

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. 12-1719-EL-USF  
Service Fund Riders of Jurisdictional Ohio )  
Electric Distribution Utilities. )

OPINION AND ORDER

The Commission, considering the Ohio Department of Development's Notice of Intent to file its annual application for adjustment to the Universal Service Fund Riders, the pleadings, and the applicable law, finds:

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.

Mike DeWine, Attorney General of the State of Ohio, by Steven L. Beeler and Thomas McNamee, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the Staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Ohio Consumers' Counsel, by Joseph P. Serio, 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.

McNees, Wallace & Nurick, LLC, by Frank P. Darr, Gretchen J. Hummel and Joseph E. Olikier, Fifth Third Center, 21 East State Street, Suite 1700, Columbus, Ohio 43215-4228, on behalf of the Industrial Energy Users-Ohio.

Colleen L. Mooney, Counsel, 231 West Lima Street, Findlay, Ohio 45839-1793, on behalf of Ohio Partners for Affordable Energy.

Mathew J. Satterwhite, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215-2373, on behalf of Ohio Power Company.

Carrie Dunn, Attorney, FirstEnergy Corp., 76 South Main Street, Akron, Ohio 44308, on behalf of Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company.

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

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

## I. UNIVERSAL SERVICE FUND BACKGROUND

The 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. The USF is funded primarily by the establishment of a universal service rider on the retail electric distribution service rates of Cleveland Electric Illuminating Company (CEI), Dayton Power & Light Company (DP&L), Duke Energy Ohio, Inc. (Duke), Ohio Edison Company (OE), Ohio Power Company (OP),<sup>1</sup> and Toledo Edison Company (TE) (all of which may be referred to, individually or collectively, as electric utilities). The USF rider rate for each electric utility was initially determined by ODOD and approved by the Commission. The USF riders proposed by ODOD were approved for CEI, OE, and TE, the operating companies of FirstEnergy Corporation, on July 19, 2000, in their electric transition plan proceeding.<sup>2</sup> The USF rider rates for the remaining electric utilities were approved on August 17, 2000, in their respective electric transition plan dockets.<sup>3</sup>

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<sup>1</sup> By Opinion and Order issued on December 14, 2011, in Case No. 10-2376-EL-UNC, et al., *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, (AEP-Ohio ESP 2 Consolidated Cases), the Commission approved a Stipulation which, among other things, included the merger of Columbus Southern Power Company with and into OP, with OP as the surviving entity. In light of the Commission's subsequent rejection of the Stipulation and the application previously modified and approved in AEP-Ohio's ESP 2 Consolidated Cases, by entry issued on March 7, 2012, the Commission again approved and confirmed the merger of CSP into OP, effective December 31, 2011, in Case No. 10-2376-EL-UNC.

<sup>2</sup> *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-EL-ETP, Opinion and Order (July 19, 2000).

<sup>3</sup> *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 & Light Co.*, Case No. 99-1687-EL-ETP; and *Monongahela Power Co.*, Case No. 00-02-EL-ETP.

Section 4928.52(B), Revised Code, provides that, if ODOD, after consultation with the Public Benefits Advisory Board, 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 programs and to provide adequate funding for those programs, ODOD shall file a petition with the Commission for an increase in the USF rider rates. Section 4928.52(B), Revised Code, also provides that the Commission, after reasonable notice and opportunity for hearing, may adjust the USF riders by the minimum amount required to provide the necessary additional revenues. To that end, the Commission has approved USF rider rate adjustments each year for each of the Ohio jurisdictional electric utilities.<sup>4</sup>

In accordance with the Stipulation filed on December 7, 2011, (2011 Adjustment Stipulation) and approved by the Commission 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. 11-3223-EL-USF, Opinion and Order (December 14, 2011) (11-3223 Adjustment Order), ODOD must file a Notice of Intent (NOI), in advance of filing a USF rider adjustment application. The function of the NOI is to provide parties with an opportunity to raise and pursue objections to the specific methodology ODOD intends to use in developing the USF rider revenue requirement and the USF rider rate design, both of which will be utilized in preparing its application for USF rider adjustments.

