

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the	:	
Ohio Department of Development for an	:	Case No. 22-556-EL-USF
Order Approving Adjustments to the	:	
Universal Service Fund Riders of	:	
Jurisdictional Ohio Electric Distribution	:	
Utilities.	:	

**MEMORANDUM IN OPPOSITION TO THE OFFICE OF THE OHIO CONSUMER
COUNSEL’S MOTION FOR CONTINUANCE AND EXTENSION OF TIME**

The Commission should deny the November 23, 2022 Motion for Continuance and Extension of Time by the Office of the Ohio Consumers’ Counsel. On October 5, 2022, the Commission approved the methodology that the Ohio Department of Development (“ODOD”) would use in developing the annual revenue requirement and rate design for Universal Service Fund riders that are collected by the state’s electric distribution utilities. Oct. 5, 2022 Opinion and Order. Pursuant to that Order, on October 31, ODOD filed an Application to adjust the utilities’ USF riders, effective January 1, 2023. The very next day, the Commission scheduled a hearing for November 30, 2022. Nov. 1, 2022 Entry. By operation of rule, direct testimony was due November 23, 2022. Ohio Adm.Code 4901-1-29(A)(1)(h).

In its Application, ODOD explained its consistent practice of annually proposing adjustments to the USF riders using the most recent information available at the time of its application, *i.e.*, actual data through August. Application, ¶ 12. As in previous USF cases, ODOD reserved the right to amend its Application to update its test-period calculations to incorporate additional actual data as it would become available. *Id. Accord: 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. 21-659-EL-USF (“2022 USF Case”), Application (Oct. 29, 2021). As in previous USF cases, ODOT filed an Amended Application to incorporate actual data through September. Nov. 21, 2022 Amended Application, ¶¶ 10.a and 14. *Accord: 2022 USF Case*, Amended Application (Nov. 22, 2021).

Accordingly, since the Commission’s November 1 Entry, OCC knew that the hearing in this case would be held on November 30. OCC also knew that testimony was due on November 23. OCC further knew the imperative of setting new USF rider rates by January 1. *See 2022 USF Case*, Opinion and Order (Dec. 15, 2021), ¶¶ 11 and 40 (reaffirming the Notice of Intent framework, which provides parties with an opportunity to raise objections to USF adjustment issues earlier in the year and affords adequate time for the Commission to act upon the annual application by January 1). Finally, OCC knew that ODOT would likely update its Application to incorporate additional actual data to calculate the needs of the Universal Service Fund more accurately.

Despite knowing these facts, OCC has not served any discovery requests regarding the Application. It then waited until 4:00 PM on the Wednesday before Thanksgiving to seek an extension of its testimony deadline until December 16 and to continue the hearing date until December 21. OCC further demands that responses to any discovery requests it serves in the meantime be provided within three business days.

The Commission should reject such gamesmanship. It is unreasonable for the Commission to hold a hearing, for a court reporter to prepare a transcript, for the parties to brief any issues that OCC might shoehorn into this case, and for the Commission to render a decision, all between December 21 and December 31 – *i.e.*, 10 days over the holidays – particularly for a

USF update case, where the Commission's role is limited by statute. *2022 USF Case*, Opinion and Order (Dec. 15, 2021), ¶ 29 (citing R.C. 4928.52(B)).

Moreover, OCC already has filed testimony in opposition to the Amended Application and Joint Stipulation and Recommendation that addresses it. Nov. 23, 2022 Testimony of James D. Williams. Notably, Mr. Williams's testimony does not dispute ODOD's application of the revenue requirement and rate design methodology approved by the Commission. *Id.* Instead, it rehashes complaints about the procurement of PIPP load, which the Commission already rejected in the October 5, 2022 Opinion and Order. Indeed, in its Motion, OCC concedes that its concerns have "been a consistent issue raised by OCC through this proceeding." OCC Motion, p. 2. Thus, OCC is not prejudiced by the current schedule, and the Commission should proceed with the hearing on November 30.

Finally, to the extent the Commission continues the November 30 hearing and grants OCC additional discovery, any continuance should be brief and any discovery should be strictly limited to ODOD's application of the methodology approved in the October 5, 2022 Opinion and Order. To allow otherwise would thwart the Notice of Intent process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Ohio Adm.Code 4901-1-05, I certify that a copy of the foregoing was e-filed with the Public Utilities Commission of Ohio on November 25, 2022. The PUCO's e-filing system will electronically service notice of the filing of this document on the following parties:

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**This foregoing document was electronically filed with the Public Utilities
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11/25/2022 11:18:45 AM

in

Case No(s). 22-0556-EL-USF

Summary: Memorandum Memorandum in Opposition to the Office of the Ohio
Consumers' Counsel's Motion for Continuance and Extension of Time electronically
filed by Mr. Christopher C. Hollon on behalf of The Dayton Power and Light
Company d/b/a AES Ohio