

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Filing by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company of a Grid Modernization Business Plan                                  | ) | ) | Case No. 16-481-EL-UNC  |
| In the Matter of the Filing by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company Application for Approval of a Distribution Platform Modernization Plan  | ) | ) | Case No. 17-2436-EL-UNC |
| In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to Implement Matters Relating to the Tax Cuts and Jobs Act of 2017 | ) | ) | Case No. 18-1604-EL-UNC |
| In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Tariff Change                                   | ) | ) | Case No. 18-1656-EL-ATA |

**INITIAL POST-HEARING BRIEF OF DIRECT ENERGY**

**I. INTRODUCTION**

The Signatory Parties in this case have agreed to a Stipulation that equitably addresses a number of major concerns, in particular the grid modernization plan and the issue of returning tax savings to customers. The Stipulation is reasonable and meets the Commission’s three-part test for approval. It should be approved and adopted by the Commission.

**II. DISCUSSION**

Ohio Admin. Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. While not binding on the Commission, the terms of such settlements are afforded

substantial weight.<sup>1</sup> In considering the reasonableness of a settlement, the Commission uses 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, as a package, violate any important regulatory principle or practice?<sup>2</sup>

The Stipulation<sup>3</sup> in this proceeding was negotiated by parties represented by experienced counsel, and that are long-time participants in Commission proceedings and have engaged in similar negotiations in the past. The Signatory Parties<sup>4</sup> represent a broad range of interests.

The Stipulation also provides a number of benefits to ratepayers, particularly in its resolution of the Commission's directive to return the benefits of the Tax Cuts and Jobs Act of 2017 (TCJA) to customers. Further, the Stipulation benefits the public interest by creating a grid modernization plan that will move the competitive market forward and enhance the customer experience and create opportunities for real energy savings.

Finally, the Stipulation not only does not violate any important regulatory principle or practice, but it actively embraces the state policy encouraging innovation and the Commission's

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<sup>1</sup> *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).

<sup>2</sup> *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St. 3d 559, 561 (1994); *Consumers' Counsel*, 64 Ohio St. 3d at 126.

<sup>3</sup> "Stipulation" refers to the Original Stipulation, signed on November 8, 2018, as modified by the Supplemental Stipulation, signed on January 25, 2019.

<sup>4</sup> "Signatory Parties" includes Ohio Edison Company, Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the Companies); Staff of the Public Utilities Commission of Ohio; Direct Energy Services, LLC, and Direct Energy Business, LLC (collectively, Direct); Environmental Defense Fund (EDF); Ohio Energy Group (OEG); Industrial Energy Users – Ohio (IEU); Ohio Cable Telecommunications Association (OCTA); Ohio Hospital Association (OHA); Interstate Gas Supply, Inc. (IGS); Office of the Ohio Consumers' Counsel (OCC); The Northeast Ohio Public Energy Council (NOPEC); and Ohio Partners for Affordable Energy (OPAE).

own vision set forth in PowerForward. The Stipulation as proposed therefore satisfies the Commission's three-part test and should be adopted.

**A. The Stipulation is a product of serious bargaining among capable, knowledgeable parties.**

All parties to each of the consolidated proceedings were invited to participate in settlement negotiations. Even after the original stipulation was signed, the Companies and Staff continued negotiations with interested parties to achieve an agreement on the supplemental stipulation. The Signatory Parties to the original stipulation were consulted and included in these negotiations. No parties were excluded from negotiations and all offers for settlement were given due consideration.

It is a testament to the settlement process in this proceeding that the Signatory Parties to the original stipulation were able to come to terms with additional parties in the supplemental stipulation, namely, OCC, NOPEC, and OPAE. The parties worked diligently for several weeks, over the holiday season, to achieve an agreement that results in additional benefits to ratepayers and the public interest, while still maintaining the benefits of the original agreement. The Stipulation clearly satisfies the first prong of the Commission's three-part test.

**B. The Stipulation, as a package, benefits ratepayers and the public interest.**

The benefits of this Stipulation as proposed cannot be overstated. The Stipulation resolves the issue of returning tax benefits to the Companies' customers, and it creates a grid modernization plan that is both ambitious but still realistic, and will result in enhancements to the competitive retail market that will not be possible without this plan. It is important to note that if any part of the grid modernization plan is modified from what is proposed in the Stipulation, there is a very real danger of losing those benefits or of increasing the cost past the point of diminishing returns. The parties have crafted a plan that strikes a balance between a number of

interests and must be given due deference; that balance may will be lost if the parties are forced to contend with onerous additional requirements at this stage of the process.

**1. The Stipulation provides for a full return of tax benefits to customers.**

The TCJA was enacted over a year ago, and the Commission has made it a priority to ensure that all of the tax savings that have resulted from that law are returned to where they belong – the customers. Staff witness Borer describes how the Stipulation allows \$900 million to be flowed back to customers,<sup>5</sup> while avoiding a protracted regulatory proceeding that would cause further delay in the realization of those benefits.

**2. The Stipulation establishes a comprehensive plan for grid modernization.**

One of the most significant pieces of the Stipulation is its grid modernization plan, which implements the principles of the Commission’s PowerForward Roadmap and creates a realistic system for utilizing the technologies available in the market to encourage energy savings for customers.

The plan begins by providing for the deployment of 700,000 smart meters to customers in the Companies’ service territories.<sup>6</sup> Such a deployment is crucial to the plan, because without these meters in play, no future enhancements are possible. But the meters are only the first step. The Stipulation also includes provisions for a Meter Data Management System (MDMS), which will be crafted in such a way as to take full advantage of the capabilities of both the smart meters and any enabling technologies, such as in-home displays or smart thermostats, that customers choose to use.<sup>7</sup> The combination of the smart meters and the MDMS will allow for a new level of data access through which a completely new slate of products and services may be offered to customers.

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<sup>5</sup> Staff Ex. 1 at 3.

<sup>6</sup> Staff Ex. 2 at 3.

<sup>7</sup> *Id.* at 5.

The Stipulation has crafted the grid modernization plan to work within the structure of the competitive retail market, specifically by factoring in that the vast majority of customers in the Companies' service territory shop for their electricity, and including specific provisions to account for that fact. The Stipulation creates a Grid Mod Collaborative which will include stakeholders in the process as the MDMS is developed.<sup>8</sup> When a level of data access is achieved such that products and services, such as time-varying rates, are possible, the Stipulation includes a process for CRES suppliers to begin providing such products and services, while maintaining necessary customer protections to ensure no customer is taken advantage of.<sup>9</sup>

The Stipulation also provides safeguards to ensure that Grid Mod I is delivering the expected benefits, by including a set of performance metrics and providing for a mid-deployment review by a third-party consultant. All of these measures are designed to provide the maximum benefit possible while protecting the ratepayer investment that is necessary to bring this plan into reality. The Stipulation delicately balances a number of competing interests in this grid modernization plan, and any modification or alteration of the plan could result in the loss of benefits or protections that is necessary for the plan to work.

### **3. A detailed plan for the implementation of enabling technologies is premature.**

The opposing parties, namely Environmental Law & Policy Center (ELPC) and Smart Thermostat Coalition (STC), attempt to argue that the lack of a “specific plan for deploying enabling technologies” calls into question the net benefits of the Stipulation.<sup>10</sup> In particular, STC witness Dzubay states that for smart meter deployment to even have a chance at being cost-effective, “it must be coupled with an appropriate time-varying rate and a definitive plan for

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 6.

<sup>10</sup> STC Ex. 4 at 4.

incenting customers to take advantage of enabling technologies.”<sup>11</sup> Ms. Dzubay, who it must be noted works for a company that stands to benefit greatly by a decision requiring the distribution of hundreds of thousands of smart thermostats,<sup>12</sup> spends the majority of her testimony espousing the virtues of enabling technologies, which no party to this proceeding disputes.

Similarly, ELPC witness Volkmann encourages the Commission to “require the Companies to modify the Grid Mod I scope to include investments in the deployment of smart thermostats in conjunction with the AMI deployment.”<sup>13</sup> His argument is that because previous studies have shown a benefit through the use of smart thermostats and similar technologies, the Stipulation somehow fails because it does not require a specific dollar amount of investment in those technologies. Mr. Volkmann did not perform an analysis to determine whether his recommendation would result in an increase in savings that would outweigh the benefits of the overall Stipulation, or whether that would result in certain parties opting out of the Stipulation.<sup>14</sup> Nor did he consider any of the other multitude of ways customers can obtain smart thermostats, or how many customers have already done so.<sup>15</sup>

Neither of these witnesses consider that there are already multiple avenues through which customers can, and in fact many currently do, obtain enabling technologies and even receive incentives to do so. Again, no party disputes the benefits of enabling technologies like smart thermostats. Rather, the Signatory Parties dispute the myopic view that the only way for customers to achieve benefits is for the Companies to be ordered to provide (ratepayer-funded) incentives for those technologies. Many CRES suppliers provide smart thermostats to their customers at little to no cost. Not only do suppliers want to make it easier for their customers to

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<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *Id.* at 1.

<sup>13</sup> ELPC Ex. 32 at 23.

<sup>14</sup> Tr. II at 248.

<sup>15</sup> *Id.* at 259-260.

have access to these enabling technologies, they recognize that such technologies are a key component to their ability to offer a whole new slate of products, such as time-varying rates, which are also contemplated by the Stipulation. Unfortunately for these witnesses and the parties they represent, there are simply more factors to consider in how best to distribute these technologies than can be included in a Stipulation. Those factors must be discussed and debated among interested parties as more information becomes available and as the system that will allow those technologies to be best used is created and implemented.

The benefits of the Stipulation are clear. Hundreds of millions of tax savings are set to be flowed back to customers, while the grid modernization plan creates a system that will result in greater energy savings and will allow enhancements of the competitive retail market that are not currently possible. The Stipulation therefore satisfies the second prong of the Commission's three-part test.

**C. The Stipulation, as a package, does not violate any important regulatory principle or practice.**

No party has claimed that the Stipulation package violates any important regulatory principle or practice. In fact, through its detailed grid modernization plan, this Stipulation not only fulfills the state policy set forth in R.C. 4828.02(D), by “encourag[ing] innovation and market access for cost-effective supply- and demand-side retail electric service,” specifically “time-differentiated pricing” and “implementation of advanced metering infrastructure,” it embodies the roadmap set forth by the Commission in PowerForward, which envisions “investments that will enhance the customer electricity experience and promote a distribution grid that is reliable and resilient.”<sup>16</sup> The Stipulation clearly satisfies the third prong of the Commission's three-part test.

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<sup>16</sup> Companies Ex. 2 at 12.

### III. CONCLUSION

Grid modernization in Ohio has been a long, arduous process. This Stipulation moves the ball forward in an inclusive fashion and could serve as a template for other utilities to do the same. The Stipulation satisfies the Commission's three-part test and should be adopted.

Dated: March 1, 2019

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail this 1st day of March, 2019, to the following:

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Summary: Text Initial Post-Hearing Brief electronically filed by Ms. Rebekah J. Glover on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC