

Before the  
Public Utilities Commission of Ohio

In the Matter of the Review of the Smart Grid	)	
Modernization Initiative Contained in the	)	
Tariffs of Ohio Edison Company, The	)	Case No. 12-0406-EL-RDR
Cleveland Electric Illuminating Company,	)	
and The Toledo Edison Company.	)	

**Reply Comments of the Staff**  
**of the Public Utilities Commission of Ohio**

April 22, 2013

## **Introduction**

On February 15, 2012, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“FirstEnergy” or the “Companies”) filed its Report in Support of Staff’s 2011 Annual Review of the Companies’ AMI Infrastructure/Modern Grid Rider (“Rider AMI”). The Staff of the Public Utilities Commission of Ohio (“Staff”) reviewed that report and investigated data and information supporting automatic quarterly adjustments to Rider AMI. On February 19, 2013, the Staff filed Comments (Staff Report) in the above-captioned case. FirstEnergy filed Comments to the Staff Report on April 5, 2013. The Staff’s Reply Comments contained herein are filed pursuant to the March 6, 2013 Entry, requesting reply comments to be filed by April 22, 2013.

Staff’s Reply Comments address the following issues raised by FirstEnergy in its Comments to the Staff Report:

1. The Companies believe all costs incurred for deploying the Mayfield and Leroy fiber cables under fixed cost contracts with FTS (“Project”) should be recovered.<sup>1</sup>
2. As of December 17, 2012, FirstEnergy has no financial interest in First Telecom Services (“FTS”), which was sold to Zayo Group;<sup>2</sup> and

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<sup>1</sup> Id., at p. 8.

<sup>2</sup> FirstEnergy Comments at p. 2.

The Companies do not believe that it is appropriate to expand the scope of the audit to include other unrelated projects;<sup>3</sup>

**1. The Companies believe all costs incurred under the Project should be recovered**

The Companies argue that, “...but for the [Smart Grid] Project, the fiber would not have been installed and no costs would have been incurred.”<sup>4</sup> They admit, however, that “In order to support the Project, the Companies required a 12 pair fiber cable to be installed.”

The Companies’ argument that the installation of 12 fiber pairs was driven by the Project has nothing to do with the decision to install 24 fiber pairs and, in turn, give to its affiliate, FTS, the cable itself and the 12 fiber pairs not required by FirstEnergy.

Likewise, it does not diminish the cost FTS would have incurred had it decided to build the cable independently. By accepting its share of the cable, FTS enjoys at least the cost advantage, if not the value, of its share of cable, and FTS’ share of cable was received courtesy of ratepayers and taxpayers.

Additionally, the Companies argue that the cost responsibility of FTS and, therefore, the limit of any disallowance the Commission may consider, should be limited to the incremental cost associated with increasing the cable from 12 pairs to 24 pairs. Staff does not accept this argument, and the Commission should reject it.

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<sup>3</sup> Id., at p. 6.

<sup>4</sup> Id. at p. 8.

The same argument supports an alternative viewpoint of which costs should be recovered from ratepayers. If FTS were to construct the cable runs, then ratepayers should be responsible for only the incremental cost of the second 12 fibers contained in the cable owned by FTS. In such case, according to FirstEnergy's calculations, only \$6,650 should be included in rates, and the remainder of the cost should be disallowed. This alternative viewpoint is validated by FTS' acceptance of the ownership of the cable itself and 12 fibers contained therein. If FTS did not need or want the 12 pairs, it could have said so, and the Project could have been limited to 12 fiber pairs, not 24.

The entire issue should be considered in light of the central point made by the Office of Consumers' Counsel in its Comments.<sup>5</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**2. FirstEnergy no longer has a financial interest in FTS, which was sold to Zayo Group ("Zayo")**

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<sup>5</sup> Comments of the Office of Consumers' Counsel at pp. 2 – 3.

This material fact was unknown to Staff before the Companies included it in their Comments to the Staff Report on April 5, 2013. It only serves to amplify Staff's arguments.

De facto, the sale of FTS to Zayo implicitly valued the fiber segments without regard to who paid for the cable fibers. Thus, absent action by the Commission, the shareholders of FirstEnergy and the non-FirstEnergy shareholders and/or owners of FTS received some windfall market value for an investment they did not make in the cables. Simply stated, the Companies are requesting to have it both ways – to recover all the costs of the investment in fiber from ratepayers and taxpayers, in addition to receiving the value of that investment from the sale of FTS.

Despite the ownership disposition of FTS, Staff maintains its original position with regard to disallowance. The 12 pairs of fiber required by the Companies to support the Project are in place. Ratepayers will enjoy the benefits of that investment and, therefore, should contribute half the costs. The Companies should then be free to dispose of FTS as they see fit, including FTS' share of the cable assets, because FTS will have paid its fair share of the Project investment.

Should the Commission reject that argument, Staff recommends that it should disallow the entire investment in the cable segments, \$905,000, on the grounds that FirstEnergy has been reimbursed for its share of the value of the assets through the sale of FTS to Zayo. Further, if the Commission finds the Companies' arguments about incremental

costs compelling, it should require ratepayers, not shareholders and FTS' prior owners, to pay only the incremental costs because the shareholders and owners have received the value of the assets from the sale of FTS to Zayo.

**3. It is not appropriate to expand the scope of the audit to include other unrelated projects**

For purposes of clarity, Staff did not recommend expanding the scope of this audit. Additionally, Staff did not go beyond the scope of this audit in its investigation for the very reasons the Companies cite. This audit is about the two fiber segments, which are the subject of this filing.

Rather, the Staff was suggesting that the Commission might, on its own initiative or on some basis other than the instant audit, investigate the extent to which joint build arrangements were used in other situations with the same or similar terms and conditions afforded FTS in this case. Specifically, there could be circumstances in addition to the Project at issue in this case, in which an entity such as FTS has been afforded ownership of the cable and some fiber pairs within the cable. In fact, the Companies cite in their Comments to the Staff Report two other instances of cable being installed under joint build arrangements with FTS.<sup>6</sup>

At the very least, the Commission should use some means of determining the extent of joint build arrangements with FTS, including the terms and conditions involved in such

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<sup>6</sup> Comments to the Staff Report at p. 10.

arrangements. Other instances of joint build arrangements could have some bearing on investments that may already, or could in the future, be included in rates of one or more of the Companies. Additional information could instruct the Commission and Staff on how to monitor and account for potential revenues and expenses resulting from such arrangements. The need for further light on these issues is even more compelling now than before, given that FTS is no longer an entity affiliated with the Companies.

## **PROOF OF SERVICE**

I hereby certify that a true copy of the foregoing **Reply Comments** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 22nd day of April, 2013.

/s/ Thomas G. Lindgren

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Summary: Comments Redacted Comments electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO