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

OPINION AND ORDER

The Commission, after thoroughly considering the Ohio Development Services Agency's Notice of Intent to file its annual application for adjustment to the Universal Service Fund riders, applicable law, the Joint Stipulation and Recommendation, and the record of evidence, adopts in its entirety the Joint Stipulation and Recommendation.

APPEARANCES:

Bricker & Eckler LLP, by Dane Stinson, 100 S. Third Street, Columbus, Ohio 43215-4291, on behalf of the Ohio Development Services Agency.

Mike DeWine, Attorney General of the State of Ohio, by John H. Jones and Thomas W. 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 utility customers.

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

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo and Matthew R. Pritchard, Fifth Third Center, 21 East State Street, Suite 1700, Columbus, Ohio 43215-4228, on behalf of the Industrial Energy Users-Ohio.

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

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

Matthew J. Satterwhite and Hector Garcia, Attorneys, American Electric Power Service Corporation, One Riverside Plaza, 29th Floor, Columbus, Ohio 43215-2373, on behalf of Ohio Power Company.

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I. UNIVERSAL SERVICE FUND BACKGROUND

The Universal Service Fund (USF) was established, under the provisions of R.C. 4928.51 through 4928.58 for the purposes of providing funding for the low-income customer assistance programs, including the consumer education programs authorized by R.C. 4928.56 and for payment of the administrative costs of those programs. The USF is administered by the Ohio Development Services Agency (ODSA), in accordance with R.C. 4928.51. The USF is funded primarily by the establishment of a universal service rider on the retail electric distribution service rates of jurisdictional electric utilities, namely Cleveland Electric Illuminating Company (CEI), Dayton Power & Light Company (DP&L), Duke Energy Ohio, Inc. (Duke), Ohio Edison Company (OE), Ohio Power Company (OP),[1] and Toledo Edison Company (TE) (individually or collectively, electric utilities). The USF rider rate for each electric utility was initially determined by ODSA and approved by the Commission.[2]

R.C. 4928.52(B) provides that, if ODSA, 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, ODSA shall

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1 By Entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Co. (CSP) into OP, effective December 31, 2011. The USF rates of OP and CSP have not been consolidated. *In re AEP Ohio*, Case No. 10-2376-EL-UNC (*Merger Case*), Entry (Mar. 7, 2012) (*Merger Case Entry*).

2 *In re FirstEnergy Corp. on Behalf of Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company*, Case No. 99-1212-EL-ETP, Opinion and Order (July 19, 2000); *In re Cincinnati Gas & Electric Co.*, Case No. 99-1658-EL-ETP, Opinion and Order (August 31, 2000); *In re Columbus Southern Power Co.*, Case No. 99-1729-EL-ETP, Opinion and Order (September 28, 2000); *In re Ohio Power Co.*, Case No. 99-1730-EL-ETP, Order (September 28, 2000); *In re Dayton Power & Light Co.*, Case No. 99-1687-EL-ETP, Order (September 21, 2000); and *In re Monongahela Power Co.*, Case No. 00-02-EL-ETP, Order (October 5, 2000).

file a petition with the Commission for an increase in the USF rider rates. R.C. 4928.52(B) 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 since 2001, the Commission has approved USF rider rate adjustments each year for each of the Ohio jurisdictional electric utilities.[3]

In accordance with the Stipulation filed on December 3, 2014 (2014 Adjustment Stipulation) and approved by the Commission in *In re Application of Ohio Dev. Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Elec. Distrib. Util.*, Case No. 14-1002-EL-USF, Opinion and Order (Dec. 10, 2014) (*2014 USF Adjustment Order*), ODSA must file a NOI, in advance of filing a USF rider adjustment application. The function of the notice of intent (NOI) is to provide parties with an opportunity to raise and pursue objections to the specific methodology ODSA 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 29, 2015, ODSA filed its NOI (2015 NOI) to file an application to adjust the USF riders of all jurisdictional Ohio electric utilities, CEI, DP&L, Duke, OE, OP, and TE, in accordance with the terms of the 2014 Adjustment Stipulation approved by the Commission pursuant to the Order issued in the *2014 USF Case*. The 2015 NOI included ODSA's Exhibit A in support of its proposed allowance for 2016 projected costs associated with the Electric Partnership Program (EPP).

To summarize, ODSA's 2015 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 (PIPP) Plus program, EPP including consumer education programs, and associated administrative costs and to reflect known and measurable changes that take effect during the test

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[3] See, e.g. *In re Application of Ohio Dept. of Dev. for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Elec. Dist. Util.*, Case No. 01-2411-EL-UNC (*2001 USF Case*), Opinion and Order (Dec. 20, 2001); *In re Application of Ohio Dept. of Dev. for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Elec. Dist. Util.*, Case No. 04-1616-EL-UNC (*2004 USF Case*), Opinion and Order (Dec. 8, 2004); *In re Application of Ohio Dept. of Dev. for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Elec. Dist. Util.*, Case No. 05-717-EL-UNC (*2005 USF Case*), Opinion and Order (Dec. 14, 2005), and Finding and Order (June 6, 2006); and *In re Application of Ohio Dev. Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Elec. Dist. Util.*, Case No. 14-1002-EL-USF (*2014 USF Case*), Opinion and Order (Dec. 10, 2014). Note that starting with the 2010 proceeding, the USF case designation code was implemented.

period and the post-test period. ODSA also proposes an adjustment to capture the impact of the anticipated increase in PIPP enrollment and a reserve component to address PIPP-related cash flow fluctuations as a result of the weather-sensitive nature of electric service. ODSA proposes, as approved by the Commission in each USF proceeding since 2006, that the reserve will be based on the highest monthly deficit during the test period.

Next, ODSA, consistent with the Commission approved ODSA-OCC settlement agreement filed on August 26, 2005, in *2005 USF Case*, proposes an EPP allowance of $14,946,196 based on its projection of payments to service providers and associated administrative costs during the 2015 collection period (*See* Exhibit A, Table 1 to the 2015 NOI application). As in prior USF rider adjustment proceedings, ODSA 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.

ODSA, consistent with the ODSA-OCC settlement agreement, as approved in each USF NOI proceeding since the *2005 USF Case*, 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, ODSA 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 as projected through December 31, 2015. ODSA's exposure to carrying charges for late reimbursement payments to the electric utilities is insignificant, and, therefore, ODSA does not propose an allowance for interest costs.

ODSA proposes to include, based on the recommendation of the USF Rider Working Group, as it has in previous USF proceedings, an allowance of $165,249 to be allocated to each of the electric utilities based on its cost of PIPP Plus for an independent third party to review the application of ODSA agreed-upon procedures of the electric utilities.

Consistent with the provisions of R.C. 4928.54 and Ohio Adm.Code 122:5-3-06, ODSA plans to establish a competitive procurement process for the supply of competitive retail electric service to PIPP Plus customers. ODSA proposes that all costs

related to the aggregation process be allocated to each EDU based on the EDU's annual PIPP Plus kilowatts per hour sales based on actual sales data available through August 2015 and projected based on actual data September 2014 through December 2014 for the remaining months of the test year.

ODSA proposes 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 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 rider rate 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 ODSA 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 order regarding the 2015 NOI, including the methodology proposed by ODSA for developing the USF rider revenue requirement, the USF rate design, and the issues raised by the parties concerning these items; and a second order regarding ODSA's subsequent application proposing USF rider adjustments, as necessary, for each of the six electric utilities.

Motions to intervene in this proceeding were timely filed by Industrial Energy Users–Ohio (IEU), Ohio Partners for Affordable Energy (OPAE), Ohio Consumers' Counsel (OCC). No memorandum contra any of the motions to intervene was filed. Accordingly, IEU's, OPAE's and OCC's respective motion to intervene was granted at the hearing (Tr. at 8).

By Entry issued on June 9, 2015, the procedural schedule was established for the NOI phase of this case, which included an evidentiary hearing to be held on August 19, 2015. The June 9, 2015 Entry also joined the electric utilities as indispensable parties to this proceeding. Pursuant to the procedural schedule, motions to intervene, and objections or comments on the 2015 NOI application were due by July 6, 2015, and

responses to objections or comments were due by July 13, 2015. While no party requested a prehearing conference, OP and OPAE filed objections to the 2015 NOI application on July 1, 2015 and July 6, 2015, respectively. On July 24, 2015, at the request of ODSA, the due date for direct and reply testimony was extended to August 3, 2015, and August 10, 2015, respectively. On August 3, 2015, ODSA, IEU, DP&L, OE, CEI and TE filed a Joint Stipulation and Recommendation (2015 NOI Stipulation) and ODSA filed the testimony of Susan M. Moser in support of the Stipulation. Also on August 3, 2015, OPAE filed the testimony of David C. Rinebolt and OP filed the testimony of David R. Gil. Consistent with the procedural schedule, on August 10, 2015, reply testimony was filed by ODSA witness Moser and by OP witness Gill. The hearing on the NOI was held, as scheduled, on August 19, 2015. At the hearing, ODSA, OPAE, and OP each presented the testimony of one witness. Admitted into evidence at the hearing was ODSA's NOI application filed on May 29, 2015 (ODSA Ex. 1); the Joint Stipulation and Recommendation (Stipulation, Joint Ex. 1); the filed direct testimony of ODSA witness Susan M. Moser in support of the Stipulation (ODSA Ex. 2); the filed reply testimony of Ms. Moser (ODSA Ex. 3); the testimony of OPAE witness David C. Rinebolt (OPAE Ex. 3); and the filed direct and reply testimony of OP witness David R. Gill (OP Exs. 1 and 2). At the conclusion of the hearing, ODSA requested, and was granted, an opportunity to file rebuttal testimony on the bargaining that had taken place between ODSA and OP. ODSA's rebuttal testimony was due by August 24, 2015. (Tr. at 211-212.)

By Entry issued August 20, 2015, the due date for ODSA's rebuttal testimony was confirmed and the hearing was scheduled to reconvene on August 27, 2015, at 1:00 p.m., at the offices of the Commission. On August 24, 2015, ODSA and OP filed a Joint Expedited Motion to Adopt Stipulated Facts and Process (Stipulated Facts and Process). In lieu of filing rebuttal testimony and reconvening the hearing, ODSA and OP requested that the Commission adopt the facts as set forth in the Stipulated Facts and OP agreed not to challenge the "serious bargaining" prong of the three-part test the Commission uses to evaluate stipulations. By Entry issued August 26, 2015, ODSA's and OP's motion was granted, the hearing which was scheduled to reconvene on August 27, 2015 was cancelled, and the briefing schedule was established. Initial briefs were due by September 2, 2015, and reply briefs were due by September 9, 2015. Initial and reply briefs were timely filed by ODSA, IEU, OP, and OPAE.

III. COMMISSION AUTHORITY IN USF PROCEEDINGS

Two parties to the proceeding oppose specific aspects of the 2015 NOI application and the 2015 NOI Stipulation. OPAE opposes the two-tier, declining block rider rate design and proposes that the Commission order a uniform per kilowatt hour rate, or in the alternative, modify the declining block structure. OP opposes ODSA's continuation of two separate USF rate zones within OP's service territory. OPAE and

OP both argue that the 2015 NOI Stipulation does not benefit ratepayers and the public interest and violates important principles and practices without the requested revision each requests.

ODSA states the Commission's jurisdiction, as a creature of statute, is limited. *Cols. Southern Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 537, 620 N.E.2d 835 (1993). According to ODSA, the Commission's jurisdiction in the review of the USF rider rates is greatly restricted. As ODSA interprets R.C. 4928.52(B), after notice and hearing, the Commission is limited to adjusting the USF rider rate by the minimum amount necessary to provide the additional revenues to ensure funding for the USF programs. Acknowledging that the Commission has jurisdiction over public utilities, including electric utilities, ODSA declares that the Commission has no such authority over ODSA, as a state agency. Further, ODSA submits that OP's reliance on *Kazmaier Supermarket, Inc. v. Toledo Edison* (1991), 61 Ohio St.3d 147, 573 N.E.2d 655, is misplaced. ODSA reasons that *Kazmaier* was decided in 1991 and the General Assembly enacted R.C. 4928.52 in 1999, limiting the Commission's authority to adjust the USF rider. ODSA submits that R.C. 4928.52 controls over R.C. 4909.15 and the related statutes in *Kazmaier*, in accordance with R.C. 1.52(A). Accordingly, ODSA submits that the Commission has no jurisdiction to review ODSA's USF system or to order ODSA to ensure its information systems can accommodate OP's request to consolidate its USF rates. (ODSA Ex. 2 at 7; ODSA Br. at 4-5, 13-14; ODSA Reply Br. at 9-10.)

