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 RIDER OF JURISDICTIONAL OHIO ELECTRIC DISTRIBUTION UTILITIES.

CASE NO. 23-603-EL-USF

OPINION AND ORDER

Entered in the Journal on December 13, 2023

I. SUMMARY

{¶ 1} The Commission adopts the Joint Stipulation and Recommendation filed on November 27, 2023, to resolve all the issues presented by the Ohio Department of Development's application to adjust the Universal Service Fund rider rates of jurisdictional Ohio electric distribution utilities.

II. DISCUSSION

A. Applicable Law and Background

{¶ 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 Department of Development (ODOD), previously known as the Ohio Development Services Agency, 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, namely The Dayton Power and Light Company d/b/a AES Ohio (AES Ohio), Cleveland Electric Illuminating Company (CEI), Duke Energy Ohio, Inc. (Duke), Ohio Edison Company (OE), Ohio Power Company

(AEP Ohio),[1] and Toledo Edison Company (TE)[2]. Each of the entities, AES Ohio, CEI, Duke, OE, AEP Ohio, 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.

{¶ 3} R.C. 4928.52(B) provides that, if ODOD, after consultation with the Public Benefits Advisory Board, determines that revenues in the 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 programs and to provide adequate funding for those programs, ODOD 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. To that end since 2001, the Commission has approved USF rider rate adjustments each year for each of the Ohio jurisdictional electric utilities.

{¶ 4} In the most recent USF case, the Commission adopted the Joint Stipulation and Recommendation filed on November 23, 2022 and executed by ODOD and several parties to resolve the issues regarding the adjustment of and to adjust the USF rider rates of each of the jurisdictional electric distribution utilities (EDUs), in accordance with R.C. 4928.52(B). The new USF rider rates became effective on a bills-rendered basis with each EDU's first billing cycle in January 2023. *In re Ohio Department of Development*, Case No. 22-556-EL-USF, Opinion and Order (Dec. 14, 2022) (*2022 USF Adjustment Order*) at ¶ 24, 25, 58.

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[1] By Entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company (CSP) with Ohio Power Company (OP) (jointly AEP Ohio), effective December 31, 2011, with OP as the surviving entity. *In re AEP Ohio*, Case No. 10-2376-EL-UNC, Entry (Mar. 7, 2012).

[2] CEI, OE, and TE are collectively referred to as FirstEnergy.

B. History of This Proceeding

{¶ 5} Since 2005 the USF proceedings have been 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 rate design, as well as any other matters that ODOD deems appropriate. 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, as necessary. The two-phase process allows the Commission and the parties to the proceedings to consider, on a timely basis, any objections that may be raised by the parties. *In re Ohio Department of Development*, Case No. 04-1616-EL-UNC, Opinion and Order (Dec. 4, 2008) at 8. ODOD agreed to continue to follow the two-phase process in the current USF case. *2022 USF Adjustment Order*, Opinion and Order (Dec. 14, 2022) ¶ 26.

1. NOTICE OF INTENT PHASE

{¶ 6} On May 31, 2023, in the above-noted case, ODOD filed its NOI to file an application to adjust the USF riders of the EDUs in accordance with R.C. 4928.52 and consistent with the process agreed to and approved in the *2022 USF Adjustment Order*. In summary, ODOD's 2023 NOI application indicated that the adjustment application would request that each of the USF riders be revised to more accurately reflect the current costs of operating the Percentage of Income Payment Plan (PIPP) Plus program, the Electric Partnership Program (EPP), including consumer education programs, and associated administrative costs and to reflect known and measurable changes that will take effect during the test period and the post-test period. Further, in its NOI, ODOD presented the methodology to be followed to determine the USF rider revenue requirement and the USF rider rate design.

{¶ 7} By Entry issued June 7, 2023, the procedural schedule was established such that motions to intervene and comments or objections to the NOI application were due by July 6, 2023, responses to comments or objections were due by July 14, 2023, direct testimony was due by July 28, 2023, and reply testimony was due by August 4, 2023. In addition, if requested by any party, a prehearing conference was scheduled for August 9, 2023, and the evidentiary hearing was scheduled for August 14, 2023, at the offices of the Commission.

{¶ 8} Motions to intervene were timely filed by Ohio Energy Group (OEG), Ohio Energy Leadership Council (OELC), and Ohio Consumers' Counsel (OCC).

{¶ 9} A Joint Stipulation and Recommendation (2023 NOI Stipulation) was filed on July 28, 2023. The 2023 NOI Stipulation was executed by ODOD, AES Ohio, AEP Ohio, OEG, and Duke.

{¶ 10} By Opinion and Order issued September 20, 2023, the Commission approved and adopted, pursuant to the 2023 NOI Stipulation, the method to determine the USF rider revenue requirement and the USF rider rate design to be implemented by ODOD for the 2024 USF collection period. Staff, OCC, and FirstEnergy neither supported nor opposed the NOI Stipulation. The motions to intervene filed by OEG, OELC, and OCC were also granted in the order. *In re Ohio Department of Development*, Opinion and Order (Sept. 20, 2023) (2023 NOI Order).

2. ADJUSTMENT PHASE

{¶ 11} On October 31, 2023, ODOD filed its application, and supporting testimony, to adjust the USF riders of the EDUs in accordance with the requirements of R.C. 4928.52 and the 2023 NOI Order.

{¶ 12} By Entry issued on November 1, 2023, a hearing was scheduled for November 28, 2023 to take place at the Commission offices on the adjustment application.

{¶ 13} On November 17, 2023, ODOD filed an amended application to adjust the USF rider rates and the supplemental testimony of Keri Harris.

{¶ 14} On November 27, 2023, ODOD filed a Joint Stipulation and Recommendation (2023 Adjustment Stipulation) executed by ODOD, Duke, OEG, AES

Ohio, and AEP Ohio (Signatory Parties). Further, the 2023 Adjustment Stipulation was endorsed by OCC, OELC, and FirstEnergy as non-opposing parties. On November 27, 2023, ODOD also filed the testimony of Ms. Harris in support of the 2023 Adjustment Stipulation.

{¶ 15} The hearing was held, as scheduled. The documents admitted into evidence at the hearing on the adjustment application are as follows: the application filed on October 31, 2023 (ODOD Ex. 1) and the accompanying testimony of Ms. Harris filed on October 31, 2023 (ODOD Ex. 2); the amended application filed November 17, 2023 (ODOD Ex. 3); the testimony of Keri Harris filed November 17, 2023, in support of the amended application (ODOD Ex. 4); the supplemental testimony of Ms. Harris in support of the 2023 Adjustment Stipulation filed November 27, 2023 (ODOD Ex. 5); and the 2023 Adjustment Stipulation filed November 27, 2023 (Joint Ex. 1). While Staff is not a signatory to the 2023 Adjustment Stipulation, Staff does not oppose the 2023 Adjustment Stipulation (Tr. at 15). The 2023 Adjustment Stipulation includes, as Appendix A, a copy of the proposed customer notice regarding the adjusted USF riders (Joint Ex. 1 at 9).

C. Summary of the Amended Adjustment Application

{¶ 16} In the amended application, ODOD requests that each of the USF riders be adjusted to more accurately reflect the current costs of operating the PIPP program, EPP, consumer education programs and the associated administrative costs. Based on ODOD's analysis of the revenues that the current USF rider rates would generate based on test period sales volumes and utilizing the USF rider revenue requirement methodology approved in the 2023 NOI Order, ODOD has determined that, on an aggregated basis, the total annual revenues generated by the current USF riders will be $87,869,194.26 more than the annual revenues necessary to fulfill the objectives identified in R.C. 4928.52(A) for the 2024 USF collection period. More specifically, ODOD's analysis reveals that the revenues that would be generated by the current USF riders of each of the EDUs will be more than the annual revenue requirement to carry out the objectives set forth in R.C. 4928.52(A) for 2024. Therefore, ODOD requests a decrease in the USF rider rates of all the EDUs.

Current USF Rider					Proposed USF Rider	
EDU	**First 833,000 kWh**[3]	**Above 833,000 kWh**	**2023 Adjusted Test Period USF Rider Revenue**	**2024 Required Annual USF Rider Revenue Requirement**	**First 833,000 kWh**	**Above 833,000 kWh**
CEI	$0.0020060	$0.0005680	$30,434,758	$22,871,779	$0.0015432	$0.0005680
AES Ohio	$0.0035110	$0.0005700	$40,905,828	$17,347,233	$0.0014740	$0.0005700
Duke	$0.0021270	$0.0004690	$34,784,697	$18,538,595	$0.0011025	$0.0004690
OE	$0.0029592	$0.0010461	$62,368,675	$45,502,595	$0.0021492	$0.0010461
AEP Ohio	$0.0062781[4]	$0.0001756	$211,124,764[5]	$194,234,305	$0.0059216	$0.0001756
TE	$0.0027352	$0.0005610	$18,776,773	$12,031,793	$0.0016127	$0.0005610
Totals			$398,395,495	$310,526,300		
Surplus				$87,869,194		

(ODOD Ex. 3 at 4-11 and Ex. I; ODOD Ex. 4 at 6-11 and Ex. KH-19 through KH-30.)

{¶ 17} The amended application and the supplemental testimony of Keri Harris states that the USF revenue requirement, which the proposed USF riders are designed to generate, consists of the following elements:

(1) Cost of PIPP. The cost of PIPP component of the USF rider revenue requirement is intended to reflect the total cost of

3 Kilowatt hours (kWh).

4 As established in Case No. 23-779-EL-USF, AEP Ohio's 2023 USF rider rate increased from $0.0053667 to $0.0062781/kWh effective with the first billing cycle in October 2023.

5 AEP Ohio's revenue requirement established in Case No. 22-556-EL-USF ($180,761,551) was adjusted by $30,363,213 in Case No. 23-779-EL-UNC, for an adjusted revenue requirement of $211,124,764. See Case No. 23-779-EL-UNC, Application Exhibit C. Of the $30,363,213 adjustment, only $5,267,013 was slated for recovery during the 2023 collection year.

electricity consumed by the EDU's PIPP customers for the 12-month period January 2023 through December 2023 (test period), plus pre-PIPP balances, less the monthly installment payments billed to PIPP customers, less payments made by or on behalf of PIPP customers, including agency payments, to the extent that these payments are applied to outstanding PIPP arrearages over the same period. Because actual data for September through December 2023 was not available at the time the original application was prepared, information from the corresponding months of 2022 was combined with actual data from January through August of 2023 to determine the test-period cost of PIPP for each EDU. By the amended application, the data for September 2022 was replaced with actual data for September 2023. ODOD submits that the test period cost of PIPP must be adjusted for the following reasons: (1) to recognize the impact of Commission-approved EDU rate changes that will take effect in 2024; (2) to annualize the impact of Commission-approved EDU rate changes that took effect during the 2023 test year; and (3) to account for projected increases in PIPP enrollment activity during the 2024 collection period. The total adjusted cost of PIPP is $275,974,564.81. (ODOD Ex. 3 at 5-6 and Ex. A, A.1, A.1.a through A.1.d, and A.2 (Column F); ODOD Ex. 2 at 7-12; ODOD Ex. 4 at 3-7 and Ex. KH-1 – KH-6.)

(2) Electric Partnership Program and Consumer Education Costs. This element of the USF rider revenue requirement reflects the costs associated with the low-income customer energy efficiency programs and the consumer education program,

referred to collectively as the EPP, and their associated administrative costs, which are recovered through the USF riders pursuant to R.C. 4928.52(A)(2) and (3). In its NOI, ODOD projected its EPP costs to be $14,946,196, but agreed to review and amend the projection of its EPP costs. Based on its review, ODOD amended its proposed EPP and consumer education program costs to $9,372,250. ODOD notes that, consistent with the 2023 NOI Order, this component of the USF rider revenue requirement is allocated to the EDUs based on the ratio of their respective cost of PIPP to the total cost of PIPP. (ODOD Ex. 3 at 6-7 and Ex. B; ODOD Ex. 4 at 6-7.)

(3) Administrative Costs. This element of the USF rider revenue requirement represents an allowance for the costs incurred by ODOD in connection with its administration of the PIPP program, which are recoverable pursuant to R.C. 4928.52(A)(3). ODOD states that the proposed allowance for administrative costs, $7,743,332 has been determined in accordance with the standard approved by the Commission in the 2023 NOI Order. The requested allowance for administrative costs has been allocated to the EDUs based on the number of PIPP customer accounts as of August 2023, which is the test period month exhibiting the highest PIPP customer account totals. In addition, pursuant to R.C. 4928.544(B), ODOD is authorized to include reimbursement of the Commission's costs incurred for aggregation of PIPP Plus customers as administrative cost. (ODOD Ex. 2 at 14-22; ODOD Ex. 3 at 7, 10 and Ex. C; ODOD Ex. 4 at 7.)

(4) December 31, 2023 PIPP Account Balances. Because the USF rider is based on historical sales and historical PIPP enrollment patterns, the cost of PIPP component of an EDU's USF rider will, in actual practice, either over-recover or under-recover its associated annual revenue requirement over the collection period. Over-recovery creates a positive USF PIPP account balance for the particular EDU, which reduces the amount needed on a forward-going basis, to satisfy the USF rider revenue requirement. Conversely, where under-recovery has created a negative USF PIPP account balance as of the effective date of the new riders, there will be a shortfall in the cash available to ODOD, which will impair its ability to make the PIPP reimbursement payments due the EDUs on a timely basis. Thus, the amount of any existing positive USF PIPP account balance must be deducted in determining the target revenue level that the adjusted USF rider is to generate, while the deficit represented by a negative USF PIPP account balance must be added to the associated revenue requirement. In this case, ODOD requests that the proposed USF riders be implemented on a bills-rendered basis effective January 1, 2024. Accordingly, the USF rider revenue requirement of each EDU has been adjusted by the amount of the EDU's projected December 31, 2023, USF PIPP account balance to synchronize the new riders with the EDU's USF PIPP account balance as of their effective date. According to ODOD, this conforms to the methodology approved by the Commission in the 2023 NOI Order. (ODOD Ex. 2 at 22-24; ODOD Ex. 3 at 7-8 and Ex. H; ODOD Ex. 4 at 7-8 and Ex. KH-7 through KH-12.)

(5) Reserve. PIPP-related cash flows can fluctuate significantly throughout the year, due in large measure, to the weather-sensitive nature of electricity sales and PIPP enrollment patterns. These fluctuations have, from time-to-time, resulted in negative USF PIPP account balances, which means that, in those months, ODOD had insufficient cash to satisfy its reimbursement obligations to the EDUs on a timely basis. To address this problem, ODOD has previously included an allowance to create a cash reserve as an element of the USF rider revenue requirement. As approved in the 2023 NOI Order, and Case No. 16-1223-EL-USF and subsequent cases, the Commission has approved a modification to the calculation to allow more flexibility. The modification permitted consideration of the highest monthly deficit during the test period for the EDUs individually rather than aggregate. Because the funds are deposited in one USF account, the modification also permitted consideration of the aggregate projected year end account balance to determine whether a reserve allowance is needed. ODOD reports that it considered the projected aggregate account balance of $12,430,574. Further, ODOD determined that use of the aggregate EDU deficit would result in a higher reserve component. In addition, it determined that, although the account balance is significant, a reserve of $0 is not appropriate given the changes in the Winter Reconnect Order and the PIPP rules. ODOD noted that a reasonable reserve was required. Therefore, relying on ODOD's previous experience, the highest monthly deficit during the test period for each EDU individually was used to determine the reserve amount. Considering the projected

aggregate account balance of $12,430,574, ODOD has concluded that a reserve allowance needs to be included in the calculation of the USF rider rate in this proceeding. (ODOD Ex. 2 at 24-26; ODOD Ex. 3 at 8-9, Ex. F and H; ODOD Ex. 4 at 8.)

(6) Allowance for Undercollection. This component of the USF rider revenue requirement is an adjustment to recognize that, due to the difference between amounts billed through the USF rider and the amounts actually collected from customers, the rider will not generate the target revenues. ODOD states that, in accordance with the methodology approved by the Commission in the 2023 NOI Order, the allowance for undercollection for each EDU is based on the collection experience of the particular EDU. The total requested allowance for undercollection is $8,844,037. (ODOD Ex. 2 at 26-27; ODOD Ex. 3 at 9-10 and Ex. G; ODOD Ex. 4 at 8 and Ex. KH-13 through KH-18.)

(7) PIPP Program Audit Costs. In prior USF cases, ODOD has included an allowance for the audit of each EDU's PIPP-related accounting and reporting. In the 2023 NOI application, ODOD includes an allowance of $130,000 for audits to be performed on CEI, OE, and TE. However, based upon the costs of the 2023 audits, ODOD reports that the actual costs of the audits is $195,630. The allocation of this cost to the EDUs remains unchanged from the original application. Pursuant to R.C 4928.544(B), the reimbursement of the Commission's costs incurred for aggregation are administrative costs of the PIPP program. (ODOD Ex. 2 at 27; ODOD Ex. 3 at 10 and Ex. D.)

{¶ 18} Accordingly, ODOD requests that the Commission find that the USF rider rate adjustments proposed in the amended application represent the minimum adjustments necessary to provide the revenues required to satisfy each EDU's respective USF rider revenue requirement. ODOD further requests that the Commission direct the EDUs to incorporate the new USF rider rates in their tariffs to be effective, on a bill rendered basis, beginning January 1, 2024. (ODOD Ex. 3 at 10-12.)

D. Summary of the Stipulation

{¶ 19} As previously noted, on November 27, 2023, ODOD filed a 2023 Adjustment Stipulation to resolve all the issues raised in this phase of the USF case. In the 2023 Adjustment Stipulation, the Signatory Parties stipulate, agree, and recommend that the Commission issue an order approving adjustment to the USF riders of the jurisdictional EDUs in accordance with the terms and conditions specified as follows:[6]

1. This matter is properly before the Commission pursuant to R.C. 4928.52(B). The Commission has jurisdiction to approve this Stipulation as submitted and to issue an order authorizing adjustments to the current EDU USF riders in the minimum amount necessary to provide the revenues sufficient to cover the administrative costs of the low-income customer assistance programs and the consumer education program and to provide adequate funding for those programs. (Joint Ex. 1 at 2.)

2. The application, amended application, supporting exhibits and the testimony of Keri Harris filed in this docket by ODOD on October 31, 2023 and on November 17, 2023, as well as the testimony of Ms. Harris in support of the Stipulation filed on November 27, 2023 shall

[6] The summary of the 2023 Adjustment Stipulation is not intended to supersede or replace the Stipulation.

be admitted into evidence and made a part of the record in this case (Joint Ex. 1 at 2-3).

3. If called to testify, an appropriate representative of each EDU would verify that the kWh sales data and other information supplied by the specific EDU to ODOD upon which ODOD relied in developing the USF rider revenue requirement and USF rider rate for each EDU, as set forth in the amended application, is true and accurate to the best of each EDU's knowledge and belief (Joint Ex. 1 at 3).

4. As set forth in ODOD's amended application, and as further described in and supported by the supplemental testimony of ODOD witness Harris, the annual USF rider revenue requirement for each EDU shall be as follows:

AEP Ohio	$194,234,305
AES Ohio	$17,347,233
Duke	$18,538,595
CEI	$22,871,779
OE	$45,502,595
TE	$12,031,793

(Joint Ex. 1 at 3.)

5. The methodology for determining the respective USF rider revenue requirements is consistent with the methodology accepted by the Commission in the 2023 NOI Order (Joint Ex. 1 at 3).

6. The annual USF rider revenue requirement set forth in the Stipulation shall be collected by the respective EDUs through a USF rider that incorporates a declining block rate design consisting of two consumption blocks. The first block of the rate is to apply to all

monthly consumption up to and including 833,000 kWh. The second block shall apply to all consumption above 833,000 kWh per month. For each EDU, the rate per kWh for the second block shall be set at the lower of the 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 is to be set at the level necessary to produce the remainder of the EDU's annual USF rider revenue requirement. The USF rider for each EDU, determined in accordance with the aforementioned methodology, is as set forth below:

EDU	**First 833,000 kWh**	**Above 833,000 kWh**
AEP Ohio	$0.0059216	$0.0001756
AES Ohio	$0.0014740	$0.0005700
Duke	$0.0011025	$ 0.0004690
CEI	$0.0015432	$ 0.0005680
OE	$0.0021492	$ 0.0010461
TE	$0.0016127	$ 0.0005610

(Joint Ex. 1 at 3-4.)

7. The rate design methodology utilized in calculating the recommended USF rider rates, as set forth in the Stipulation, is identical to the methodology accepted by the Commission in the 2023 NOI Order of this proceeding and in all prior USF rider rate adjustment proceedings. Any change in the existing relative customer class revenue responsibility resulting from the use of this rate design methodology is well within the range of estimation error inherent in any customer class cost-of-service analysis and does not violate R.C. 4928.52(C), which prohibits shifting the costs of funding low-income customer assistance programs among

customer classes. By stipulating to the use of the EDU's October 1999 PIPP charge as a cap on the second block of the rider for purposes of this case, no Signatory Party waives its right to contest the continued use of the October 1999 PIPP charge as a cap on the second block of the rider in any future R.C. 4928.52(B) USF rider rate adjustment proceeding. (Joint Ex. 1 at 4.)

8. The rates for all EDUs represent the minimum rates necessary to satisfy their respective rider revenue requirements as set forth in the Stipulation. The current USF rider of each EDU shall be withdrawn and cancelled and shall be replaced by the USF riders containing the rates provided in Paragraph 6 of the Stipulation, such riders to be filed within seven days of the Commission order adopting the Stipulation. The new USF riders shall be effective upon filing with the Commission and shall apply on a bills-rendered basis beginning with the first billing cycle of the month following their effective date. The EDUs shall notify customers of the adjustments to their respective USF riders by means of the customer notice attached to the Stipulation. (Joint Ex. 1 at 4-5.)

9. ODOD reserves the right to commence a separate proceeding to address any potential changes in residential rates or to the cost to supply electricity to PIPP customers during the 2024 collection period (Joint Ex. 1 at 5).

10. Unlike traditional ratemaking, where the objective is to establish rates which will provide the applicant utility with a reasonable earnings opportunity, the USF riders must actually generate sufficient revenues to enable ODOD to meet its specific USF-related statutory and contractual obligations on an ongoing basis. To this end, ODOD shall file, not later than October 31, 2024, an application with the Commission

for such adjustments to the USF riders as may be necessary to assure, to the extent possible, that each EDU's USF rider will generate its associated revenue requirement, but not more than its associated revenue requirement, during the annual collection period following Commission approval of such adjustments. ODOD shall serve copies of such application upon all other parties to this proceeding. In the event ODOD fails to file such application on or before October 31, 2024, ODOD shall notify the Signatory Parties in writing of its intentions with respect to an application for adjustments to the USF riders, including its anticipated filing date. Such notice shall not affect the right of any Signatory Party to pursue such legal recourse against ODOD as may be available for failure to comply with the Stipulation, if any. (Joint Ex. 1 at 5.)

11. The Signatory Parties recognize that the EDU USF rider rates proposed in ODOD's annual USF rider adjustment applications are predicated on the assumption that the new USF riders authorized by the Commission will be effective on a bills-rendered basis during the January billing cycle of the following year. Although the October 31, 2024 filing deadline established in the Stipulation for the filing of next year's application will provide adequate time for the Commission to act upon the application prior to January 1, 2025, if the application is not contested, the Signatory Parties recognize that this two-month interval may not be sufficient in the event that a party to the proceeding objects to the application and wishes to litigate the issue(s) raised in its objection(s).[7] To address this concern, the Signatory Parties propose and

[7] In so stating the Signatory Parties are referring to an objection relating to something other than the mathematical accuracy of ODOD's calculations, as an objection to the accuracy of an ODOD calculation can

agree that ODOD should again follow the NOI process first adopted in Case No. 04-1616-EL-UNC. Specifically, on or before May 31, 2024, ODOD shall file with the Commission a notice of its intent to submit its annual USF rider adjustment application and shall serve the NOI on all parties to this proceeding. The NOI shall set forth the methodology ODOD intends to employ in calculating the USF rider revenue requirement and in designing the USF rider rates in preparing its 2024 USF rider rate adjustment application and may also include such other matters as ODOD deems appropriate. Upon the filing of the NOI, the Commission will open the 2024 USF rider adjustment application docket and will establish a schedule for the filing of objections or comments, responses to the objections or comments, and, if a hearing is requested, a schedule for discovery, the filing of testimony, and the commencement of the hearing. The Commission will use its best efforts to issue its decision with respect to any objections raised not later than September 30, 2024. ODOD will conform to its 2024 USF rider adjustment application to any directives set forth in the Commission's decision. If the order is not issued sufficiently in advance of the October 31, 2024 filing deadline to permit ODOD to incorporate such directives, ODOD will file an amended application conforming to the Commission's directives as soon as practicable after the order is issued. (Joint Ex. 1 at 5-7.)

12. The Signatory Parties support initiatives intended to control the costs that ultimately must be recovered through the USF riders. In furtherance of this objective, the Signatory Parties agree to the

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almost certainly be resolved informally in a time frame that will permit the Commission to issue a final order on the application in advance of the January billing cycles.

> continuation of the USF Rider Working Group (Working Group) formed pursuant to the Stipulation approved by the Commission in Case No. 03-2049-EL-UNC.[8] The Working Group is charged with developing, reviewing, and recommending cost-control measures. Although recommendations made by the Working Group shall not be binding upon any Signatory Party, the Signatory Parties shall give due consideration to such recommendations and shall not unreasonably oppose the implementation of such recommendations. A Working Group meeting will be held prior to the filing of the NOI with the intent to hold the meeting a week before ODOD seeks the recommendation of the Public Benefits Advisory Board as required by R.C. 4928.58. (Joint Ex. 1 at 7.)

{¶ 20} Accordingly, the Signatory Parties respectfully request that the Commission issue an order adopting the 2023 Adjustment Stipulation and directing each EDU to file new USF riders in accordance therewith, said riders to be effective with the January 2024 billing cycle on a bills-rendered basis (Joint Ex. 1 at 7).

E. Consideration of the Stipulation

{¶ 21} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

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[8] *In re Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 03-2049-EL-UNC, Opinion and Order (Dec. 3, 2003).

{¶ 22} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

a. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

b. Does the settlement, as a package, benefit ratepayers and the public interest?

c. Does the settlement package violate any important regulatory principle or practice?

{¶ 23} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 24} ODOD witness Keri Harris, Deputy Chief of ODOD's Community Services Division, previously directly supervised the preparation of the USF rate application and currently has responsibility for administering the programs for low-income utility customers. ODOD witness Harris testified that the 2023 Adjustment Stipulation satisfies the three-part test utilized by the Commission to evaluate stipulations: (1) the stipulation is a product of serious bargaining among capable, knowledgeable parties; (2) the stipulation does not violate any important regulatory principle or practice; and (3) the stipulation, as a package, will benefit customers and the public interest. Ms. Harris states that the parties to this case have been actively participating in the USF proceedings, and other Commission cases, for several years, all parties are represented by experienced, competent counsel, and were afforded the opportunity to participate in a prehearing conference and to engage in settlement discussions on the proposed stipulation. ODOD witness Harris notes that many of the parties in this USF proceeding are signatories to stipulations filed in prior USF cases. On that basis, Ms. Harris reasons the 2023 Adjustment Stipulation is the product of serious bargaining among capable, knowledgeable parties and, therefore, meets the first condition used by the Commission to evaluate a stipulation. (ODOD Ex. 2 at 2-3; ODOD Ex. 5 at 2-3.)

{¶ 25} ODOD witness Harris also testified the 2023 Adjustment Stipulation ensures adequate funding for the low-income customer assistance programs and the consumer education programs administered by ODOD at the minimal rider rates necessary to collect each EDU's USF rider revenue requirement. Accordingly, ODOD witness Harris concluded that the 2023 Adjustment Stipulation complies with the second criteria used by the Commission to evaluate a stipulation. Finally, Ms. Harris testified that the 2023 Adjustment Stipulation does not violate any important regulatory principles or practices and further states the USF rider revenue requirements, and the USF rider rates were determined consistent with the NOI methodology approved by the Commission in the 2023 NOI Order issued in this case. (ODOD Ex. 5 at 3.)

III. COMMISSION CONCLUSION ON THE STIPULATION

{¶ 26} The Commission notes that, unlike other proceedings before the Commission where we are charged with balancing the interest of the utilities and the public, in this matter the Commission's role is limited primarily to facilitating the process by which ODOD files for and the EDUs implement their respective USF rider rates. In USF proceedings, in accordance with R.C. 4928.52(B), the Commission cannot decrease the USF rider without the approval of the director of ODOD. Thus, in light of the Commission's limited role in these USF proceedings, our evaluation of the issues raised in this proceeding and Staff's participation in this case, is restricted. Given that there are no issues to be litigated and several of the parties to this matter have entered into a stipulation resolving all the issues raised in this case, the Commission will consider the stipulation filed. We also note that no party to the case opposes the stipulation.

