

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. 17-1377-EL-USF

SECOND ENTRY ON REHEARING

Entered in the Journal on December 13, 2017

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Ohio Partners for Affordable Energy of the October 11, 2017 Opinion and Order.

II. APPLICABLE LAW

{¶ 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 in Ohio, 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), and Toledo Edison Company (TE) (individually or collectively, electric utilities).

{¶ 3} Each of the electric utilities, 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, is subject to the jurisdiction of this Commission.

{¶ 4} 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 the USF 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.

{¶ 5} R.C. 4928.52(C) provides that the USF rider be established 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.

{¶ 6} In accordance with the adjustment stipulation filed in the 2016 USF case, and consistent with the process followed for more than a decade, USF proceedings are a two-phase process. There is a hearing held and an evidentiary record developed for each phase of the USF case. In the first phase, ODSA files a notice of intent (NOI) application to provide interested parties with an opportunity to raise and pursue issues related to the methodology proposed to develop the USF rider revenue requirement and the USF rider rate design to be implemented in the adjustment phase of USF proceedings. In the second phase of the USF proceeding, the adjustment phase, ODSA prepares and files an application to adjust the USF riders in accordance with the approved methodologies presented in the NOI phase. Accordingly, the Commission issues two orders in USF case.

III. PROCEDURAL BACKGROUND AND HISTORY

{¶ 7} On June 1, 2017, ODSA filed its notice of intent (NOI) to file an application to adjust the USF riders of all Ohio jurisdictional electric utilities, CEI, DP&L, Duke, OE, OP, and TE (collectively, EDUs) in accordance with R.C. 4928.52 and the stipulation filed in the adjustment phase of the 2016 USF proceeding. *In re ODSA*, Case No. 16-1223-EL-USF, Opinion and Order (Dec. 21, 2016) at 14.

{¶ 8} On October 11, 2017, the Commission approved ODSA's proposed methodology to establish the USF revenue requirement and rider rate design for the 2018 USF collection period. *In re ODSA*, Case No. 17-1377-EL-USF (2017 USF Case), Opinion and Order (Oct. 11, 2017).

{¶ 9} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 10} On November 9, 2017, Ohio Partners for Affordable Energy (OPAE) filed an application for rehearing of the Opinion and Order adopting the USF rider rate design and revenue requirement methodology. Memoranda contra OPAE's application for rehearing were filed by ODSA, IEU and jointly by the EDUs on November 20, 2017.

IV. DISCUSSION

{¶ 11} In the NOI application, ODSA proposed and the Commission approved, the continuation of the current two-step, declining block rate design where the first block applies to all monthly consumption up to and including 833,000 kilowatt hours (kWh) per month per account or facility. The second block of the rate, which applies to all consumption over 833,000 kWh per month, to be set at the lower of the Percentage of Income Payment Plan (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 rate per kWh. The first block of the electric utility's USF rate will be set at the level necessary to produce the remainder of the electric utility's annual USF rider revenue requirement. In such instances where the EDU's or rate zones October 1999 PIPP charge exceeds the per kWh rate that would apply if the EDU'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. *2017 USF Case*, Opinion and Order (Oct. 11, 2017) at 14.

{¶ 12} In its first ground for rehearing, OP&E argues the Opinion and Order is unlawful, to the extent that the Commission concluded that the two-step declining block rate design methodology does not violate R.C. 4928.52(C). OP&E interprets the statute to prohibit any shift of costs, de minimis or otherwise, between the customer classes. OP&E declares that the USF rider rate must be a uniform per kWh rate for all customers so as not to shift the costs between the residential, commercial or industrial customer classes. OP&E argues that the Commission cannot rely on its past USF decisions as precedent on this issue, as all the prior USF proceedings were resolved by stipulations which declared that any costs shift between the customer classes was de minimis. OP&E avers the Commission must base its decision on the merits of the arguments regarding compliance with R.C. 4928.52(C) and the statute forbids any cost shift. Accordingly, OP&E concludes the Commission should grant rehearing of its Order. (OP&E AFR at 1-3.)

{¶ 13} In their respective memoranda contra, ODSA, IEU and the EDUs dispute OP&E's arguments that the Commission has not considered whether the two-step declining block rate design complies with R.C. 4928.52(C) in the context of the prior stipulations, did not consider the lawfulness of the two-step declining block rate structure and, therefore, cannot rely on its prior USF decisions as precedent. Further, IEU argues OP&E failed to present any evidence that the two-step declining block rate design is not in compliance with the statute. IEU emphasizes that OP&E's only cross-examination was of ODSA witness Meadows regarding OP&E's objections, which are not part of the record, and that OP&E did not cross-examine any other witness on the USF rate design, and did not offer any exhibits or testimony in support of its position that the two-step declining block rate design shifts costs among the customer classes. IEU further notes that on brief, OP&E relied on the claims of Kroger to support its position which the Commission rejected. *2017 USF Case, Opinion and Order* (Oct. 11, 2017) at 26. OP&E's focus, according to ODSA and the EDUs, is how the Commission characterizes OP&E's arguments in the Order and, therefore, the Commission's conclusion in the Order. IEU and ODSA highlight that the evidentiary record in the NOI phase demonstrates that the two-step declining block rate design provides a reasonable contribution by all customer classes to the USF revenue requirement. ODSA Ex.

2 at 4-5, Tr. at 22-28. Thus, ODSA, IEU and the EDUs submit OP&E's argument that the USF rate design is unlawful is without merit and must be denied. (ODSA Memo at 1-3, IEU Memo at 2-5, EDU Memo at 2-3.)

{¶ 14} In the October 11, 2017 Opinion and Order on the NOI phase of this proceeding, the Commission found that ODSA supported its proposal for the two-step declining block rate design (ODSA Ex. 1 at 11 and Ex. 2 at 3-5) and no evidence or analysis had been presented to demonstrate that the two-step declining block rate design inherently shifts costs between the customer classes in violation of R.C. 4928.52(C). However, the Commission specifically acknowledged that "the information to determine the amount of each EDU's USF rider rate adjustment, if any, and the analysis to determine compliance with R.C. 4928.52(C), may be available in the adjustment phase of the USF proceeding." As the Commission recognized in the Order, the mere shift of costs to the first-block of the two-block declining rate does not demonstrate a shift of costs among the rate classes as all customer classes are included in the first-block of the USF rate and, therefore, some additional analysis is required. *2017 USF Case*, Opinion and Order (Oct. 11, 2017) at 25-26. In its application for rehearing, OP&E fails to indicate any record evidence the Commission failed to consider that demonstrates a shift of costs among the customer classes in violation of R.C. 4928.52(C). Accordingly, the Commission denies OP&E's application for rehearing on this issue.

{¶ 15} In its second assignment of error, OP&E submits the Opinion and Order unreasonably and unlawfully concluded the two-step declining block rate design does not inherently shift costs among the customer classes. As part of its application for rehearing, OP&E presents an example to substantiate its position. Using OP's 1999 PIPP rate of \$.0001681 per kWh, OP&E advocates a uniform USF rate for all customers of \$.0024475 per kWh, and calculates the cost to a hypothetical residential and commercial or industrial customer at various consumption levels. OP&E avers the Commission incorrectly concluded that the two-block rate design does not inherently shift costs among the customer classes. Indeed, OP&E asserts the very purpose of the two-step declining block rate design

is to shift costs among the customer classes. OPAE concludes that the two-step declining block rate design inherently violates R.C. 4928.52(C), and there is no need for OPAE, or any other party, to present evidence as the issue is resolved by simple mathematics. OPAE advocates for a uniform per kilowatt hour USF rate for all customers. (OPAE AFR at 3-5.)

{¶ 16} ODSA reasons that OPAE presented no evidence to support its position in this phase of the USF proceeding. ODSA reiterates the testimony of ODSA witness Meadows that the USF rate design ensures “a reasonable contribution by all customer classes to the USF revenue requirement.” ODSA asserts that no evidence to the contrary was offered. Therefore, ODSA argues that on rehearing, OPAE’s attempt to support its position using a series of hypothetical facts, which are not part of the record, cannot serve as the basis of the Commission’s decision. (ODSA Memo at 3, IEU Memo 3-8, EDUs Memo 3-4.)