OPAE argues that ODSA's and IEU's claims as to the Commission's authority are overstated. OPAE reasons that the Stipulation in the *2004 USF Case* and each stipulation in the USF proceedings since has explicitly provided for any parties right to challenge the rate design and the cap on the second tier of the declining block rate design. Thus, OPAE reasons that the Commission has the authority to consider challenges to the USF rate design. Further, OPAE notes that standard stipulation language includes a provision which acknowledges signatory parties rights to enforce the terms of the stipulation. According to OPAE, such language was included in the Stipulation filed in the *2004 USF Case* and each stipulation filed in a USF proceeding since. (*2004 USF Case*, Stipulation (Dec. 1, 2004) at 2, 5-7; OPAE Br. at 5-6.)

OP accepts that the Commission is bound to ensure sufficient recovery to fund the USF programs pursuant to R.C. 4928.52(B). However, OP avers that the Commission is also vested with exclusive jurisdiction over the ratemaking function of Ohio's electric utilities. OP distinguishes the Commission's USF funding authority from its other statutory duties. OP submits that the Commission is vested with exclusive jurisdiction to establish the rates and related services of OP. *Kazmaier Supermarket, Inc. v. Toledo Edison Co. (1991), 61 Ohio St.3d 147, 150, 573 N.E.2d 655.* OP contends that ODSA overstates its authority and understates the jurisdiction of the

Commission. OP notes that the General Assembly granted the Commission broad, exclusive jurisdiction over public utilities as reflected in R.C. Chapter 49 and supported by the Supreme Court of Ohio. OP states that the specific statute creating the USF rider must be read in concert with the Commission's exclusive jurisdiction over public utilities' rates and tariff related matters. According to OP, ODSA appears to read the statute as an elimination of any and all Commission oversight rather than a plain reading of R.C. 4928.52. As interpreted by OP, a plain reading of R.C. 4928.52 is limited to the expressed words regarding the level of recovery and a prohibition on class subsidy in relation to the USF process before the Commission. The language of R.C. 4928.52(B) is focused on the process for ODSA to adjust the USF funding. OP argues that R.C. 4928.52 is limited to the issue of amount not the USF structure or process. OP reasons the absence of any enumerated specific language on rate design for the USF application filed with the Commission leaves the Commission as the regulatory agency with broad oversight of the industry and the authority to determine the appropriate rate structure and any undefined terms. OP concludes that R.C. 4928.52 does not preclude or modify the exclusive authority of the Commission over rates and tariffs. Furthermore, OP submits that while ODSA alleges that the Commission's authority is limited, the very nature of this proceeding, the submission of the 2015 NOI Stipulation to the Commission, and ODSA's reliance on past Commission orders, undermines ODSA's arguments that the Commission's authority is limited. (OP Reply Br. at 7-13.)

Each of the electric utilities in this USF proceeding is a public utility subject to the Commission's jurisdiction pursuant to R.C. 4905.02 and 4905.03. The Supreme Court of Ohio has determined that the Commission is vested with broad and exclusive jurisdiction over the rates and services of public utilities. *State ex rel. Ohio Bell Tel. Co. v. Common Pleas Court of Cuyahoga Cnty., 128 Ohio St. 553, 554, 192 N.E. 787, 787 (1934); Kazmaier Supermarket, Inc. v. Toledo Edison Co., 61 Ohio St. 3d 147, 150-51, 573 N.E.2d 655, 658 (1991); Hull v. Columbia Gas of Ohio, 2006-Ohio-3666, 110 Ohio St. 3d 96, 102, 850 N.E.2d 1190, 1196.* In addition, the Commission's jurisdiction is limited to authority granted in the statutes. *Cols. Southern Power Co. V Pub. Util. Comm., 67 Ohio St.3d 535, 535, 620 N.E.2d 835, 838 (1993); Disc. Cellular, Inc. v. Pub. Util. Comm., 2007-Ohio-53, 112 Ohio St. 3d 360, 373, 859 N.E.2d 957, 969.* Pursuant to rules of statutory interpretation, statutes are to be interpreted based on the plain language of the statute; individual words and phrases shall be read in context and construed according to the rules of grammar and common usage. R.C. 1.42. Based on the plain language of R.C. 4928.52, the Commission's authority to adjust the amount of the USF rider is limited. R.C. 4928.52(B) provides that 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 needed to continue the USF programs. The Commission shall not decrease the USF rider without the approval of the director, after consultation by the director with the advisory board. The Commission notes that R.C.

4928.52(B) makes no mention of the Commission's broad authority otherwise granted pursuant to R.C. Chapter 49. The Commission finds no conflict between R.C. 4928.52 and its jurisdiction and authority as to the remainder of R.C. Chapter 49. For that reason, the Commission finds that R.C. 1.52, as to the effective date of R.C. 4928.52 does not apply under these circumstances. R.C. 4928.52 is not a limit of the Commission's broad jurisdiction over the electric utilities' rates and service matters. Rather, it is a limitation only as to the amount of the adjustment of the USF rider. Accordingly, the Commission reasons that it may consider USF rate design issues within the context of a USF proceeding filed by ODSA.

IV. 2015 NOI STIPULATION

A. Summary of the Stipulation

As previously noted, on August 3, 2015, a Joint Stipulation and Recommendation (Joint Ex. 1 or 2015 NOI Stipulation) was filed that purports to address all of the issues raised by the 2015 NOI application. The 2015 NOI Stipulation was signed by ODSA, IEU, DP&L and OE, TE and CEI (Signatory Parties). OPAE and OP specifically oppose aspects of the Stipulation. On September 2, 2015, and September 3, 2015, OCC and Duke, respectively, filed letters indicating that they take no position on the Stipulation. In a notice from Staff filed on September 2, 2015, Staff indicates that its participation in USF proceedings are limited to the mathematical accuracy of the USF filings and, therefore, Staff would not be filing briefs in this proceeding.

