THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE DETERMINATION OF THE EXISTENCE OF SIGNIFICANTLY EXCESSIVE EARNINGS FOR 2017 UNDER THE ELECTRIC SECURITY PLAN OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.	CASE NO. 18-857-EL-UNC

OPINION AND ORDER

Entered in the Journal on March 20, 2019

I. SUMMARY

{¶ 1} The Commission finds that the stipulation between the Companies and Staff regarding the significantly excessive earnings test for the annual period ending December 31, 2017, meets the criteria used by the Commission to evaluate stipulations, is reasonable, as modified, and should be adopted.

II. PROCEDURAL HISTORY

{¶ 2} Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and The Toledo Edison Company (TE) (collectively, FirstEnergy or the Companies) are electric distribution utilities, as defined in R.C. 4928.01(A)(6), and public utilities, as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4928.141, electric utilities are required to provide consumers with a standard service offer, consisting of either a market-rate offer or an electric security plan (ESP). Further, R.C. 4928.143(F) requires the Commission to evaluate the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility. The Commission issued a Finding and Order in *In re Significantly Excessive Earnings Test,* Case No. 09-786-EL-UNC (*SEET Test Case*), Finding and Order (June 30, 2010), which established the policy and significantly excessive earnings test (SEET) filing directives for the electric utilities.

{¶ 4} On May 15, 2018, the Companies filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2017. The Companies also filed the supporting testimony of Jason S. Petrik and Joanne M. Savage as attachments to its application.

{¶ 5} On October 16, 2018, Staff filed the testimony of Joseph P. Buckley and the Ohio Consumers' Counsel (OCC) filed the testimony of Daniel J. Duann, Ph.D.

{¶ 6} A stipulation and recommendation (Stipulation) between FirstEnergy, Ohio Energy Group (OEG), and Staff was filed on October 26, 2018, in addition to supplemental testimony submitted by FirstEnergy witness Savage.

{¶ 7} OCC filed supplemental testimony of Dr. Duann in response to the Stipulation on November 16, 2018.

{¶ 8} Motions to intervene were filed by OCC, OEG, and Industrial Energy Users-Ohio on June 29, 2018, June 5, 2018, and October 5, 2018, respectively. The attorney examiner granted the motions to intervene by Entry issued October 31, 2018, as well as scheduled a hearing for November 29, 2018.

{¶ 9} At the November 29, 2018 hearing, the Stipulation was introduced and admitted into the record (Jt. Ex. 1). The attorney examiner also admitted into the record the testimony of OCC witness Duann (OCC Ex. 1; OCC Ex. 2), Staff witness Buckley (Staff Ex. 1), and FirstEnergy witnesses Savage (Co. Ex. 3; Co. Ex. 4) and Petrik (Co. Ex. 2).

{¶ 10} At the conclusion of the hearing, the parties agreed that initial and reply briefs would be submitted by January 8, 2019, and January 18, 2019, respectively. Briefs were timely filed by Staff, OCC, and the Companies on those prescribed days.

III. Discussion

A. *Summary of Application*

{¶ 11} In the application, the Companies explain that in *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO (*ESP III*), Opinion and Order (July 18, 2012), the Commission approved an ESP for the Companies effective June 1, 2014 through May 31, 2016. Additionally, the Companies affirm that in *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (*ESP IV*), Opinion and Order (Mar. 31, 2016), the Commission approved an ESP for the Companies effective June 1, 2016 through May 31, 2024. The Companies note that R.C. 4928.143(F) requires the Commission to annually determine whether an electric distribution utility has earned significantly excessive earnings under its ESP. In the application, the Companies request that the Commission find that significantly excessive earnings did not result for the Companies under their ESPs with respect to the annual period ending December 31, 2017. (Co. Ex. 1 at 1-3.)

{¶ 12} The application and supporting testimony explain that, for purposes of determining significantly excessive earnings, net income and common equity were adjusted as contemplated by the stipulations in *ESP III* and *ESP IV* (Co. Ex. 2 at 5). Under the terms of the stipulation, adjustments should be made to net income and common equity in order to exclude the impact of any reduction in equity from any write-off of goodwill, of deferred carrying charges, and of any liability or write-off of regulatory assets due to the implementation of the Companies' ESPs. The application notes that no adjustments were made for the write-off of goodwill or the write-off of regulatory assets; however, adjustments were made for other special, extraordinary, and nonrecurring items as the Companies had done previously. (Co. Ex. 2 at 6-7.) After making these adjustments, the application indicates that the Companies' 2017 adjusted net income for SEET purposes was $126,320,235 for OE, $58,142,960 for CEI, and $34,110,490 for TE. The average common equity with adjustments for 2017 was $1,072,702,323 for OE, $1,436,357,709 for CEI, and

$529,304,805 for TE. The resulting return on equity for 2017 was 11.8 percent for OE, 4.0 percent for CEI, and 6.4 percent for TE. (Co. Ex. 2 at 8-9.)

