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Via E-FILE

March 12, 2019

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 16-481-EL-UNC, 17-2436-EL-UNC, 18-1604-EL-UNC and 18-1656-EL-ATA

Dear Sir/Madam:

Please find attached the REPLY BRIEF OF THE OHIO ENERGY GROUP e-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Michael L. Kurtz", with a stylized flourish at the end.

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

MLKkew

Encl.

Cc: Certificate of Service

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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 of an 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

**REPLY BRIEF OF THE
THE OHIO ENERGY GROUP**

The Ohio Energy Group (“OEG”) submits this Reply Brief in response to the pleadings filed by opponents of the Stipulations. Opponents claim that the Stipulations fail to satisfy the Commission’s three-prong test for reviewing settlements and therefore, that the Commission should indefinitely delay the resolution of these proceedings until their particular concerns are addressed. But those concerns are without merit. Accordingly, the Commission should not further delay the return to customers of 100% of the savings associated with the Tax Cuts and Jobs Act of 2017 (“TCJA”), but instead should approve the Stipulations as filed.

Regarding the first prong of the Commission’s settlement test, opponents complain about the process by which the Stipulations were negotiated, claiming that there was insufficient time for review.¹ But FirstEnergy filed its initial grid modernization business plan in Case No. 16-481-EL-UNC as far back as February 29, 2016 and its

¹ Initial Brief of the Environmental Law & Policy Center, Natural Resources Defense Council, and Ohio Environmental Council (“Environmental Brief”) at 13; Post Hearing Brief of the Ohio Manufacturers’ Association Energy Group (“OMAEG Brief”) at 7-9; Initial Post-Hearing Brief of the Kroger Co. (“Kroger Brief”) at 9-12.

application for approval of a distribution platform modernization plan in Case No. 17-2436-EL-UNC as far back as December 1, 2017. Hence, parties had notice for over two years of FirstEnergy's intent to engage in grid modernization efforts and sufficient opportunity to review FirstEnergy's grid modernization proposals. Moreover, since the TCJA was adopted on December 22, 2017, parties should have been aware that utilities would begin receiving tax savings that should be passed back to customers. The Commission opened a generic investigation aimed at passing those tax savings back on January 3, 2018 in Case No. 18-47-AU-COI and gave interested stakeholders, including many of the opponents to the Stipulations in this proceeding, an opportunity to comment on TCJA-related issues. Additionally, parties had already engaged in TCJA-related negotiations with other Ohio utilities prior to the settlement discussions in this case. The issues resolved by the Stipulations were therefore not as new or novel as opponents would have the Commission believe.

Regarding the second prong of the Commission's test, the expedited flowback to customers of 100% of the savings associated with the TCJA is a substantial benefit to customers and the public interest (estimated at \$900 million) that would be delayed if the Commission were to reject the Stipulations.² The Commission should not delay this benefit so that parties can relitigate the legality or purpose of the Distribution Modernization Rider.³ Indeed, that issue is now before the Supreme Court of Ohio.⁴ Nor should the Commission delay that benefit in order to clawback TCJA savings from residential customers, as some parties suggest.⁵ Nor should the Commission delay that benefit because of a desire by some parties to tinker with FirstEnergy's grid modernization plan,⁶ which Staff has already analyzed in detail and found to be beneficial to customers and the public interest.⁷

Finally, regarding the third prong of the Commission's test, as OEG already noted, the Stipulations further several important state policies, including ensuring the availability to customers of adequate and reliable service and promoting innovation in technology for infrastructure.

² Company Ex. 1 (Stipulation and Recommendation) at 7-10; Company Ex. 2 (Direct Testimony of Santino L. Fanelli) at 2:22-3:4 and 9:1-13; Company Ex. 3 (Supplemental Stipulation and Recommendation) at 2; Company Ex. 4 (Supplemental Testimony of Santino L. Fanelli) at 2:5-12.

³ OMAEG Brief at 16-17; Kroger Brief at 13-18.

⁴ Supreme Court of Ohio Case Nos. 2017-1444 and 2017-1664.

⁵ OMAEG Brief at 17-19; Kroger Brief at 20-22.

⁶ Environmental Brief at 28-35; Initial Brief of the Smart Thermostat Coalition at 18-30.

⁷ Staff Ex. 2 (Direct Testimony of Krystina Schaefer) at 3:4-8.

Consequently, the Commission should approve the Stipulations without modification.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "M.L. Kurtz", is positioned above a horizontal line.

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March 12, 2019

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 12th day of March, 2019 to the following:


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Summary: Reply Ohio Energy Group (OEG) Reply Brief electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group