The Signatory Parties assert that the 2015 NOI Stipulation represents a just and reasonable resolution of the issues presented in the 2015 NOI application, does not violate any regulatory principle, and is the product of serious discussions among knowledgeable and capable parties. Further, Signatory Parties offer that, although the 2015 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. The Signatory Parties request that the Commission issue an order adopting the Stipulation. (Jt. Ex. 1 at 2.)

The 2015 NOI Stipulation provides that the USF rider revenue requirement, to be recovered by the USF rider rates of Ohio electric utilities January through December 2016, include the following elements, each of which will be determined in the manner proposed in ODSA's 2015 NOI application, and which is consistent with the revenue requirement methodology approved by this Commission in prior USF proceedings: (a) cost of PIPP; (b) EPP costs and, if updated projections for the EPP allowance suggest the EPP allowance is no longer appropriate, ODSA will, consistent with its obligations, perform any necessary adjustments and document the basis for the adjustment in the adjustment phase of this USF proceeding; (c) administrative costs; (d) December 31,

2015, PIPP account balances; (e) reserve; (f) allowance for undercollection; (g) no cost for electric utility audits, at this time, understanding that ODSA reserves the right to propose such an allowance if ODSA determines otherwise; (h) USF interest offset, if available; and (i) the cost of aggregation for PIPP Plus customers. (Joint Ex. 1 at 3-5.)

The 2015 NOI Stipulation also provides that ODSA should use the current rate design methodology, as previously approved by the Commission, 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 R.C. 4928.52(C) and that any case-to-case changes in the revenue distribution under the two-block rate design are well within the range of estimation error inherent in any interclass cost-of-service study. (Jt. Ex. 1 at 5-6.)

B. Opposition to the Stipulation

(1) OPAE

OPAE submits that the USF two-step, declining block rate design proposed by ODSA and incorporated into the 2015 NOI Stipulation shifts costs between the customer classes in violation of R.C. 4928.52(C). OPAE states that since the *2001 USF Case*, ODSA has continually proposed this rate design where customers who use more than 833,000 kWh incur a lower USF rate for consumption above the specified level. Based on record evidence filed in the *2014 USF Case* as an example, OPAE argues the declining block rate design is increasing the USF rider costs for customers with usage in excess of 10,000,000 kWh per year, contrary to the stated purpose of the two-block rate design. Further, OPAE avers there is no justification for the continued use of the legacy PIPP rider rate in effect in October 1999 as the second-tier rate, as the 1999 rate has no relationship to the costs of USF program as it exists today. In 1999, Ohio's electric utilities were vertically integrated and their rates include generation, distribution, and transmission costs, without market competition. OPAE asserts the Joint Stipulation entered into by the parties to the *2001 USF Case* recognized that for OP to meet its revenue requirement with the declining block rate structure required the transfer of $2,037,246 of the revenue requirement to the first block of the rider, increasing the cost assigned to the first rate block by 26 percent. OPAE calculates that the USF rider in

effect for 2015 reveals a similar revenue shift for OP customers as a result of the declining block rate structure of approximately $28.5 million (*2014 USF Case*, Suppl. Testimony of Susan M. Moser, ODSA Ex. 5, Ex. SMM-30). Thus, OPAE reasons the first block of the USF rate is 36 percent higher than if a uniform kilowatt per hour rate were implemented. According to OPAE, the two-tier rate design results in an annual increase of $17.45 for the average residential customer using 1,000 kWh per month when compared to a uniform kWh rate. OPAE contends a single kWh rate should be implemented for each electric utility's USF rate as opposed to the two-step declining block rate design. (OPAE Ex. 3 at 5-9, Att. DCR-1; OPAE Br. at 11-13.)

IEU argues that OPAE witness Rinebolt did not hold himself out as an expert on rate design or cost of service studies but as an individual with experience in proceedings involving such issues. ODSA and IEU claim that OPAE's comparison analysis of the two-step declining block USF rate and a uniform kilowatt per hour rate does not demonstrate costs shifts among the customer classes. IEU notes that the term "customer class" is a term of art in the utility industry which refers to residential, commercial, and industrial customers. According to ODSA and IEU, OPAE's analysis instead demonstrates, as OPAE admits, the cost shift based on energy consumption. ODSA and IEU contend that the two-step declining block rate design has been agreed to by the parties in USF proceedings since 2001 and should be adopted by the Commission again in this case. Further, IEU submits OPAE witness Rinebolt's testimony failed to demonstrate how continued use of the declining block rate design violates R.C. 4928.52(C). IEU argues that OPAE does not identify any funding responsibility or shift among the customer classes as that term is regularly understood to mean the residential, commercial, or industrial customer class. Further, IEU argues that OPAE failed to demonstrate the rate design results in any shift in funding responsibility based on utility rate schedule. (OPAE Ex. 3, Att. DCR-1; ODSA Br. at 14-15; IEU Br. at 5-10; Tr. at 103-104, 110-111.)

(2) OP

As presented by ODSA in its NOI application, and reflected in the 2015 NOI Stipulation, OP has two USF rider rates—one rate for the OP rate zone and another rate for the CSP rate zone. OP requests that the Commission modify the Stipulation to revise the USF rider to a single USF mechanism applicable to all OP customers.

OP also submits that consistent with the Commission's Order in Case No. 11-351-EL-AIR (*2011 OP Rate Case*), as of January 1, 2015, the Company implemented a new rate design where all residential customers pay the same customer charge and monthly distribution energy charge, irrespective of rate zone. The Company argues that other Company rate structures reflect expenses incurred by both rate zones and calculates a single rate to be applied to all OP customers, including for example the bad debt

expense, transmission cost recovery rider, as well as OCC and Commission assessments. OP reasons that other than the USF rate, the rates charged to residential customers are the same, except for two riders—the Phase-in Recovery Rider (PIRR) and the Pilot Throughput Balancing Adjustment Rider (PTBAR). OP notes that these two riders equate to approximately three percent of the total residential bill. (OP Ex. 1 at 3-4; OP Ex. 2 at 4; OP Br. at 3-4.)

OP reasons that a single USF rate structure for all of OP's service territory is beneficial to the Company, ODSA, the Commission and, ultimately, OP's customers as it will reduce inefficiencies or avoid redundancy.[4] According to OP, consolidating the company's two USF rate zones into a single USF rate will cut OP's data reporting requirements to ODSA in half. OP reasons that the two rate zones require the Company to manually input two separate data reports into ODSA's online system, prepare two separate customer information reports, and prepare two separate payments to be remitted to ODSA. OP estimates that based on the company's currently effective USF rider rates the typical bill impact would range between an increase or decrease of .7 percent. Stated differently, the 2015 CSP rate zone USF rate is $0.0049462 for the first 833,000 kWh and $0.0001830 kWh above 833,000 kWh and the 2015 OP rate zone USF rate is $ $0.0061835 for the first 833,000 kWh and $0.0001681 kWh above 833,000 kWh. OP calculates that combined the USF rate for 2015 would be $.0055682 per kWh for the first 833,000 kWh and $.001725 for all kWh in excess of 833,000 kWh. (OP Ex. 1 at 4-6, Ex. DRG-1 and 2; OP Ex. 2 at 2.)

OP reasons that based on his review, implementation of a single USF rate for OP will allow ODSA to review and track customer data for a single company as opposed to two rate zones, which may reduce the PIPP-related administrative costs that are collected through the USF rider, and possibly the USF rider rate. OP believes that merger of the OP USF data is as simple as reporting the combined information under one of the currently existing reports. (OP Ex. 1 at 5; OP Ex. 2 at 2-3; Tr. 146-148.) Thus, OP requests that the Commission revise the Stipulation to merge the company's USF rates.

ODSA states that it can not agree to the merger of OP's USF rates into a single USF rate, at this time, for two reasons. First, ODSA states that before ODSA will consolidate the USF rider rates of OP, the Commission must make a determination that the merger would not violate prior Commission Orders. ODSA notes that the Commission's approval of OP's merger of CSP into OP did not merge the customer rates of the surviving company and the Commission continues to maintain separate

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4 OP witness Gill defined "inefficiencies" as the expenditure of resources with nothing gained in return (OP Ex. 2 at 2).

rider rates for OP for the PIRR and PTBAR.[5] Since the merger, ODSA has established USF rider rates based on the revenue requirements for each rate zone. Further, ODSA notes that in OP's 2011 electric security plan (ESP) Case the Commission refused to merge the PIRR rate because the PIRR balance was incurred primarily by OP customers and cost causation principles dictated that the recovery of the balance should be from OP customers. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al. (*OP ESP 2 Case*), Opinion and Order (Aug. 8, 2012) at 55; Entry on Rehearing (Jan. 30, 2013) at 51-52. ODSA notes that while the deferred fuel cost incurred on behalf of former CSP rate zone customers is zero, there remains a significant deferred fuel cost balance for OP rate zone customers. Second, ODSA emphasizes that the agency must complete its internal review of process and technical issues for the merger of the OP USF rates to ensure that the change can be efficiently, technically, and cost-effectively implemented. (OP Ex. 1 at 3; ODSA Br. at 7-8.)

ODSA argues that OP's claims of ODSA inefficiencies are disingenuous, as OP witness Gill states that maintaining the two USF rates for OP may result in additional administrative or audit costs. ODSA notes however, that OP did not oppose the administrative cost methodology or audit expense included in the NOI application or Stipulation. Furthermore, OP witness Gill did not quantify such cost or savings and conceded on cross-examination that the alleged inefficiencies may not translate to any direct savings for customers. More specifically, ODSA claims that the Commission lacks jurisdiction to review any alleged inefficiencies in the USF rate process. ODSA avers the Commission's jurisdiction is limited, under R.C. 4928.52(B), to adjusting the USF rider by the amount necessary to provide the additional revenues required to ensure sufficient funding for the USF programs. ODSA further notes that, according to OP's witness, the effects of merging the OP USF rates will be revenue neutral. (ODSA Br. at 1-2; Tr. at 130, 132, 171-172.)

III. COLLATERAL ATTACKS ON PRIOR USF PROCEEDINGS

ODSA and IEU submit that OPAE's use of information filed in the *2014 USF Case* to demonstrate claims regarding the two-step declining block rate design are an impermissible collateral attack on the currently effective USF rates adopted by the Commission *2014 USF Case*.. (*2014 USF Case*, Opinion and Order (Dec. 10, 2014); Tr. at 119.)

OPAE argues that the Stipulation filed by the parties to the *2004 USF Case* recognized that the USF rider rates for each electric utility needed to be effective on a bill rendered basis for the January billing cycle of the following year. As such, the

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5 *Merger Case*, Entry (Mar. 7, 2012) at 11.

signatory parties to the *2004 USF Case* agreed that in addition to filing an application with the Commission to adjust the USF rates by October 31 of each year, ODSA would file an NOI application by May 31 of each year. In the NOI application, ODSA would include details regarding the methodology ODSA would follow to calculate the USF rider revenue requirement and design USF rates for the following year. OPAE notes that the purpose of the NOI application is to afford sufficient time in the USF process should an interested party object to issues raised by the USF methodology. Pursuant to the process set forth in the 2004 USF Case Stipulation, after the NOI application was filed, the Commission would establish a procedural schedule for the filing of objections or comments, responses, testimony, and a hearing. OPAE submits that the Stipulation in the *2004 USF Case* specifically acknowledged that the NOI process was necessary to facilitate objections to issues beyond "simple mathematical issues" and accuracy. OPAE also notes that the *2004 USF Case* Stipulation also expressly provided that no signatory party waived its right to contest the continued use of the October 1999 PIPP charge as a cap on the second block of the rider in any future USF proceeding. OPAE argues that claims of a collateral attack on the Commission's Order in the *2014 USF Case* approving the currently effective USF rates overlook the USF proceeding process. Under the USF process, OPAE notes that ODSA will not file data for the USF rates to be effective in 2016 until October 31, 2015. (OPAE Br. at 4-5; Tr. at 35-38, 98-100; *2004 USF Case*, Jt. Stip. and Recommendation (Dec. 1, 2004) 5-8.)

In light of the USF process established, OPAE contends that this is the proper time to challenge the rate design for the upcoming USF collection year. Similarly, OP argues that this is the appropriate proceeding and time to merge the Company's two USF rates into a single USF rate to be applied to all OP customers.

The Commission finds OPAE's analysis of information from the *2014 USF Case* not to be a collateral attack on currently effective USF rates. The time to appeal the Order in the *2014 USF Case* has passed and the Order is final. Further, the Commission notes that the USF proceedings incorporate a two-part process, the NOI phase and an adjustment phase and this two-part process has been followed by ODSA for more than a decade. The bifurcated process was initiated to provide interested stakeholders an opportunity to challenge the USF methodology to be used to calculate and design the USF rates while facilitating the implementation of new USF rates as of January of the next year. In this NOI phase of the USF proceeding, the information necessary to calculate the USF rate to be applicable for 2016 have not yet been filed by ODSA. The most recent USF information available to analyze the rates was filed in the *2014 USF Case*. OPAE used the information filed in the adjustment phase of the *2014 USF Case* to make its arguments regarding the rate design. For these reasons, the Commission finds OPAE's analysis of the information from the *2014 USF Case* not to be a collateral attack on the currently effective rates.

IV. COMMISSION CONSIDERATION OF STIPULATIONS

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although the stipulation is not binding on the Commission, the terms of such agreements are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 NE.2d 480 (1978). 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 numerous prior Commission proceedings. See, *In re Ohio-American Water Co.*, Case No. 99-1038-WW-AIR, Opinion and Order (June 29, 2000); *In re Application of the Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand, (April 14, 1994); *In re Application of the Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (March 30, 1994); *In re the 1991 Long Term Forecast Report Filed on Behalf of Ohio Edison Co.*, Case No. 91-698-EL-FOR et al., Opinion and Order (December 30, 1993); *In re Notice of Intent of the Cleveland Electric Illum. Co. to File an Application for Authority to Amend and Increase Its Filed Schedules for Electric Service*, Case No. 88-170-EL-AIR, Opinion and Order (January 30, 1989); *In re Restatement of Accounts and Records of the Cincinnati Gas and Electric Company, et. al. (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Opinion and Order (November 26, 1985). The ultimate issue for the Commission's consideration is whether the stipulation, which embodies 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 R.C. 4928.52(B) and Ohio Adm.Code 4901-1-30. The Commission will discuss each of the criteria.

A. Serious Bargaining for 2015 NOI Stipulation

(1) IEU and ODSA in Support of the Stipulation

IEU generally supports the Commission's approval of the 2015 NOI Stipulation consistent with the Commission's approval of other USF stipulations over the years. ODSA submits that the parties to this case have been actively participating in USF proceedings and other Commission proceedings for numerous years. Each party was also represented by experienced, competent counsel with experience in Commission proceedings. Further, ODSA notes that the Signatory Parties to the 2015 NOI Stipulation have been parties to substantially similar agreements with the identical rate design and nearly the same revenue requirement methodology. According to ODSA, all parties to the case had the opportunity to file objections and to offer input on the 2015 NOI Stipulation and the Stipulated Facts and Process. Moreover, ODSA submits that the Signatory Parties to the 2015 NOI Stipulation represent diverse interests. (IEU Br. at 5; ODSA Br. at 5; ODSA Ex. 2 at 5.)

ODSA notes that prior to the filing of its initial brief OPAE did not challenge whether the Stipulation was the result of serious bargaining. ODSA requests that if the Commission considers OPAE's inaccurate claims that OPAE did not participate in any settlement negotiations and was unaware any negotiations took place between the parties, ODSA requests that OPAE's witness be made available for cross-examination and an opportunity for ODSA to offer rebuttal. Further, ODSA notes that OPAE relies on the initial claims of OP witness Gill where Mr. Gill made similar claims in his reply testimony. ODSA submits that the facts as set forth in the record of this proceeding support that serious bargaining occurred. It is OPAE's responsibility, according to ODSA, to take advantage of the opportunities to negotiate in this matter. (ODSA Reply Br. at 4-5.)

(2) OPAE

OPAE argues the 2015 NOI Stipulation fails to meet the three-part test used by the Commission to evaluate stipulations. OPAE emphasizes that neither of the parties who initially challenged the NOI application are signatory parties to the Stipulation. Further, OPAE notes that ODSA witness Moser did not testify that any bargaining took place between the parties in this case. OPAE submits that no bargaining took place between OPAE, OP, and ODSA and that OPAE was unaware of any settlement negotiations taking place among the parties. Thus, OPAE argues the record does not

support the conclusion that any bargaining took place to produce the 2015 NOI Stipulation. (ODSA Ex. 2 at 5; OP Ex. 2 at 1; OPAE Br. at 7-8.)

(3) OP and ODSA

As noted above, in lieu of ODSA filing rebuttal testimony, ODSA and OP filed the Stipulated Facts and Process on August 24, 2015. Pursuant to the Stipulated Facts and Process, ODSA and OP agree that:

(1) OP raised the idea of a merged OP rate zone informally to ODSA in March of 2015.

(2) As a result ODSA informally requested information as to the effect of the merger on CSP and OP customers. OP provided that data in mid-June 2015.

(3) ODSA initially circulated a draft stipulation to all parties on July 22, 2015, that retained the two rate zones, but ODSA indicated in a cover email that it still was considering OP's merger proposal.

(4) On July 23, 2015, in a reply to all parties, counsel for OP indicated that it cannot sign a stipulation with a continuation of the two rate zones, but offered, "Is it helpful for OP to suggest a paragraph that authorizes the reflection of the single rate zone" for OP?

(5) On July 23, 2015, in a reply to all parties, counsel for ODSA responded: "Thanks for offering the drafting help; but, as indicated in my earlier email, the merger issue still is under review by ODSA. Drafting language may be premature. That being said. Any party is free to provide suggestions to the stipulation, or to request a prehearing conference among the parties per the AE [attorney examiner] entry."

(6) On July 27, 2015, OP offered for its non-legal staff to discuss matters with the ODSA non-legal staff to ensure both sides understood the nature of the objections and the concerns with the change recommended by OP.

(7) On July 31, 2015, counsel for ODSA informed counsel for OP that it would not recommend the merger because

ODSA wished to defer to the PUCO orders on the merger issue and that ODSA had not completed its internal review of potential process and technical issues related to merging the USF rider rate.

(8) On July 31, 2015, counsel for ODSA circulated a second stipulation for consideration of all parties, without the caveat that the merger question still was under consideration.

(9) On July 31, 2015, counsel for OP responded that "OP feels it is important to address the two rate zone charge for OP, a single company, and intends to file testimony supporting that position."

