

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Ohio Development Services Agency)	
for an Order Approving Adjustments)	Case No. 18-976-EL-USF
to the Universal Service Fund Riders of)	
Jurisdictional Ohio Electric Distribution)	
Utilities.)	

**INDUSTRIAL ENERGY USERS-OHIO'S REPLY
TO THE OBJECTIONS OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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Pursuant to the Attorney Examiner’s June 4, 2018 Entry in this matter, Industrial Energy Users-Ohio (“IEU-Ohio”) submits this reply to the objections filed in this matter by Ohio Partners for Affordable Energy (“OPAE”). In its objections, OPAE repeats its previously-rejected objections to continuation of the two-step declining block rate design for the Universal Service Fund (“USF”) riders that has been in place since 2001. As discussed below, OPAE’s objections are without merit and should again be rejected.

I. BACKGROUND

R.C. 4928.52 requires the director of the Ohio Development Services Agency (“ODSA”) to file an application before the Public Utilities Commission of Ohio (“Commission”) if the director determines that the current USF rider rates are insufficient to cover the costs of the USF fund. This section further authorizes the Commission to adjust the USF rider rates “by the minimum amount necessary to provide the additional revenues” needed to fund the USF program. Finally, this section provides that the USF rates established under this Section “shall be set in such a manner so as not to shift

among the customer classes of electric distribution utilities the costs of funding” the USF program.

For a number of years, a stipulated process has been followed whereby ODSA files a notice of intent addressing the methodology ODSA intends to use to calculate the USF revenue requirement and USF rider rate design followed by an application to establish specific USF rider rates.¹ On May 31, 2018, ODSA filed its Notice of Intent (“NOI”). In the NOI, ODSA proposes to continue utilizing the two-step declining block rate design which has been in approved and in place every year since 2001.²

Under this rate design, the first block of the rate applies to all monthly consumption up to and including 833,000 kWh. The second block rate applies to all consumption above 833,000 kWh per month. For each electric distribution utility (“EDU”), the rate per kWh for the second block will be set at the lower of the Percentage of Income Payment Plan (“PIPP”) charge in effect in October 1999 or 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 the first block rate will be set at the level necessary to produce the remainder of the EDU’s annual USF rider revenue requirement. Thus, in those instances where the EDU’s 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.

¹ See e.g., Ohio Development Services Agency Notice of Intent to File an Application for Adjustments to Universal Service Fund Riders at 1-2 (noting that the notice of intent process was first adopted in 2004) (May 31, 2018) (“NOI”).

² NOI at 11.

The two-step USF rider rate design was implemented in ODSA's first USF rider adjustment case (Case No. 01-2411-EL-UNC) as a result of negotiations that led to a stipulation agreed to by all parties to that proceeding and approved by the Commission in its December 20, 2001 order in that docket. The two-step declining block rate was proposed as a means of limiting the substantial financial impact on the state's largest electric consumers that would have resulted if the USF rider revenue requirements were to be recovered through the uniform per-kWh rate design of the USF riders initially approved by the Commission in the electric transition plan ("ETP") cases. In each case from 2001 to 2016, a stipulation was entered into to address and resolve issues regarding the NOI, including the rate design for the USF riders. The 2017 case was tried without a stipulation. In each case, the Commission approved the use of the two-step declining block rate design.

II. ARGUMENT

A. OPAE fails to present the information the Commission indicated was required for it to determine if a rate design violated R.C. 4928.52(C)

To support its claim that the two-step declining block rate design violates R.C. 4928.52(C), OPAE presents an analysis based on a hypothetical customer.³ This is the same type of analysis OPAE presented to the Commission in the 2015 and 2017 USF cases. However, in the 2015 and 2017 USF cases, the Commission rejected OPAE's theoretical challenge to the two-step declining block rate design.⁴ The Commission held

³ Ohio Partners for Affordable Energy's Motion to Intervene and Memorandum in Support and Objections at 5 (June 29, 2018) ("OPAE Objections").

⁴ *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 at 20-21 (Oct. 28, 2015) ("2015 USF Case"); *In the Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal*

that for it to find that the existing rate design violates R.C. 4928.52(C), OPAE must “demonstrate to what degree costs shift between the customer classes” result from the utilization of a specific rate design.⁵ OPAE has again failed to present the required information.

OPAЕ’s analysis is limited to a discussion of a hypothetical customer served by Ohio Power using exactly 833,000 kWh per month.⁶ OPAЕ concludes that this hypothetical customer would have paid less through Ohio Power’s 2018 USF rider under a uniform kWh rate than under the actual two-step declining block rate design for 2018.⁷ This hypothetical analysis, limited to a one-year review of a hypothetical customer’s usage within a single EDU’s service area, does not discuss customer classes at all, let alone demonstrate a cost shift among the customer classes.

