

**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.)	

**INITIAL BRIEF OF
INDUSTRIAL ENERGY USERS-OHIO**

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This is the 15th annual proceeding to update the Universal Service Fund (“USF”) riders. In each of the prior 14 annual USF cases, a stipulation was presented to the Public Utilities Commission of Ohio (“Commission”) that recommended, among other things, that the Commission adopt a declining block rate design methodology for calculating the USF rider to be collected by each electric distribution utility (“EDU”).¹ More specifically, the stipulations in each prior USF proceeding recommended that the Commission approve the jointly sponsored declining block rate design methodology for calculating each EDU’s USF rider because it was reasonable and does not violate R.C. 4928.52(C). The Ohio Partners for Affordable Energy (“OPAE”) signed and jointly recommended that the Commission adopt many of these stipulations.² In each of the

¹ See, e.g., Ohio Development Services Agency (“ODSA”) Ex. 1 at 11; Joint Ex. 1 at 7.

² *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, Opinion and Order at 3, 6 (Dec. 20, 2001) (“2001 USF Case”); *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. 03-2049-EL-UNC, Opinion and Order at 7-9 (Dec. 3, 2003) (“2003 USF Case”); *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. 04-1616-EL-UNC, Opinion and Order at 3, 7-9 (Dec. 8, 2004) (“2004 USF Case”); *In the Matter of the Application of the*

prior 14 annual USF cases, the Commission has approved the jointly-sponsored stipulation and found that the use of the recommended declining block rate design does not violate R.C. 4928.52(C).³

A Joint Stipulation and Recommendation ("Stipulation") was submitted to the Commission in this proceeding as well and it recommends continued use of the same declining block rate design that the Commission has previously approved.

Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities, Case No. 05-717-EL-UNC, Opinion and Order at 4, 10-15 (Dec. 14, 2005) ("2005 USF Case"); 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. 06-751-EL-UNC, Opinion and Order at 10-14 (Dec. 20, 2006) ("2006 USF Case"); 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, Finding and Order at 5-7, 10-11 (Sep. 5, 2007) ("2007 USF Case"); 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, Finding and Order at 5-9 (Sep. 10, 2008) ("2008 USF Case"); 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, Finding and Order at 4-9 (Oct. 28, 2009) ("2009 USF Case"); 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. 10-725-EL-USF, Finding and Order at 9-12 (Oct. 27, 2010) ("2010 USF Case"); 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, Finding and Order at 7-10 (Oct. 3, 2011) ("2011 USF Case"); 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. 12-1719-EL-USF, Finding and Order at 7-10 (Sep. 19, 2012) ("2012 USF Case"); and 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. 13-1296-EL-USF, Finding and Order at 5-8 (Oct. 2, 2013) ("2013 USF Case"). OPAE intervened in the 2002 case and indicated that although it did not join the stipulation in the 2002 case it did not oppose it; OPAE did not intervene in the 2014 case. *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. 02-2868-EL-UNC, Opinion and Order at 6 (Jan. 23, 2003) ("2002 USF Case"); 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 ("2014 USF Case").*

³ *2014 USF Case*, Finding and Order at 7 (Sep. 25, 2014); *2013 USF Case*, Finding and Order at 8 (Oct. 2, 2013); *2012 USF Case*, Finding and Order at 9-10 (Sep. 19, 2012); *2011 USF Case*, Finding and Order at 9 (Oct. 3, 2011). In its orders prior to 2011, the Commission approved stipulations that recommended the Commission find that the continued use of the declining block rate design did not violate R.C. 4928.52(C) and the Commission approved each of these stipulations without modification. See, e.g., *2010 USF Case*, Finding and Order at 10-11 (Oct. 27, 2010).

OPAE, a residential electric customer of Ohio Power Company using around 500 kilowatt-hours (“kWh”) per month,⁴ opposes the declining block rate design methodology for computing the successor USF riders.⁵

This Brief is submitted by the Industrial Energy Users-Ohio (“IEU-Ohio”) for the Commission’s consideration and pursuant to the procedural schedule established by Attorney Examiner See. IEU-Ohio’s Brief demonstrates that the Stipulation, as supported by evidence presented during the evidentiary hearing in this matter, is reasonable and satisfies the Commission’s 3-part test used to review stipulations, and should therefore be adopted. IEU-Ohio’s Brief also addresses OPAE’s opposition to the Stipulation and its unwarranted claims regarding the continued use of the declining block USF rate design methodology.