{¶ 27} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement may be accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 28} After reviewing the 2023 Adjustment Stipulation and the record evidence in this matter, the Commission finds that the 2023 Adjustment Stipulation and proposed customer notice are reasonable. Further, the Commission concludes that the USF rider rates set forth in the 2023 Adjustment Stipulation reflect the minimum level necessary to produce the required revenues for ODOD to cover the administrative costs of the low-income customer assistance programs and the consumer education program and to provide adequate funding for those programs. We also find that the process involved serious bargaining by knowledgeable, capable parties that were represented by competent counsel familiar with the USF process. We note that the 2023 Adjustment Stipulation is not opposed by any party to this proceeding. Furthermore, we find that the 2023 Adjustment Stipulation is in the public interest to the extent it provides adequate funding, at the lowest USF rider rate feasible, for the low-income customer assistance programs and the consumer education program offered by ODOD and does not violate any important regulatory principle or practice.

{¶ 29} In accordance with paragraphs 10, 11 and 12 of the 2023 Adjustment Stipulation, ODOD agrees to notify the Signatory Parties regarding events in the next USF process including filing the notice of intent, filing an adjustment application after October 31, 2024, and participating in the Working Group. We note that at the hearing, ODOD committed to notify all parties in this matter of events related to the next USF application and the Working Group meetings. (Joint Ex. 1 at 5-6; Tr. at 13-14). Accordingly, subject to this clarification, the Commission finds that the 2023 Adjustment Stipulation and the USF rider rates established therein for AEP Ohio, AES Ohio, CEI, Duke, OE, and TE, should be approved. Finally, to facilitate the retrieval of USF cases in the future, the Commission directs ODOD to continue to file future USF cases with the USF purpose code.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 30} The USF was established, pursuant to R.C. 4928.51 through 4928.58, for the purposes of providing funding for the low-income customer assistance programs, including the consumer education program, authorized by R.C. 4928.56, and for payment of the administrative costs of those programs.

{¶ 31} The USF is administered by ODOD, in accordance with R.C. 4928.51.

{¶ 32} ODOD filed an application on October 31, 2023, as amended on November 17, 2023, to adjust the USF riders of the EDUs, in accordance with the requirements of R.C. 4928.52.

{¶ 33} The hearing was held on November 28, 2023. At the hearing, the 2023 Adjustment Stipulation was admitted into the record, which, if approved, purports to resolve all issues in this case.

{¶ 34} The 2023 Adjustment Stipulation and proposed customer notice are reasonable and should be adopted.

{¶ 35} The two-step, declining block USF rider rates set forth in the 2023 Adjustment Stipulation reflect the minimum level necessary to produce the required revenues for ODOD to cover the administrative costs of the low-income customer assistance programs and the consumer education program and to provide adequate funding for those programs.

V. ORDER

{¶ 36} It is, therefore,

{¶ 37} ORDERED, That the 2023 Adjustment Stipulation, as clarified in the Opinion and Order, and the proposed customer notice be approved. It is, further,

{¶ 38} ORDERED, That the EDUs be authorized to file, in final form, four complete copies of their tariffs consistent with this Opinion and Order, within seven days after the date of this Order. Each EDU shall file one copy in its TRF docket and one copy in this case docket. The remaining two copies shall be designated for distribution to the Commission's Rates and Analysis Department. It is, further,

{¶ 39} ORDERED, That the effective date of the new tariffs be a date not earlier than both the date of this Opinion and Order and the date upon which the copies of the final tariffs are filed with the Commission. The new USF riders shall be effective upon filing with the Commission and apply on a bills-rendered basis in the first billing cycle of the month following their effective date. It is, further,

{¶ 40} ORDERED, That the EDUs notify all customers affected by the tariff by the customers' first bill that will include the new USF rider rate. It is, further,

{¶ 41} ORDERED, That ODOD file all subsequent USF cases under the USF purpose code. It is, further,

{¶ 42} ORDERED, That a copy of this Opinion and Order be served on ODOD, the electric-energy list serve, and all persons of record

COMMISSIONERS:
Approving:
Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

GNS/IMM/dmh

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Case No(s). 23-0603-EL-USF

Summary: Opinion & Order adopting the Joint Stipulation and Recommendation filed on November 27, 2023, to resolve all the issues presented by the Ohio Department of Development’s application to adjust the Universal Service Fund rider rates of jurisdictional Ohio electric distribution utilities electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.