

**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)	Case No. 17-1377-EL-USF
Service Fund Riders of Jurisdictional Ohio)	
Electric Distribution Utilities.)	

**OHIO PARTNERS FOR AFFORDABLE ENERGY’S
APPLICATION FOR REHEARING
AND
MEMORANDUM IN SUPPORT**

Pursuant to Ohio Revised Code (“R.C.”) Section 4903.10, Ohio Partners for Affordable Energy (“OPAE”) herein submits to the Public Utilities Commission of Ohio (“Commission”) this Application for Rehearing from the Commission’s October 11, 2017 Opinion and Order in this proceeding considering the application made by the Ohio Development Services Agency (“OSDA”) for an order approving adjustments to the Universal Service Fund (“USF”) riders of Ohio electric distribution utilities. The Commission’s Opinion and Order is unlawful and reasonable on the following grounds.

- 1) The Commission acted unlawfully in violation of R.C. 4928.52(C) when it approved a rate design for the USF riders that will shift costs among customer classes.
- 2) The Commission acted unreasonably and unlawfully when it found that OPAE must show the rate design’s shift among customer classes.

- 3) The Commission acted unreasonably and unlawfully when it did not order ODSA to file an application for USF rider adjustments that does not shift the cost of funding the USF among the customer classes.

The Commission should grant rehearing and correct these errors in its Opinion and Order for the reasons set forth in the attached Memorandum in Support of this Application for Rehearing which is incorporated herein.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT
OF
APPLICATION FOR REHEARING**

- 1) The Commission acted unlawfully in violation of R.C. 4928.52(C) when it approved a rate design for USF riders that will shift costs among customer classes.

Pursuant to R.C. 4928.52(C): the Universal Service Fund (“USF”) rider is to “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 Ohio Development Services Agency (“ODSA”) filed a Notice of Intent (“NOI”) to file an application for an order approving adjustments to the USF riders. ODSA proposed a rate design that will shift the cost of funding the USF among the customer classes, in violation of R.C. 4928.52(C).

ODSA’s two-block rate design’s first block rate applies to all monthly consumption up to and including 833,000 kWh and the second block rate applies to all consumption above 833,000 kWh per month. ODSA used the October 1999 Percentage of Income Payment Plan (“PIPP”) rate of the 1999 Ohio electric distribution utilities for the second block of its USF rate design. The second block

applies whenever the October 1999 PIPP rate is lower than a uniform per kWh rate for all customers. Given that the purpose of the two-block rate design is to shift among the customer classes the responsibility of funding low-income customer assistance programs, the two-block rate design violates R.C. 4928.52(C). The USF rider rate must be a uniform per kWh rate for all customers so that it does not shift costs among customer classes.

The Commission has approved Stipulations and Recommendations allowing the two-block rate design in all USF proceedings. The Commission's Opinion and Order states that OPAE argued that "the Commission's rationale for approving the stipulations" in prior USF proceedings was incorrect. Opinion and Order at 26. OPAE made so such argument. The Commission's decisions in the prior USF proceedings are final. What OPAE argued is that the Commission approved the two-block rate design in the prior proceedings only on the basis of the Commission's three-part test for the reasonableness of stipulations. OPAE stated a fact: the Commission never discussed R.C. 4928.52(B) except in the context of the stipulations, which acknowledged the cost shift but claimed the cost shift was de minimis. In this case, there is no stipulation and no de minimis language. There is only the statute, under which any cost shift among the customer classes is prohibited.

The Commission states that OPAE did not file an application for rehearing from its prior decisions. This is irrelevant. The Commission never reached the merits of an argument based on R.C. 4928.52(C); the Commission merely approved stipulations that the Commission found met its three-part test for the reasonableness

of stipulations. The prior orders are not precedent for this case because there is no stipulated de minimis language in this case. There is only the statute that forbids any cost shift. While the Commission may approve a stipulation based on its three-part test, the Commission has no authority to violate Ohio law. The Commission also can draw no conclusions from any party's decision not to seek rehearing or appeal a Commission order. Whenever the Commission issues a final order in violation of Ohio law, the final order may be appealed to the Supreme Court.

- 2) The Commission acted unreasonably and unlawfully when it found that OPAE, an intervenor in this case, must show the rate design's shift among the customer classes.

