

**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.)	

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

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September 9, 2015

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The Ohio Development Services Agency (“ODSA”), Industrial Energy Users-Ohio (“IEU-Ohio”), Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy”), and The Dayton Power and Light Company (“DP&L”) have jointly submitted a Stipulation and Recommendation (“Stipulation”) to the Public Utilities Commission of Ohio (“Commission”) that seeks to continue 14 consecutive years of Commission approval of the declining block rate design for purposes of calculating the Universal Service Fund (“USF”) rider rates. Following the presentation of evidence at the hearing held on August 19, 2015, the Staff of the Commission (“Staff”), the Office of the Ohio Consumers’ Counsel (“OCC”), and Duke Energy Ohio, Inc. (“Duke”) filed letters with the Commission indicating they do not oppose the Stipulation. As discussed in IEU-Ohio’s Initial Brief, the Stipulation is reasonable, adequately supported by the record, and should be adopted.¹

Only two parties filed briefs opposing the Stipulation. Neither party has presented the Commission with a basis to reject the Stipulation.

¹ IEU-Ohio’s Initial Brief at 4-5.

Ohio Partners for Affordable Energy (“OPAE”) requests that the Commission reject the Stipulation because it recommends the Commission authorize the continued use of a declining block rate design methodology to calculate the USF rider rates. OPAE claims that the declining block rate design methodology violates R.C. 4928.52(C) because it “shifts costs from a subset of very large industrial customers to all other customers.”² OPAE requests that the Commission adopt a uniform per kilowatt-hour (“kWh”) rate design in its place.

Irrespective of the errors embedded in OPAE’s claims and testimony, and there are many as explained in IEU-Ohio’s Initial Brief including OPAE’s flip-flopping regarding the declining block rate design, the relief OPAE seeks is barred by R.C. 4928.52. More specifically, the uniform per kWh rate design outcome OPAE seeks would result in a reduction in a portion of the USF charges, which the Commission may not order without the consent of the Director of ODSA who must first consult with the Public Benefits Advisory Board (“Advisory Board”).³ Accordingly, there is no evidence in the record to grant OPAE the relief it seeks.

Ohio Power Company (“AEP-Ohio”) also opposes the Stipulation and argues that the Stipulation should be modified to merge the USF riders for the Ohio Power (“OP”) and Columbus Southern Power (“CSP”) rate zones. AEP-Ohio argues that maintaining separate USF riders for the two rate zones perpetuates operational inefficiencies.⁴ AEP-Ohio’s witness Mr. Gill, however, was not able to quantify these inefficiencies, admitted that he was not aware of any cost savings from any potential operational

² OPAE Initial Brief at 15.

³ R.C. 4928.52(B).

⁴ AEP-Ohio Initial Brief at 1, 10-11.

efficiencies that would be passed on to customers, and was not able to testify whether ODSA's IT systems were in a position to merge the riders for the two rate zones.⁵ Conversely, Ms. Moser testified that ODSA had not completed its internal review to determine what IT or operational upgrades would be necessary to implement AEP-Ohio's recommendation.⁶ Given these uncertainties, AEP-Ohio has failed to demonstrate that its requested modification to the Stipulation is reasonable.

The relief AEP-Ohio seeks also conflicts with the Commission's prior findings regarding the funding responsibility for the OP rate zone deferral that is collected through the Phase-In Recovery Rider ("PIRR"). A portion of the overall funding responsibility for the USF rider in the OP rate zone reflects costs attributable to the PIRR rider that would otherwise be paid for by a Percentage of Income Payment Plan ("PIPP") customer but for their participation in the PIPP program. AEP-Ohio's Initial Brief fails to address the issue and therefore fails to present the Commission with a reasonable or lawful basis to modify its prior finding. Accordingly, AEP-Ohio has failed to demonstrate that its proposed modification to the Stipulation is reasonable.

In sum, the Stipulation is reasonable and satisfies the Commission's 3-part test for reviewing the reasonableness of stipulations and it should therefore be adopted without modification.

⁵ Tr. at 151, 153. 194-196.

⁶ Tr. at 62, 67-68.