{¶ 13} The Companies further state that their 2017 returns on equity for SEET purposes are below the "safe harbor" threshold of 200 basis points above the mean of the comparable risk group recognized by the Commission in the *SEET Test Case*, or 14.3 percent (Co. Ex. 2 at 12). Finally, the Companies state that, because their earnings are not significantly excessive, they do not need to submit revenue information from their prior rate plans (Co. Ex. 2 at 12-13).

B. *Summary of Stipulation*

{¶ 14} As noted above, the Stipulation signed by FirstEnergy and Staff was filed on October 26, 2018. The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding (Jt. Ex. 1 at 1). The Stipulation states that the earned returns on equity for the Companies for 2017, as adjusted by specific items contemplated in *ESP IV*, was 11.8 percent for OE, 4.0 percent for CEI, and 6.4 percent for TE. On that basis, the signatory parties recommend the Commission determine that significantly excessive earnings did not occur with respect to the Company's ESPs in 2017. (Jt. Ex. 1 at 2.)

C. *Applicable Law*

{¶ 15} 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.

{¶ 16} 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 The Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, 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?

{¶ 17} 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.

D. Arguments of Parties

{¶ 18} In support of the Stipulation, Staff notes that the Commission has previously determined that Rider DMR revenues should not be used for purposes of calculating significantly excessive earnings. *ESP IV*, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶77-80. Moreover, Staff contends that if the Commission were to follow its reasoning in *ESP IV* and conclude that these revenues should not be included in the Commission's determination as to the level of earnings, all parties would then agree that no significantly excessive earnings exist (OCC Ex. 2 at 10). Specifically, Staff contends that the Commission adopted several reasons to exclude Rider DMR revenues from the SEET, the first and foremost being that including these revenues in the test would run in direct contradiction to the main purpose of Rider DMR, which was to enable the Companies to improve the group credit rating and create a financial environment conducive to allowing grid modernization investment. Furthermore, Staff asserts that the plain language of R.C. 4928.143(B)(2)(h), namely that the Commission is authorized to adopt measures under this statute "...notwithstanding any provision of Title XLIX of the Revised Code to the contrary...", cannot be limited by R.C. 4928.143(F), as such an interpretation would run against the expressed intent of the General Assembly. Finally, Staff contends other arguments adopted by the Commission in *ESP IV* would further bolster the decision to refrain from including Rider DMR revenues as earnings for purposes of the 2017 SEET. See *ESP IV*, Eighth Entry on Rehearing, (Aug. 16, 2017) at ¶78.

{¶ 19} OCC strongly objects to the exclusion of the Rider DMR revenues and raises many of the arguments it proffered during the *ESP IV* proceeding, while emphasizing that these profits should be included in earnings as a matter of fairness and reasonableness for consumers (OCC Ex. 2 at 7). See *ESP IV*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶181-82, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶¶77-80. Notably, OCC contends that if these revenues are excluded, then OE's SEET-adjusted net income would be unreasonably and artificially reduced from approximately $184.8 million to $126.3 million, resulting in a 2017 ROE reduction from 17.39 percent to 11.80 percent (OCC Ex. 1 at 10).

{¶ 20} Upon determining that the Rider DMR revenues should not be included for purposes of the SEET, Staff calculated the ROE of comparable risk companies, using a select group from the SPDR Select Sector Fund-Utility (XLU) (Staff Ex. 1 at 3-4).[1] Using the

1 Staff notes that several XLU companies had earnings that injected too much volatility into the resulting average; therefore, Staff made the calculated decision to remove certain companies demonstrating very large and irregular performance. Staff concludes that, although they hesitantly removed several

modified XLU group, Staff calculated a resulting average ROE of 8.73 percent, concluding that any returns above this level are in excess of the average return on annuity (Staff Ex. 1 at 3). Staff then utilized the method adopted by the Commission in previous cases to render an ROE of 9.89 percent and an earnings threshold of 17.22 percent.[2] See *In re the Application of Columbus S. Power Co.*, Case No. 11-4571-EL-UNC; *In re Ohio Power Co.*, Case No. 11-4572-EL-UNC. As a final matter, the Companies and Staff assert that the Stipulation in this case satisfies the Commission's adopted three-prong test (Co. Ex. 4 at 4-5).

{¶ 21} However, OCC avers that the three-prong test has not been met in this case. OCC initially argues that the Stipulation fails the first prong, as no serious bargaining could have occurred because Staff and the Companies were never adverse parties to this case and the purported Stipulation does not even resolve the 2017 SEET threshold, the only issue upon which Staff and the Companies disagree, without which OCC avers there is no basis to decide if OE's SEET-adjusted ROE was significantly excessive or not (OCC Ex. 2 at 6-7, 9; Co. Ex. 2 at 4-6; Staff Ex. 1 at 2; Joint Ex. 1). Moreover, OCC witness Duann testified that he first learned of the Stipulation when it was filed and made publicly available in the case docket (OCC Ex. 1 at 5). As such, OCC avers that the Stipulation is nothing more than a summary of the previously-filed testimony of these two parties and should not be considered the product of serious bargaining (OCC Ex. 1 at 3-4). Contrarily, Staff and the Companies assert that, even if they agreed with OCC's incorrect interpretation as to what is required by the first prong, it would be met as the Companies and Staff disagreed about the correct methodology to use when administering the SEET or the 2017 SEET threshold, even though the signatory parties conclude that all approaches resulted in the same conclusion.

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companies in the XLU from the comparable group of companies to calculate the ROE and earnings threshold, that action did not change their ultimate conclusion in this case but did provide a more reliable value for purposes of the SEET.

2 Using all companies contained in the XLU, Staff first calculated an earnings threshold of 30.28 percent, which again, in its opinion, resulted in a higher than acceptable standard deviation, necessitating the modification to the comparable group (Staff Ex. 1 at 4-5).

The Companies add that OCC fails to provide any applicable legal authority to support its position that serious bargaining did not occur.

{¶ 22} As to the second prong, OCC contends the proposed settlement harms consumers by allowing OE to withhold significantly excessive profits of more than $42 million collected in 2017, rather than requiring the company to return that amount to customers, consistent with Ohio law. OCC encourages the Commission to adopt OCC witness Duann's results of the SEET, which he claims is a more appropriate application of the SEET than that utilized by Staff (OCC Ex. 1 at 30). Further, as indicated in Dr. Duann's testimony, OCC claims that there is no commensurate benefit to compensate consumers for the $42 million refund to which they are entitled, noting that FirstEnergy witness Savage only referenced that the proposed settlement would benefit customers and the public interest by contributing to a "timely and reasonable resolution to this case" (OCC Ex. 2 at 6). However, as OCC alleges, the Stipulation will have no impact on the timeliness and efficiency of the resolution of this case; rather, OCC contends that the Stipulation, if adopted, will likely discourage participation and negotiation by all parties with diverse interests in resolving difficult issues in future cases (OCC Ex. 2 at 7).

{¶ 23} In response, FirstEnergy argues that complying with the Commission's orders in *ESP IV* is a valid reason for excluding the Rider DMR revenues from the 2017 SEET calculation. See *ESP IV*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶212, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶81. In fact, if the Commission agreed with OCC's analysis and ultimate conclusion that a $42 million refund should be provided to OE's customers, the Companies and Staff contend that the Commission would be jeopardizing the entire purpose of Rider DMR, a purpose that was emphasized by the Commission when it approved the rider.

{¶ 24} Finally, OCC contends that the Stipulation fails to satisfy the third-prong of the Commission's test for evaluating stipulations, noting that the proposed settlement would result in unjust and unreasonable rates and violate state policy (OCC Ex. 2 at 7-8). In support of its argument, OCC maintains that the entire point of the SEET was to ensure that utilities were prevented from collecting significantly excessive earnings from their customers and OE chose to subject itself to the SEET when it elected to offer an ESP, pursuant to R.C. 4928.143(F). *In re Application of Columbus S. Power Co.*, 134 Ohio St.3d 392, 2012-Ohio-5690, 983 N.E.2d 276.

{¶ 25} Staff quickly notes that the Commission recognized that Rider DMR would support the state policies set forth in R.C. 4928.02 when it found that Rider DMR would provide the necessary "jumpstart" to allow the Companies to improve their credit rating and ultimately position them to make significant enhancements toward grid modernization in their service territories.

IV. CONCLUSION

{¶ 26} As an initial matter, at significant issue in this proceeding is whether it was appropriate for the Companies and Staff to exclude Rider DMR revenues from earnings for purposes of the 2017 SEET in their respective analyses. In *ESP IV*, we determined that Rider DMR revenues would be excluded from SEET calculations for the approved initial three-year period of the rider; however, we did note that we would consider whether to exclude Rider DMR revenues from SEET when we rule upon any possible extension of Rider DMR. *ESP IV*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶212, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶81. Staff conducted their statutorily required review of the earnings level of the Companies in 2017, in conjunction with the Commission's prior instructions as to the Rider DMR revenues application to the SEET, and determined that the Companies did not have any significantly excessive earnings for that period (Staff Ex. 1 at 3-5). Staff excluded those revenues because the Commission had directed their exclusion. This issue has been thoroughly considered by the Commission in *ESP IV* and OCC has failed to demonstrate any new rationale for including these revenues in the 2017 SEET. OCC is welcome to request intervention and raise its concerns regarding the inclusion of Rider DMR revenues for purposes of the SEET in FirstEnergy's recent application requesting a two-year extension of

Rider DMR. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.,* Case No. 19-361-EL-RDR, Application (Feb. 1, 2019).

{¶ 27} Before conducting the three-prong test, we will first address OCC's arguments pertaining to the conflicting analyses presented. We would note that there does not appear to be any dispute that TE and CEI did not experience any significantly excessive earnings, based on the independent calculations submitted on the record, as well as the Stipulation (Joint Ex. 1 at 2; OCC Ex. 1 at 4-5; Co. Ex. 2 at 3; Staff Ex. 1 at 3). OCC only raises the possibility of significantly excessive earnings for OE in 2017 (OCC Ex. 1 at 3-4, 11). As we find the determination that TE and CEI did not experience any significantly excessive earnings for 2017, a conclusion presented by all interested parties to this proceeding, to be reasonable, we will limit the following discussion to the persuasiveness and ultimate disposition of the analyses presented as to whether OE similarly did not experience significantly excessive earnings.

{¶ 28} Relying on the Commission's prior decisions regarding Rider DMR, we find that a majority of Dr. Duann's analysis is rendered fundamentally flawed, particularly his proposed 17.39 percent SEET-adjusted 2017 ROE for OE, as he indicates that he included Rider DMR revenues in his calculation (OCC Ex. 1 at 4-5, 11-14). The Commission determined previously that Rider DMR revenues, at least for the first three-year period, would be excluded from earnings for purposes of the SEET. As Dr. Duann's analysis goes directly against prior Commission orders on this matter, we cannot rely on his suggested SEET-adjusted ROE for OE. We do, however, agree that the Companies made a calculation error, which was later included in the Stipulation, and OE's average common equity should be $1,033,641,759, given the three adjustments proposed by OE, resulting in a corrected 2017 SEET ROE for OE as 12.22 percent (OCC Ex. 1 at 8-9; Co. Ex. 2, Att. JSP-3). Accordingly, the Stipulation should be amended to reflect the revised 12.22 percent ROE. As discussed below, we do not believe this slight modification changes the outcome of this proceeding or the signatory parties' determination that significantly excessive earnings did not occur.

{¶ 29} Staff witness Buckley's testimony provided significant detail in the method utilized by Staff to determine the ROE threshold of 17.22 percent, ultimately concluding that the Companies did not experience significantly excessive earnings in 2017 (Staff Ex. 1 at 3-5). The Companies also provided detail in their initial calculations for the ROE threshold of 19.20 percent, while acknowledging that the methodology used by Staff was an appropriate alternative (Co. Ex. 2 at 4-6, Att. JMS-1). We find both methodologies to be appropriate, in addition to the safe harbor provision set forth in the *SEET Test Case*, even though the Stipulation does not directly address the issue of the ROE threshold.

{¶ 30} As noted above, the corrected 2017 SEET ROE for OE was 12.22 percent. While OCC argues that the Companies' 19.20 percent ROE threshold is excessive, Dr. Duann does acknowledge that significantly excessive earnings only occur when the utility's earnings are above the established ROE threshold, necessitating a refund to customers (OCC EX. 1 at 17, 25). We would note that even if we were to adopt Dr. Duann's alternatively proposed 14.91 percent threshold,[3] OE's revised ROE of 12.22 percent would not exceed it, which provides further support for the conclusion that OE did not experience any significantly excessive earnings in 2017 (OCC Ex. 1 at 29-30). In summary, OCC, Staff, and the Companies each supplied a suggested ROE threshold, and the properly calculated 2017 SEET ROE for OE of 12.22 percent fell well below all of those recommended thresholds.

{¶ 31} Turning now to our review of the Stipulation, FirstEnergy witness Joanne Savage provided testimony regarding the Stipulation and the application of the Commission's three-prong test. She testified that the Stipulation is a product of serious bargaining among knowledgeable and capable parties (Co. Ex. 4 at 4). We find the arguments of OCC lack merit. We recognize that the inclusion of Rider DMR revenues in earnings for SEET purposes has not been disputed between Staff and the Companies because the Commission already addressed and decided that issue on multiple occasions,

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3 Furthermore, it does appear that Dr. Duann attributed zero weight to his own statistics-based analysis outcome, and instead, relied solely on his suggested adder of 450 basis points to develop his recommended SEET threshold (OCC Ex. 1 at 27-28, Att. DJD-6).

as discussed above. Moreover, given that both parties decided to adhere to those Commission directives, it is not unreasonable that they arrived at similar conclusions after conducting their own initial independent analyses. Furthermore, OCC provides no case precedent supporting its position that the Companies and Staff should be prohibited from entering into a stipulation in this, or any, proceeding, or should be limited as to what a potential stipulation may include, simply because OCC considers them to be "non-adversarial" parties. Accordingly, we find that the first prong of the test is met. However, we will note that, while no one party's inclusion in settlement discussions automatically satisfies the first prong of the test, we expect OCC to have the opportunity to participate in settlement negotiations for all SEET cases.

{¶ 32} With regard to the second criterion, Ms. Savage explained that the Stipulation benefits the public interest by avoiding needless litigation (Co. Ex. 4 at 4). The Commission agrees, noting that such a benefit has long been acknowledged and valued in prior SEET proceedings, and consequently finds that the Stipulation also satisfies the second prong of the test. See, e.g., *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-1265-EL-UNC, Opinion and Order (Nov. 22, 2010); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 11-4553-EL-UNC, Opinion and Order (Jan. 18, 2012); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1544-EL-UNC, Opinion and Order (Feb. 13, 2013); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 13-1147-EL-UNC, Opinion and Order (Oct. 16, 2013); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 17-993-EL-UNC, Opinion and Order (Mar. 8, 2018).

{¶ 33} Finally, Ms. Savage testified that the Stipulation does not violate any important regulatory policy or principle (Co. Ex. 4 at 5). 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, the Commission finds that the Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

{¶ 34} Finally, we strongly disagree that the approval of this Stipulation will, in any way, discourage parties from engaging in settlement negotiations in future proceedings before the Commission, as alleged by OCC witness Duann (OCC Ex. 2 at 7). Moreover, every stipulation filed before us is subjected to, and must satisfy, the three-prong test, which obviously includes the evaluation of contradictory evidence submitted by opposing parties. If interested parties would like to make bold assertions as to the Commission's interpretation or use of the three-prong test that would dictate otherwise, they should cite to precedent supporting those assertions.

V. Findings of Fact and Conclusions of Law

{¶ 35} The Companies are public utilities as defined in R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.

{¶ 36} R.C. 4928.143(F) requires the Commission to evaluate the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility.

{¶ 37} On May 15, 2018, the Companies filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10.

{¶ 38} The evidentiary hearing was held in this matter on November 29, 2018. At the hearing, the Stipulation was submitted and admitted into the record. OCC opposed certain portions of the Stipulation.

{¶ 39} The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted, as modified by this Opinion and Order.

VI. Order

{¶ 40} It is, therefore,

{¶ 41} ORDERED, That the Stipulation filed in this proceeding, as modified herein, be approved and adopted. It is, further,

{¶ 42} ORDERED, That the Companies take all necessary steps to carry out the terms of the Stipulation, as modified, and this Opinion and Order. It is, further,

{¶ 43} 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,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

M. Beth Trombold

M. Beth Trombold, Chair

Thomas W. Johnson

Thomas W. Johnson

Lawrence K. Friedeman

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Secretary