Although OPAЕ failed to demonstrate that the two-step declining block rate design results in a material cost shift among the customer classes, it has conceded that its proposed alternative rate design would shift costs among customers.⁸

Because OPAЕ has failed to present the information necessary to support a finding that the existing rate design violates R.C. 4928.52(C) or that its preferred rate design satisfies R.C. 4928.52(C), the Commission must reject OPAЕ’s objections.

Service Fund Rider of Jurisdictional Ohio Electric Distribution Utilities, Case No. 17-1377-EL-USF, Opinion and Order at 25-26 (Oct. 11, 2017) (“2017 USF Case”).

⁵ 2015 USF Case, Opinion and Order at 21.

⁶ OPAЕ Objections at 5.

⁷ *Id.*

⁸ OPAЕ Objections at 5 (adoption of OPAЕ’s proposed uniform kWh rate would have shifted \$15.6 million to large industrial and commercial customers using more than 833,000 kWh per month).

B. OPAE's preferred uniform kWh rate design runs contrary to rate design principles and would result in unreasonable cost shifts

A volumetric or uniform per-kWh rate design such as that suggested by OPAE in its objections is not a reasonable rate design when the underlying cost it distributes to customers is unrelated to kWh consumption. There is no relationship between the amount of revenue that needs to be collected to fund USF programs and customers' kWh usage.

In other contexts, the Commission has also rejected OPAE's arguments urging the Commission to authorize rates with a volumetric rate design to collect costs unrelated to consumption. In 2008 and 2009, the Commission considered and authorized changes to the rate design of the four major gas utility companies in Ohio.⁹ In each of those cases, the Commission issued orders providing for the recovery of the gas utilities' fixed distribution costs through a straight-fixed variable ("SFV") rate design, which recovers most of the fixed costs through a flat monthly charge.¹⁰ OPAE was a party in each of those proceedings and urged the Commission to adopt a rate design that would have heavily relied on a volumetric rate design to collect costs unrelated to consumption.¹¹ The

⁹ *In the Matter of Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation*, Case No. 10-3126-EL-UNC, Finding and Order at 19-20 (Aug. 21, 2013) (citing *In re Duke Energy Ohio*, Case No. 07-589-GA-AIR, Opinion and Order (May 28, 2008) ("2007 Duke Rate Case"); *In re Dominion East Ohio*, Case No. 07-829-GA-AIR, Opinion and Order (Oct. 15, 2008) ("2007 Dominion Rate Case"); *In re Columbia Gas of Ohio*, Case No. 08-72-GA-AIR, Opinion and Order (Dec. 3, 2008) ("2008 Columbia Rate Case"; and *In re Vectren Energy Delivery of Ohio*, Case No. 07-1080-GA-AIR, Opinion and Order (Jan. 7, 2009) ("2007 VEDO Rate Case")).

¹⁰ *Id.*

¹¹ *2007 Duke Rate Case*, Opinion and Order at 13 (May 28, 2008); *2007 Dominion Rate Case*, Opinion and Order at 15 (Oct. 15, 2008); *2008 Columbia Rate Case*, Opinion and Order at 16-17 (Dec. 3, 2008); *2007 VEDO Rate Case*, Opinion and Order at 8 (Jan. 7, 2009).

Commission rejected OPAE's arguments in each proceeding and, as noted above, adopted the SFV rate design.¹²

Other states, such as Wisconsin and Michigan, recognize the large burden a uniform per-kWh charge would have on large industrial customers for funding low-income assistance programs and implement other rate designs. In Wisconsin, charges are capped for non-residential customers at \$172.87 per month for the largest electricity users in the state.¹³ In Michigan, charges are capped at \$1 per meter per month for all customer classes.¹⁴

The Pennsylvania Public Utility Commission has also excluded non-residential customers from funding Pennsylvania's universal service fund because "[u]niversal service programs, by their nature, are narrowly tailored to the residential customers and therefore, should be funded only by the residential class."¹⁵ Accordingly, Ohio's industrial customers are already contributing amounts significantly greater than what has been deemed reasonable in other states.

¹² *2007 Duke Rate Case*, Opinion and Order at 17-20 (May 28, 2008); *2007 Dominion Rate Case*, Opinion and Order at 23-24 (Oct. 15, 2008); *2008 Columbia Rate Case*, Opinion and Order at 19-20 (Dec. 3, 2008); *2007 VEDO Rate Case*, Opinion and Order at 11-12 (Jan. 7, 2009). More recently, the Commission confirmed in Case Nos. 10-3126-EL-UNC and 12-3255-EL-RDR that it was inappropriate to collect fixed costs through volumetric charges because the costs were unrelated to consumption. *In the Matter of Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation*, Case No. 10-3126-EL-UNC, Finding and Order at 1, 19-20 (Aug. 21, 2013); *In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, Opinion and Order at 29 (Apr. 2, 2014) (rejecting OCC's request to collect distribution costs through an energy allocator).

¹³ Wisconsin Public Service Commission, *WI Low-Income Assistance Fee*, available at: http://www.wisconsinpublicservice.com/business/wi_lowincome.aspx. Residential customer charges are capped at \$3.15 per month; small business customer charges are capped at \$14.94 per month; the largest business customers are capped at \$172.87 per month. *Id.*

¹⁴ *In the matter on the Commission's own motion to implement the provisions of 2013 PA 95*, MPSC Case No. U-17377, Order at 1-2 (July 29, 2017).

¹⁵ *Customer Assistance Programs: Funding Levels and Cost-Recovery Mechanisms*, Pennsylvania PUC Docket No. M-00051923, Order at 32 (Oct. 19, 2006), available at: <http://www.puc.state.pa.us/PcDocs/646476.doc>.

In sum, OPAE's preferred uniform kWh rate design is unreasonable and unlawful and should again be rejected.

C. The existing two-step declining block rate design is lawful as previously confirmed by the Commission

OPAE's opposition to the two-step declining block rate design is based on the same arguments that the Commission previously rejected. As it has done in prior USF cases, the Commission should again reject OPAE's argument that the existing rate design violates R.C. 4928.52(C).

The Commission has implicitly or explicitly rejected OPAE's argument that the two-step declining block rate design violates R.C. 4928.52(C) in each and every USF case. In the 2012, 2015, and 2017 USF cases, the Commission explicitly rejected OPAE's argument that this rate design was unlawful. In the 2012 USF case, the Commission authorized a stipulation that continued the previously-approved two-step declining block rate design and held that it "continue[s] to find OPAE's arguments that the two-step declining block USF rate design violates Section 4928.52(C), Revised Code, to be unpersuasive."¹⁶ In the 2015 and 2017 USF cases, the Commission further rejected OPAE's claim that, on its face, the two-step declining block rate design violated R.C. 4928.52(C).¹⁷ Finally, in adopting stipulations in the 2001 through 2016 USF cases, the Commission determined that the two-step declining block rate design does not violate R.C. 4928.52(C).¹⁸

¹⁶ *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 12-1719-EL-USF, Opinion and Order at 5-6, 8-10 (Sept. 19, 2012) ("2012 USF Case").

¹⁷ *2017 USF Case*, Opinion and Order at 26 (citing *2015 USF Case*, Opinion and Order at 21 (Oct. 28, 2015)).

¹⁸ *See id.*

Because OPAE offers no new arguments and no rationale for why the Commission should deviate from its prior holding, the Commission should respect its precedent and again reject OPAE's argument that the existing rate design violates R.C. 4928.52(C).¹⁹

D. OPAE's discussion of the separate USF riders for the Ohio Power and Columbus Southern Power rate zones is misplaced

In its objections, OPAE also addresses Ohio Power's request in the 2015 USF case to merge the USF Riders for the OP and CSP rate zones. OPAE's characterization of Ohio Power's request is incorrect and had nothing to do with altering the two-step declining block rate design.

Initially, it is not clear why OPAE is addressing a request AEP-Ohio made in the 2015 USF case to combine the CSP and OP rate zones into a single rider utilizing the two-step declining block rate design; a request that was rejected by the Commission in the 2015 USF case, and which has not been raised by any party, including AEP-Ohio, in this case or the prior two USF cases.²⁰

Moreover, OPAE's characterization of AEP-Ohio's proposal is incorrect. AEP-Ohio was proposing to combine the rate zones into a single rider, not combine the two rate blocks into a uniform rate. AEP-Ohio's testimony in support of its objections plainly demonstrates this. AEP-Ohio witness Gill testified what the first and second block rates would be under the two-step declining block rate design and further identified the estimated bill impacts of its proposed rate zone merger while utilizing the two-step

¹⁹ *In re Application of Duke Energy Ohio Inc.*, 150 Ohio St.3d 437, 2017-Ohio-5536 at ¶ 23 (quoting *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431 (1975)).

²⁰ See 2015 USF Case, Opinion and Order at 22; 2015 USF Case, Testimony of AEP-Ohio Witness Gill at 1, 6, Exhibit DRG-1.

declining block rate design.²¹ AEP-Ohio's request in the 2015 USF case was completely related to the arguments contained in OPAE's objections and does not provide any support for OPAE's position.

III. CONCLUSION

The existing USF rider rate design is lawful, as the Commission has concluded in each of its annual orders approving the USF riders since 2001. In objecting to the continuation of the existing two-step declining block rate design for the USF riders, OPAE presents the Commission with the same arguments and flawed analysis that the Commission previously rejected. Because the existing rate design is lawful and OPAE has not presented the Commission with any new arguments, the Commission should again reject OPAE's objection to the continuation of the existing USF rider rate design.

Respectfully submitted,

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²¹ 2015 USF Case, Testimony of AEP-Ohio Witness Gill at 6, Exhibit DRG-1.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio's Reply to the Objections of Ohio Partners for Affordable Energy* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 10th day of July 2018, *via* electronic transmission.

/s/ Matthew R. Pritchard

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