BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of First-Energy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues.	)	Case No. 99-1212-EL-ETP Case No. 99-1213-EL-ATA Case No. 99-1214-EL-AAM
In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan, Approval of Tariff Changes and New Tariffs, Authority to Modify Current Accounting Procedures, and Approval to Transfer its Generating Assets to an Exempt Wholesale Generator.	)	Case No. 99-1658-EL-ETP Case No. 99-1659-EL-ATA Case No. 99-1660-EL-ATA Case No. 99-1661-EL-AAM Case No. 99-1662-EL-AAM Case No. 99-1663-EL-UNC
In the Matter of the Application of the Dayton Power and Light Company for Approval of its Transition Plan, for the Opportunity to Receive Transition Revenues, for Approval to Change Accounting Methods, and Approval to Amend its Tariff.	)	Case No. 99-1687-EL-ETP Case No. 99-1688-EL-AAM Case No. 99-1689-EL-ATA
In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues.	)	Case No. 99-1729-EL-ETP Case No. 99-1730-EL-ETP
In the Matter of the Application of Monongahela Power Company dba Allegheny Power for Approval of an Electric Transition Plan.	)	Case No. 00-02-EL-ETP

ENTRY ON REHEARING

The Commission finds:

(1) On July 13, 2000, as amended on July 17, 2000, the Ohio Department of Development (ODOD) filed applications in the above-captioned cases for approval of Universal Service Fund (USF) riders and Energy Efficiency Revolving Loan Fund (EERLF) riders for each of the companies. In accordance with the requirements of Ohio's electric restructuring legislation (Amended Substitute Senate Bill 3, hereafter S.B. 3), Sections

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4928.52 and 4928.62, Revised Code, provide that USF and EERLF riders are to be effective on July 1, 2000 and January 1, 2001, respectively. However, due to delays in the transfer of the program, ODOD requested that the Commission make the USF riders effective September 1, 2000. The stipulations submitted in each of these proceedings provided that the USF and EERLF riders are to be determined by ODOD and approved by the Commission.

(2) On August 17, 2000, the Commission issued an entry approving ODOD's proposed USF and EERLF rider rates, and denied a motion from Industrial Energy Users-Ohio (IEU-Ohio) to disapprove ODOD's applications, finding that the riders satisfied the statutory requirements of S.B. 3 and were consistent with the stipulations permitting ODOD to determine the rider rates.

(3) On August 29, 2000, IEU-Ohio, Ohio Council of Retail Merchants, and Ohio Manufacturers' Association (Applicants) filed a motion for rehearing. The Applicants contend that the Commission erred by finding that the USF riders were established in compliance with S.B. 3. The Applicants argue that Section 4928.52(A), Revised Code, requires that the USF rider be calculated using the level of the percentage of income payment plan (PIPP) program rider in existence on the effective date of S.B. 3, that no audit was performed by the Commission to establish a PIPP baseline, that the low-income customer energy efficiency program component of the USF rider was calculated and applied incorrectly, and that adequate details have not been provided to justify the funding amount for energy education component of the USF rider. The Applicants also contend that the Commission erred in approving rates, which are an increase over current rates, without fulfilling the due process requirements of Sections 4909.18 and 4928.52, Revised Code. In addition, the Applicants argue that, pursuant to Section 4903.10(B), Revised Code, the Commission's order has been stayed by the filing of the application for rehearing prior to the effective date of the August 17, 2000 entry.

(4) On September 7, 2000, Ohio Partners for Affordable Energy and the Appalachian People's Action Coalition (OPAE) filed a memorandum contra to the application for rehearing. OPAE contends that the Commission's approval of the USF riders was reasonable and consistent with S.B. 3. On September 8, 2000, ODOD also filed a memorandum contra to the application for rehearing. ODOD contends that the proposed riders represent its best estimate of the costs associated with running the PIPP program, as well as the costs of a low-income energy efficiency program and consumer education. In establishing a baseline for the PIPP program component of the low-income assistance

programs, ODOD obtained information from the electric distribution utility companies, as well as from the 1999 "OSCAR" (Ohio Statistics on Customer Accounts Receivable) reports sent to the staff by the companies (*See*, July 13, 2000 Application, Attach. C). ODOD also contends that S.B. 3 contemplated that the USF rider would be set at a reasonable level to allow ODOD to adequately fund a wide range of low-income customer assistance programs including PIPP, the Home Energy Assistance Program, and the targeted energy efficiency and weatherization programs (Section 4928.01(A)(16), and Sections 4928.51 through 4928.56, Revised Code). ODOD asserts that to rigidly apply Section 4928.52(A)(1), (2), and (3), Revised Code, would effectively negate entire provisions of a pervasive statutory scheme to establish and preserve low-income customer assistance programs. In its memorandum contra, ODOD states that approximately $7 million statewide was established to preserve and create a new energy efficiency and weatherization programs which will serve 5,300 electric PIPP customers out of approximately 173,000 electric PIPP customers across the state. ODOD claims that if it were to rely on only the funding provided for in Section 4928.52(A), Revised Code, for these programs, its budget, based on data received from the electric utilities, would be less than $1 million because Ohio Power Company and Columbus Southern Power Company were the only utilities which claim to have funding in current electric rates for low-income customer energy efficiency programs. Further, ODOD states that the $6 million for energy education services and the $1,896,196 for administrative costs used in calculating the USF riders are what ODOD believes is necessary to achieve the goals set forth by S.B. 3. (See Attachment 1 to OEU-Ohio's August 4, 2000 motion to disapprove.)

(5) Pursuant to Section 4928.52(A), Revised Code, the USF rider for the first five years after the starting date of competitive retail electric service shall be the sum of:

> (1) the level of the percentage of income payment plan program riders in existence on the effective date of this section; (2) an amount equal to the level of funding for low-income customer assistance programs provided through electric utility rates in effect on the effective date of this section; [and] (3) any additional amount necessary and sufficient to fund through the universal service rider the administrative costs of the low-income customer assistance programs and the consumer education program created in section 4928.56 of the Revised Code.

This section of the code also provides that beginning July 1, 2000, the USF riders shall replace the PIPP riders in existence on the effective date of this section and any amount in the rates of the electric utilities for the funding of low-income customer energy efficiency programs. We also believe that the language cited above must be considered in conjunction with Section 4928.51(D), Revised Code, which provides for the establishment of a baseline for the PIPP program as a component of the low-income assistance plan based upon an audit of each electric utility to be conducted by the Commission.

(6) In considering the arguments raised on rehearing, the Commission believes it is appropriate to interpret Sections 4928.51 and 4928.52, Revised Code, in a manner that is most in keeping with the intent of the legislature when Sections 4928.51 to 4928.63, Revised Code, were drafted. With respect to the Applicants' argument that the PIPP component of the USF rider should be the PIPP rates currently in existences, the Commission cannot agree. We believe that it was the legislative intent to establish a baseline PIPP rate, looking at the ongoing cost of each electric utility's PIPP program, rather than using the outdated PIPP rates in existence on the effective date of S.B. 3. The Applicants, in citing Section 4928.52(A)(2), Revised Code, to support their position, ignore Section 4928.51(D), Revised Code, which supports the position held by the Commission that the PIPP component of the USF is to be arrived at by establishing a baseline PIPP rate for each electric utility. We believe that the reference to the use of PIPP rates in existence on the effective date of S.B. 3, set forth in Section 4928,52(A)(1), Revised Code, conflicts with Section 4928.51(D), Revised Code. Parenthetically, we also note that the three items to be included in the USF rider set forth in Section 4928.52(A)(1), (2) and (3), Revised Code, apply to USF riders in effect after the start of competitive retail electric service on January 1, 2001. Accordingly, it is not clear what effect this provision has on USF riders established prior to that date.

With respect to the Applicants' arguments that no staff baseline PIPP audit was performed or that that ODOD's filing lacked adequate detail to justify the funding of the various components of the USF rider, the Commission will grant rehearing in order for ODOD and the Commission's staff to provide additional data on the various components of the USF riders. ODOD and the staff shall file such data within 30 days of this entry. USF riders in effect shall remain in effect pending the Commission's further review of this matter.

Further, the Commission does not agree with the Applicants' argument regarding the need for a hearing under Sections 4909.18 and 4909.19, Revised Code, before establishing the USF riders. We do not believe that the ratemaking requirements of Section 4909.18 and 4909.19, Revised Code, come into play regarding the adoption of the USF rider. This rider is being implemented pursuant to Sections 4928.51 and 4928.52, Revised Code, which does not require a hearing before ODOD establishes the initial riders.

We also do not find any merit to the Applicants' argument that, pursuant Section 4903.10(B), Revised Code, the Commission's order has been stayed by the filing of the application for rehearing prior to the effective date of the August 17, 2000 entry. The Commission has addressed this very issue in *The Matter of the Application of the Toledo Edison Company for Authority to Increase Rates*, Case No 86-2026-EL-AIR, Entry issued December 23, 1987. In that entry, we noted that, unless stated otherwise, our orders become effective immediately upon the order being journalized. In the present case, the entry was journalized on August 17, 2000, and we found that the effective date should not be stayed or postponed.

It is, therefore,

ORDERED, That application for rehearing filed by Industrial Energy Users-Ohio, Ohio Council of Retail Merchants, and Ohio Manufacturers' Association is granted in part and denied in part. It is, further,

ORDERED, That the parties to these proceedings comply with the Commission's directives set forth in Finding 6. It is, further,

ORDERED, That a copy of this entry on rehearing be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Craig A. Glazer – No

Judith A. Jones

Donald L. Mason

RRG;geb

I would leave this matter to the les tive budget process & not have it be e embroiled in the PUCO process

ENTERED IN THE JOURNAL SEP 28 2000
(date)