

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

---

**OHIO DEVELOPMENT SERVICES AGENCY'S  
MEMORANDUM CONTRA OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
APPLICATION FOR REHEARING**

---

Dane Stinson (Reg. No. 0019101)  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
Telephone: (614) 227-2300  
Facsimile: (614) 227-2390  
E-Mail dstinson@bricker.com

Attorneys for Ohio Development  
Services Agency

November 20, 2017

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

---

**OHIO DEVELOPMENT SERVICES AGENCY’S  
MEMORANDUM CONTRA OHIO PARTNERS FOR AFFORDABLE ENERGY’S  
APPLICATION FOR REHEARING**

---

**I. INTRODUCTION**

By its Opinion and Order issued in this proceeding on October 11, 2017 (“Order”), the Public Utilities Commission of Ohio (“Commission”) approved the Ohio Development Services Agency’s (“ODSA”) Notice of Intent (“NOI”) application filed May 31, 2017. The NOI Order approved the methodology for determining the Universal Service Fund (“USF”) revenue requirement and rate design to establish USF rider rates for 2018. The Commission approved the same two-step declining block rate design that it has approved since 2001.

Ohio Partners for Affordable Energy (“OPAE”) asserts in this proceeding that the two-step declining block rate structure is unlawful and that a single, uniform rate should be ordered for all customer classes.<sup>1</sup> The NOI Order rejected OPAE’s position, from which OPAE raises three assignments of error, each of which is without merit.

---

<sup>1</sup> Notably, OPAE was a signatory party to the unanimous stipulation approved in the initial 2001 USF proceeding that supported the two-step declining block rate design. *In re Ohio Dept. of Development*, Case No. 01-2411-EL-UNC at 2 (noting OPAE’s appearance as a party) and 6 (noting the parties’ unanimous stipulation).

## II. ARGUMENT

### A. The Commission consistently has found that the two-step declining block rate design does not violate R.C. 4928.52(C).

In its application for rehearing, OPAE confusingly claims that the Commission misconstrued OPAE's argument on brief.<sup>2</sup> OPAE is wrong. In its reply brief, OPAE argued that the stipulations approved in prior proceedings were unlawful.<sup>3</sup> In the NOI Order, the Commission correctly refused to consider OPAE's argument because the orders in the prior proceedings were final and non-appealable.<sup>4</sup>

Now, on rehearing, OPAE asserts that its position is that the Commission has only considered R.C. 4928.52(C) in the context of stipulated agreements, and has not addressed the lawfulness of the two-step declining block rate structure. OPAE is mistaken. As a part of the Commission's three prong test for approving stipulations it must consider whether the provisions violate an important regulatory principle or practice. In each of the prior USF proceedings since 2001, the Commission approved the stipulations under this standard. In finding that that two-step declining block rate structure did not violate a regulatory practice or principle, the Commission necessarily found that the rate design was lawful.

Indeed, OPAE is well aware that stipulations are subject to attack on the basis that one or more of its provisions are unlawful. It challenged the stipulation offered in the 2015 USF proceeding, through detailed testimony, under the same rationale it presents in this proceeding. However, the Commission found that the record did not support a claim that the stipulation

---

<sup>2</sup> OPAE Application for Rehearing at 1-3.

<sup>3</sup> OPAE Reply Br. at 2-3.

<sup>4</sup> NOI Order at 26.

violated an important regulatory principle or practice.<sup>5</sup> OPAE's argument that the Commission has not reached the merits of whether the two-step declining block rate structure is unlawful must be denied.

**B. The record contains no evidence that the two-step declining block rate design is unlawful.**

Unlike the 2015 USF proceeding in which OPAE presented detailed testimony in an attempt to support its position for a single, uniform USF rider rate, OPAE presented no evidence to support its position in this proceeding. Lacking testimony, OPAE attempts to support its position on rehearing based upon a series of hypothetical facts.<sup>6</sup> Because these hypothetical facts are not a part of the record in this proceeding, they cannot serve as the basis of the Commission's decision.

The record in this proceeding shows that the two-step declining block rate design provides "a reasonable contribution by all customer classes to the USF revenue requirement."<sup>7</sup> No evidence has been offered to the contrary. Thus, the Commission must reject OPAE's argument.

**C. The Commission did not err by not ordering ODSA to file an application that contained a different rate design.**

OPAE next contends that the Commission erred by not ordering ODSA to file an application that contains a new rate design.<sup>8</sup> As stated above, the record in this proceeding does not demonstrate that the two-step declining block rate structure is unlawful. Therefore, the Commission was correct in not ordering the filing of a new application.

---

<sup>5</sup> *In re Ohio Development Services Agency*, PUCO No. 15-1046-EL-USF, Opinion and Order (October 28, 2015) at 23.

<sup>6</sup> OPAE Application for Rehearing at 4-5.

<sup>7</sup> ODSA Ex. 2 (Meadows Direct Testimony) at 4.

<sup>8</sup> Application for Rehearing at 5-6.

### III. CONCLUSION & RECOMMENDATION

For the foregoing reasons, ODSA respectfully requests that the Commission deny OPAAE's application for rehearing.

Respectfully submitted,



---

Dane Stinson (Reg. No. 0019101)  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
Telephone: (614) 227-4854  
Facsimile: (614) 227-2390  
E-Mail dstinson@bricker.com

Attorneys for Ohio Development  
Services Agency

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum Contra has been served upon the following parties by first class mail, postage prepaid, and/or electronic mail this 20<sup>th</sup> day of November 2017.



Dane Stinson

Steven T. Nourse  
Christen M. Blend  
Service Corporation 1 Riverside Plaza  
Columbus, Ohio 43215  
stnouse@aep.com  
cblend@aep.com

L. Bradfield Hughes  
Porter Wright Morris & Arthur, LLP  
Huntington Center  
41 South High Street, Suite 2900  
Columbus, Ohio 43215  
bhughes@porterwright.com

Randall V. Griffin  
Judi L. Sobecki  
Michael J. Schuler  
The Dayton Power & Light Company  
MacGregor Park  
1065 Woodman Avenue  
Dayton, Ohio 45432  
Randall.Griffin@dplinc.com  
Judi.Sobecki@dplinc.com  
Michael.Schuler@aes.com

Amy B. Spiller  
Elizabeth H. Watts  
Duke Energy Ohio, Inc. 155 East  
Broad Street  
Columbus, Ohio 43215  
Amy.Spiller@duke-energy.com  
Elizabeth.Watts@duke-energy.com

Carrie M. Dunn  
FirstEnergy Corp.  
76 South Main Street  
Akron, Ohio 44308  
cdunn@firstenergycorp.com

William L. Wright  
Section Chief, Public Utilities Section  
Thomas W. McNamee  
Assistant Attorney General  
Public Utilities Commission of Ohio  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, Ohio 43215  
William.Wright@ohioattorneygeneral.gov  
Thomas.McNamee@ohioattorneygeneral.gov

Christopher Healey  
Ohio Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485  
Christopher.healey@occ.oh.us

Sam Randazzo  
Frank P. Darr  
Matthew Pritchard  
McNees, Wallace & Nurick  
Fifth Third Center Suite 910  
21 East State Street  
Columbus, Ohio 43215  
sam@mwncmh.com  
fdarr@mwncmh.com  
mpritchard@mwncmh.com

Colleen L. Mooney  
Ohio Partners for Affordable Energy  
PO Box 1793  
231 West Lima Street  
Findlay, Ohio 45839-1793  
cmooney@ohiopartners.org

Angela Paul Whitfield  
Kimberly W. Bojko  
Carpenter Lipps & Leland LLP  
280 North High Street, Suite1300  
Columbus, Ohio 43215  
Bojko@carpenterlipps.com  
Paul@carpenterlipps.com

Greta See  
Attorney Examiner  
Public Utilities Commission of Ohio  
Legal Department  
180 East Broad Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215  
Greta.See@puc.state.oh.us

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/20/2017 2:58:35 PM**

**in**

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

Summary: Memorandum Contra Ohio Partners for Affordable Energy's Application for Rehearing electronically filed by Dane Stinson on behalf of Ohio Development Services Agency