the conclusion of the hearing.

These milestone dates are proposed with the understanding that the Commission may adjust the dates to accommodate factors such as weekends, holidays, and hearing room availability.

³ Development recognizes that the proposed discovery period is significantly longer than discovery periods typically approved in Commission proceedings. However, a 90-day discovery period is necessary to accommodate the possibility that a follow-up third-party Duke audit may be necessary to quantify the financial remedy Development will ultimately propose in this proceeding. The Commission contemplated that such an audit might be required in approving an allowance for the cost of an additional Duke audit in its opinion and order in the 2009 USF rider rate adjustment proceeding (see *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 dated December 16, 2009, at 9)).

III. ISSUES TO BE ADJUDICATED

Development has concluded that exceptions reported by Schneider Downs in the Duke AUP Report in connection with Procedures 8, 9, and 13 are evidence of systemic problems that had a material impact on the cost of PIPP recovered from Duke's electric ratepayers through the Duke's USF rider. As discussed in detail in the Supplement and Development's reply to Duke's response to the Supplement, these exceptions give rise to three issues:

1. Did Duke improperly request and receive reimbursement from the USF for electric service provided to PAC 2 customers, and, if so, what was the dollar impact on the USF of these improper reimbursement requests?
2. Did Duke fail to apply security deposits to customer's electric accounts upon enrollment of the customer in the electric PIPP program, or, alternatively, remit such deposits to the USF, and, if so, what was the dollar impact on the USF of this failure?
3. Did Duke's method for allocating payments by PIPP customers between their gas and electric accounts violate the Commission's rules governing the application of payments, and, if so, what was the dollar impact on the USF of this practice?

Based on Duke's filed responses to the Supplement and Development's reply, Development has concluded that none of the other Schneider Downs' exceptions identified in the Supplement would support a finding that Duke's unsatisfactory performance in the areas in question had a material impact on the cost of PIPP recovered from Duke ratepayers through the USF rider. However, to the extent these other exceptions evidence systemic problems that Duke has represented will be corrected, Development requires written confirmation from Duke that it has implemented the necessary changes or, to the extent it has not already made the changes, a definitive written commitment that the changes will be made, including the date by which they will be implemented. If Duke does not provide such confirmations and/or commitments, Development reserves the right to revisit these issues, and, if appropriate, to raise them before the Commission in the context of this proceeding.

IV. CONCLUSION

For the reasons set forth above, Development respectfully requests that its motion for an order establishing a procedural schedule be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. E. Royer', with a long horizontal flourish extending to the right.

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 - Phone
(614) 228-0201 - Fax
BarthRoyer@aol.com - Email

Attorney for
The Ohio Department of Development

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, this 23rd day of December 2010.


Barth E. Royer

Steven T. Nourse
Matthew J. Satterwhite
AEP Service Corporation
1 Riverside Plaza
Columbus, Ohio 43215

Randall V. Griffin
Judi L. Sobacki
The Dayton Power & Light Company
MacGregor Park
1065 Woodman Avenue
Dayton, Ohio 45432

Elizabeth H. Watts
Duke Energy Ohio, Inc.
155 East Broad Street
21st Floor
Columbus, Ohio 43215

Carrie Dunn
Kathy J. Kolich
FirstEnergy Corp.
76 South Main Street
Akron, Ohio 44308

Janine Migden-Ostrander
Ann Hotz
Richard C. Reese
Ohio Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215-3485

Samuel C. Randazzo
Gretchen J. Hummel
McNees, Wallace & Nurick
Fifth Third Center
Suite 910
21 East State Street
Columbus, Ohio 43215

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
PO Box 1793
231 West Lima Street
Findlay, Ohio 45839-1793