I. ARGUMENT

A. The Commission should reject OPAE's arguments because the Commission cannot grant OPAE the relief it seeks, the sought relief is unlawful and unreasonable, and OPAE's arguments are otherwise without merit

OPAE's Brief, as supported by its non-expert witness testimony,⁷ requests that the Commission adopt a uniform kWh rate design for the USF riders that will lower a portion of the USF rates.⁸ The Commission, however, "shall not decrease the universal service rider without the approval of the director, after consultation by the director with the advisory board."⁹ Nowhere in its Brief does OPAE suggest that the Director of ODSA has consented to such a decrease or that the Director of ODSA consulted with the Advisory Board about decreasing a portion of the USF rider rates.

OPAE also claims that the Stipulation violates R.C. 4928.52(C) because the "declining block methodology shifts costs from a subset of very large industrial customers to all other customers."¹⁰ As demonstrated in IEU-Ohio's Initial Brief, Mr. Rinebolt is not an expert in the areas of rate design or cost of service studies and, therefore, his testimony, and OPAE's Brief relying on that testimony, should be stricken or given no weight.¹¹ Furthermore, Mr. Rinebolt's testimony fails to demonstrate that the declining block rate design violates, or that its requested uniform kWh methodology satisfies, the command in R.C. 4928.52(C) that the Commission establish the USF riders in a manner "so as not to shift among the customer classes" the USF funding

⁷ See IEU-Ohio Initial Brief at 6 (*citing* Tr. at 103-104).

⁸ OPAE Ex. 3 at 7, 10, Attachment DCR-1.

⁹ R.C. 4928.52(B).

¹⁰ OPAE Initial Brief at 15.

¹¹ IEU-Ohio Initial Brief at 6 (*citing* Tr. at 103-104).

responsibility.¹² Mr. Rinebolt's testimony does not contain any analysis relative to any customer class or utility rate schedule.¹³

Accordingly, the evidence demonstrates that the relief OPAE seeks is beyond that which the Commission may authorize in this proceeding. The best means for the Commission to prevent a cost-shift among customer classes, and the only outcome supported by the record, is to maintain the declining block rate design methodology used to determine the USF rider rates for the past 14 years.

Furthermore, and as discussed further in IEU-Ohio's Initial Brief, OPAE's arguments against the declining block rate design and for the uniform kWh methodology are without merit. The Commission has on at least five occasions explicitly rejected OPAE's arguments advancing a volumetric rate design to collect costs unrelated to consumption.¹⁴ OPAE fails to address the Commission's precedent or distinguish its current request from its previously rejected arguments in its Brief.

Finally, OPAE has not rebutted the evidence that demonstrates the Stipulation is reasonable and satisfies the Commission's 3-part test for reviewing the reasonableness of stipulations. OPAE initially attempts to distract attention from its lack of evidence by focusing on the Notice of Intent ("NOI") process that was first recommended in 2004.¹⁵ OPAE's recitation of the history of the NOI process and OPAE's reliance on the 2004 stipulation are irrelevant as the NOI process for this case was established in the Commission's Opinion and Order in the 2014 USF case, and the Commission-ordered

¹² *Id.* at 9-10.

¹³ *Id.*

¹⁴ *Id.* at 6-8.

¹⁵ OPAE Initial Brief at 4-6.

NOI process has been followed.¹⁶ OPAE had, and used, the opportunity to file objections, present testimony, participate in a hearing, and file post-hearing briefs. OPAE's process claims should be rejected as nothing more than an attempt to distract attention from its inability to put forward a credible case on the merits.

Although OPAE's witness did not address the Commission's 3-part test, in its Brief OPAE argues that the Stipulation fails all 3 parts. Initially, OPAE makes the incredulous claim that it was unaware of any settlement negotiations occurring in this case and claims that no evidence was presented to satisfy the first prong.¹⁷ OPAE then leaps to conclude there was no serious bargaining among capable, knowledgeable parties.¹⁸

OPAE's assertions are contradicted by its Initial Brief and the record. More specifically, OPAE acknowledges that ODSA presented evidence on the first part in the form of Ms. Moser's direct testimony, which indicates that the Stipulation was the product of serious bargaining.¹⁹ AEP-Ohio witness Gill also testified that ODSA had circulated draft stipulations and engaged in settlement talks with AEP-Ohio.²⁰ Additionally, and in lieu of holding an additional day of hearing on the issue of bargaining, AEP-Ohio (the only party that raised the issue of serious bargaining during the evidentiary hearing) and ODSA filed a joint stipulation of facts highlighting some of

¹⁶ *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, Opinion and Order at 10 (Dec. 10, 2014) ("2014 USF Case").

¹⁷ OPAE Initial Brief at 8.

¹⁸ *Id.*

¹⁹ OPAE Initial Brief at 7; ODSA Ex. 2 at 5.

²⁰ Tr. at 160-169.

the bargaining that took place prior to the submission of the Stipulation.²¹ Further, OPAE has participated in 13 of the 14 annual USF cases, is aware that every single prior USF case has been resolved by way of settlement, and was notified that ODSA would be filing the NOI application through its participation on the Advisory Board.²² Accordingly, OPAE's claim that there is no evidence to support a finding that there was serious bargaining and its claim that it was unaware that settlement negotiations were occurring are without merit and should be rejected.

OPAE also failed to rebut the evidence that demonstrates that the Stipulation satisfies the second and third parts of the Commission's test.

Although OPAE has previously represented to the Commission that the declining block rate design methodology is lawful and reasonable, OPAE now asserts otherwise in its Brief.²³ The Commission must reject OPAE's arguments; arguments that are in direct conflict with OPAE's prior representations to the Commission, in direct conflict with the Commission's prior rulings, rest upon opinions of Mr. Rinebolt who admitted that he is not an expert on the subjects discussed in his testimony, and are arguments that amount to a collateral attack on a prior Commission order approving the declining block rate design.²⁴

²¹ Joint Expedited Motion to Adopt Stipulated Facts and Process in Lieu of Pre-Filed Testimony and Hearing at 4-5 (Aug. 24, 2015); *see also* Tr. at 160-167.

²² Tr. at 105-107; Tr. at 114-116; OPAE Ex. 3 at 5-7; *see also* OPAE Initial Brief at 2-3.

²³ *See, e.g., 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.

²⁴ *See* IEU-Ohio Initial Brief at 6 (*citing* Tr. at 103-104, 119).

B. The relief AEP-Ohio seeks conflicts with prior Commission orders

AEP-Ohio urges the Commission to modify the Stipulation and order ODSA to merge the USF riders for the OP and CSP rate zones. AEP-Ohio's arguments rely on a claim that merging the riders for the two rate zones will result in operational efficiencies.²⁵ AEP-Ohio's witness, however, admitted that he could not quantify these claimed efficiencies and admitted that it was not proposing to pass on any cost savings to customers.²⁶ ODSA witness Moser also testified that ODSA was conducting an internal review to determine what IT or process upgrades would be necessary to adopt AEP-Ohio's recommendation.²⁷

Regardless of whether the Commission finds that the evidence demonstrates there would be operational efficiencies from a merger or whether ODSA would be able to technologically implement the recommendation, AEP-Ohio's Brief fails to demonstrate that its recommendation would comply with prior Commission orders.²⁸ More specifically, the Commission previously found that the deferral that is collected from the OP rate zone customers through the PIRR should not be collected from CSP rate zone customers because they had already paid their deferral.²⁹ For every PIPP customer in the OP rate zone, a portion of the PIPP expense that is picked up through the USF rider relates to the PIRR charge. Merging the two rate zones will cause CSP rate zone customers to pick up a portion of the OP rate zone PIRR charges.

²⁵ AEP-Ohio Initial Brief at 1, 10-11.

²⁶ Tr. at 193-197.

²⁷ Tr. at 62, 67-68.

²⁸ See e.g., Tr. at 133-135.

²⁹ Tr. at 133; see also Tr. at 181, 183.

AEP-Ohio has not provided the Commission with any basis to reverse its prior findings with respect to CSP rate zone customers not paying for the OP rate zone deferral collected through the PIRR charge. Accordingly, the Commission should reject, without prejudice, AEP-Ohio's proposed modification to the Stipulation.

II. CONCLUSION

For the reasons discussed above, the Commission should find that the Stipulation is reasonable. Additionally, the Commission should reject the relief sought by OPAE and AEP-Ohio because the relief they seek is unlawful and unreasonable.

Respectfully submitted,

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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 *Reply 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 9th day of September 2015, via electronic transmission.

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Case No(s). 15-1046-EL-USF

Summary: Brief --Reply Brief of Industrial Energy Users-Ohio electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio