

# 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 RIDER OF JURISDICTIONAL OHIO  
ELECTRIC DISTRIBUTION UTILITIES.

CASE NO. 16-1223-EL-USF

## OPINION AND ORDER

Entered in the Journal on September 7, 2016

### I. SUMMARY

{¶ 1} The Commission adopts the unopposed Joint Stipulation and Recommendation filed to resolve all the issues presented by the Ohio Development Services Agency's Notice of Intent application.

### II. LAW AND PROCEDURAL HISTORY

#### A. *Universal Service Fund Background*

{¶ 2} 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 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),<sup>1</sup> and Toledo Edison Company (TE) (individually or collectively, electric utilities). Each of the entities, CEI, DP&L, Duke, OE, OP and TE, is an electric

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<sup>1</sup> By Entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Co. (CSP) with OP, effective December 31, 2011. *In re AEP Ohio*, Case No. 10-2376-EL-UNC, Entry (Mar. 7, 2012). The USF rates of OP and CSP have not been consolidated. *In re ODSA*, Case No. 15-1046-EL-USF (2015 USF Case), Opinion and Order (Oct. 28, 2015).

distribution utility, as defined in R.C. 4928.01(A)(6), and a public utility, as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission. The USF rider rate for each electric utility was initially determined by ODSA and approved by the Commission.<sup>2</sup>

{¶ 3} 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 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.<sup>3</sup>

{¶ 4} In the most recent USF case, a Stipulation was filed on December 1, 2015 which was approved by the Commission. *2015 USF Case*, Case No. 15-1046-EL-USF, Opinion and Order (Dec. 16, 2015) (*2015 USF Adjustment Order*). Consistent with the *2015 USF Adjustment Order*, ODSA must file a notice of intent (NOI), in advance of filing

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<sup>2</sup> *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 (Aug. 31, 2000); *In re Columbus Southern Power Co.*, Case No. 99-1729-EL-ETP, Opinion and Order (Sept. 28, 2000); *In re Ohio Power Co.*, Case No. 99-1730-EL-ETP, Order (Sept. 28, 2000); *In re Dayton Power & Light Co.*, Case No. 99-1687-EL-ETP, Order (Sept. 21, 2000); and *In re Monongahela Power Co.*, Case No. 00-02-EL-ETP, Order (Oct. 5, 2000).

<sup>3</sup> 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. 05-717-EL-UNC (2005 USF Case), Opinion and Order (Dec. 14, 2005), and Finding and Order (June 6, 2006); and *2015 USF Case*, Opinion and Order (Dec. 16, 2015) (*2015 USF Adjustment Order*). Note that starting with the 2010 proceeding, the USF case designation code was implemented.

a USF rider adjustment application. The function of the NOI is to provide interested stakeholders 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. Accordingly, the Commission will issue two orders in this proceeding: one order regarding the 2016 NOI, including the methodology proposed by ODSA for developing the USF rider revenue requirement, the USF rate design, and any 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.

**B. History of This USF Proceeding**

{¶ 5} On May 31, 2016, ODSA filed its NOI to file an application to adjust the USF riders of all Ohio jurisdictional electric utilities, CEL, DP&L, Duke, OE, OP, and TE (collectively, EDUs) in accordance with R.C. 4928.52 and the *2015 USF Adjustment Order*.

{¶ 6} To summarize, ODSA's 2016 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, Electric Partnership Program (EPP) including consumer education programs, and associated administrative costs and to reflect known and measurable changes that take effect during the test period and the post-test period. The 2016 NOI includes ODSA's Exhibit A in support of its proposed allowance for 2017 projected costs associated with EPP. 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.

{¶ 7} Next, ODSA, consistent with the Commission approved settlement agreement between ODSA and Ohio Consumers' Counsel (OCC) (ODSA-OCC settlement agreement) filed on August 26, 2005, in the *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 2016 NOI application*). *In re ODSA*, Case No. 05-717-EL-UNC (*2005 USF Case*), Opinion and Order (Sept. 28, 2005) at 9, 21-24; Opinion and Order (Dec. 14, 2005) at 7, 11; Finding and Order (June 6, 2006). 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 or, in the alternative, based on the amount of each EPP provider grant expended in the individual electric utility's service territory during the based on actual and projected data.

{¶ 8} 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, adjustments for the state fiscal year, and adjustments for prior unexpended administrative costs, to assure, to the extent possible, that the administrative cost incurred are collected during the collection year. *2005 USF Case Order* (Sept. 28, 2005) at 21. The administrative costs shall include costs incurred by the Commission to design, manage and supervise the aggregation process for PIPP Plus customers.<sup>4</sup> 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.

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<sup>4</sup> See, *In the Matter of the Implementation of R.C. 4928.54 and 4928.544*, Case No. 16-247-EL-UNC, Finding and Order (Mar. 2, 2016); Entry on Rehearing (Apr. 27, 2016).

{¶ 9} 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.

{¶ 10} ODSA proposes to include, based on the recommendation of the USF Rider Working Group, an allowance 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. ODSA has not yet determined an amount but estimates \$150,000 to conduct such reviews in 2017 for the four electric utilities.

{¶ 11} 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.

{¶ 12} By Entry issued June 2, 2016, the jurisdictional electric utilities were joined as indispensable parties and the procedural schedule established as set forth below:

File objections or comments	June 30, 2016
File motions to intervene	June 30, 2016
Prehearing conference	Upon request of any party
File responses to objections and comments	July 8, 2016
Discovery completion	July 15, 2016
File Direct Testimony	July 22, 2016
File Reply Testimony	August 1, 2016
Evidentiary Hearing	August 9, 2016
File Post-Hearing Briefs	August 15, 2016
File Reply Briefs	August 19, 2016

{¶ 13} Motions to intervene were filed by Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU), Ohio Partners for Affordable Energy (OPAE) and The Kroger Company (Kroger). The motions to intervene were granted by Entry issued July 25, 2016. The Entry dated July 25, 2016 also granted an extension of the due date to filed direct testimony and reply testimony to July 29, 2016 and August 5, 2016, respectively, for the purpose of allowing the parties additional time to consider settlement proposals offered by multiply parties.

{¶ 14} While no party requested a prehearing conference, Kroger filed objections to the 2016 NOI application on July 1, 2016. Replies to Kroger's objections were filed by ODSA, OCC and jointly by the electric utilities.

{¶ 15} On July 29, 2016, ODSA, IEU, Kroger, DP&L, OE, CEI, TE, OP and Duke filed a Joint Stipulation and Recommendation (2016 NOI Stipulation) and ODSA filed the testimony of Susan M. Moser in support of the 2016 NOI Stipulation.

### III. SUMMARY OF THE EVIDENCE

{¶ 16} The hearing on the NOI was held, as scheduled, on August 9, 2016. Admitted into evidence at the hearing was ODSA's NOI application filed on May 31, 2016 (ODSA Ex. 2); the Stipulation filed July 29, 2016 (Joint Ex. 1 or 2016 NOI Stipulation) and the filed direct testimony of ODSA witness Susan M. Moser in support of the Stipulation (ODSA Ex. 1).

**A. 2016 NOI Stipulation**

{¶ 17} The 2016 NOI Stipulation addresses all of the issues related to the NOI and was signed by ODSA, IEU, Kroger, DP&L, OE, CEI, TE, OP and Duke (collectively, Signatory Parties). While Staff, OCC and OP&E did not sign the 2016 NOI Stipulation, they do not oppose the Stipulation.<sup>5</sup> The Signatory Parties assert that the 2016 NOI Stipulation is the product of serious discussions among capable, knowledgeable parties undertaken in a cooperative process where all parties had the opportunity to participate. The 2016 NOI Stipulation adopts nearly the same methodologies approved in numerous prior USF proceedings to ensure adequate funding for the low-income customer assistance programs and the consumer education programs and provides a reasonable contribution by all customer classes to the USF revenue requirement for 2017. Further, Signatory Parties advocate that the 2016 NOI Stipulation benefits consumers and the public interest because the methodologies adopted will result in USF rider rates that represent the minimal rates necessary to collect each EDU's USF rider revenue requirements. Lastly, the Signatory Parties offer that, although the 2016 NOI Stipulation is not binding on the Commission, it is entitled to careful consideration, as it is sponsored by parties representing a wide range of interests and is not opposed by any party. The Signatory Parties request that the Commission issue an order adopting the Stipulation. (Joint Ex. 1 at 2-7; Tr. at 7, 9.)