The Commission's Opinion and Order states that the Commission cannot conclude, based on the evidence, that the ODSA rate design is, on its face, a violation of R.C. 4928.52(C). Opinion and Order at 26. According to the Commission, a "theoretical argument that there is a likelihood of an improper transfer of costs to the first-tier of the USF rates is insufficient at this stage of the USF proceeding." The Commission states that OPAE presented no evidence or analysis that the two-tier rate design "inherently shifts costs between (sic) the customer classes". Id. The Commission interprets R.C. 4928.52(C) to require a demonstrated transfer of USF costs from one class of customers to another. The Commission found that the two-step rate design did not "inherently" violate R.C. 4928.52(C). Id. at 26.

The Commission is wrong. The two-block rate design inherently shifts costs among the customer classes. The purpose of the two blocks is to shift costs among the customer classes. The two-block rate design inherently violates R.C. 4928.52(C).

For example, ODSA may file an application with a uniform per kWh rate for all customers (and therefore paid by all classes) for Ohio Power Company of \$0.0024475. This uniform rate would shift no costs among the customer classes. However, in another example, ODSA may file an application proposing for Ohio Power Company a two-block rate design with a \$0.0001681 per kWh rate on all monthly usage above 833,000 kWh, (i.e., the 1999 PIPP rate of Ohio Power) and for the first 833,000 kWh of monthly usage a rate of \$0.0036315 per kWh. If a customer uses 833,000 kWh in a month, the customer would pay \$2,061.67 under the uniform per kWh rate of \$.0024475 and \$3,025.04 under ODSA's proposed two-block rate design. Almost \$1,000 of USF cost responsibility would be shifted to the customers using 833,000 kWh per month. A residential class customer using 1,000 kWh monthly would have USF cost responsibility of \$2.45 under the uniform per kWh rate and \$3.63 under ODSA's two-block rate design. The uniform per kWh rate of \$0.0024475, which shifts no costs among the customer classes, would be a lower rate for the entire residential class, for all customer classes whose customers have monthly usage at 833,000 kWh per month, and even for all customer classes with monthly usage below 1,250,000 kWh. (At 1,250,000 kWh per month, the uniform rate results in a payment responsibility of \$3,059.38 per month, whereas the ODSA rate design results in a payment responsibility of \$3,025.04 on the first

833,000 kWh per month plus \$70.10 on the next 417,000 kWh for a total of \$3,095.14 per month.) The only customers who would benefit from the two-block rate design are those with usage above 1,250,000 kWh monthly (15,000,000 kWh annually). The two-block rate design would shift USF funding responsibility away from customers using 1,250,000 kWh per month and onto all other customers. This is a shift among customer classes because that level of usage is not applicable to all or even most customer classes. The purpose of the two-block rate design is to shift costs among the customer classes. There is no other reason for the two-block rate design. There is no need for OPAE or anyone else to present evidence when the issue is resolved by simple mathematics.

- 3) The Commission acted unreasonably and unlawfully when it did not order ODSA to file an application for USF rider adjustments that does not shift the responsibility of funding the USF among the customer classes.

Eliminating ODSA's two-block rate design will end the unlawful cost shift that forces nearly all customer classes to pay more to fund the USF than they would pay under a uniform per kWh rate. Residential and small commercial customers will all pay less whenever there is no second block. Even large commercial and small industrial customers with usage above 833,000 monthly will pay less as they are unlikely to have enough usage in the second block to counter-act the increase in the first block from any shortfall in the USF revenue requirement. There is no place in

Ohio law for a USF rate design that shifts costs from a few extremely large users to all other customers and customer classes.

Pursuant to R.C. 4928.52(B), the Commission must consider the USF rate design in the USF application filed by ODSA. It is the Commission that will determine whether the rate design shifts costs among the customer classes.

Pursuant to R.C. 4928.52(B), the Commission cannot approve a rate design for the USF rider that shifts costs among the customer classes. ODSA's rate design shifts costs among the customer classes. It is unlawful, and the Commission cannot approve it. The Commission must follow Ohio law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Application for Rehearing and Memorandum in Support will be served electronically by the Commission's Docketing Division on parties who are electronically subscribed to this case on this 9th day of November 2017.

/s/Colleen L. Mooney
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11/9/2017 1:13:05 PM

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Case No(s). 17-1377-EL-USF

Summary: Application for Rehearing and Memorandum in Support electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy