

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Ohio Development Services Agency)	
for an Order Approving Adjustments)	Case No. 15-1046-EL-USF
to the Universal Service Fund Riders of)	
Jurisdictional Ohio Electric Distribution)	
Utilities.)	

**INDUSTRIAL ENERGY USERS-OHIO'S REPLY TO THE
OBJECTIONS FILED BY OHIO PARTNERS FOR AFFORDABLE ENERGY
AND THE OHIO POWER COMPANY**

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OHIO**

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Pursuant to the Attorney Examiner’s June 9, 2015 Entry in this matter, Industrial Energy Users-Ohio (“IEU-Ohio”) respectfully submits this reply to the objections filed in this matter by Ohio Power Company (“AEP-Ohio”) and Ohio Partners for Affordable Energy (“OPAE”) on July 1, 2015 and July 6, 2015, respectively.

In its Notice of Intent, the Ohio Development Services Agency (“ODSA”) (formerly the Ohio Department of Development or “ODOD”) indicated that it intends to pursue aggregating customers under the Percentage of Income Payment Plan (“PIPP”) pursuant to R.C. 4928.54 and Rule 122:5-3-06, Ohio Administrative Code (“O.A.C.”).¹ The ODSA also indicated that it proposes to utilize the two-block rate design methodology for the Universal Service Fund (“USF”) rider.

OPAE objects to ODSA’s proposal to continue using the two-block rate design for the USF rider.

¹ ODSA Notice of Intent at 10-11.

AEP-Ohio objects to ODSA's Notice of Intent to the extent ODSA continues to bifurcate AEP-Ohio's USF rates into separate rates for its Columbus Southern Power rate zone and Ohio Power rate zone.² AEP-Ohio also objects to ODSA's plan to pursue aggregating the PIPP load to the extent ODSA's aggregation plans to do so do not include consultation with the Public Utilities Commission of Ohio ("Commission") and electric distribution utilities ("EDU") and the adoption of rules.

As discussed below, OPAE's objection to the two-block rate design of the USF rider is without merit. Additionally, with the recent change to R.C. 4928.54 and enactment of R.C. 4928.541 to 4928.544, IEU-Ohio urges ODSA to expeditiously adopt rules governing the aggregation of PIPP customers in accordance with R.C. 4928.543.

I. THE TWO-STEP DECLINING BLOCK RATE DESIGN OF THE USF RIDER IS LAWFUL

The Commission should authorize the continuation of the lawful two-step declining block rate design, which has been in effect since 2001. Furthermore, replacing that rate design with a new methodology, as OPAE requests, could result in the type of cost shifting that the General Assembly sought to prevent through R.C. 4928.52(C). Accordingly, as discussed in more detail below, the Commission should authorize ODSA to continue utilizing the two-step declining block rate design.

R.C. 4928.52 established the USF rider to replace EDUs' individual PIPP riders, effective July 1, 2000. The largest cost included in the rider is the cost to fund the

² IEU-Ohio is not commenting on this objection; however, IEU-Ohio's silence should not be construed as support or opposition to this issue raised by AEP-Ohio.

EDUs' low-income assistance PIPP programs.³ The statute provides that the rider shall be established "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."⁴

ODSA proposes to recover the annual USF rider revenue requirement for each EDU through a USF rider that incorporates a two-step declining block rate design of the type approved by the Commission in all prior ODSA applications.⁵ As proposed, as in the past, 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 consumption above 833,000 kWh per month. For each EDU, the rate per kWh for the second block will be set at the lower of the PIPP charge in effect in October 1999 or the per-kWh rate that would apply if the EDU'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 EDU's annual USF rider revenue requirement. Thus, in those instances where the EDU's October 1999 PIPP charge exceeds the per-kWh rate that would apply if the EDU'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.

³ R.C. 4928.52(A)(1); *In the Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 14-1002-EL-USF, Amended Application at Exhibit H (Nov. 26, 2014) (hereinafter, "2014 USF Case").

⁴ R.C. 4928.52(C).

