

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 SERVICE FUND RIDERS OF
JURISDICTIONAL OHIO ELECTRIC
DISTRIBUTION UTILITIES.

CASE NO. 22-556-EL-USF

ENTRY

Entered in the Journal on November 29, 2022

{¶ 1} R.C. 4928.52(B) provides that if, after consultation with the Public Benefits Advisory Board, the director of the Ohio Department of Development (ODOD) determines that revenues in the Universal Service Fund (USF) and revenues from federal or other sources of funding for those programs will be insufficient to cover the administrative costs of the low-income customer assistance programs and the consumer education program and provide adequate funding for those programs, ODOD shall file a petition with the Commission for an increase in the USF riders. The Commission, after reasonable notice and opportunity for hearing, may adjust the USF riders by the minimum amount necessary to provide additional revenues.

{¶ 2} The USF proceeding is a two-phase process. In the first phase of the USF case, the notice of intent (NOI) phase, ODOD files, by May 31 each year, an application with its proposed methodology to calculate the USF revenue requirement and the proposed rate design. In the second phase of the USF proceeding, ODOD files, by October 31 each year, an application to adjust the USF rider rates of the EDUs in accordance with the methodology and rate design approved.

{¶ 3} On May 27, 2022, ODOD filed a notice of intent (NOI) to file an application to adjust the USF riders of all Ohio jurisdictional electric distribution utilities (EDUs) namely, AES Ohio, formerly known as the Dayton Power & Light Company (AES Ohio), Ohio Power Company (AEP Ohio), Duke Energy Ohio, Inc. (Duke), and Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company (jointly and

collectively FirstEnergy EDUs) , in accordance with R.C. 4928.52. The function of the NOI phase of this proceeding is to provide interested stakeholders with an opportunity to raise and pursue objections to the methodology ODOD intends to use to develop the USF rider revenue requirement and rate design. *In re Ohio Development Services Agency*, Case No. 21-659-EL-USF, Opinion and Order (Dec. 15, 2021).

{¶ 4} On October 5, 2022, the Commission approved, pursuant to a Joint Stipulation and Recommendation filed August 5, 2022, the proposed USF rider revenue requirement methodology and the USF rider rate design methodology to be followed by ODOD for the 2023 USF collection period. *In re Ohio Department of Development*, Case No. 22-556-EL-USF, Opinion and Order (Oct. 5, 2022). Ohio Consumers' Counsel (OCC) was the only party to object to the Stipulation. Consistent with the established two-phase process, on October 31, 2022, ODOD filed its USF application and supporting testimony to adjust the USF riders of the Ohio jurisdictional electric utilities, in accordance with R.C. 4928.52. In its application, ODOD requests that each of the USF riders be adjusted to more accurately reflect the current operating costs of the Percentage of Income Payment Plan Plus (PIPP), the Electric Partnership Program, the consumer education program, and associated administrative costs. ODOD requests that the proposed USF riders for the electric utilities be effective January 1, 2023, on a bills-rendered basis.

{¶ 5} To assist the Commission with its consideration of ODOD's USF adjustment application, by Entry issued November 1, 2022, a hearing was scheduled to commence on November 30, 2022, at 10:00 a.m., at the offices of the Commission, 180 E. Broad Street, Hearing Room C, 11th Floor, Columbus, Ohio 43215. As no due date for the filing of direct testimony as set in the November 1, 2022 Entry, pursuant to Ohio Adm.Code 4901-1-29(A)(1)(h), the due date for all direct expert testimony to be filed and served is no later than seven days prior to the commencement of the hearing, in this instance November 23, 2022.

{¶ 6} R.C. 4903.10 provides that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined

therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 7} Ohio Adm.Code 4901-1-38 permits the Commission to upon its own motion or the motion of a party to waive any requirement of the chapter for good cause shown, other than a requirement mandated by statute.