(10) After the filing of the initial testimony (including the stipulation and testimony in support of the stipulation) and the reply testimony, ODSA and OP, prior to hearing, attempted to resolve the OP objections, but were unable to do so. Subsequently, the non-legal staffs did have a discussion on the process and technical aspects of implementing OP's recommendation on August 10, 2015, after the filing of stipulation and testimony in support.

Further, ODSA and OP agree, among other things, that these facts as presented in the Stipulated Facts and Process are accurate and that OP will not challenge this prong of the three-part test the Commission uses to evaluate the 2015 NOI Stipulation in this case.

(Stipulated Facts and Process, Att. A.)

B. Does the 2015 NOI Stipulation, as a Package, Benefit Consumers and the Public Interest

ODSA reiterates that the 2015 NOI Stipulation adopts methodologies approved in numerous prior USF proceedings, assures adequate funding for the USF assistance and education programs, and provides a reasonable contribution to the USF revenue requirement by all customer classes. The 2015 NOI Stipulation, according to ODSA, is a reasonable compromise of varied interest and resolves several significant issues presented in the USF proceeding without engaging the considerable resources otherwise necessary to litigate the complex issues presented. ODSA and IEU reason

that the 2015 NOI Stipulation benefits the ratepayers and the public interest. (ODSA Br. at 6; ODSA Reply Br. at 5-6.)

On the other hand, OPAE avers that the Stipulation, as a package, fails to benefit ratepayers and the public interest. OPAE argues that merely because the Stipulation adopts a rate design methodology approved by the Commission in numerous prior USF proceedings, does not support the 2015 NOI Stipulation in this case. OPAE reasons that it has raised the issue in this proceeding whether the historic USF methodology continues to benefit consumers and the public interest. OPAE avers that ODSA failed to present any record evidence to support a finding that the rate design methodology continues to be a benefit to consumers, is in the public interest, and provides a reasonable contribution by all customer classes. OPAE contends that ODSA did not conduct any analysis of the revenue contribution by customer class for any electric utility. Thus, OPAE avers the record does not support any contribution by revenue class or the revenue contribution by revenue requirement. (OPAE Ex. 1; OPAE Ex. 2; OPAE Br. at 9-10; OPAE Reply Br. at 9-12; Tr. at 15-19).

Similarly, OP argues that without a single USF rate for all OP service territory, the 2015 NOI Stipulation is not in the public interest as the Stipulation perpetuates inefficiencies and fails to follow Commission precedent on social allocations in rate structures. OP also notes its request for a single USF rate is unique to OP and only OP and ODSA have an interest in the issue raised by OP. For this reason, OP submits its objection to the 2015 NOI Stipulation is of no interest to other parties and the Commission should evaluate the Stipulation from that perspective. (OP Br. at 16-17.)

C. The 2015 NOI Stipulation Violates Important Regulatory Principles and Practices

ODSA

In support of the 2015 NOI Stipulation, ODSA reasons that this Stipulation, like many others approved by the Commission, incorporates a two-step declining block rate design. ODSA notes that the Commission has previously determined that this rate design does not violate R.C. 4928.52 and R.C. 4928.52 does not specify the rate design the Commission must adopt. Moreover, ODSA is a state agency and, as such, ODSA argues the Commission is without jurisdiction to review ODSA's management of the USF information systems, or the USF programs for efficiency or cost prudency, as OP request. Further, ODSA submits that continuation of the two USF rate zones within OP is appropriate until ODSA determines that its information systems can accommodate the merger or until the PIRR and PTBAR riders are terminated. (ODSA Ex. 2 at 7; ODSA Br. at 13-14; ODSA Reply Br. at 9-10.)

OPAE

OPAE submits that ODSA's claim that the Stipulation does not violate any important regulatory principles and practices is based on the Commission's prior approval of the rate design in previous cases. Specifically, OPAE notes ODSA's reliance on the Commission's approval of the rate design in *2014 USF Case* wherein the Commission concludes the rate design was insufficient to constitute a material shift among customers or to violate R.C. 4928.52(C). OPAE emphasizes ODSA's claim that the rate design results in a reasonable contribution to the revenue requirement by all customer classes is unsubstantiated by any analysis in this proceeding. OPAE submits the 2015 NOI Stipulation supports charges that are not just and reasonable as required by R.C. 4909.15 and violates R.C. 4928.52(C), to the extent the declining block rate design shifts costs from a subset of very large industrial customers to all other customers. (ODSA Ex. 2 at 7; OPAE Br. at 14-16; Tr. at 41.)

D. Commission's decision on OPAE's and OP's objections

OPAE's request for rate design revision

The Commission notes that the two-step declining block rate design has been a component of all the Stipulations filed by the parties to these USF proceedings since it was first implemented in the *2001 USF Case*. In each USF case since 2009, excluding the *2014 USF Case*, OPAE signed the Stipulation but refused to endorse the two-step, declining block rate design provision.[6] The Commission notes however, that this is the first USF proceeding where OPAE, or any other party, has raised the issue challenging the USF rate design.

R.C. 4928.52(C) directs that the USF rider be set in a manner so as not to shift among the customer classes of electric distribution utilities the cost of funding low-income customer assistance programs. R.C. 1.42 provides that, words and phrases shall be read in context and construed according to the rules of grammar and common usage and where words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. Significant to the Commission's consideration of this issue is the meaning of customer class, as set forth in R.C. 4928.52(C). The Commission notes OPAE admits the term

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6 *See, In re Application of Ohio Dept. of Dev. for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Elec. Dist. Util.*, Case No. 08-658-EL-UNC, NOI Stipulation filed July 25, 2008 at 5-6; *In re Application of Ohio Dept. of Dev. for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Elec. Dist. Util.*, Case No. 10-725-EL-USF, Opinion and Order (Dec. 15, 2010) at 10; *In re Application of Ohio Dev. Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Elec. Dist. Util.*, Case No. 13-1296-EL-USF, Opinion and Order (Dec. 18, 2013) at 3, 10.

customer class is not defined in the statutes or in any electric utility's tariff. OPAE states that in the utility industry the term customer class refers to residential, commercial, and industrial customers. OPAE's analysis of the comparison of the two-tier, declining block rate design to a uniform rate for each electric utility demonstrates, as OPAE admits, a cost shift to the first block of the rate design which includes all classes of customers. While the record reveals that the declining block rate design shifts some costs to the first-tier, it does not demonstrate to what degree costs shift between the customer classes. Such a demonstration is required for the Commission to find that the rate design violates R.C. 4928.52(C). Accordingly, we deny OPAE's request to revise the USF rate design to a uniform rate or, in the alternative, to revise the second tier of the two-tier rate. (*2001 USF Case*, Opinion and Order (Dec. 20, 2001) at 3; *2014 USF Case* (Dec. 10, 2014) at 5; Tr. at 103-105.)

