

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,) Case No. 12-406-EL-RDR
The Cleveland Electric Illuminating)
Company, and The Toledo Edison)
Company.)

In the Matter of the Review of the Smart)
Grid Modernization Initiative Contained)
in the Tariffs of Ohio Edison Company,) Case No. 13-549-EL-RDR
The Cleveland Electric Illuminating)
Company, and The Toledo Edison)
Company.)

OPINION AND ORDER

The Commission, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Kathy J. Kolich, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, and Calfee, Halter & Griswold, LLP, by Colleen M. O'Neil, 1405 East 6th Street, Cleveland, Ohio 44114, on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

Mike DeWine, Ohio Attorney General, by Thomas G. Lindgren and Devin D. Parram, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Terry L. Etter, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

OPINION:I. Background

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are public utilities as defined in R.C. 4905.02 and electric utilities as defined in R.C. 4928(A)(11), and, as such, are subject to the jurisdiction of this Commission.

On June 30, 2010, the Commission issued its Finding and Order, which approved, with certain modifications, FirstEnergy's application for its proposed Smart Grid Modernization Initiative (SGMI) and timely recovery of costs through the Advanced Metering Infrastructure/Modern Grid Rider (Rider AMI). *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 09-1820-EL-ATA, et. al. (SGMI Application), Finding and Order (June 30, 2010) at 11. Additionally, the Commission directed Staff to conduct an annual audit report to review all reasonable project costs. SGMI Application at 11.

On January 20, 2012, Staff opened Case No. 12-406-EL-RDR (2011 Review Case) for the 2011 annual review of FirstEnergy's Rider AMI. On February 15, 2012, FirstEnergy filed a report in support of the 2011 review of Rider AMI. Ohio Consumers' Counsel (OCC) filed a motion to intervene on February 27, 2012. Staff filed comments on the results of Staff's financial audit on February 19, 2013. OCC's motion to intervene was granted on March 6, 2013, and comments and reply comments were filed by Staff, OCC, and FirstEnergy.

On July 15, 2013, the attorney examiner set the 2011 Review Case for hearing and established a procedural schedule. On August 19, 2013, the attorney examiner granted FirstEnergy's request for a stay of the procedural schedule to allow the parties to engage in settlement discussions. Reports on the status of settlement negotiations were filed multiple times between August 30, 2013, and June 20, 2014.

On February 28, 2013, Staff opened Case No. 13-549-EL-RDR (2012 Review Case) for the 2012 annual review of Rider AMI, and FirstEnergy filed a report in support of the review. On August 8, 2013, Staff filed comments. OCC filed a motion to intervene in the 2012 Review Case on March 5, 2014.

On June 20, 2014, FirstEnergy, OCC, and Staff filed a stipulation (Stipulation), recommending the resolution of all issues raised in both the 2011 Review Case and the 2012 Review Case (Jt. Ex. 1). By Entry issued on June 24, 2014, OCC's motion to intervene in the 2012 Review Case was granted and an evidentiary hearing was scheduled for July 9, 2014.

At the July 9, 2014 hearing, the Stipulation was introduced by the signatory parties. In support of the Stipulation, Staff presented the testimony of witness Daniel Johnson.

II. Summary of Comments

In Staff's first annual financial audit of FirstEnergy's SGMI investments and expenses, Staff stated it reviewed a detailed list of FirstEnergy's capitalized charges and expenses incurred up to December 31, 2011, and conducted a physical audit of a subset of FirstEnergy's deployed distribution automation equipment (2011 Audit at 3-4).

Initially, Staff noted FirstEnergy contracted with an affiliate company, First Telecom Services (FTS), to install fiber optic cable to support its SGMI in Ohio. Although FirstEnergy only needed 12 pairs of fiber for support, 24 pairs were installed by FTS. FTS retained ownership of the cable itself and 12 fiber pairs, and FirstEnergy owns of 12 pairs. Staff reported FTS is contractually obligated to remit 5 percent of gross revenues from any commercial telecommunications traffic that uses any or all of FTS' 12 fiber pairs to FirstEnergy. In turn, FirstEnergy will credit the revenue to ratepayers through Rider AMI. (2011 Audit at 5-6.) Staff raised a number of recommendations and concerns in regards to this arrangement.

First, Staff recommended specifying a methodology for determining gross revenues associated with the fiber cables (2011 Audit at 6). Additionally, Staff believed it would be useful to require FirstEnergy to disclose any other similar joint build arrangements and whether those fibers cables have generated any revenue (2011 Audit at 7).

Staff raised concern with the appropriate level of cost recovery from ratepayers because of the contractual arrangement between FirstEnergy and its affiliate, FTS. Staff disagreed with FirstEnergy's representations of FTS' contributions to the cable installation and concluded each entity should be responsible for half the cost of the lines. (2011 Audit at 9-10.) Therefore, FirstEnergy should only be eligible to recover half the amount of the total project costs from ratepayers (2011 Audit at 10).

OCC commented in support of Staff's recommendation to require FirstEnergy to disclose similar fiber cable joint build arrangements and any revenue that has been generated from these arrangements. OCC also supported Staff's recommendation to only allow FirstEnergy to recover half of the total costs of the project. (OCC at 3.) On reply, OCC repeated its concern regarding the joint build arrangement's effect on FirstEnergy's calculation of recoverable costs (OCC Reply at 4-6).

Initially, FirstEnergy commented that it no longer holds a financial interest in FTS, as FTS has since been sold (FirstEnergy at 2). FirstEnergy also clarified that 5 percent gross revenue will be calculated by prorating the length of the fiber segments jointly built compared to total length of the fiber from the origin to the destination (FirstEnergy at 4). Additionally, FirstEnergy took concern with expanding the scope of the audit by requiring disclosure of other joint build arrangements (FirstEnergy at 6-7). Finally, FirstEnergy defended its assertion of full cost recovery by placing monetary values on FTS' contributions (FirstEnergy at 8-11). In its reply comments, FirstEnergy asked the Commission to reject Staff and OCC's recommendations concerning the disclosure of other joint build arrangements and partial recovery of project costs (FirstEnergy Reply at 2-3).

Staff's reply comments maintained the position that FirstEnergy's recoverable share is half of the total project costs (Staff Reply at 5). Further, Staff clarified it did not recommend expanding this audit to other joint build arrangements, but instead was encouraging the Commission to investigate into similar situations on some other basis (Staff Reply at 6).

In Staff's annual financial audit for 2012, Staff noted an error in the costs reported by FirstEnergy regarding capacitor bank conversion costs. The error resulted in a \$602,117 over-statement of costs charged to Rider AMI. Staff recommended an adjustment to remove the amount from Rider AMI's capitalized costs and requiring FirstEnergy to file the accounting of that adjustment and a recalculation of rates in the next Rider AMI filing or as a supplemental filing. (2012 Audit at 4-5.)

III. Stipulation

A Stipulation signed by FirstEnergy, Staff, and OCC was submitted, on the record, at the hearing held on July 9, 2014 (Jt. Ex. 1). The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding (Jt. Ex. 1 at 5). The Stipulation includes, inter alia, the following provisions:

- (1) The Parties agree that the total amount of project costs for the Leroy Center and Mayfield Lines (collectively, 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.
- (2) Any future 5 percent revenues 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.

- (3) The Parties agree 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 fibers segments compared to the length of the fiber from the origin to the destination of the traffic.
- (4) The Parties acknowledge that the adjustment of \$602,117 relating to the refurbished capacitor banks was made in the revenue requirement supporting the Companies' AMI Rider filed on July 1, 2013.
- (5) The Companies represent they are in a maintenance agreement with FTS, now owned by Zayo Group Holdings, Inc., requiring FTS to provide all ongoing routine, non-routine, and emergency maintenance of the Lines at no cost to the Companies.
- (6) 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.

(Jt. Ex. 1 at 6-8.)

IV. Consideration of the Stipulation

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See 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.

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 W. Res. Tel. 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 (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our 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:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues 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, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126.

Staff witness Johnson testified that the Stipulation is a product of serious bargaining among capable, knowledgeable parties (Tr. at 9). Upon review of the terms of the Stipulation, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, Mr. Johnson explained that the Stipulation benefits the public interest (Tr. at 9-12). Based upon the evidence, we find that, as a package, it satisfies the second criterion as it benefits ratepayers by avoiding the cost of litigation. The Stipulation also benefits ratepayers by requiring 5 percent of the gross revenues from fiber pairs in the Lines not owned by the Companies to be credited back to the ratepayers.

Staff witness Johnson also testified that the Stipulation does not violate any important regulatory principle or practice (Tr. at 12). The Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice and, therefore, the Stipulation meets the third criterion.

Accordingly, we find that the Stipulation entered into by the parties is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) FirstEnergy is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.
- (2) On February 15, 2012, FirstEnergy filed a report in support of the 2011 review of Rider AMI in the *2011 Review Case*.
- (3) OCC filed a motion to intervene in the *2011 Review Case* on February 27, 2012. The attorney examiner granted the motion on March 6, 2013.
- (4) Comments and Reply Comments were filed by Staff, FirstEnergy, and OCC.
- (5) On February 28, 2013, FirstEnergy filed a report in support of the 2012 review of Rider AMI in the *2012 Review Case*.
- (6) On August 8, 2013, Staff filed Comments.
- (7) OCC filed a motion to intervene in the *2012 Review Case* on March 5, 2014. The attorney examiner granted the motion on June 24, 2014.
- (8) On June 20, 2014, a Stipulation agreed to by Staff, FirstEnergy, and OCC was filed.
- (9) The evidentiary hearing was held on July 9, 2014.
- (10) At the hearing, the Stipulation was submitted, intending to resolve all issues in this proceeding. No one opposed the Stipulation.
- (11) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

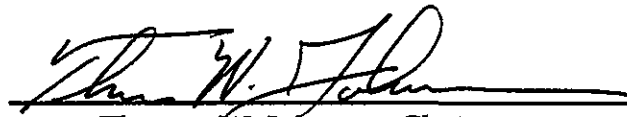
ORDERED, That the Stipulation filed in this proceeding be approved and adopted. It is, further,

ORDERED, That FirstEnergy take all necessary steps to carry out the terms of the Stipulation and this Opinion and Order. It is, further,

ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon each party of record.

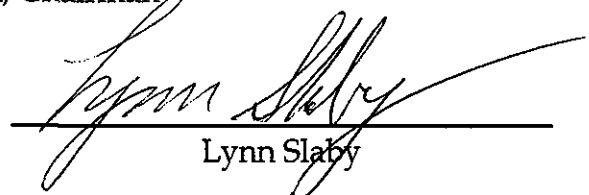
THE PUBLIC UTILITIES COMMISSION OF OHIO



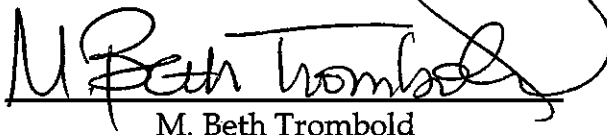
Thomas W. Johnson, Chairman



Steven D. Lesser



Lynn Slaby



M. Beth Trombold

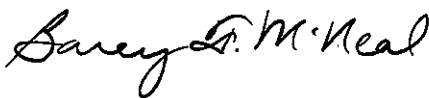


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Secretary