{¶ 8} On November 4, 2022, OCC filed an application for rehearing of the October 5, 2022 Opinion and Order. Memoranda contra the application for rehearing were filed by ODOD and jointly by AES Ohio, Duke, and AEP Ohio on November 14, 2022.

{¶ 9} On November 21, 2022, ODOD filed its amended application and supplemental testimony. As explained by ODOD, actual data for September through December 2022 was not available when the adjustment application was filed. Subsequently, the data for September 2022 has become available and the amended adjustment application and supplemental testimony has been revised to reflect September 2022 actual data.

{¶ 10} On November 23, 2022, in anticipation of a stipulation being filed, OCC filed a motion for continuance, extension of time, and a request for expedited ruling. In its motion, OCC requests a waiver of Ohio Adm.Code 4901-1-38(B). OCC argues that it is unreasonable for testimony in opposition to a settlement to be due the same day the settlement is filed. OCC states its issues with the anticipated settlement includes that the proposed USF rates are unjust and unreasonable due to the significant increase in the PIPP generation rate in comparison to the standard service offer rate (SSO); an issue which OCC admits it has been consistently raised throughout this proceeding. OCC request a three-week extension of the evidentiary hearing, until December 21, 2022, to afford OCC additional time to conduct discovery on the settlement and that testimony in opposition to the settlement be due December 16, 2022. OCC further asks that responses to any discovery be provided within three business days. OCC states that it cannot certify that all parties to the case do not object to the request for a continuance or the expediated ruling in accordance with the requirements of Ohio Adm.Code 4901-1-12(C).

{¶ 11} Subsequently, also on November 23, 2022, ODOD filed a Joint Stipulation and Recommendation (2022 Adjustment Stipulation or Stipulation) executed by ODOD, Duke, Industrial Energy Users-Ohio (IEU), AES Ohio, and AEP Ohio. Also, signing the 2022 Adjustment Stipulation as non-opposing parties is the Ohio Energy Group (OEG) and FirstEnergy EDUs. On the same day, ODOD also filed the direct testimony of Megan Meadows in support of the 2022 Adjustment Stipulation.

{¶ 12} Shortly after the 2022 Adjustment Stipulation was filed on November 23, 2022, OCC also filed the testimony of James D. Williams in opposition to the Stipulation.

{¶ 13} AES Ohio and ODOD filed memoranda contra OCC's motion for a continuance and extension of time on November 25, 2022, and November 28, 2022, respectively. ODOD notes that the purpose of this phase of the USF process is to apply the methodology approved by the Commission to determine the revenue requirement and rate design. ODOD notes that OCC does not assert that the proposed USF rider rates are mathematically incorrect. ODOD and AES Ohio argue that OCC admits that OCC is raising the same argument already raised and rejected by the Commission. ODOD and AES Ohio argue that OCC has known since November 1, 2022, that the hearing would be held on November 30, 2022, and, as ODOD has done in prior USF proceedings and disclosed in their application, ODOD may update its application for additional actual data as it becomes available. ODOD and AES Ohio point out that OCC has not served any discovery requests or otherwise informed the parties of any miscalculations or objections regarding the adjustment application. Further, AES Ohio notes that OCC waited until 4:00 p.m. on the Wednesday before Thanksgiving to seek an extension of the testimony deadline. Despite filing a motion for an extension, ODOD and AES Ohio note that OCC filed the testimony of James D. Williams on November 23, 2022. ODOD further states that ODOD informed all parties that it had not received notice of any errors in the calculation of the USF rider rates or objections and, nonetheless reserved a conference time of 10:00 a.m., on November 21, 2022, to discuss any such issues. According to counsel for ODOD, due to an unavoidable conflict counsel for OCC requested that the conference be rescheduled to 3:00 p.m. and all

parties were informed of the time change. ODOD states that OCC did not inform ODOD until 2:55 p.m., on November 21, 2022, that a meeting was not necessary. Nonetheless, ODOD states that the 3:00 p.m. meeting was held, as rescheduled, and OCC participated. Subsequently, a draft stipulation was circulated. For these reasons, ODOD and AES Ohio contend that OCC fails to state good cause to extend the procedural schedule and ask that the motion be denied.