⁵ ODSA Notice of Intent at 11.

The two-step USF rider rate design was implemented in ODSA's first USF rider adjustment case (Case No. 01-2411-EL-UNC) as a result of negotiations that led to a stipulation agreed to by all parties to that proceeding and approved by the Commission in its December 20, 2001 order in that docket. The two-step declining block rate was proposed as a means of limiting the substantial financial impact on the state's largest electric consumers that would have resulted if the USF rider revenue requirements were to be recovered through the uniform per-kWh rate design of the USF riders initially approved by the Commission in the electric transition plan ("ETP") cases. A stipulation has resolved the issues regarding USF rider adjustment applications in each of the years since the stipulation, and has always included the two-step declining block rate design.

OPAE argues that continuation of the two-step declining block rate design for the USF rider is unlawful because this rate design results in cost shifting among customer classes in violation of R.C. 4928.52(C). OPAE also claims that electric regulation in Ohio has changed significantly since 1999 with service unbundling, competition, and the merger of EDUs, but fails to demonstrate that these changes in any way relate to a cost shift among customer classes that would violate R.C. 4928.52(C). OPAE requests that the Commission replace the two-step declining block rate design with a uniform kWh charge.

Continuation of the two-step declining block rate design is the best method to comply with the command in R.C. 4928.52(C) to prevent cost-shifting among customer classes. If the Commission were to adopt a new methodology, there could be significant shifting in costs or rates within and between customer classes. Thus,

OPAE's request to shift from the two-step declining block methodology to a new methodology may actually cause the type of harm that OPAE claims should be avoided. Accordingly, the best means to prevent cost shifting among customer classes is to continue to utilize the existing rate design for the USF riders.

ODSA has also previously considered and opposed OPAE's arguments:

Although Section 4928.52(A), Revised Code, specifies the costs to be recovered through the USF rider, the statute does not mandate the use of any specific rate design for the cost-recovery mechanism. Thus, subject to the Section 4928.52(C), Revised Code, requirement that the USF 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," the Commission is free to approve any rider rate design it finds to be reasonable. Obviously, the statutory prohibition against shifting the cost of funding the low-income customer assistance programs among customer classes requires interpretation, as the legislature could not have intended that each customer class contribute precisely the same percentage to the support of the low-income customer assistance programs that, by happenstance, they were contributing in 1999 as OPAE appears to suggest. Such an approach would ignore changes in the membership and relative consumption of the customer classes in the intervening years and would mean that, as the number of large industrial customers declined, the remaining industrials would be expected to contribute, in the aggregate, the same percentage of the USF rider revenue requirement that was originally spread over a larger industrial base. On its face, this makes no sense. Further, OPAE's proposed remedy - that the same per-Kwh rate be charged to all customers of a particular EDU - would, itself, produce a different inter-class revenue distribution than that which existed for that EDU in 1999.⁶

Furthermore, declining block rates are commonplace in the utility industry. Indeed, the Ohio legislature recognized the reasonableness of using a declining block rate structure for recovering government-imposed obligations in mandating a three-step

⁶*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, Response of ODOD to OPAE's Objection at 2-3 (Aug. 9, 2011) (internal citations omitted) (hereinafter, "2011 USF Case").

declining block rate for the recovery of the kWh tax imposed on the state's electric utilities (see R.C. 5727.81).

The volume discount reflected by the cap on the second block of the two-step USF rider rate is also supported by principles of fairness and revenue stability. Under the two-step rider rate, the state's largest electric customers pay the identical USF rider per-kWh rate for the first 833,000 kWh consumed as all other customers, including the increment of the under-833,000 kWh block rate attributable to the shifting revenues from the first block to the second block in those instances in which the 1999 PIPP rider rate cap on the second block comes into play. Even at the threshold 833,000 kWh level, these large users are already paying many thousands of dollars per year to support the USF rider revenue requirement, and the largest users, such as those that qualify as self-assessing purchasers under R.C. 5727.81(C), pay tens of thousands of dollars annually. If an EDU were to lose a large customer, or if a large customer were to scale back its operations, there would be a significant revenue shortfall during the collection period, which would ultimately lead to a higher future rider rate for all customers. Although the risk of a large customer leaving the state remains significant, the use of the two-block rate design will provide at least some measure of revenue stability that would not be present if the revenues were generated by a uniform per-kWh rate.

