

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Implementation of)
Section 749.10 of Amended Substitute) Case No. 11-5384-AU-UNC
House Bill 153.)

FINDING AND ORDER

The Commission finds:

- (1) Section 749.10 of Amended Substitute House Bill 153 (Section 749.10) provides that the Commission shall, on or before December 31, 2011, determine appropriate methods under which to ensure that the reduction in public utility assessments paid under Section 4911.18, Revised Code, for the Ohio Consumers' Counsel (OCC) for fiscal year (FY) 2012 and FY year 2013 is distributed to the benefit of Ohio customers of the utilities.
- (2) By entry issued October 12, 2011, the Commission, in accordance with Section 749.10, directed OCC to determine and file in this docket, for each affected utility the amount of any decrease due to the decrease in OCC's assessment from FY 2011 to FY 2012. In addition, the Commission's Staff (Staff) was instructed to file a proposed distribution methodology for the decrease in the amount of OCC's assessment and interested persons were given a deadline for filing comments in response to Staff's proposal.
- (3) By entries issued October 27, and November 15, 2011, the filing deadlines in this matter were extended.
- (4) On November 4, 2011, OCC filed its response to the Commission's request for assessment data setting forth in Attachment A to its filing (Attachment A) a breakdown of the decrease in OCC's assessment attributable to each utility.
- (5) On November 4, 2011, OCC also filed an application for rehearing of the Commission's October 12, 2011, entry. In its application for rehearing, OCC submitted that, because some wireless service providers consider assessment information to be trade secret information under Section 1333.61(D), Revised Code, and the Commission has a duty to protect confidential

information pursuant to Rule 4901:1-6-37(A), Ohio Administrative Code (O.A.C.), the Commission should specifically address how the assessment information pertaining to wireless service providers should be provided.

- (6) By entry on rehearing issued November 29, 2011, the Commission granted OCC's application for rehearing, finding that the issue raised by OCC warranted further consideration.
- (7) Upon consideration on rehearing of OCC's concern about the filing of information regarding the wireless service providers, the Commission finds that, no later than December 22, 2011, OCC should:
 - (a) file a list in this docket containing the names of the wireless service providers that will pay a lesser amount in assessments for FY 2012 to OCC;
 - (b) submit to the Commission's Director of the Utilities Department, in the same fashion as set forth in Attachment A, the requisite information, including the breakdown of the decrease in OCC's assessment attributable to each wireless service provider; and
 - (c) issue notification to each wireless service provider regarding the amount of the decrease in the provider's OCC assessment.
- (8) In accordance with the directives in this case, on November 22, 2011, Staff filed its recommendation on the distribution methodology for the decrease in the amount of OCC's assessment. Staff notes that the total decrease in OCC's assessment is \$2,856,907, with the per company amounts ranging from a low of \$.08 to a high of \$463,692.12. Due to the wide range of assessment reductions, Staff believes that a one-time, company-issued customer credit would provide little, if any, impact on customer bills. According to Staff, taking into consideration the amount owed per company, in relation to the number of customers, the costs associated with issuing the credit may outweigh the one-time credit. Therefore, Staff recommends that, since the majority of Ohioans pay electric costs, the reduction should be credited in full to the electric percentage of income payment plan (PIPP) rider that is

operated through the Ohio Department of Development (ODOD). In support of its proposal, Staff states that the credit to the electric PIPP program will provide a benefit to Ohio customers by paying down the PIPP rider, and, in turn, associated costs for non-PIPP qualifying households. Staff recommends that, within 60 days of this order, the companies submit the amount set forth in Attachment A, and file a compliance letter in this docket stating that the requirement has been met. Once ODOD receives the monies and the compliance letters are filed, Staff recommends the Commission issue an order in this docket and the appropriate universal service fund (USF) docket authorizing ODOD to credit each electric company's PIPP rider the equivalent percentage of the overall PIPP obligation for that company, and directing the electric companies to reduce their PIPP riders accordingly.

- (9) On December 1, 2011, ODOD, the Ohio Telecom Association (OTA), the AT&T entities¹ (AT&T), Columbia Gas of Ohio, Inc. and the East Ohio Gas Company d/b/a Dominion East Ohio (Columbia/DEO), and Duke Energy Ohio, Inc. (Duke) filed comments in response to Staff's November 22, 2011, recommendation.
- (10) AT&T supports Staff's proposal. Likewise, OTA states that Staff's proposal is commendable and endeavors to provide a straightforward approach to the application of the credit to benefit Ohio customers. OTA mentions that customers could also reap the benefits of investment of these funds through improved and expanded broadband, computing centers, or other advanced services. If Staff's proposed methodology is implemented, OTA requests that, when the PIPP rider credit is applied to the electric bills, the source of the refund be recognized as coming from all Ohio utilities.
- (11) The Commission finds that OTA's request for notification is reasonable. Therefore, the Commission directs the electric companies to work with the Director of the Commission's Service Monitoring Department to develop a customer notice that denotes that the customers will receive a credit to their

¹ The AT&T entities are The Ohio Bell Telephone Company d/b/a AT&T Ohio, AT&T Communications of Ohio, Inc., TCG Ohio, SBC Long Distance d/b/a AT&T Long Distance, SNET America, Inc. d/b/a AT&T Long Distance East, BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service, and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility.

PIPP rider rates and that all Ohio utilities, including natural gas, gas pipeline, telecommunications, waterworks, sewage disposal, wireless, heating, cooling, and electric companies, contributed to the credit amount, as a result of the Commission's order.

- (12) Columbia/DEO object to Staff's proposal arguing that it provides an inequitable and anti-competitive benefit to electric companies and their customers, at the expense of the natural gas distribution companies and their customers. Columbia/DEO agree that issuing credits to individual customers will provide little impact to customer bills and not be administratively efficient, and they do not object to crediting the full amount to reduce PIPP arrearages. However, they object to crediting the full amount solely to the electric PIPP programs, because crediting gas companies' OCC assessments to the electric PIPP riders creates a subsidy flowing to the electric companies from the gas companies, and the Commission should avoid such cross-subsidization. Columbia/DEO also argue that Staff's proposal is anti-competitive in that gas companies often compete with the electric companies for various types of customers. Taking the gas companies' OCC assessments and using them to reduce electric PIPP arrearages will reduce the electric companies' PIPP rates; however, the gas companies' PIPP rates will be higher than they would have been absent the credit for the OCC assessment. Columbia/DEO argue that this disparity in PIPP rates will work to the competitive disadvantage of the gas companies. Therefore, Columbia/DEO advocate that the better approach is to have each utility apply its additional OCC assessment to its own PIPP arrearages; if a utility does not have a PIPP program, then the electric PIPP fund could be the default option. According to Columbia/DEO, this approach better matches the return to customers for the additional OCC assessment with cost causation and eliminates the anti-competitive subsidy that would be created with Staff's methodology. Finally, Columbia/DEO note that some utilities may have collection of part of the OCC assessment embedded in base rates; therefore, they suggest that OCC should be required to annually report the amount of additional OCC assessment for each utility, in order to ensure that there is not an ongoing over collection of the OCC assessment.

- (13) Upon consideration of the concerns raised by Columbia/DEO, the Commission initially points out that the overall amount of the decrease equates to \$2,856,907 for FY 2012. As proposed by Staff, this amount would be credited to the electric companies' PIPP riders and each customer of a regulated electric company in the state of Ohio would see a decrease in their electric PIPP rider. Contrary to the position espoused by Columbia/DEO, when the decrease in the amount is spread over the entire customer base throughout the state, the reduction will in no way provide the electric companies' with an advantage over the gas companies. As for the proposal that the Commission review the amount of additional OCC assessment for each utility to ensure there is not over collection, the Commission assures the companies that it will be tracking this issue to ensure that over collection does not occur.
- (14) The Commission notes that, in their comments, Columbia/DEO assert that the amount recorded in Attachment A, is less than the amount invoiced to DEO for FY 2012. Accordingly, the Commission finds that OCC should review the information contained in Attachment A and file any necessary corrections to the attachment no later than December 22, 2011, in this docket.
- (15) Duke submits that Staff's proposed methodology will require Duke to return monies to customers that it has not collected. Duke believes that, when calculating the amount of change in OCC's assessment, only those revenues arising from services regulated by the Commission should be considered. Duke requests that the Commission explicitly state, in its order, that it will not seek to use the company's acquiescence and/or cooperation with this program as precedent in any future proceeding. Duke submits that requiring regulated entities to return monies to customers that the entities have not received from customers, constitutes a taking of shareholder dollars, and treats regulated utilities unfairly compared with competitive suppliers, because the latter are not similarly being disadvantaged. However, Duke agrees that providing a credit to individual customers could be more costly than the credit itself. Therefore, Duke recommends that the best use of such funds would be for purposes of job creation and economic development. Duke recommends that each utility's proportionate share should be paid to ODOD to be used for

JobOhio-related projects. Having said this, Duke states that it will cooperate with the Commission in responding to the directive of the General Assembly, despite its hesitation in complying with an order it deems potentially *ultra vires*.

- (16) Contrary to Duke's assertions, the Commission finds that the methodology proposed by Staff complies with the statutory directives and appropriately distributes the funds to Ohio customers. In response to Duke's concern about the scope of our decision in this case, the Commission emphasizes that the sole purpose of our determinations herein is to fulfill the objectives established by the General Assembly set forth in Section 749.10. We appreciate the cooperation of the utilities in assisting us in carrying out this statutory directive and the Commission has no intent to use their acquiescence as precedent in any future proceeding.
- (17) ODOD states in its comments that it endorses Staff's proposed method to distribute the decrease in the OCC assessment. However, ODOD requests that the Commission clarify the mechanics of the process and the methodology to be employed. Upon consideration of ODOD's suggestions to clarify the directives in this case, the Commission finds that they are well-made and should be incorporated into the process and methodology adopted herein. The suggestions made by ODOD are set forth below in finding (18) and are incorporated into our decision in this case.
- (18) Accordingly, upon deliberation of Staff's proposal and the comments filed in response to the proposal, the Commission concludes that Staff's proposal should be adopted, subject to certain modifications, as follows:
 - (a) No later than February 22, 2012, each utility listed in Attachment A shall submit the requisite amount, payable to the Treasurer of the state of Ohio, to ODOD's Deputy Chief of the Office of Community Assistance, P.O. Box 1001, 77 South High Street, 25th Floor, Columbus, Ohio 43216-1001.
 - (b) Upon a utility's compliance with finding (18)(a) above, but no later than February 22, 2012, the

utility shall file a letter in this docket notifying the Commission that the requisite amount has been submitted to ODOD.

- (c) Staff shall coordinate with ODOD to ensure that ODOD has received monies from all utilities. Once all the monies have been received by ODOD and all compliance letters have been filed, Staff shall notify ODOD.
- (d) Upon notification by Staff that all compliance letters have been received, ODOD shall file a supplemental application with the Commission in its most recent annual Section 4928.52(B), Revised Code, USF rider rate adjustment case (ODOD Comments at 3).
- (e) In its supplemental application, ODOD shall quantify the impact of the funds received from the affected utilities on the USF rider revenue requirements previously approved by the Commission through an adjustment to the revenue requirements analysis used to determine the current USF rider rates of each electric company. The USF rider revenue requirement analysis submitted in support of the supplemental application shall also reflect the corresponding changes to the Electric Partnership Program and an allowance for under collection that will be affected by a change in the cost of the PIPP program. (ODOD Comments at 3-4.)
- (f) Using the Commission-approved USF rider rate design methodology, ODOD shall calculate the new USF rider rates for each electric company based on the adjusted revenue requirements (ODOD Comments at 4).²

² In its comments, ODOD states that, in accordance with Section 4928.52(B), Revised Code, it will consent to a reduction in the rider rate and request, in its supplemental application, that the Commission direct the electric companies to amend their current USF riders (ODOD Comments at 4).

- (g) Payments shall be allocated to the electric companies based on the ratio of the cost of PIPP of the individual electric company to the total cost of PIPP of all electric companies (ODOD Comments at 5).
 - (h) The USF rider rates shall be made effective, on a bills-rendered basis, for billing cycles commencing in the month following the Commission's order approving the supplemental application. The rates should be designed to flow the benefit of the payments through to customers over the remainder of 2012. (ODOD Comments at 5.)
- (19) Section 749.10 also requires that the Commission implement a distribution methodology for any decrease due to the decrease in OCC's assessment for FY 2013. To that end, the Commission finds that the methodology and process adopted in this order for FY 2012 should also be employed for determining the decrease for FY 2013. In order to effectuate this process for FY 2013, the Commission finds that the following deadlines should be observed:
- (a) No later than October 1, 2012, OCC should:
 - (i) determine and file in this docket, for each affected utility, with the exception of the wireless service providers, the amount of any decrease due to the decrease in OCC's assessment for FY 2013, in conformance with the methodology adopted in this docket;
 - (ii) file a list in this docket containing the names of the wireless service providers that will pay a lesser amount in assessments for FY 2013 to OCC;
 - (iii) submit to the Commission's Director of the Utilities Department the decrease in OCC's assessment

attributable to each wireless service provider; and

- (iv) issue notification to each wireless service provider regarding the amount of the decrease in the provider's OCC assessment.
- (b) No later than November 1, 2012, each utility listed in the attachment to OCC's October 1, 2012, filing shall:
 - (i) submit the requisite amount, payable to the Treasurer of the state of Ohio, to ODOD's Deputy Chief of the Office of Community Assistance, P.O. Box 1001, 77 South High Street, 25th Floor, Columbus, Ohio 43216-1001; and
 - (ii) file a letter in this docket notifying the Commission that the requisite amount has been submitted to ODOD.
- (c) Staff shall coordinate with ODOD to ensure that ODOD has received monies from all utilities. Once all the monies have been received by ODOD and all compliance letters have been filed, Staff shall notify ODOD.
- (d) Upon notification by Staff that all compliance letters have been received, ODOD shall file an application or supplemental application with the Commission in its most recent annual Section 4928.52(B), Revised Code, USF rider rate adjustment case.
- (e) In its application or supplemental application ODOD shall utilize the methodology set forth in finding (18)(e) through (g), above.
- (f) The USF rider rates shall be made effective, on a bills-rendered basis, for billing cycles commencing in the month following the Commission's order approving the supplemental

application. The rates should be designed to flow the benefit of the payments through to customers over the remainder of 2013.

- (20) On December 9, 2011, OTA filed a motion for protective order requesting that the information regarding each wireless service provider's share of the reduction in OCC's assessment be treated as confidential, trade secret information in accordance with Rule 4901-1-24(D), O.A.C., and Sections 149.43 and 1333.61(D), Revised Code. Moreover, OTA asserts that the information that forms the basis for the calculation of OCC's assessment is provided via the annual reports required pursuant to Section 4905.14, Revised Code, which requires the Commission to protect confidential information in the wireless service providers' reports. OTA clarifies that its request does not extend to the aggregate of all wireless service providers' information, because it would not reveal individual provider's data.
- (21) Rule 4901-1-24(D), O.A.C., provides that any party may file a motion for protective order regarding any document filed at the Commission. As set forth above in findings (7)(b) and (19)(a)(iii), OCC will submit each wireless service provider's information to Staff and the information will not be filed with the Commission. Therefore, the Commission finds it unnecessary to rule on OTA's motion for protective order. However, as noted by OTA, the information is derived from the annual report information, and Section 4905.14, Revised Code, requires that the Commission maintain such information as confidential. Therefore, consistent with that statutory requirement, the Commission and its Staff will treat the information, which pertains to each wireless service provider's share of OCC's assessment and is provided by OCC to Staff in accordance with this order, as confidential.

It is, therefore,

ORDERED, That, in accordance with finding (7), by December 22, 2011, OCC file the list of wireless service providers in this docket, submit to the Commission's Director of the Utilities Department the requisite information, and issue notification to the wireless service providers. It is, further,

ORDERED, That, in accordance with finding (11), the electric companies shall work with the Director of the Commission's Service Monitoring Department to develop a customer notice. It is, further,

ORDERED, That, in accordance with finding (14), OCC file any necessary corrections to Attachment A no later than December 22, 2011. It is, further,

ORDERED, That the methodology and process proposed by Staff, as modified in finding (18), be adopted for FY 2012. It is, further,

ORDERED, That, in accordance with finding (18)(a) and (b), no later than February 22, 2012, each utility listed in Attachment A submit the requisite amount to ODOD and file a compliance letter in this docket. It is, further,

ORDERED, That, in accordance with finding (19), the methodology and process proposed by Staff, as modified in herein, be adopted for FY 2013. It is, further,

ORDERED, That, in accordance with finding (19)(a), no later than October 1, 2012, OCC file the amount of any decrease due to the decrease in OCC's assessment for FY 2013 in conformance with the methodology adopted in this docket, file the list of wireless service providers, submit to the Commission's Director of the Utilities Department the requisite information, and issue notification to each wireless service provider. It is, further,

ORDERED, That, in accordance with finding (19)(b), no later than November 1, 2012, each utility listed in the attachment to OCC's filing for FY 2013 shall submit the requisite amount to ODOD and file a compliance letter in this docket. It is, further,

ORDERED, That, in accordance with finding (21), the information, which pertains to each wireless service provider's share of OCC's assessment and is provided by OCC to Staff, be treated as confidential. It is, further,

ORDERED, That nothing in this finding and order shall be deemed precedential or binding upon this Commission or any utility in any other proceeding. It is, further,

ORDERED, That a copy of this finding and order be served upon ODOD, OCC, OTA, each utility listed in Attachment A, and all other interested persons of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella

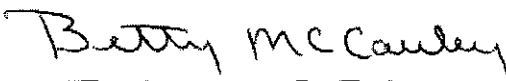

Steven D. Lesser


Andre T. Porter


Cheryl L. Roberto

CMTP/vrm

Entered in the Journal
DEC 14 2011


Betty McCauley
Secretary