{¶ 18} Ms. Moser testified that the 2016 NOI Stipulation is the product of serious bargaining among capable, knowledgeable parties, does not violate any important regulatory principle or practice and the 2016 NOI Stipulation, as a whole, will benefit customers and the public interest. According to Ms. Moser, the parties to this case have been actively participating in the USF proceedings or a number of other Commission proceedings for several years and are represented by experienced, competent counsel.

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<sup>5</sup> Pursuant to Ohio Adm.Code 4901-1-10(C), Staff is a party in this proceeding for the purpose of entering into this Stipulation.

Further, the witness offered the Signatory Parties have been signatories to several prior NOI stipulations which adopted the identical rate design and nearly the same revenue requirement methodology. ODSA witness Moser states the remaining parties to this proceeding, namely Staff, OCC and OPAE, participated fully in the settlement process and do not oppose the 2016 NOI Stipulation. Further, the witness notes the 2016 NOI Stipulation adopts nearly the same methodologies approved in numerous prior USF proceedings. Ms. Moser contends the approved methodologies ensure adequate funding for the low-income customer assistance and consumer education programs and provides a reasonable contribution by all customer classes to the USF revenue requirement. Further, the witness advocated that the 2016 NOI Stipulation benefits consumers and the public interest because the methodologies adopted will result in USF rider rates that represent the minimal rates necessary to collect each electric utility's USF rider revenue requirement. Witness Moser submits the 2016 NOI Stipulation does not violate any important regulatory principles and practices, as the witness offers in each USF proceeding since 2001, the Commission has approved stipulations adopting the two-step declining block rate design and concluded that it does not violate R.C. 4928.52, which does not specify the rate design to be adopted. (ODSA Ex. 1 at 4-6.)

#### **1. USF RIDER REVENUE REQUIREMENT METHODOLOGY**

{¶ 19} The 2016 NOI Stipulation provides that the USF rider revenue requirement, to be recovered by the USF rider rates of the Ohio electric utilities during the 2017 collection period, should include the following elements, each of which will be determined in the manner proposed in ODSA's 2016 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, 2016, PIPP account balances; (e) reserve;<sup>6</sup> (f) allowance for undercollection; (g) an allowance for evaluation of each electric utility's agreed-upon USF procedures; (h) USF interest offset; and (i) cost of the aggregation process for PIPP customers. (Joint Ex. 1 at 3-5.)

## 2. USF RIDER RATE DESIGN METHODOLOGY

{¶ 20} The 2016 NOI Stipulation also provides that ODSA should use the current rate design methodology, as previously approved by the Commission in all prior ODSA applications, to recover the annual USF rider revenue requirement, in this proceeding.<sup>7</sup> 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 kilowatt hour (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). (Joint Ex. 1 at 5-6.)

## IV. COMMISSION CONCLUSION

{¶ 21} 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.*

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<sup>6</sup> In the 2016 NOI Stipulation, based on the information provided at this time, the electric utilities do not oppose the methodology proposed by ODSA to determine the reserve component of the USF revenue requirement but reserve the right to provide comments and/or object to the reserve requirement when ODSA files its application to adjust the USF rider rates.

<sup>7</sup> Kroger agrees not to oppose the rate design methodology set forth herein. However, Kroger reserves the right to object and/or provide comments regarding the application of the two-step declining block rate design in a future USF rider rate adjustment proceeding.

*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.

{¶ 22} 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 Appl. of the Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand, (Apr. 14,1994); *In re Application of the Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 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 (Dec. 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 (Jan. 30, 1989); *In re Restatement of Accounts and Records of the Cincinnati Gas and Electric Co., et. al. (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 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?

{¶ 23} 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.* (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.