Other states, such as Wisconsin and Michigan, recognize the large burden a uniform per-kWh charge would have on large industrial customers and implement other rate designs. In Wisconsin, charges are capped for non-residential customers at

\$152.81/month for the largest electricity users in the state.⁷ In Michigan, charges are capped at \$1 per meter per month for all customer classes.⁸ The Pennsylvania Public Utility Commission has excluded non-residential customers from funding Pennsylvania's universal service fund because "[u]niversal service programs, by their nature, are narrowly tailored to the residential customers and therefore, should be funded only by the residential class."⁹ Accordingly, Ohio's industrial customers are already contributing amounts significantly greater than what has been deemed reasonable in other states.

In sum, OPAE has not demonstrated that the current two-step declining block rate design is unlawful or that a change in what has become the traditional USF rider revenue recovery mechanism is warranted. Accordingly, the Commission should approve ODSA's continued use of the two-step declining block rate design.

II. ODSA SHOULD EXPEDITIOUSLY ADOPT RULES GOVERNING THE AGGREGATION OF PIPP CUSTOMERS

AEP-Ohio objects to ODSA's Notice of Intent to the extent ODSA would attempt to aggregate PIPP customers prior to adopting rules in consultation with the Commission and EDUs such as AEP-Ohio.¹⁰ In support, AEP-Ohio claims that R.C.

⁷ Wisconsin Public Service Commission, *WI Low-Income Assistance Fee*, available at: http://www.wisconsinpublicservice.com/business/wi_lowincome.aspx. Residential customer charges are capped at \$3.21/month; small business customer charges are capped at \$13.20/month. *Id.*

⁸ *In the matter on the Commission's own motion to implement the provisions of 2013 PA 95*, MPSC Case No. U-17377, Order at 1-2 (July 29, 2013), available at: <http://efile.mpsc.state.mi.us/efile/docs/17377/0021.pdf>

⁹ *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Pennsylvania PUC Docket No. M-00051923, Order at 32 (Oct. 19, 2006).

¹⁰ AEP-Ohio Objections at 1.

4928.54 and Rule 122:5-3-06, O.A.C., require ODSA to work with the Commission and the EDUs to develop rules prior to the aggregation of customers.¹¹

IEU-Ohio would note that the effect of this statute and rule has been impacted by recent changes to Ohio law.¹² On June 30, 2015, Amended Substitute House Bill 64 (“HB 64”) was signed into law by the Governor. Among other things, HB 64 modified R.C. 4928.54 and enacted R.C. 4928.541 to 4928.544. These sections require the Director of ODSA to establish a competitive bid process for the supply of competitive retail electric service to PIPP customers. R.C. 4928.543 requires ODSA to adopt new rules in accordance with R.C. Chapter 119 to implement R.C. 4928.54, 4928.541, and 4928.542.

Accordingly, IEU-Ohio urges ODSA to expeditiously adopt rules in accordance with R.C. Chapter 119.

Respectfully submitted,

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¹¹ *Id.* at 3-4.

¹² The specific statutory language cited by AEP-Ohio requiring ODSA to consult with the Commission and AEP-Ohio was stricken by HB 64. The newly enacted language in R.C. 4928.543 contains the operative language regarding ODSA adopting rules regarding aggregation, and it does not require ODSA to consult with the Commission or AEP-Ohio. Instead, R.C. 4928.543 requires ODSA to adopt rules regarding aggregation in accordance with R.C. Chapter 119. This Chapter specifies the process that AEP-Ohio may utilize to involve itself in ODSA’s rulemaking process.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio's Reply to the Objections Filed by Ohio Partners for Affordable Energy and the Ohio Power Company* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 13th day of July 2015, via electronic transmission.

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