{¶ 14} AES Ohio requests that to the extent the Commission is inclined to grant OCC's motion for a continuance and extension, that any continuance be brief, and discovery be limited to ODOD's application of the methodology approved in the October 5, 2022 Order. Similarly, ODOD asks that if discovery be limited to the accuracy and application of the September 2022 data since OCC did not initiated any discovery on the October 31, 2022 application, the hearing date extended for no longer than one week, December 7, 2022 and the Commission forbid discovery of further argument on the reasonableness or lawfulness of PIPP generation rates, considering that the issue was resolved in the NOI Order issued October 5, 2022.

{¶ 15} By correspondence filed on November 28, 2022, Duke joins the memoranda contra filed by AES Ohio and ODOD. Further, Duke adds that OCC's request to delay the hearing, and the adjustment of the USF rider rates to commence on January 1, 2023, is not made in good faith and the request should be denied.

{¶ 16} The attorney examiner finds that OCC has failed to state good cause for an extension of the due date for the filing of testimony and a continuation of the hearing. Since 2005 the USF has been a two-phase process to facilitate the timely implementation of USF rider rates which reflect the most up-to-date costs of the electric low-income assistance and education programs. In this adjustment phase of the case, parties are reviewing ODOD's adjustment application for compliance with the methodologies approved by the Commission in the NOI order and mathematical accuracy of the calculation of the USF rider rates. In this phase of the proceeding, all testimony is due simultaneously one week before

the hearing because of the limited scope of the matters in this phase and to facilitate a decision by the Commission so that new USF rider rates may be effective January 1, 2023. While OCC has had time to object or raise issues, OCC has not raised any new issues, objections, or inaccuracies regarding the adjustment application to the parties either as filed on October 31, 2022, or as amended for September 2022 actuals and filed on November 21, 2022. In the NOI phase, OCC raised issues primarily regarding the PIPP generation rates approved by the Commission, all of which have been repeatedly raised by OCC and rejected by the Commission. Opinion and Order at ¶¶ 44-46. Furthermore, OCC has raised, and the Commission has denied, these same claims in certain of the EDUs' SSO auction cases. *In re the Procurement of Std. Service Offer Generation for Customers of The Dayton Power and Light Company*, Case No. 17-957-EL-UNC, Finding and Order (Sept. 21, 2022) at ¶¶ 16, 18, Entry on Rehearing (Nov. 16, 2022) at ¶¶ 15, 17-20; *In re the Procurement of Std. Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 18-6000-EL-UNC, Entry on Rehearing (Oct. 5, 2022) at ¶¶ 12-13, Entry on Rehearing (Nov. 16, 2022) at ¶¶ 14, 16, 18-19. Nonetheless, OCC's application for rehearing of the October 5, 2022 Order is currently pending before the Commission. Accordingly, the attorney examiner finds that OCC has failed to offer good cause to be granted an extension of the due date to file testimony and to continue the hearing and, thus, its motion should be denied.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That OCC's motion for an extension of the due date to file testimony and a continuance of the hearing be denied. It is, further,

{¶ 19} ORDERED, That the hearing will commence, as scheduled on November 30, 2022, at 10:00 a.m., at the offices of the Commission. It is, further,

{¶ 20} ORDERED, That a copy of this Entry be served on all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Greta See

By: Greta See
Attorney Examiner

MJA/hac

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

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

Summary: Attorney Examiner Entry ordering that OCC's motion for an extension of the due date to file testimony and a continuance of the hearing be denied and that the hearing will commence, as scheduled on November 30, 2022, at 10:00 a.m., at the offices of the Commission electronically filed by Heather A. Chilcote on behalf of Greta See, Administrative Law Judge, Power Siting Board