IEU-Ohio’s failure to address, in this Brief, any other claims advanced to contest the recommendations in the Stipulation should not be construed or applied to indicate that IEU-Ohio supports such others claims.

I. BACKGROUND

In accordance with the process ordered by the Commission,⁶ on May 29, 2015, ODSA filed a Notice of Intent to File an Application for Adjustments to Universal Service Fund Riders (“Notice of Intent” or “NOI”) to resolve ODSA’s proposed methodology for determining the revenue requirement and rate design for the USF riders for 2016. In its Notice of Intent, ODSA proposed to retain the same methodology it has utilized, and the

⁴ Tr. at 103.

⁵ OPAE’s Objections to ODSA’s Notice of Intent at 1-3 (July 6, 2015); OPAE Ex. 3 at 7-12.

⁶ See 2014 USF Case, Opinion and Order at 10 (Dec. 10, 2014); see *also* Entry at 2-3 (June 9, 2015).

Commission has approved, for numerous years for determining the revenue requirement for and rate design of the USF riders.⁷

ODSA, IEU-Ohio, The Dayton Power and Light Company (“DP&L”), Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy”) entered into the Stipulation in this case on August 3, 2015.⁸ As reflected in the Direct Testimony of Ms. Moser, Duke Energy Ohio, Inc. (“Duke”) has indicated that although it is not a signatory to the Stipulation, Duke does not oppose the Stipulation.⁹ The Stipulation recommends that the Commission approve ODSA’s Notice of Intent as filed.¹⁰

The evidentiary hearing was held on August 19, 2015. ODSA witness Moser and OPAE witness Rinebolt testified at the hearing.¹¹ Mr. Rinebolt’s testimony focused on the declining block rate design and did not address the Commission’s 3-part test used to evaluate stipulations.

II. ARGUMENT

A. The Stipulation should be approved because it is reasonable and satisfies the Commission’s 3-part test for reviewing the reasonableness of stipulations

Rule 4901-1-30, Ohio Administrative Code (“O.A.C”), authorizes parties in a proceeding before the Commission to enter into a stipulation. In reviewing a stipulation, the ultimate issue for the Commission’s consideration is whether the stipulation is

⁷ ODSA Ex. 1 at 3-11.

⁸ Joint Ex. 1 at 7.

⁹ ODSA Ex. 2 at 4.

¹⁰ Joint Ex. 1 at 3-6.

¹¹ IEU-Ohio objected to the admission of Mr. Rinebolt’s testimony for the reasons identified in the record. Tr. at 99-100. IEU-Ohio hereby restates its objection to the admission of the testimony and urges the Commission to find that such testimony should not have been admitted over the objections of IEU-Ohio.

reasonable.¹² 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?¹³

The evidence submitted at the hearing demonstrates that the Stipulation is reasonable and satisfies all elements of the Commission's 3-part test.¹⁴ The Stipulation recommends that the Commission approve the same methodology ODSA has utilized to determine the revenue requirement for the USF riders that dates back many years.¹⁵ The Stipulation also recommends that the Commission approve the same methodology ODSA has utilized to design the USF rider rates, a methodology that dates back to 2001.¹⁶ The Commission has repeatedly found that these methodologies are reasonable pursuant to the Commission's 3-part test. The outcome can be no different here.

- B. The Commission should reject OPAE's suggestion that the Commission should modify the Stipulation and insert a uniform per kWh rate design because the suggestion amounts to a collateral attack on the existing USF riders, is contrary to Commission precedent and OPAE's prior positions, Mr. Rinebolt admitted he is not an expert on these subjects and Mr. Rinebolt offered no indication of how the Stipulation would shift revenue "among the classes"**

¹² 2014 USF Case, Opinion and Order at 11 (Dec. 10, 2014).

¹³ *Id.* at 11-12.

¹⁴ Joint Ex. 1; ODSA Ex. 2 at 5-7; ODSA Ex. 3 at 2-6.

¹⁵ Joint Ex. 1 at 3; *see also* ODSA Ex. 1 at 3-11.

¹⁶ Joint Ex. 1 at 5; *see also* ODSA Ex. at 11.

OPAE argues that the Stipulation should be rejected because it recommends that the Commission authorize the continued use of the declining block rate design that OPAE previously urged the Commission to adopt by signing stipulations in prior USF proceedings. Contrary to OPAE's past representations to the Commission,¹⁷ OPAE has a new claim; it is now claiming that the rate design methodology it previously agreed did not violate R.C. 4928.52(C) will somehow violate R.C. 4928.52(C).

OPAE's witness, Mr. Rinebolt, agreed that he has no expertise in this area¹⁸ and, regardless of his qualifications, that the admittedly hypothetical illustrations¹⁹ in his testimony amount to a collateral attack on the currently-approved declining block USF riders.²⁰ Nonetheless, he sponsored testimony on behalf of OPAE to suggest that the Commission modify the Stipulation and eliminate the declining block rate design in favor of a uniform per kWh USF rider for each EDU.²¹

A volumetric or uniform per kWh rate design such as that suggested by OPAE in this proceeding is not a reasonable rate design when the underlying cost it distributes to customers is unrelated to kWh consumption. During cross-examination, Mr. Rinebolt agreed that there is no relationship between the amount of revenue that needs to be

¹⁷ Tr. at 105; see *also supra*, at 1 n. 2, (OPAE has signed 12 of the last 14 annual USF case stipulations that have recommended the Commission find that the use of the declining block rate design did not violate R.C. 4928.52(C))

¹⁸ Tr. at 103-104.

¹⁹ Tr. at 117-119.

²⁰ Tr. at 119.

²¹ As illustrated in Mr. Rinebolt's testimony, his uniform per kWh rate design could reduce the level of the charge in the first block of the declining block rate design. The Commission's jurisdiction in this proceeding is limited to determining if ODSA's proposal will produce the minimum amount of revenue necessary to provide ODSA with additional revenue required for ODSA to satisfy its USF-related duties. The Commission cannot reduce a USF rider without approval of the Director of ODSA after the Director consults with the USF advisory board. R.C. 4928.52(B).

collected to fund USF programs and customers' kWh usage.²² Yet OPAE's non-expert, Mr. Rinebolt, suggests that USF funding should be collected from customers as though there is a causal relationship between the amount of funding needed by ODSA and each kWh consumed by customers.

The Commission has previously rejected OPAE's recommendation to collect the funding for the USF through a uniform kWh rate design and should do so again. In the *2012 USF Case*, the Commission authorized a stipulation that continued the previously-approved declining block rate design and held that the Commission "continue[s] to find OPAE's arguments that the two-step declining block USF rate design violates Section 4928.52(C), Revised Code, to be unpersuasive."²³

Further, and in another context, the Commission has also rejected OPAE's arguments urging the Commission to authorize rates with a volumetric rate design to collect costs unrelated to consumption. In 2008 and 2009, the Commission considered and authorized changes to the rate design of the four major gas utility companies in Ohio.²⁴ In each of those cases, the Commission issued orders providing for the recovery of the gas utilities' fixed distribution costs through a straight-fixed variable ("SFV") rate design, which recovers most of the fixed costs through a flat monthly

²² Tr. at 112.

²³ *2012 USF Case*, Opinion and Order at 5-6, 8-10 (Sept. 19, 2012).

²⁴ *In the Matter of Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation*, Case No. 10-3126-EL-UNC, Finding and Order at 19-20 (Aug. 21, 2013) (citing *In re Duke Energy Ohio*, Case No. 07-589-GA-AIR, Opinion and Order (May 28, 2008) ("2007 Duke Rate Case"); *In re Dominion East Ohio*, Case No. 07-829-GA-AIR, Opinion and Order (Oct. 15, 2008) ("2007 Dominion Rate Case"); *In re Columbia Gas of Ohio*, Case No. 08-72-GA-AIR, Opinion and Order (Dec. 3, 2008) ("2008 Columbia Rate Case"); and *In re Vectren Energy Delivery of Ohio*, Case No. 07-1080-GA-AIR, Opinion and Order (Jan. 7, 2009) ("2007 VEDO Rate Case")).

charge.²⁵ OPAE was a party in each of those proceedings and urged the Commission to adopt a rate design that would have heavily relied on a volumetric rate design to collect costs unrelated to consumption.²⁶ The Commission rejected OPAE's arguments in each proceeding and, as noted above, adopted the SFV rate design.²⁷

More recently, the Commission confirmed in Case Nos. 10-3126-EL-UNC and 12-3255-EL-RDR that it was inappropriate to collect fixed costs through volumetric charges because the costs were unrelated to consumption.²⁸

Based on the Commission's prior rulings, a rate design methodology for the USF riders based on a uniform kWh charge would not be a proper rate design methodology. Again, OPAE's Mr. Rinebolt admitted that there is no causal relationship between customers' kWh usage and the amount of funding that ODSA needs to pay for the USF programs.²⁹ Accordingly, the rate design suggested by OPAE through Mr. Rinebolt cannot be reasonable based on the Commission's existing regulatory principles and practices.

The testimony of OPAE's Mr. Rinebolt also attempts to explain away OPAE's prior support of the declining block rate design by claiming that prior stipulations set up

²⁵ *Id.*

²⁶ *2007 Duke Rate Case*, Opinion and Order at 13 (May 28, 2008); *2007 Dominion Rate Case*, Opinion and Order at 15 (Oct. 15, 2008); *2008 Columbia Rate Case*, Opinion and Order at 16-17 (Dec. 3, 2008); *2007 VEDO Rate Case*, Opinion and Order at 8 (Jan. 7, 2009).

²⁷ *2007 Duke Rate Case*, Opinion and Order at 17-20 (May 28, 2008); *2007 Dominion Rate Case*, Opinion and Order at 23-24 (Oct. 15, 2008); *2008 Columbia Rate Case*, Opinion and Order at 19-20 (Dec. 3, 2008); *2007 VEDO Rate Case*, Opinion and Order at 11-12 (Jan. 7, 2009).

²⁸ *In the Matter of Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation*, Case No. 10-3126-EL-UNC, Finding and Order at 1, 19-20 (Aug. 21, 2013); *In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, Opinion and Order at 29 (Apr. 2, 2014) (rejecting OCC's request to collect distribution costs through an energy allocator).

²⁹ Tr. at 112.

a *de minimus* standard and then stating that, as a non-expert, he “no longer views the impact of the declining block as ‘*de minimus*.’”³⁰ But, as already mentioned, the hypothetical illustrations in his testimony are a collateral attack on the current USF riders and declining block rate design which the Commission has already approved.³¹

And contrary to the representations in his testimony indicating that OPAE’s favorable declining block rate design recommendation in past stipulations was based on some *de minimus* standard, the cross-examination of Mr. Rinebolt demonstrated that there was no repeatedly-applied *de minimus* standard in the prior USF proceedings.³² More specifically, Mr. Rinebolt’s testimony describes this *de minimus* standard as something that has been included in every stipulation submitted in prior USF proceedings.³³ Yet, there is no *de minimus* language in the Stipulation filed in this proceeding or any other stipulation except for the first stipulation submitted to the Commission in 2001.³⁴

Even if the Commission ignores the fact that OPAE previously joined in the representation that the declining block rate design does not violate R.C. 4928.52(C), Mr. Rinebolt’s testimony also fails to show how continued use of the declining block rate design violates R.C. 4928.52(C). That section directs the Commission to establish the USF rider in a manner “so as not to shift among the customer classes” the USF funding responsibility. Mr. Rinebolt’s testimony does not identify any funding responsibility or shift among the “customer classes” as that term is regularly understood (residential,

³⁰ OPAE Ex. 3 at 7.

³¹ *Id.* at 10-11, Attachment DCR-1; Tr. at 117-119.

³² Compare OPAE Ex. 3 at 5-8 with Tr. at 106-108.

³³ OPAE Ex. 3 at 5-7.

³⁴ See Tr. at 106-108.

commercial, and industrial customer classes).³⁵ Nor does Mr. Rinebolt's testimony identify any shift in funding responsibility by utility rate schedule.³⁶

In sum, Mr. Rinebolt's non-expert testimony fails to address the Commission's 3-part test used to evaluate stipulations, fails to demonstrate that the Stipulation is unreasonable and fails to show how a uniform per kWh rate design is lawful and reasonable. Accordingly, the Commission should approve the Stipulation without modification.

III. CONCLUSION

Based on the record evidence and the Commission's 3-part test used to evaluate stipulations, IEU-Ohio urges the Commission to adopt the Stipulation and reject OPAE's meritless claims regarding the declining block rate design.

Respectfully submitted,

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³⁵ Tr. at 110.

³⁶ *Id.* at 111.

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 *Initial Brief of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 2nd day of September 2015, via electronic transmission.

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