## II. HISTORY OF THIS PROCEEDING

On May 31, 2012, ODOD filed its NOI (2012 NOI) to file an application to adjust the USF riders of all jurisdictional Ohio electric utilities: CEL, DP&L, Duke, OE, OP, and TE, in accordance with the terms of the 2011 Adjustment Stipulation approved by the Commission pursuant to the 11-3223 Adjustment Order. The 2012 NOI included

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<sup>4</sup> Case No. 01-2411-EL-UNC, Opinion and Order (December 20, 2001); Case No. 02-2868-EL-UNC, Opinion and Order (January 23, 2003); Case No. 03-2049-EL-UNC, Opinion and Order (December 3, 2003); Case No. 04-1616-EL-UNC, Opinion and Order (December 8, 2004); Case No. 05-717-EL-UNC, Opinion and Order (December 14, 2005), and Finding and Order (June 6, 2006); Case No. 06-751-EL-UNC, Opinion and Order (December 20, 2006), and Finding and Order (January 10, 2007); Case No. 07-661-EL-UNC, Opinion and Order (December 19, 2007) and Finding and Order (May 28, 2008); Case No. 08-658-EL-UNC, Opinion and Order (December 17, 2008); Case No. 09-463-EL-UNC, Opinion and Order (December 16, 2009); Case No. 10-725-EL-USF, Opinion and Order (December 15, 2010); Case No. 11-3223-EL-USF, Opinion and Order (December 14, 2011).

ODOD's Exhibit A in support of its proposed allowance for the 2013 costs associated with the Electric Partnership Program (EPP).<sup>5</sup>

To summarize, ODOD's 2012 NOI indicates that its subsequent adjustment application will request that each of the USF riders be revised to more accurately reflect the current costs of operating the Percentage of Income Payment Plan Plus (PIPP) program, EPP including consumer education programs, and associated administrative costs and to reflect known and measurable changes that take effect during the test period and the post-test period. ODOD also proposes an adjustment to capture the impact of the anticipated increase in PIPP enrollment, a reserve component to address PIPP-related cash flow fluctuations as a result of the weather-sensitive nature of electric service.

Next, ODOD, consistent with the Commission approved ODOD-OCC settlement agreement filed on August 26, 2005, in Case No. 05-717-EL-UNC, proposes an EPP allowance of \$14,946,196 based on its projection of payments to service providers and associated administrative costs during the 2013 collection period (See Exhibit A to the NOI application). As in prior USF rider adjustment proceedings, ODOD will allocate this *component of the revenue requirement among the electric utilities based on each electric utility's ratio of the cost of PIPP to the total cost of PIPP.*

ODOD, consistent with the ODOD-OCC settlement agreement, as approved in each USF NOI proceeding since Case No. 05-717-EL-UNC, proposes an allowance for administrative costs based on the administrative costs incurred during the test period, subject to adjustments for reasonably anticipated post-test period costs, to assure, to the extent possible that the administrative cost incurred are collected during the collection year. The requested allowance for administrative costs will be allocated among the electric utilities based on the relative number of PIPP customer accounts as of the month of the test period exhibiting the highest PIPP customer account totals.

As in the past, ODOD proposes to include in the USF revenue requirement an allowance for under-collection, as a result of the difference between the amounts billed through the rider and the amount collected from customers. The allowance will be based on each electric utility's actual collection experience.

Last, ODOD indicates that it plans to employ the same USF rider revenue requirement and rate design methodology approved by the Commission in prior USF proceedings, which incorporates a two-step declining block rate design. More specifically, as proposed, the first block of the rate will apply to all monthly consumption up to and including 833,000 kilowatt hours (kWh). The second block rate will apply to all

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<sup>5</sup> EPP includes the programs previously referred to as the low-income customer energy efficiency program and consumer education programs.

consumption above 833,000 kWh per month. For each electric utility, the rate per kWh for the second block will be set at the lower of the PIPP rate in effect in October 1999 or the per kWh rate that would apply if the electric utility's annual USF rider revenue requirement were to be recovered through a single block per kWh rate. The rate for the first block rate will be set at the level necessary to produce the remainder of the electric utility's annual USF rider revenue requirement. Thus, in those instances where the electric utility's October 1999 PIPP charge exceeds the per kWh rate that would apply if the electric utility's annual USF rider revenue requirement were to be recovered through a single block per kWh rate, the rate for both consumption blocks will be the same.

The Commission notes that the function of the NOI is to provide parties with an opportunity to raise and pursue objections to the specific methodology ODOD intends to use in developing the USF rider revenue requirement and the USF rider rate design, to be utilized in preparing the USF rider adjustments. Accordingly, the Commission will issue two orders in this proceeding: one regarding the 2012 NOI including the methodology proposed by ODOD for developing the USF rider revenue requirement, the USF rate design, and the issues raised by the parties concerning these items; and one regarding ODOD's subsequent application proposing USF rider adjustments, as necessary, for each of the six electric utilities.

By entry issued on July 5, 2012, the procedural schedule was established for this phase of the case, which included an evidentiary hearing to be held on September 5, 2012. The July 5, 2012, entry also joined the electric utilities as indispensable parties to this proceeding.

Motions to intervene in the proceeding were filed by and intervention was granted by entry issued on August 23, 2012, to Ohio Partners for Affordable Energy (OPAE), Industrial Energy Users–Ohio (IEU), and the Office of Ohio Consumers' Counsel (OCC).

Pursuant to the procedural schedule, objections or comments on the 2012 NOI application were due by July 27, 2012, and responses to objections or comments were due by August 3, 2012. Objections to the NOI application were filed by OPAE on July 27, 2012, and reply comments were filed by IEU on August 2, 2012. No party filed a request for a prehearing conference.

In its objections to ODOD's 2012 NOI, OPAE argues, as OCC and OPAE have in years past, that the two-step declining block USF rate design causes a shift of USF costs from the largest industrial customers to all other customers in violation of Section 4928.52(C), Revised Code. Section 4928.52(C), Revised Code, states, in relevant part:

The universal service rider ... shall be set in such a manner so as not to shift among the customer classes of electric distribution utilities the costs of funding low-income customer assistance programs.

OPAE reasons that when Section 4928.52(C), Revised Code, was adopted as a part of Amended Substitute Senate Bill 3 (SB3), the ODOD did not use the proposed two-step declining block rate design. OPAE contends that ODOD should establish a single USF rider rate per kWh for all customers so as not to shift any PIPP-related cost between customers or customer classes. OPAE reasons that continuing to use the 1999 PIPP rate as the second block rate, after more than 10 years, bears no relation to the current cost of the program, overlooks the restructuring of the electric utilities, and that certain electric utilities have merged. OPAE believes that the USF should be established using a single rate for each kWh consumed and, therefore, requests that the Commission eliminate the two-block rate design of the USF rider.

Further, OPAE comments that ODOD should actively pursue its authority to aggregate and bid out the supply to serve PIPP customers, as permitted pursuant to Section 4928.54, Revised Code, among other options to control and reduce PIPP costs.

In its response to OPAE's objections to the NOI, IEU argues that the impact of using the two-step declining block rider, as opposed to a single per-kWh rate as OPAE proposes, is *de minimis*. Further, IEU states that the difference in the revenue distribution when using a two-step, declining block USF rate as compared to a uniform per kWh USF rate is well within the range of an estimation error inherent in any inter-customer class cost of service analysis. The statute, as interpreted by IEU, extends only to the cost of funding low income customer assistance programs, which is only a portion of the USF revenue requirement. Given the *de minimis* difference between the two rate design methods, IEU asserts that the difference in the revenue requirement could be absorbed into one of the other USF cost categories without raising a meaningful issue under the requirements of Section 4928.52(C), Revised Code. IEU argues that Section 4928.52(C), Revised Code, must be interpreted as prohibiting a change in cost recovery that has a material adverse effect on a particular customer class. IEU notes that over the years since the two-step declining rate block has been in place, the second block has not come into play and, therefore, all customers have paid the same USF rider rate. Further, IEU reasons that where the second block rate has come into play, the effect on the typical residential customer was minuscule, requiring the rate to be taken to seven digits to demonstrate the difference. Furthermore, IEU contends that under the two-block rate design, large use customers pay thousands of dollars to support the USF and incorporating the two-block rate design results in pennies per month for individual residential customers who can benefit from ODOD's programs. IEU contends the two-block rate design is fair, equitable, and provides revenue stability.

IEU further notes that the two-step declining block rate design, proposed in this proceeding, has been endorsed by the majority of the parties to the USF proceedings, including Staff, and adopted by the Commission for the past 11 years.<sup>6</sup>

IEU endorses OPAAE's proposal that ODOD pursue opportunities to bid out the supply to serve PIPP customers to reduce the USF rider rates.

### III. JOINT STIPULATION AND RECOMMENDATION

On September 4, 2012, ODOD filed a Joint Stipulation and Recommendation (Joint Ex. 1 or 2012 NOI Stipulation) that proposes to address all of the issues related to its 2012 NOI. The signatory parties to the 2012 NOI Stipulation are: ODOD, IEU, CEI, OE, TE, OP, DP&L, and OPAAE.<sup>7</sup> The remaining parties to the proceeding, Duke, OCC and Staff did not sign the 2012 NOI Stipulation. However, Duke and Staff state that they do not oppose the Stipulation and OCC submits that they neither oppose nor support the Stipulation (Tr. at 7-8).<sup>8</sup>

The signatory parties assert that the 2012 NOI Stipulation represents a just and reasonable resolution of all issues presented in the 2012 NOI, does not violate any regulatory principle, and is the product of serious bargaining among knowledgeable and capable parties in a cooperative process undertaken by the parties to settle the issues involved. Lastly, the signatory parties offer that, although the 2012 NOI Stipulation is not binding on the Commission, it is entitled to careful consideration because it is sponsored by parties representing a wide range of interests and is not opposed by any party.

The Stipulation also specifically provides that, the signatory parties waive any right to a hearing and request that the Commission issue an order adopting the Stipulation.

#### A. 2012 NOI Stipulation – USF Rider Revenue Requirement Methodology

The 2012 NOI Stipulation provides that the USF rider revenue requirement, to be recovered by the USF rider rates of the Ohio electric utilities during the 2013 collection period, should include the following elements, each of which will be determined in the

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<sup>6</sup> *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. 01-2411-EL-UNC, Joint Exhibit 1 at 5 (December 10, 2001).

<sup>7</sup> OPAAE, although a signatory to the 2012 NOI Stipulation, does not join in paragraph 2 of the Stipulation regarding the USF two-step declining block rider rate design methodology. OPAAE, however, will not oppose the adoption of this aspect of the 2012 NOI Stipulation in the NOI phase of this proceeding.

<sup>8</sup> Joint Ex. 1 at 3. Rule 4901-1-10(C), O.A.C., provides that Staff is a party for the purpose of entering into this Stipulation.

manner proposed in ODOD's 2012 NOI application, and which is consistent with prior revenue requirement methodology approved by this Commission: (a) cost of PIPP; (b) EPP costs and, if updated projections for the EPP allowance suggest the EPP allowance is no longer appropriate, ODOD will, consistent with its obligations, perform any necessary adjustments and document the basis for the adjustment in the next phase of this proceeding; (c) administrative costs; (d) December 31, 2012, PIPP account balances; (e) reserve; (f) no allowance for interest expense; (g) allowance for undercollection; (h) cost for electric utility audits to be conducted; and (i) USF interest offset.