{¶ 24} After reviewing the 2016 NOI application, the Stipulation and the testimony offered at hearing, the Commission finds that the negotiation process involved knowledgeable, capable parties familiar with the USF as well as other Commission proceedings. The parties and their counsel have been actively participating in the USF proceedings and numerous other Commission cases for several years. All parties were provided the opportunity to participate in the negotiation discussions. Further, the Commission recognizes that Staff, OCC, and OPAE are the only parties to this USF proceeding that are not Signatory Parties to the Stipulation but Staff, OCC and OPAE do not oppose the Stipulation. (ODSA Ex. 1 at 4-5; Tr. at 7, 9.)

{¶ 25} The Commission finds that the Stipulation adopts the proposed USF rider revenue requirement methodology and USF rider rate design methodology submitted in ODSA's NOI application and is consistent with the methodologies previously approved by the Commission. Further, we find that the 2016 NOI Stipulation resolves all the issues presented, benefits consumers and is in the public interest as it provides ODSA with a process to ensure adequate funding for the low-income customer assistance programs and the consumer education programs at the minimum rates necessary without engaging in extensive litigation. (Joint Ex. 1 at 2-7; ODSA Ex. 1 at 5-6.)

{¶ 26} Last, the Commission concludes the Stipulation does not violate any important regulatory principle or practice. In each USF NOI proceeding since the adoption of the two-step declining block rate design, the Commission has, based on the record before it, adopted the stipulation endorsing the same rate design. (Joint Ex. 1 at 2; ODSA Ex. 1 at 6.)

{¶ 27} Accordingly, the Commission finds the 2016 NOI Stipulation is reasonable and should be adopted in its entirety.

#### V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 28} Each of the entities, CEI, DP&L, Duke, OE, OP and TE, is an electric distribution utility, as defined in R.C. 4928.01(A)(6), and a public utility, as defined in R.C. 4905.02 and, as such, each is subject to the jurisdiction of this Commission.

{¶ 29} On May 31, 2016, ODSA filed its NOI to file an application to adjust the USF rider rates of CEI, DP&L, Duke, OE, OP and TE.

{¶ 30} OCC, IEU, OP&E, and Kroger requested and were granted intervention in this matter.

{¶ 31} By Entry issued June 2, 2016, a procedural schedule was established for the processing of ODSA's NOI application. Consistent with the procedural schedule, no party requested a prehearing conference.

{¶ 32} On July 29, 2016, ODSA, CEI, DP&L, Duke, OE, OP, TE, IEU, and Kroger filed the 2016 NOI Stipulation to resolve the issues raised by the NOI. The remaining parties did not oppose the NOI Stipulation, nor do they support the Stipulation.

{¶ 33} The hearing was held on August 9, 2016 and ODSA presented the testimony of one witness in support of the 2016 NOI Stipulation.

{¶ 34} The 2016 NOI Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted in its entirety.


#### VI. ORDER

{¶ 35} It is, therefore,

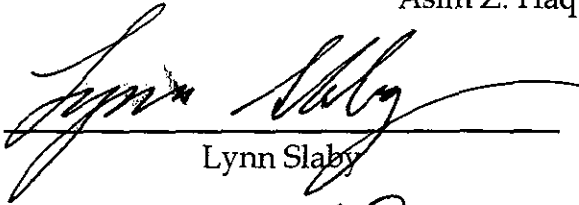
{¶ 36} ORDERED, That the 2016 NOI Stipulation filed on July 29, 2016 be adopted. It is, further,

[¶ 37] ORDERED, That a copy of this Opinion and Order be served on ODSA, the electric-energy list serve, and all persons and parties of record.

## THE PUBLIC UTILITIES COMMISSION OF OHIO



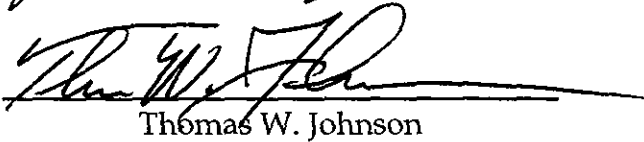
Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold

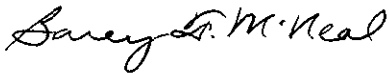


Thomas W. Johnson



M. Howard Petricoff

GNS/dah

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Secretary

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