Uniform USF rate for OP

The Commission notes that OP's deferred fuel cost applicable to the OP rate zone is projected to be fully recovered from OP customers on or about December 2018. Currently, OP's deferred fuel cost to be recovered through the PIRR reflects a significant balance. On the other hand, the deferred fuel cost applicable to CSP rate zone customers is zero.

The USF revenue requirement includes, among other expenses, the cost of the PIPP program. All OP customer bills include deferred fuel costs recovered through the PIRR. Accordingly, if as OP requests, the USF rates of OP are consolidated, PIRR for PIPP customers will be recovered from CSP rate zone customers. According to OP testimony, if the USF rates of OP were consolidated, the bills of CSP rate zone customers would increase less than 1 percent per month while the bills of OP customers would decrease by less than 1 percent per month.

As the parties acknowledge, the Commission confirmed the merger of CSP into OP, with OP as the surviving entity, in the *Merger Case*. *Merger Case*, Entry (Mar. 7, 2012). Subsequently, in OP's modified electric security plan (ESP) OP specifically requested, among other things, that the Commission combine the Phase in Recovery Riders (PIRR) of CSP and OP rate zone, arguing that all the assets and liabilities of CSP were now on the books of OP, and it was therefore appropriate for all OP customers, including CSP rate zone customers, to pay the PIRR. As ODSA notes, the Commission specifically refused to combine the PIRR rates of CSP and OP. At that time, approximately one percent of the outstanding total PIRR balance had been incurred by CSP customers with the balance incurred by OP customers. Thus, the Commission noted that the outstanding PIRR balance was incurred primarily by OP customers, and according to cost-causation principles, the recovery of the balance should be from OP

customers. *OP ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 54-55. Furthermore, when parties to the *OP ESP 2 Case* requested that the Commission reconsider this aspect of the Order, the Commission confirmed its decision not to merge the PIRR rates. *OP ESP 2 Case*, Entry on Rehearing (Jan. 30, 2013) at 51-52. The Commission finds that merging the USF rider rates circumvents the Commission's expressed reason for refusing to merge the PIRR of the CSP and OP rate zones in the ESP proceeding. Consolidating the USF rates of the CSP rate zone and OP rate zone will shift the deferred fuel costs for the OP rate zone PIPP participants to CSP rate zone customers. OP's deferred fuel costs are projected to be fully recovered by on or about December 2018. Thus, the Commission denies, at this time, OP's request to consolidate the USF rate zones.

Decision on 2015 NOI Stipulation

In light of the Commission's conclusions on OPAE's objections to the rate design and OP's request for a single USF rate for the company's service area, the Commission considers the criteria for evaluation of stipulations.

Based on the totality of the record, the Commission finds that it appears that the 2015 NOI Stipulation is the product of serious bargaining among capable, knowledgeable parties. It is undisputed that each of the parties and their respective counsel, including the Signatory Parties to the 2015 NOI Stipulation, have been active participants in many USF proceedings and other Commission cases. All of the parties and their respective counsel is familiar with the USF process. OPAE is the only party challenging whether the 2015 NOI Stipulation meets this criterion and OPAE relies on the claims of OP witness Gill which were subsequently clarified pursuant to the Stipulated Facts and Process. While the Commission notes the objections of OP and OPAE were not incorporated into the 2015 NOI Stipulation, the Commission does not find it indicative of a lack of serious bargaining. It appears that the testimony of OP witness Gill which OPAE relied on does not present a complete picture of the course of events. As such, the Commission is reluctant to rely on that aspect of OPAE's arguments regarding whether serious bargaining occurred. Nonetheless, it is not a requirement that the Stipulation be a unanimous agreement. The Signatory Parties include ODSA, IEU, and four electric utilities; parties with diverse interest in the proceeding. Accordingly, the Commission concludes that the record supports a finding that the 2015 NOI Stipulation is the product of serious bargaining among capable, knowledgeable parties.

Furthermore, the Commission finds that the 2015 NOI Stipulation, as a package, benefits consumers and the public interest. The 2015 NOI Stipulation resolves numerous issues regarding the revenue requirement methodology and rate design

methodology to ensure sufficient funding for the USF assistance and education programs. To that end, the 2015 NOI Stipulation benefits the public interest and Ohio consumers. The Signatory Parties to the 2015 NOI Stipulation are ODSA, IEU, DP&L, OE, TE, and CEI which include the administrator of the USF assistance and education programs, the customer beneficiaries of the USF programs, an advocate of industrial energy customers, and four electric utilities. The Signatory Parties represent a diverse group of stakeholders with different interest in this USF matter. Therefore, the Commission concludes that the 2015 NOI Stipulation, as a package, benefits consumers and the public interest.

Finally, the Commission finds that the 2015 NOI Stipulation does not violate any important regulatory principles or practices. The Commission finds that R.C. 4928.52(C) dictates that the USF rider 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 not persuaded that OPAE's analysis demonstrates any significant cost shift between the customer classes as required by the statute. Nonetheless, the Commission directs the jurisdictional electric utilities to provide to ODSA the information necessary to determine compliance with R.C. 4928.52(C). Further, the Commission has determined that OP's request to revise the 2015 NOI Stipulation to consolidate the USF rates of OP, violates the expressed intent of the Commission's order in the utility's ESP case. *OP ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 54-55. Accordingly, the Commission finds the record does not support any claim that the 2015 NOI Stipulation violates any important regulatory principle or practice. Therefore, the Stipulation is reasonable and should be approved.

ORDER:

It is, therefore,

ORDERED, That the request of OP and OPAE to revise provision of the 2015 NOI Stipulation are denied. It is, further,

ORDERED, That the 2015 NOI Stipulation filed on August 3, 2015, be approved. It is further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Andre T. Porter, Chairman

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

Thomas W. Johnson

GNS/dah

Entered in the Journal OCT 28 2015

Barcy F. McNeal
Secretary