

**BEFORE THE  
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 Nos. 12-406-EL-RDR
Cleveland Electric Illuminating Company,	)	13-549-EL-RDR
and The Toledo Edison Company	)	
	)	

**STIPULATION AND RECOMMENDATION**

Rule 4901-1-30, Ohio Administrative Code, provides that any two or more parties to a proceeding before the Public Utilities Commission of Ohio ("Commission") may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this Stipulation and Recommendation ("Stipulation") is to set forth the understanding and agreement of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "Companies"), the Commission Staff ("Staff"),<sup>1</sup> and the Office of the Ohio Consumers' Counsel ("OCC"), each of whom is a Signatory Party, and who together constitute the Signatory Parties or Parties. The Signatory Parties recommend that the Commission approve and adopt, as part of its Opinion and Order in these proceedings, this Stipulation, which resolves all issues arising from the audit of costs incurred by the Companies through December 31, 2012 for the Ohio portion of the Smart Grid Modernization Initiative ("SGMI") sponsored through the Department of Energy ("DOE") and approved by the Commission in Case No. 09-1820-EL-ATA, et al. ("DOE Project"), including all issues pertaining to DOE project costs which are described in support of Staff's annual review in Case Nos. 12-406-EL-RDR and 13-549-EL-RDR (collectively, "Cases") and all issues raised regarding the Leroy Center and the Mayfield lines (collectively,

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<sup>1</sup> The Staff of the Public Utilities Commission of Ohio will be considered a party for the purpose of entering into this Stipulation pursuant to Ohio Administrative Code Sections 4901-1-10(C) and 4901-1-30.

“Lines”). This Stipulation is supported by adequate data and information including, but not limited to, the Companies’ November 18, 2009 Application for Approval of Ohio Site Development of the Smart Grid Modernization Initiative and Timely Recovery of Associated Costs, the Commission Staff’s audit of such costs through December 31, 2012 as set forth in the Staff’s Comments (“Staff Comments”) in Case Nos. 12-406-EL-RDR and 13-549-EL-RDR, dated February 19, 2013 and August 8, 2013, respectively; comments filed individually by the Companies and OCC in Case No. 12-406-EL-RDR on April 5, 2013; reply comments filed individually by the Companies, the Staff and OCC in Case No. 12-406-EL-RDR, on April 22, 2013; and the Companies’ responses to data requests in the subject proceedings.

This Stipulation represents a just and reasonable resolution of the issues raised in these proceedings, violates no regulatory principle or precedent, and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this Commission and undertaken by the Parties, representing a wide range of interests to resolve the aforementioned issues. Although this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving all issues raised by these proceedings, the Parties stipulate, agree, and recommend as set forth below.

This Stipulation is a reasonable compromise that balances diverse and competing interests and does not necessarily reflect the position that any one or more of the Signatory Parties would have taken had these issues been fully litigated. This Stipulation represents an agreement by all Parties to a package of provisions rather than an agreement to each of the individual provisions included within the Stipulation. The Signatory Parties’ agreement to this Stipulation, in its entirety, shall not be interpreted in a future proceeding before this Commission as their agreement to only an isolated provision of this Stipulation.

This Stipulation is submitted for purposes of these proceedings only and is limited in scope to only the two Lines, and neither this Stipulation nor any Commission Order considering this Stipulation shall be deemed binding in any other proceeding. This Stipulation or any Commission Order considering this Stipulation shall not be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation.

The Signatory Parties agree that the settlement and resulting Stipulation are a product of serious bargaining among capable, knowledgeable Parties with diverse interests. This Stipulation is the product of an open process in which all Parties were represented by able counsel and technical experts. The Signatory Parties, which include the Companies, the Staff, and OCC, have signed the Stipulation and adopted it. The Signatory Parties believe that this Stipulation, recommended for Commission adoption, presents a fair and reasonable result.

The Signatory Parties agree that the settlement, as a package, benefits ratepayers, and is in the public interest. The Signatory Parties agree that the settlement package does not violate any important regulatory principle or practice.

This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. If the Commission rejects or materially modifies all or any part of this Stipulation,<sup>2</sup> each and every Signatory Party shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing or to terminate and withdraw from the Stipulation by filing a notice with the Commission. The Signatory Parties agree they will not oppose or argue against any other Signatory Party's notice of termination or application for rehearing that seeks to uphold the original, unmodified Stipulation. If, upon rehearing, the Commission does not adopt the Stipulation in its entirety and without material

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<sup>2</sup> Any Signatory Party has the right, at its sole discretion, to determine what constitutes a "material" change for the purposes of that Party withdrawing from the Stipulation.

modification, any Signatory Party may terminate and withdraw from the Stipulation. Termination and withdrawal from the Stipulation shall be accomplished by filing a notice with the Commission, including service to all Signatory Parties in this proceeding, within thirty days of the Commission's Order or ruling on rehearing that does not adopt the Stipulation in its entirety and without material modification. Other Signatory Parties to this Stipulation agree to not oppose the termination and withdrawal of the Stipulation by any other Signatory Party. Upon the filing of a notice of termination and withdrawal, the Stipulation shall immediately become null and void.

Prior to the filing of such a notice, the Signatory Party wishing to terminate agrees to work in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Signatory Party wishing to terminate, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, the Commission will convene an evidentiary hearing such that the Signatory Parties will be afforded the opportunity to present evidence through witnesses and cross-examination, present rebuttal testimony, and brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed.

**WHEREAS**, all of the related issues and concerns raised by the Parties are addressed in the substantive provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Parties, an overall reasonable resolution of all such issues; and

**WHEREAS**, pursuant to a stipulation approved by the Commission in Case No. 08-935-EL-SSO ("SSO Stipulation"), the Companies committed to develop a proposal to pursue federal

funds from smart grid investment with the recovery of any state-committed funds for such investment through a non-bypassable rider; and

**WHEREAS**, in accordance with the SSO Stipulation, the Companies submitted to the DOE an application for approval of the SGMI, which application was contingent upon the Companies' receipt of authority to recover all state-committed funds for such investment from the PUCO; and

**WHEREAS**, on June 30, 2010, the Commission approved certain terms and conditions for the Companies' recovery of actual costs incurred, which were not designated for reimbursement by the DOE, for Rider AMI in Case No. 09-1820-EL-ATA; and

**WHEREAS**, cost recovery through Rider AMI was approved in Case No. 10-388-EL-SSO; and

**WHEREAS**, in 2012, Staff conducted its first annual financial audit of the Companies' investment in and expenses incurred through December 31, 2011 relative to the DOE Project and issued a report in Case No. 12-406-EL-RDR on February 19, 2013, to which OCC commented and the Companies commented and objected; and

**WHEREAS**, Staff conducted a second audit in 2013 of the Companies' investment in and expenses incurred during the twelve months ended December 31, 2012 relative to the DOE Project; and

**WHEREAS**, the Signatory Parties believe that the agreements herein represent a fair and reasonable resolution of the issues raised in the Cases concerning the audit of Rider AMI as it relates to the DOE Project and the costs related thereto which were incurred through December 31, 2012.

**NOW THEREFORE**, it is agreed that:

## **I. FINANCIAL AND ACCOUNTING**

- A. The Signatory Parties agree that the total amount of project costs for the Lines is \$927,456. The Companies will reduce the costs for the Lines that will be collected from customers through Rider AMI by \$347,700. The adjustment to the Rider AMI calculation will be made in the month(s) that the costs were originally charged to properly adjust the revenue requirement. The reduction in costs to be collected from customers will appear as a separate line item on the "AMI Spend" tab of the Rider AMI workpapers and will be made in the next quarterly Rider AMI filing after Commission approval of the Stipulation.
- B. Any future 5% revenue earned from the fiber pairs not owned by the Companies included in the Lines will flow through Rider AMI, or its equivalent, through a credit calculation as a benefit to customers. The Companies represent that there have been no revenues to date associated with the Lines and, therefore, no revenues from the Lines have flowed through Rider AMI to date. The Parties understand and acknowledge that the gross revenues received for commercial traffic on the Lines, should a third party contract come into existence, is based on a proration of the length of these fiber segments compared to the length of the fiber from the origin to the destination of the traffic. The Companies represent that First Telecom Services ("FTS"), which is now owned by Zayo Group Holdings, Inc., dba Zayo Group LLC ("Zayo"), has agreed to track the revenue associated with the fiber pairs not owned by the Companies and to provide a monthly statement or include a line item in their monthly invoice that identifies any revenues related to these pairs. The revenues received from the Lines to which the Companies are entitled will be

credited 50% to the Companies' customers until June 1, 2015. Thereafter all revenues from the Lines to which the Companies are entitled and that the Companies have received will be credited to the Companies' customers through Rider AMI, or its successor or equivalent. The Companies' internal audit department will periodically, and no less than every two years, audit the determination of the 5% revenues generated from the Lines. Further, the Companies agree that audit reports from such audits shall be made available to Staff for their review during their annual audit of Rider AMI or its successor or equivalent. The audit reports will be made available to OCC upon its request.

- C. The Parties acknowledge and agree that the costs included in Rider AMI are recovered over a ten-year period from when they are incurred and that Rider AMI does not have a finite ten-year life.
- D. The Parties acknowledge that the adjustment of \$602,117 relating to the refurbished capacitor banks under DA/VVC/PQ Non-labor Incremental costs described in the Audit Report for Case No. 13-549-EL-RDR was made in the revenue requirement supporting the Companies' AMI Rider filed on July 1, 2013, and that this issue, as raised in the Staff Report for Case No. 13-549-EL-RDR, has been resolved to the satisfaction of Staff and OCC.

## **II. MAINTENANCE**

The Companies represent that their parent corporation, FirstEnergy Corp. ("FirstEnergy"), and FTS entered into a Maintenance Agreement dated March 7, 2008. Section 1 of the Maintenance Agreement provides that FTS (now owned by Zayo, which is also bound by the Maintenance Agreement) is required to provide all ongoing routine, non-routine and emergency

maintenance of the Lines at no cost to the Companies. This was confirmed in a Memorandum of Understanding, included as part of Purchase order number 45289752, dated December 12, 2008 ("MOU"), which the Companies represent are additional terms governing the construction and maintenance of the Lines. The Parties agree that, to the extent that Section 1 of the Maintenance Agreement and the additional terms set forth in the MOU (or any amendments thereto) provide for such maintenance at no charge to the Companies, the Companies will not charge customers any maintenance costs related to the Lines. Absent reasons for cause, as listed in parts (b) through (e) of section 4 of the Maintenance Agreement, the Companies agree that neither they nor FirstEnergy will initiate termination of either the Maintenance Agreement or the maintenance terms set forth in the MOU for 36 months after the docketing of the Commission's Order approving this Stipulation. If the Maintenance Agreement or the maintenance terms set forth in the MOU are terminated, FirstEnergy will file notice of such termination with the Commission in the dockets of the Cases within 30 days after completion of the internal audit (described in Paragraph II(B) hereof) in which such termination is discovered. Should the docket numbers of the Cases be closed prior to such notice being made, such notice shall be made by first class mail, postage prepaid to Staff and OCC at their then-current addresses. Such notice shall include a reference to the docket numbers of the Cases and this Section II of this Stipulation.

### **III. FUTURE JOINT BUILD ARRANGEMENTS**

The Companies agree that any future joint build arrangements for the construction of fiber optic cable that will cost the Companies more than \$50,000 shall be the result of competitive procurement. Any and all such arrangements shall conform to all applicable regulatory requirements.



IN WITNESS THEREOF, the undersigned Parties agree to this Stipulation and Recommendation as of this 20<sup>th</sup> day of June, 2014. The undersigned Parties respectfully request the Commission to issue its Opinion and Order approving and adopting this Stipulation.

On Behalf of Staff of the Public Utilities  
Commission of Ohio

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On Behalf of Ohio Edison Company,  
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The Toledo Edison Company

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Summary: Stipulation and Recommendation electronically filed by Ms. Kathy J Kolich on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company and The Office of the Ohio Consumers' Counsel and The Staff of the Public Utilities Commission of Ohio