{¶ 17} The Commission must base its decision on the evidentiary record in the case before it. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 91, 706 N.E.2d 1255 (1999). OPAE does not highlight for the Commission’s consideration on rehearing any evidence in the record which was overlooked. OPAE’s example is not part of the record in the NOI phase nor was it presented by OPAE or any other party in the briefs. Instead, OPAE relies on a hypothetical example which was not explored on the record in the NOI phase. At best, although OPAE does not cite to ODSA’s adjustment application as filed on October 31, 2017, OPAE relies on ODSA’s the adjustment application. This information was not part of the NOI phase of the proceedings on which the Commission must rely to reach its conclusion regarding the revenue requirement and rate design methodologies. The Commission also notes that while OPAE did not present on brief any example similar to the one it now presents in its application for rehearing, this example is exactly what the Commission expected in the adjustment phase of the USF proceedings. *2017 USF Case*, Opinion and Order (Oct. 11, 2017) at 26. Nonetheless, OPAE’s example illustrates the potential effect on a residential customer, it does not demonstrate a shift in costs between the customer classes based on the rate design as OPAE purports. The Commission reiterates that the first-block of the rate includes residential, commercial and industrial customers. As the Commission

previously determined additional analyses is necessary to conclude that the two-step declining block rate design shifts cost between the customer classes. For these reasons, the Commission denies OP&A's second ground for rehearing.

{¶ 18} In its final ground for rehearing, OP&A contends the October 11, 2017 Opinion and Order is unlawful and unreasonable in its failure to direct ODSA to file a USF adjustment application that does not shift costs among the customer classes. OP&A contends R.C. 4928.52(B) requires the Commission to consider the USF rate design as part of the USF application process and prohibits the Commission from approving a rate design which shifts the costs among the customer classes. OP&A submits nearly all customers would pay less under a uniform per kilowatt hour USF rate. (OP&A AFR at 5-6.)

{¶ 19} ODSA, IEU, and the EDUs argue that because OP&A's third ground for rehearing is premised on OP&A's failed claims that the two-step declining block rate design is unlawful, its final ground for rehearing must be rejected. Opposing parties state, as each argued in response to OP&A's first ground for rehearing, OP&A has failed to present any evidentiary basis for the Commission to find the approved USF rate design unlawful or to deviate from the approved rate design. On that basis, ODSA, IEU and the EDUs submit OP&A's third ground for rehearing must fail. (ODSA Memo at 3, IEU Memo 2-5, 7-8, EDUs Memo at 2-4.)

{¶ 20} For the same reasons the Commission denies OP&A's other grounds for rehearing, the Commission denies OP&A's final ground for rehearing of the October 11, 2017 Order. The Commission finds there is no evidentiary support for OP&A's argument that ODSA's proposed rate design is an inherent violation of R.C. 4928.52(C) and, therefore, no basis for the Commission to direct ODSA to eliminate the two-step declining block USF rate design and file the adjustment application based on some other rate design which had not been considered by the parties or the Commission. Accordingly, the Commission denies OP&A's third ground for rehearing.

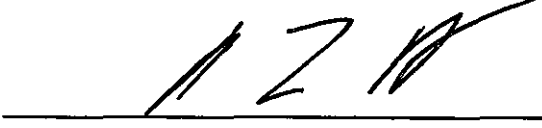
V. ORDER

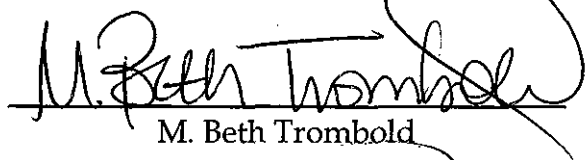
{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the application for rehearing be denied. It is, further,

{¶ 23} ORDERED, That a copy of this Entry on Rehearing be served upon all persons of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


M. Beth Trombold

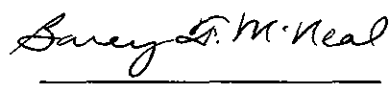

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