

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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. 15-1046-EL-USF

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**POST HEARING REPLY BRIEF OF OHIO POWER COMPANY**

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**Filed September 9, 2015**

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## **I. Introduction**

In its attempt to support the non-unanimous Stipulation filed in this proceeding, the Ohio Development Services Agency (“ODSA”) filed an initial post-hearing brief on September 2, 2015. In response to the issues raised by Ohio Power Company (“AEP Ohio,” Company,” or “Ohio Power”), ODSA makes two general arguments: 1) the appropriateness of a single AEP Ohio USF rate structure considering past Commission decisions and 2) the authority of the Commission to issue an order that defines the structure of the rate at issue in this case.

The ODSA’s arguments provided in the initial post-hearing brief both rely upon and at the same time reject the authority of the Commission. ODSA largely defers to the Commission on whether there are past regulatory hurdles to approve a single AEP Ohio Universal Service Fund (USF) mechanism, but challenges the basic authority of the Commission to exercise its power over the structure of the rate mechanism. ODSA grossly overstates its own authority and understates the jurisdiction of the Commission, especially considering the underlying matter involves the payment for electric service to a regulated utility in the state of Ohio. ODSA overreaches and seeks to control core matters of rate design enumerated by statute and Supreme Court of Ohio precedent as within the exclusive jurisdiction of the Commission.

Absent modification to adopt AEP Ohio’s request, the non-unanimous Stipulation at issue in this proceeding does not satisfy the Commission’s test for approval. The Commission should modify the structure of the mechanism, as it is entitled to by statute, and adopt the recommendation as proposed by AEP Ohio. Then and only then will the non-unanimous Stipulation be in the public interest and in agreement with regulatory principles and practices.

**A. The time is right for the Commission to set up the AEP Ohio USF rider charge as a single rate structure.**

ODSA raises a number of arguments that lead it to assume the Commission precedent bars implementation of AEP Ohio's request, but ultimately ODSA agrees this is a matter for Commission deference. (ODSA Br. at 7-8.) ODSA raises the existence of the Phase-In Recovery Rider ("PIRR") and Pilot Throughput Balancing Adjustment Rider ("PTBAR") as a reason to structure a bifurcated AEP Ohio USF mechanism. (Id. at 8.) ODSA's reliance on the existence of these riders underscores its lack of rate making exposure and should not be used as a rationale against modifying the non-unanimous Stipulation.

Commission precedent contemplates an update to the USF mechanism as requested by AEP Ohio. AEP Ohio addressed this issue at length in its initial brief and incorporates those facts and arguments into this brief in reply. (AEP Ohio Br. at 3-4; 12-14.) Chief among the points already established is the very language on "subsequent proceedings" from the *Merger Entry* that ODSA also cites in its brief. [ODSA Br. at 7, citing Case 10-2376-EL-UNC. Entry March 7, 2012 @ ¶37 ("*Merger Entry*").] As pointed out already by AEP Ohio, since the *Merger Entry* there were significant changes including the combining of generation rates and implementation of a revenue neutral residential rate design as recently as January 1, 2015, that paved the way for the AEP Ohio's proposal in this "subsequent proceeding." The *Merger Entry* was concerned with customer impacts and left matters to future proceedings so those impacts could be weighed. Weighing those factors now in 2015, in this case, after the merging of the residential customer generation rates and most other charges, combining the USF rate structure shows less than a half of one percent impact on residential customers. (AEP Ohio Ex. 1 at 3; Tr. at 138 lines 7-24)

discussing AEP Ohio Ex. 1, DRG-2.) The impact is no longer a significant issue and therefore this is the “subsequent proceeding” to update the USF mechanism.

ODSA’s argument that the mere existence of two riders, the PTBAR and PIRR, would prevent the single AEP Ohio USF rider rate structure ignores the basis of the USF’s makeup and purpose. The USF rider does not combine riders as its function. As ODSA witness Moser admitted on cross examination, when developing the USF rider rate the process does not involve looking at the different rate zones and looking rider by rider to determine what a customer is charged. (Tr. at 70 lines 13-20.) The configuration of the rider is a fund to assist low-income customers with the ability to pay their bill regardless of the charges. As witness Moser agreed, the USF rider is a social program that takes the unrecovered amount of electric use of an electric distribution utility (“EDU”) on the balance sheet that results from the application of the low income customer assistance program and spreads the unrecovered costs across the entirety of an EDU customer base. (Tr. at 53-54 lines 20-2.) The USF rider is created by the utility providing data to ODSA that delineates the amount of revenue foregone, due to the unrecovered collections associated with customers enjoying the benefits of the PIPP Plus social program. These unrecovered costs that pass through the USF rider are not figured at the rider level and are no longer delineated as particular charges. According to the spreadsheets used, the USF is based on the unrecovered revenues due to the utility (aka the cost of PIPP). The fiction being presented by ODSA is that these two specific riders flow through the USF, when the ratemaking reality is that all billing components lose their identity, they are removed from that designation for the purpose of providing this social benefit approved by the General Assembly and based on unrecovered revenue from company ledgers. ODSA’s attempt to argue that this process violates some

regulatory principle ignores its own authorizing statute and social nature of this assistance program.

ODSA argues that AEP Ohio's argument on efficiency is disingenuous because it did not challenge administrative costs in the current USF request (ODSA Br. at 9.) ODSA's argument focused on judging the participation in past systems as an indictment undermining requests for improvements in the future system is nonsensical. AEP Ohio had to incur the costs and so did ODSA for the agreed system and mechanism approved in the last USF proceeding. While AEP Ohio must comply and facilitate the previous system approved, this docket defines the structure of the mechanism for the coming year. This is a new chance to implement a better system. AEP Ohio is doing what is expected by its regulator, to look at its operations and determine if there are redundancies or inefficiencies that can be corrected on a prospective basis. ODSA agrees that organizations should ensure work is being done efficiently and that the ODSA itself reviewed its work to look for inefficiencies. (Tr. at 52-53 lines 20-3; 64-65 lines 23-3.) AEP Ohio seeks that same courtesy, to apply a USF process that removes unnecessary tasks and allows it to operate efficiently.

ODSA's argument that AEP Ohio's proposal would prevent the ODSA from keeping track of separate tariff charges for the auditor is without merit. (ODSA Br. at 10.) The record establishes the complexity of the reports provided ODSA and the variable amount of data already included. (Tr. at 68-69; 82, ODSA witness Moser's Cross.) Under AEP Ohio's proposed modification, the combination of the PIPP Plus data for use in the USF rider will be in a single streamlined report as opposed to two. ODSA will not receive less data. The discussion during the hearing with ODSA witness Moser shows that the identification for auditors of the tariff rates for the each rate zone is not an issue. (Id. at 73 lines 4-23.) Witness Moser agreed that those rates are publicly

available for review with the Commission and that auditors typically interact with AEP Ohio personnel during audits to resolve any confusion on any matters. (Id.) The information is available through a number of avenues; ODSA can confirm the information independently, through consultation with Commission Staff and directly with the Company. Moreover, the auditors reviewing the overall system currently are already asking for the data on a combined basis. (AEP Ohio Ex. 3, APPRISE Audit RFI.) The argument that ODSA will not have access to data is false.

ODSA makes a final argument that the Commission should wait on reflecting the single AEP Ohio USF structure because ODSA is looking into whether there are changes needed to adapt to AEP Ohio's proposal and that it will make a recommendation later based on its review. (ODSA Br. at 10.) ODSA's argument ignores the purpose of this docket, to set up the right mechanism for recovery of the USF rider. This is a subpart of the greater utility-related issues found in Title 49 of the Ohio Revised Code, governing the provision of public utility service, including the provision of electric service. As outlined below, ODSA overreaches on its attempt to minimize the importance and role of the Commission in overseeing the regulation of rates and tariffs. Moreover, absent Commission definition of the proper structure, ODSA may never reach a decision on AEP Ohio's issue. As the record shows, AEP Ohio raised the issue back in March of 2015 with ODSA. (Joint Stipulation of Facts, filed August 24, 2015.) ODSA performed its own review of efficiencies but did not contemplate the efficiency raised by AEP Ohio and has not done so to date. (Tr. at 53 lines 4-19.) The Commission must make the issue a priority by ordering the proper rate structure under its authority.

ODSA's attacks on Mr. Gill's expertise are unsubstantiated and unwarranted. (ODSA Br. at 11-12.) AEP Ohio witness Gill testified to his understanding of the data used and the

spreadsheets applying that data. In particular, Mr. Gill testified that all the data could be reported on the existing Ohio Power report, as Ohio Power is the only entity still in existence, and that there would be an accurate USF rider produced from this process. (see discussion Tr. at 147 lines 17-24; 150 lines 22-25.) Mr. Gill's experience with AEP Ohio and his educational training establish him as the only rate making expert in this proceeding. (AEP Ohio Ex. 1 at 1-2; Tr. at 183 lines 12-13.) ODSA offered no witness in reply to rebut Mr. Gill's expertise. (Tr. at 61, Moser agreement she is not a rate making expert.) ODSA seeks to attack Mr. Gill's credibility by arguing that he is not an ODSA employee. But as ODSA does point out he is a graduate of Otterbein University with a degree in mathematics. Ironically, the creation of the USF rate is simply an application of the equations and information included in the spreadsheets developed in the OCEAN system that AEP Ohio seeks to make more efficient. Thus, Mr. Gill's work experience at AEP Ohio in the field of rate making combined with his undergraduate specialty of mathematics makes him the best possible type of expert to testify to the capability of AEP Ohio's proposal. And in this particular docket he is not only the best witness to speak to the subject matter, he is also the only expert witness to speak to the subject matter. The record declares that the AEP Ohio request to structure its USF rider as a single EDU structure should be approved by the Commission.

Alternatively, if the Commission is swayed by the argument that the application of the social USF program is irrelevant and has a concern about the minor difference in rates, the Commission can still approve AEP Ohio's proposed modification. The individual customers in the separate rate zones are in fact paying a percentage of their own bill by the plain definition of the program. The Commission could find that the percentage paid initially by PIPP Plus customers accounts for the differences in the rate zones. Company witness Gill provides evidence of the minimal

nature of the difference in rates. (AEP Ohio Ex. 1 at 3.) Exhibit DRG-2 attached to AEP Ohio Ex. 1 also shows the minimal impact of the dollars involved in the deferral recovery through the remaining riders. Therefore, the argument could be that the PIPP installments that are paid by the customers in distinct zones already recover the PIRR and PTBAR charges, and then the USF rates are recovering the remaining portion of the ninety seven percent (97%) residential customers have in common regardless of rate zone. This finding, while not necessary for the reasons stated above, would serve to make the need for a Commission decision on the other argument moot and allow implementation of AEP Ohio's proposal.

**B. The Commission has exclusive jurisdiction over the setting of rates under Ohio Revised Code Chapter 49 of the Ohio Revised Code including the structure of the USF Rider structure.**

Despite the testimony of ODSA witness Moser, ODSA argues throughout its post-hearing brief that the Commission is extremely limited in its role implementing the USF rider. ODSA's analysis of the law is overbroad and discounts the entirety of the Commission's exclusive jurisdiction as provided by the General Assembly in Ohio Revised Code Chapter 49 and supported by the Supreme Court of Ohio upon review. It is true that there is a specific statute creating the USF rider, but that statute must be read in concert with the Commission's exclusive jurisdiction over all matters related to rates and tariffs. ODSA appears to read the statute as an elimination of any and all Commission oversight as opposed to a plain reading that shows the statute. A plain reading shows that the statute is limited to the express words written on level of recovery and a prohibition on class subsidy. The absence of any enumerated specific language on rate design for the applications filed with the Commission leaves the Commission, as the regulatory agency with broad oversight of the industry, to determine the appropriate rate structure and any undefined terms.

As discussed in AEP Ohio's initial brief, the Commission has the statutory authority to implement a single AEP Ohio USF rider structure because it involves the rate making mechanism to recover the revenue requirement needed to fund the USF. (AEP Ohio Br. at 13.) The Commission has exclusive jurisdiction by statute over matters involving rates and service. The Court has expressed the scope of this exclusive jurisdiction in the setting of rates and related services in *Kazmaier Supermarket, Inc. v. Toledo Edison Co.* (1991), 61 Ohio St.3d 147, 150, 573 N.E.2d 655. The Court stated:

The General Assembly has created a broad and comprehensive statutory scheme for regulating the business activities of public utilities. R.C. Title 49 sets forth a detailed statutory framework for the regulation of utility service and the fixation of rates charged by public utilities to their customers. As part of that scheme, the legislature created the Public Utilities Commission and empowered it with broad authority to administer and enforce the provisions of Title 49. The commission may fix, amend, alter or suspend rates charged by public utilities to their customers. R.C. 4909.15 and 4909.16. Every public utility in Ohio is required to file, for commission review and approval, tariff schedules that detail rates, charges and classifications for every service offered. R.C. 4905.30. And a utility must charge rates that are in accordance with tariffs approved by, and on file with, the commission. R.C. 4905.22.

The Commission is bound to provide the recovery needed to fund the USF, but the rate making function is a matter clearly within the exclusive jurisdiction and purpose of the Commission.

ODSA asserts its unique ability to avoid Commission rate determinations based on the existence of R.C. 4928.52(B). (ODSA Br. at 9.) In fact, ODSA asserts that this statutory provision should be read to limit the Commission jurisdiction to adjusting the USF rider by the minimum amount necessary to provide the additional revenues required to provide sufficient funding for the USF program. (Id.) ODSA is wrong. ODSA cites a statutory provision limited to the specific situation governing the questions of funding levels. This statute describes the process to request more funding, and a directive that the Commission cannot decrease the funds

as a result of this request. That language in no manner whatsoever erases the Commission's exclusive jurisdiction of rates, tariffs and rate structure. ODSA overextends the application of the statute dealing solely with amount of funds available for the fund.

The language of R.C. 4928.52(B) is focused on the process for ODSA to seek to increase the level of funds needed to fund the universal service fund. Specifically, the statute states:

(B) If, during or after the five-year period specified in division (A) of this section, the director of development, after consultation with the public benefits advisory board created under section 4928.58 of the Revised Code, determines that revenues in the universal service fund and revenues from federal or other sources of funding for those programs, including general revenue fund appropriations for the Ohio energy credit program, will be insufficient to cover the administrative costs of the low-income customer assistance programs and the consumer education program and provide adequate funding for those programs, **the director shall file a petition with the commission for an increase in the universal service rider. The commission, after reasonable notice and opportunity for hearing, may adjust the universal service rider by the minimum amount necessary to provide the additional revenues. The commission shall not decrease the universal service rider without the approval of the director, after consultation by the director with the advisory board.**

(Emphasis added), R.C. 4928.52(B). The majority of this statutory provision discusses the process for the director of development to determine if there is adequate revenue in the universal service fund. Only once that determination is made does the statute instruct the director to file a petition with the Commission seeking permission for an increase. The statute states that the Commission "may" adjust the rider by the amount necessary for additional revenues but cannot decrease without approval of the director, after a process. This statute is limited to the question of amount not structure or process. The approval of any increase is discretionary for the Commission, as shown by the inclusion of the word "may." R.C. 4928.52(B) does not preclude or modify the exclusive Commission authority over rates and tariffs.

The only limitation on the Commission's exclusive jurisdiction over rates and tariffs deals with the shifting of costs among customer classes, not the establishment of a single EDU rate structure. R.C. 4928.52(C) reads:

(C) The universal service rider established under division (A) or (B) of this section 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.

This section indicates that the rider that will be established, by the Commission, shall be set with the single limitation concerning cost shifting. Nowhere in this single limitation on structure is there anything to support the ODSA's broad assertion that the Commission is without authority to determine the best rate structure. The ODSA reliance on R.C. 4928.52(B) is misplaced and its failure to point out the only enumerated limitation on the Commission concerning its design of the rate structure under R.C. 4928.52(C) undermines its entire argument.

The very nature of this proceeding and the Stipulation that ODSA seeks approval undermines its argument against Commission jurisdiction. If the ODSA argument were adopted then ODSA would simply be filing a revenue requirement for Commission approval under R.C. 4928.52(B). It would not be seeking to define the structure of the mechanism. Yet the Stipulation does seek Commission approval of a mechanism design. The objection raised by OP&E seeks to change that structure used in past years. ODSA is not arguing that the Commission has no authority to determine the rate structure in its response to OP&E. In fact, ODSA is relying on the fact that the Commission has considered the structure in the past and that the structure is appropriate.

ODSA argues that a ruling on the appropriate rate making structure would amount to a Commission attempt to manage ODSA and order the sister agency to ensure its systems can

accommodate AEP Ohio's request. (ODSA Br. at 13.) In support of this statement, ODSA cites R.C. 4909.154 discussing the Commission's authority over the management policies and practices of a public utility. (Id. at fn 43.) As a sidenote describing R.C. 4909.154 in footnote 43, ODSA asserts that while the Commission has management authority over utilities it does not over another state agency. (Id.) First, R.C. 4909.154 does not mention other state agencies. The side note provided by ODSA should not be read to assume that there is a statutory prohibition between state agencies. Second, AEP Ohio is not arguing that the Commission should be dictating the type of software or managing the USF program for ODSA. Will changes be necessary to update the proper rate design? Maybe, but the record shows it can be done today. Regardless, it is up to the Commission to order the correct rate mechanism and leave implementation to ODSA and the EDUs with any cost differential open for recovery in the administrative cost recovery allowances.

AEP Ohio understands the delicate balance that the Commission must weigh in its rate design in USF proceedings. It is a partner with the ODSA in the application of the USF program. But the Commission should not forget that the EDUs are also partners in the application of this program. AEP Ohio is not asking the Commission to dictate to ODSA what technology it must use and what changes it has to make. AEP Ohio is asking the Commission to exercise the power provided by the General Assembly and apply the appropriate rate structure to avoid known inefficiencies in the implementation of this program. AEP Ohio is asking the Commission to recognize the EDUs as a partner with the Commission and ODSA. Furthermore, ODSA agrees it must make this change at some point, therefore any change that may be needed will result irrespective of when the Commission adopts the appropriate structure. The Commission should focus on the proper rate making structure because the appropriate time for a

change in relation to rates is a matter for Commission decision. AEP Ohio has shown in this record that the time is now in this docket to make that change that is within the Commission's jurisdiction to make.

ODSA's own testimony undermines its attack on the Commission's jurisdiction. During the hearing, ODSA witness Moser agreed that she is not arguing with the authority of the Commission to oversee the practices of a utility and the creation of the rider charged to customers. (Tr. at 62.) And that testimony is provided with good reason. As witness Moser testified, from an ODSA perspective all things PIPP probably flow through her. (Tr. at 52 lines 9-12.) But she also admitted she is not a ratemaking expert. Specifically, Witness Moser testified to a question from counsel for AEP Ohio:

Q. Do you consider yourself an expert in ratemaking?

A. Oh, no.

(Id. at 61 lines 7-9.) She went on to agree that the ODSA could not create distinctions for USF rates based on different territories or cities within an electric distribution utility's territory. (Id. at 14-21.) And when discussing this very issue of the Commission's interaction with the ODSA, she responded that she was not arguing with the authority of the Commission to oversee the practices of a utility and the creation of a rider charged to customers. (Id. at 61-62 lines 22-6.)

Finally, ODSA's argument provided on brief that the change requested by AEP Ohio is revenue neutral also supports the Commission's jurisdiction to make the modification requested by AEP Ohio. (ODSA Br. at 9-10.) ODSA asserts, that "[m]ost significantly," the fact that Mr. Gill stated on cross examination that the AEP Ohio proposal would be revenue neutral that this fact highlights that the change has no effect on the level of revenues required to provide minimal funding for the program and therefore the Commission has no jurisdiction." (Id.) ODSA's has

applied this fact backwards. The fact that the proposed modification has no impact on the level of recovery sought pursuant to R.C. 4928.52(B) is the exact reason that it is a matter exclusively under the jurisdiction of the Commission. The funds available for the USF are not impacted in this case, only the rate structure and traditional ratemaking issues exclusively left to the Commission are involved.

## **II. Conclusion**

AEP Ohio respectfully requests that the Commission properly structure the 2016 USF Rider. The extraneous issues about how the ODSA and Company will comply with the design should not distract the Commission from properly designing the rate methodology. ODSA and the Company can work to accommodate the ordered modification and if it is not feasible for this coming year, the partners can inform the Commission and the rate can be set using the illustrative formula followed in the testimony of AEP Ohio witness Gill's DRG-1.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic mail upon the below-listed counsel this 9<sup>th</sup> day of September, 2015.

//s// Matthew J. Satterwhite

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

Summary: Reply (Post Hearing)Brief electronically filed by Mr. Matthew J Satterwhite on behalf of Ohio Power Company