#### B. 2012 NOI Stipulation – USF Rider Rate Design Methodology

The 2012 NOI Stipulation also provides that ODOD should use the current rate design methodology, as previously approved by the Commission in all prior ODOD applications, to recover the annual USF rider revenue requirement, in this proceeding. This rate design is a two-step, declining block rate design; the first block of which applies to all monthly consumption up to and including 833,000 kWh per month. The second block of the rate, which applies to all consumption over 833,000 kWh per month, will be set at the lower of the PIPP rider rate in effect in October 1999 or the per kWh rate that would apply if the electric utility's annual USF rider rate were to be recovered through a single-block volumetric (per kWh) rate. The first block rate will be set at the level necessary to produce the remainder of the electric utility's annual USF rider revenue requirement. The signatory parties submit that this rate design methodology provides for a reasonable contribution by all customer classes to the USF revenue requirement and does not violate Section 4928.52(C), Revised Code.<sup>9</sup>

#### IV. COMMISSION DISCUSSION

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);

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<sup>9</sup> Although a signatory to the Stipulation, OPAE does not join in this provision of the Stipulation but will not contest the adoption of this provision in the NOI phase of this proceeding.



*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 that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.*) 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.

After reviewing the 2012 NOI Stipulation, the Commission finds that the Stipulation adopts the proposed USF rider revenue requirement methodology and USF rider rate design methodology, as submitted in ODOD's 2012 NOI USF rider application. We find that the process involved serious bargaining by knowledgeable, capable parties. Counsel for the applicant, and all intervenors, have been actively participating in the USF proceedings over several years. We also note that with the exception of Duke, OCC and Staff, all of the intervenors have entered into the Stipulation and even the non-signatory parties do not oppose the Stipulation. Further, we find that the 2012 NOI Stipulation is in the public interest as it provides ODOD with a process to ensure adequate funding for the low-income customer assistance programs and the consumer education programs administered by ODOD. Last, the Commission concludes the Stipulation does not violate any important regulatory principle or practice. In each USF NOI proceeding since adoption of the two-step declining block rate design, the Commission has adopted the stipulation endorsing the same rate design. We continue to find OP&E's arguments that the two-step declining block USF rate design violates Section 4928.52(C), Revised Code, to be unpersuasive. The magnitude of the impact of utilizing a two-step declining block USF rate design, as opposed to a uniform USF rate per kWh, when the second block is activated, is insufficient, in this case, to constitute a material shift among customers or the

customer classes to violate Section 4928.52(C), Revised Code. As such, the Commission approves the 2012 NOI Stipulation in its entirety.


ORDER:

It is, therefore,

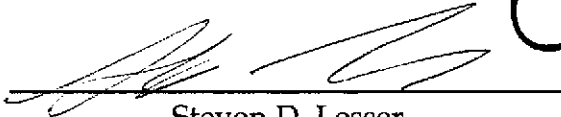
ORDERED, That the 2012 NOI Stipulation filed on September 4, 2012, be approved in its entirety. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon ODOD, the electric-energy list serve, and all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Todd A. Snitchler, Chairman



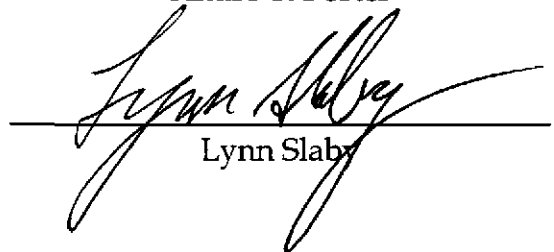
Steven D. Lesser



Andre T. Porter



Cheryl L. Roberto

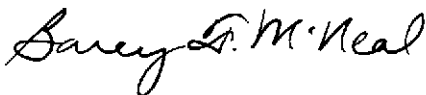


Lynn Slaby

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**SEP 19 2012**



Barcy F. McNeal  
Secretary