

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

| | |
|------------------------------------------------|-------------------------|
| In the Matter of the Application of the Ohio) | |
| Department of Development for an Order) | |
| Approving Adjustments to the Universal) | Case No. 22-0556-EL-USF |
| Service Fund Riders of Jurisdictional) | |
| Ohio Electric Distribution Utilities.) | |

**OHIO DEPARTMENT OF DEVELOPMENT’S MEMORANDUM CONTRA
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL’S
MOTION FOR CONTINUANCE**

I. INTRODUCTION

On November 23, 2022, the Office of the Ohio Consumers’ Counsel (“OCC”) filed a motion to continue the hearing scheduled in this matter from November 30, 2022 to December 21, 2022 (“Motion”). OCC requests the continuance to provide it additional time to engage in discovery and prepare testimony opposing the Joint Stipulation and Recommendation (“Joint Stipulation”) filed in this proceeding. Confusingly, subsequent to filing its Motion, OCC also filed its testimony opposing the Joint Stipulation on November 23, 2022 (“Testimony”).

The purpose of this application phase of the USF proceeding is to mathematically apply the methodologies approved in the October 5, 2022 Notice of Intent order (“NOI Order”) to 2022 test year data in order to calculate USF rider rates for 2023.¹ Nowhere in its Motion or Testimony does OCC assert that the USF rider rates are mathematically incorrect.² Instead, it raises the same arguments that the Public Utilities Commission of Ohio (“PUCO”) rejected in the NOI Order³ – that it is unreasonable

¹ The Stipulation approved in the 2021 proceeding (See Case No. 21-659-EL-USF; 2021 Stipulation at ¶ 11) provides that Development’s application shall conform to the methodologies approved in the NOI order.

² Indeed, OCC has not bothered to engage in discovery since the application was filed October 31, 2022 to ascertain if the methodologies were correctly applied to test year data.

³ Opinion and Order (October 5, 2022) at ¶ 44.

and unlawful to include PUCO-approved PIPP generation prices in USF rider rates if they are greater than standard service offer generation prices.⁴

OCC has not stated good cause to extend the procedural schedule because it intends only to raise previously rejected arguments. Indeed, its request to delay the evidentiary hearing until December 21, 2022 appears to be nothing more than an attempt to delay the January 1, 2023 adjustment to USF rider rates.

II. BACKGROUND

In the NOI phase of this proceeding, the parties litigated OCC's objection that the bids the PUCO approved to set the PIPP generation rates violated R.C. 4928.542(C). The PUCO found that the issue fell outside of the scope of the USF rider rate proceeding.⁵ OCC filed an application for rehearing on November 4, 2022, which remains pending.

In the interim, the Ohio Department of Development ("Development") applied the PUCO-approved NOI methodologies to calculate proposed USF rider rates in the application filed October 31, 2022 (the "Application"), including the PUCO-approved PIPP generation rates. OCC did not submit discovery related to the Application or otherwise notify the parties of any objections to the mathematical calculations made.

By email of November 15, 2022, Development notified the parties that it had received no notice of errors in the Application or objections to it. Development asked all parties to notify it of any such errors or objections and reserved a placeholder time (10:00 a.m. on November 21, 2022) to discuss and

⁴ See, e.g., Motion at 2:

OCC's issues with this Settlement will include that the proposed USF Rider Rates are unjust and unreasonable. The significant increase to the USF Rider rates resulting from the implementation of a rate for low-income Ohioans on PIPP that is higher than what non-low-income Ohioans are paying for electricity on utilities' standard service offer. This has been a consistent issue raised by OCC through this proceeding. OCC requires additional time to adequately prepare for hearing and develop testimony to support our consumer advocacy.

⁵ Opinion and Order (October 5, 2022) at ¶ 44.

attempt to resolve any errors or objections brought to its attention. On November 16, 2022, counsel for OCC requested that the conference time be moved to 3:00 p.m. Consistent with conversations with OCC, Development informed the parties that OCC may wish to discuss the Application, that the placeholder time would be moved to 3:00 p.m., that OCC would notify Development if discussions were requested, and that Development would notify all parties one way or another if a discussion were to be held. See Attachment.

At approximately 11:30 a.m. on November 21, 2022, Development informed all parties that OCC had not given notice whether it requested a conference on the Application. Development nevertheless sent a Zoom invitation to all parties in the event OCC requested a discussion. By email sent at 2:55 p.m., Development informed all parties that OCC indicated that a meeting was not necessary on its part. However, considering the late hour, Development conducted the meeting anyway (with OCC participating) to ascertain if any party had comments or concerns with the Application. See Attachment.

Thereafter, Development filed the traditional amendment to the Application substituting September 2022 for the September 2021 as part of the test year data, and filed the supplemental testimony of its witness. A draft Stipulation and Recommendation also was circulated that applied the NOI methodologies to the test year data.

All parties, including OCC, were given the opportunity via email on November 22 and 23, 2022 to provide comments regarding the draft Joint Stipulation, which was filed November 23, 2022. OCC admittedly was aware that a Joint Stipulation could be filed on November 23, 2022 on behalf of some parties and filed its preemptory Motion for a continuance. In its Motion, OCC asserts that a continuance is needed in order for it to argue that the USF rider rate was unreasonable and unlawful because it included PIPP generation prices that were greater than for non-PIPP customers. This is the

exact same issue that OCC raised and the PUCO rejected in the recently concluded NOI phase of this proceeding.⁶

OCC's subsequently filed Testimony in opposition to the Joint Stipulation confirms that its arguments for opposing the Joint Stipulation are the same as those raised, and rejected, in the NOI phase of this proceeding. In its Motion for continuance and Testimony in opposition to the Joint Stipulation, OCC does not argue that the USF rider rates were not calculated in accordance with the approved NOI methodologies.

III. RECOMMENDATION

OCC is precluded from raising in the Application phase of this proceeding the same arguments that were raised and rejected in the NOI Order. Its attempt to do so is subject to a motion to strike at hearing, and renders a continuance pointless. Further, OCC has had the opportunity since October 31, 2022, to seek discovery regarding the application of the NOI methodologies to test year data. It has not bothered to do so. Its request to commence discovery on the amended application, which only substitutes data from September 2022 for September 2021 data, appears solely intended to delay January 2023 adjustments to USF rider rates. OCC's request to continue the evidentiary hearing until December 21, 2022 is without good cause and should be denied.

If the PUCO is inclined to extend the procedural schedule to permit discovery, it should limit discovery to the accuracy and application of the September 2022 data, considering that OCC initiated no discovery whatsoever on the October 31, 2022 application. The hearing date should be extended no longer than one week. Moreover, as part of any ruling, the PUCO should forbid discovery or further argument on the reasonableness or lawfulness of PIPP generation prices, considering that the issue was resolved in the NOI Order.

⁶ Opinion and Order (October 5, 2022) at ¶ 44.

Respectively submitted,

A handwritten signature in black ink that reads "Dane Stinson". The signature is written in a cursive style with a horizontal line underneath it.

Dane Stinson (0019101)
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Special Counsel for
The 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 28th day of November 2022.



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Stinson, Dane

From: Amy.botschner.obrien@occ.ohio.gov
Sent: Wednesday, November 16, 2022 5:51 PM
To: Stinson, Dane
Subject: RE: Application Universal Service Fund, Case No. 22-556-EL-USF [IMAN-BRICKER2.FID707074]

This message originated outside your organization.

Dane,

I am following up with an email per your request after our phone call. Due to my jury service with deliberations that potentially could cover Monday morning/early afternoon, I request that this discussion be pushed a little later on the day on Monday the 21st. 3:00 should be a more conflict-free time. I appreciate your attention to this matter.

Thank you.



Amy Botschner O'Brien
 Assistant Consumers' Counsel

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amy.botschner.obrien@occ.ohio.gov

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Cc: Sullinger, Whitney <Whitney.Sullinger@development.ohio.gov>; Meadows, Megan <Megan.Meadows@development.ohio.gov>
Subject: Application Universal Service Fund, Case No. 22-556-EL-USF [IMAN-BRICKER2.FID707074]
Importance: High

Counsel,

Everyone should have received the Ohio Department of Development's USF application filed in this proceeding on October 31, 2022. The Stipulation approved in the 2021 proceeding (Case No. 21-659-EL-USF) provides that Development's application shall conform to the PUCO's NOI order, and that the application phase of this proceeding will address the mathematical calculations contained in the application pursuant to the NOI's approved methodology. I have received no notice of any errors in the October 31, 2022 application, or any other objection to the application. Please notify me and all counsel if you propose corrections or have objections to the application and if you would like to discuss the errors/objections with all parties to resolve them. If a discussion/negotiation is requested I will set up a zoom call on Monday, November 21, 2022 at 10:00 am. Please notify me by the close of business tomorrow, November 16, 2022 of any errors or objections. Absent notice, I will assume the parties have none.

Dane Stinson

Partner

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Cc: 'Whitney.Sullinger@development.ohio.gov'; 'Megan.Meadows@development.ohio.gov'
Subject: RE: Application Universal Service Fund, Case No. 22-556-EL-USF [IMAN-BRICKER2.FID707074]

OCC indicates a meeting isn't necessary on its part; but, given the hour, I'll go ahead and open the zoom to see if anyone else has any comments or concerns with the issue related to the application. Talk to you soon.

Dane Stinson

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Sent: Monday, November 21, 2022 11:31 AM

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Cc: 'Whitney.Sullinger@development.ohio.gov' <Whitney.Sullinger@development.ohio.gov>; 'Megan.Meadows@development.ohio.gov' <Megan.Meadows@development.ohio.gov>
Subject: RE: Application Universal Service Fund, Case No. 22-556-EL-USF [IMAN-BRICKER2.FID707074]
Importance: High

I haven't received word from OCC yet whether it wishes to have a meeting today. I'm sending this zoom invite as a placeholder.

Dane Stinson is inviting you to a scheduled Zoom meeting.

Topic: USF Application

Time: Nov 21, 2022 03:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

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Dane Stinson

Partner

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From: Stinson, Dane

Sent: Wednesday, November 16, 2022 5:58 PM

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Cc: 'Whitney.Sullinger@development.ohio.gov' <Whitney.Sullinger@development.ohio.gov>; 'Megan.Meadows@development.ohio.gov' <Megan.Meadows@development.ohio.gov>

Subject: RE: Application Universal Service Fund, Case No. 22-556-EL-USF [IMAN-BRICKER2.FID707074]

I the email below, I reserved 10:00 a.m. Monday for any potential discussion of objections/errors to the application. OCC may wish to have a discussion, due to unavoidable conflicts, asks that the time be moved to Monday at 3:00 p.m. OCC will notify me if discussions are requested and I will notify the parties one way or another. Thank you.

Dane Stinson

Partner

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From: Stinson, Dane

Sent: Tuesday, November 15, 2022 1:15 PM

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Cc: 'Whitney.Sullinger@development.ohio.gov' <Whitney.Sullinger@development.ohio.gov>;
Megan.Meadows@development.ohio.gov
Subject: Application Universal Service Fund, Case No. 22-556-EL-USF [IMAN-BRICKER2.FID707074]
Importance: High

Counsel,

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

Summary: Text Ohio Department of Development's Memorandum Contra The
Office of The Ohio Consumers' Counsel's Motion for Continuance electronically
filed by Teresa Orahod on behalf of Dane Stinson