

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 16-0743-EL-POR
Illuminating Company and The Toledo)
Edison Company for Approval of their)
Energy Efficiency and Peak Demand)
Reduction Program Portfolio Plans for)
2017 through 2019)

INITIAL BRIEF OF INTERSTATE GAS SUPPLY, INC.

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I. INTRODUCTION

On April 15, 2016, Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company (collectively, “FirstEnergy”) filed an application for approval of their energy efficiency and peak demand reduction plan (the “Application” or “Portfolio Plan”). Following several settlement meetings, in order to resolve the outstanding issues in this proceeding, FirstEnergy and a diverse group of parties¹ submitted a Stipulation and Recommendation (“Stipulation”) requesting that the Commission approve the Portfolio Plan as modified by the Stipulation.

Although several parties to this proceeding are supportive of the Stipulation, the Office of the Ohio Consumers’ Counsel (“OCC”) submitted testimony opposing many aspects of the Application, as modified by the Stipulation, including all measures related to incentives for

¹ The Stipulation is signed by several supporting parties and non-opposing parties. The supporting parties include Energy Management Solutions, Inc., EnerNoc, Ohio Partners for Affordable Energy, Ohio Environmental Council, Environmental Defense Fund, National Resource Defense Council, IGS Energy, Environmental Law & Policy Center, the Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company. The non-opposing parties include Kroger Company, Ohio Manufacturer’s Association, and Industrial Energy Users-Ohio

smart thermostats. IGS hereby submits its initial brief in support of the Stipulation, and in particular, the provisions within the Stipulation that would authorize FirstEnergy to provide incentives for smart thermostats. As discussed further below, the Stipulation provides a just, reasonable, and balanced resolution of the issues in this proceeding; therefore, the Commission should approve the Stipulation.

II. BACKGROUND AND ARGUMENT

Under rule 4901-1-30, Ohio Administrative Code (“OAC”), parties to Commission proceedings may enter into stipulations to resolve contested issues. Although the Stipulation filed in this case is non-binding to the Commission, the terms of the agreement are accorded substantial weight. In considering the reasonableness of stipulations, the Commission often relies on a test known as the three-prong test:

- (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?²

The Stipulation in this case is a result of significant time and effort on behalf of the signatory parties and satisfies or exceeds each of the criteria above. Therefore, the Commission should adopt it.

A. The Stipulation is the Product of Serious Bargaining Among Capable, Knowledgeable Parties

² See *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm’n*, 68 Ohio St.3d 559 (1994).

The Stipulation is the product of serious bargaining between knowledgeable and capable parties. As stated by the testimony of FirstEnergy witness Miller:

All parties in the case were invited to participate in the settlement discussions, each of which was represented by experienced, competent counsel—many of whom regularly participate in other EE/PDR portfolio cases and other regulatory proceedings. . . . After extensive discussions and spirited debate in these meetings, a compromise was reached with the signatory parties and documented in the Stipulation being presented to the Commission for consideration and approval. These signatory parties (supporting and non-opposing) represent a wide range of interests, including the low-income residential advocate, several environmental advocates, an industrial energy management consultant, a retail energy service provider, an energy technology and analytics provider, a commercial consumer, and industrial advocates.³

While not all parties to the negotiations signed the Stipulation, every party was invited to the negotiating table and provided the opportunity to make their views and opinions known. No customer class was excluded from the negotiations. Therefore, the Commission should approve the Stipulation.

Despite the clear diversity of interests at the negotiating table, OCC argues in its testimony that the Stipulation should be rejected because it lacks a “diversity of interests” in support of the Stipulation. OCC, however, misstates the criteria for evaluating stipulations under the first prong. The question for consideration is whether any class of intervenors was excluded from the negotiating table.⁴ It is not a requirement that all customer classes support the Stipulation. Indeed, the Commission recently held that “we have already rejected proposals that any one class of customers can effectively veto a

³ FirstEnergy Ex. 5 at 8-9.

⁴ *Time Warner AXS v. Pub. Util. Comm’n of Ohio*, 75 Ohio St.3d 229, footnote 2 (1996).

stipulation, holding that we will not require any single party, including OCC, to agree to a stipulation in order to meet the first prong of the three-prong test.”⁵

Because each party had an opportunity to provide input into the Stipulation, and no customer class was excluded from negotiations, the Commission should determine that the Stipulation satisfies the first prong.

B. The Stipulation Benefits the Public Interest

FirstEnergy’s Portfolio Plan, as modified by the Stipulation, will benefit the public interest. Among other things, the Stipulation provides that FirstEnergy will endeavor to provide incentives that will facilitate the deployment of 20,000 smart thermostats per year, with up to a \$100 rebate per thermostat.

The OCC takes specific issue with FirstEnergy’s proposal to provide incentives for smart thermostats, alleging that they are not cost-effective. Specifically, citing to certain Total Resource Cost (“TRC”) test calculations included in the initial Application, OCC alleges that the proposed smart thermostat incentives do not pass the TRC test.⁶ Thus, OCC alleges that the net present value of the energy-related savings from a smart thermostat is lower than the cost of deploying a smart thermostat. OCC further alleges in testimony that “nothing in the Settlement suggests that these programs are now cost-effective.”⁷ As discussed below,

⁵ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Opinion and Order at 43 (Mar. 31, 2016) (citing *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order at 18 (Feb. 2, 2005); Entry on Rehearing at 7 (Mar. 23, 2005).

⁶ OCC Ex. 9B at 64-65 (Spellman Supplemental Direct).

⁷ OCC Ex. 9B at 66.

OCC's argument misstates the legal standard for approval, is internally inconsistent with its own public representations, and is factually incorrect.

Under 4901:1-39-04, FirstEnergy is required to "demonstrate that its program portfolio plan is cost-effective *on a portfolio basis*." (emphasis added). While programs within the portfolio plan must also be cost effective, "each measure within a program need not be cost-effective."⁸ Moreover, "an electric utility may include a program within its program portfolio plan that is not cost-effective when that program provides substantial nonenergy benefits."⁹ OCC has not alleged—nor can it¹⁰—that FirstEnergy's Portfolio Plan in its entirety or that any program as a whole fail to pass the TRC test. Therefore, OCC's argument is legally flawed and unsubstantiated by the record.

In any event, OCC is also incorrect that the measures related to thermostat incentives fail the TRC test. Although OCC witness Spellman claims that the thermostat measures are not cost-effective, Mr. Spellman conceded that he relied upon stale information contained in the Market Potential Study that failed to account for all energy-related savings from smart thermostats.¹¹ But, as FirstEnergy witness Miller testified, one of the provisions in the Stipulation required FirstEnergy to update its calculations of the TRC test for smart thermostats to account for the "inclusion of estimated natural gas savings projected to be

⁸ 4901:1-39-04(B), OAC.

⁹ Indeed, many low-income focused programs and measures do not pass the TRC test, but that does not mean that this group of customers should be neglected.

¹⁰ See Joint Ex. 1 at Ex. A (containing a summary of TRC scores for each program within FirstEnergy's Portfolio Plan to reflect the terms of the Stipulation). As the exhibit reflects, each program has a TRC score greater than 1.

¹¹ Tr. Vol. II at 293 ("Q. And your testimony is based upon statistics in the Market Potential Study, correct? A. Correct.").

achieved through the use of smart thermostats, which provides a more accurate estimate of the benefits associated with smart thermostats.”¹² OCC witness Spellman indicated that he was not aware of this modeling change when he submitted his supplemental direct testimony.¹³ Because OCC failed to account for this modeling change, it cannot credibly argue that smart thermostats fail the TRC Test.

Moreover, OCC’s own public representations regarding thermostat savings undermine its testimony. Specifically, OCC’s website states that “[a] properly set programmable thermostat can save homeowners \$100 to \$180 per year if they maintain those settings.”¹⁴ OCC witness Spellman did not dispute these savings estimates, and, in fact, he agreed that programmable thermostats are less effective than the smart thermostats at issue in this proceeding: “would you agree that a programmable thermostat is effectively a dumb version of a smart thermostat? A. Yes.”¹⁵

Using OCC’s own savings numbers for programmable thermostats, which are admittedly conservative, FirstEnergy’s smart thermostat incentives would easily pass the TRC Test.¹⁶ Therefore, OCC’s claim that smart thermostat incentives are not cost-effective is unsubstantiated, undermined by their own website, and therefore should be rejected.

¹² FirstEnergy Ex. 5 at 4-5 (Supplemental Direct Testimony of Ed Miller).

¹³ Tr. Vol. II at 294.

¹⁴ IGS Ex. 1 (OCC Consumers’ Fact Sheet: *Easy Ways to Save Energy and Money*). “A properly set programmable thermostat can save homeowners \$100 to \$180 per year if they maintain those settings.” *Id.*; see also Tr. Vol. II at 295-296.

¹⁵ Tr. Vol. II at 296. See also *id.* at 295-97.

¹⁶ Assuming a useful life of 5 years or greater, programmable thermostats would provide between \$500-\$900 in energy-related savings. Using extremely conservative net present value assumptions, a \$250 thermostat would be cost-effective under the TRC Test. FirstEnergy has assumed that smart thermostats will be used for 11 years. Ohio Edison. Appendix C-1 Page 1 of 8.

C. The Stipulation Does Not Violate any Regulatory Practice or Principle

The Stipulation does not violate any regulatory policy or principle. Indeed, the Stipulation goes even further, promoting the State Policy contained in R.C. 4928.02. That section provides that it is the policy of this state to “[e]ncourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure.”¹⁷ The Stipulation, including the proposed incentives to deploy smart thermostats, will promote energy efficiency through innovative technology. Accordingly, the Stipulation satisfies the third prong; thus, IGS urges the Commission to adopt the Stipulation.

III. CONCLUSION

For the reasons stated herein, IGS recommends that the Commission approve the Stipulation.

Respectfully Submitted,

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¹⁷ R.C. 4928.02(D).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of *Interstate Gas Supply, Inc.'s Initial Brief* was served this 21th day of February 2017 via electronic mail upon the following:

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Case No(s). 16-0743-EL-POR

Summary: Brief Initial Brief electronically filed by Mr. Joseph E. Olikier on behalf of IGS Energy