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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

MOTION TO INTERVENE
AND
REQUEST FOR LEAVE TO INTERVENE OUT OF TIME
OF
THE SMART THERMOSTAT COALITION

The Smart Thermostat Coalition ("STC"),¹ pursuant to R.C. 4903.221 and Rule 4901-1-11, Ohio Administrative Code ("OAC"), hereby moves to intervene in Case No. 16-481-EL-

¹ STC is an *ad hoc* coalition comprised of Ecobee Inc. and Google, Inc. subsidiary, Nest Labs, which are industry leaders in smart thermostat technology.

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UNC and, by extension, in the other three above-captioned cases which have been consolidated with Case No. 16-481-EL-UNC for purposes of considering a stipulation and recommendation (“Stipulation”) submitted by Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Companies (collectively, the “Companies”), the Commission staff, and certain other parties, which, if adopted by the Commission, would resolve all four proceedings.²

As more fully discussed in the accompanying memorandum, STC is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect its interests. Further, STC's interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved without unduly delaying the proceedings or unjustly prejudicing any existing party.

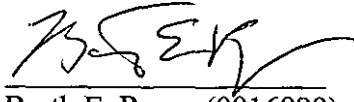
STC recognizes that the November 15, 2018 entry establishing the procedural schedule for the consolidated proceeding fixed November 27, 2018 as the deadline for motions to intervene.³ However, R.C. 4903.221(A)(2) accords the Commission discretion to entertain motions for intervene filed out of time for good cause shown. STC respectfully requests that, for the reasons stated in the accompanying memorandum, the Commission grant STC leave to intervene, notwithstanding that its motion to intervene has been filed after the previously established due date.

WHEREFORE, STC respectfully requests that the Commission grant its motion to intervene.

² See Attorney Examiner's Entry dated November 15, 2018, at ¶11.

³ *Id.*

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. E. Royer', with a long horizontal stroke extending to the right.

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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	:	Case No. 18-1656-EL-ATA

MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
AND
REQUEST FOR LEAVE TO INTERVENE OUT OF TIME
OF
THE SMART THERMOSTAT COALITION

By their February 29, 2016 filing in Case No. 16-481-EL-UNC – and consistent with their commitment in ESP IV – the Companies set out a grid modernization business plan to

advance and modernize the Companies' electric distribution delivery system throughout their respective service territories. The plan contained a number of elements, including advanced metering infrastructure, distribution automation, and voltage control. The Commission deferred consideration of the plan pending the launch of its PowerForward initiative, which culminated with the release of *PowerForward: A Roadmap to Ohio's Electricity Future* on August 29, 2018 (the "PowerForward Roadmap").

As noted in the foregoing motion, the Stipulation submitted on November 9, 2018 by the Companies, the Commission staff, and various other parties is intended to resolve Case No. 16-481-EL-UNC, as well as the cases dealing with the Companies' distribution platform modernization plan (Case No. 17-2436-EL-UNC), the impact of the 2017 Tax Cuts and Jobs Act on the Companies' customers (Case No. 18-1604-EL-UNC), and changes to the Companies' pole attachment tariffs (Case No. 18-1656-EL-ATA). With respect to grid modernization, the signatories state that the Stipulation is consistent with the Commission's PowerForward Roadmap and that it will advance the Commission's PowerForward Roadmap for future grid modernization projects, innovative regulations, and forward-thinking policies for the benefit of customers.⁴ However, the PowerForward Roadmap recognizes that measures that permit customers to manage their energy usage not only allow customers to control their costs but also "provide benefits and drive systemic benefits for the grid."⁵ To this end, the PowerForward Roadmap, states as follows:

The Commission encourages, in parallel with advanced meter deployment, that each EDU propose or amend an existing TOU rate design for SSO customers, which may include: real time pricing, block and index pricing, TOU pricing, variable peak pricing, critical peak pricing, and/or critical

⁴ See Stipulation, 2-3.

⁵ *PowerForward: A Roadmap to Ohio's Electricity Future*, available at <https://www.puco.ohio.gov/industryinformation/industry-topics/powerforward/powerforward-a-roadmap-to-ohios-electricity-future/>, 31.

peak rebates. Further, the on-peak/off-peak ratio should be sufficient to provide a response from participating customers and the peak period duration and frequency should reasonably allow for participation from customers on the rate. The proposal may also include a rebate program for enabling technologies (e.g. smart thermostats) which can be paired with TOU rates offered through the SSO or through CRES provider offerings that utilize time-based pricing.⁶

The Stipulation does address TOU pricing through a provision that obligates the Companies, within six months of the order in this case, and after consultation with the Grid Mod collaborative group, to “propose a time-varying rate offering for non-shopping customers, which will be designed to achieve the energy and capacity savings detailed in the cost-benefit analysis and should leverage enabling devices, e.g. smart thermostats.”⁷ However, the language of this commitment as it relates to smart thermostats is extremely vague by any standard, and is subject to a variety of interpretations, including a reading that there is no commitment whatever to providing an incentive to customers to utilize smart thermostats as contemplated by the PowerForward Roadmap. Moreover, although smart thermostats are a natural adjunct of time-of-use rates (*i.e.*, smart thermostats automatically shape customer consumption to maximize the benefit of time-of-use rates), smart thermostat technology provides benefits to both EDUs and consumers regardless of the rate schedule involved by reducing demand and by providing potential cost savings to customers.

In so stating, STC recognizes that the Stipulation contemplates that smart thermostat deployment is a matter that will be taken up by the Grid Mod collaborative group. However, without definitive guidance from the Commission, there is no assurance that the ultimate proposal that emerges from the collaborative will achieve the customer benefits the Commission

⁶ *Id.*

⁷ Stipulation, 17.

envisioned in the PowerForward Roadmap. In addition, timing is an issue, because smart thermostats also complement smart metering as the Commission recognized in the PowerForward Roadmap, wherein the Commission stressed that, unlike earlier AMI deployments in the state, which focused on the benefits to the EDUs, the Commission expects future AMI deployments to enhance the customer experience as well via enabling technologies such as smart thermostats.⁸

Simply stated, if the goal of rolling out smart meters is to permit FE and customers to better understand individual contributions to peak load, the installation of smart meters should be accompanied by the deployment of smart thermostats to enable customers to act on this enhanced information to their benefit. To permit the Companies to charge ahead with smart meter installation without a plan that will actually produce customer benefits would be extremely poor public policy.

R.C. 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” STC seeks to participate in this proceeding to protect the interests of its members, who, as providers of smart thermostat technology, may be adversely affected by an ill-conceived and/or ill-designed smart thermostat program that will not produce the results anticipated by the Commission in the PowerForward Roadmap. Further, not only does STC satisfy the underlying statutory test, but it also satisfies the standards governing intervention set forth in the Commission’s rules.

Rule 4901-1-11(A), OAC, provides, in pertinent part, as follows:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

⁸ See *PowerForward: A Roadmap to Ohio's Electricity Future*, available at <https://www.puco.ohio.gov/industryinformation/industry-topics/powerforward/powerforward-a-roadmap-to-ohios-electricity-future/>, 31.

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his ability to protect that interest, unless the person's interest is adequately represented by existing parties.

As a coalition of leading providers of smart thermostat technology, STC plainly has a real and substantial interest in a proceeding that will shape the smart thermostat program in the Companies' respective service territories. As sellers of smart thermostat products in the Ohio market, STC's members have an obvious interest in assuring the smart thermostats deployed in connection with any program approved have the capabilities necessary to provide the maximum benefit to the Companies' customers. No existing party represents this interest.

In addition, each of the specific considerations that the Commission, pursuant to Rule 4901-1-11(B), OAC, must take into account in applying the Rule 4901-1-11(A)(2), OAC, standard also fully supports granting STC's motion to intervene. Rule 4901-1-11(B), OAC, provides as follows:

In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner case shall consider:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties;

First, as previously explained, STC's interest in this proceeding is direct and substantial. Second, the above-described position that STC will advance has a direct relation to the merits of the Stipulation. Third, in view of the present posture of these cases, granting STC's motion to intervene will not unduly delay or prolong the proceeding. Fourth, although STC has not previously intervened in a proceeding before this Commission, STC's members have been frequent participants energy efficiency initiatives in other states in which they do business. Thus, STC will bring the substantial experience and expertise of its members to bear on the question of what constitutes a properly conceived and properly designed smart thermostat program. Finally, no existing parties represent STC's interest. Therefore, granting STC intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

STC recognizes that the deadline established by the Attorney Examiner's November 15, 2018 entry in these dockets has long since passed. However, STC only recently learned that the Stipulation submitted in these proceedings addressed smart thermostat deployment. Upon determining that the provision in question, if adopted by the Commission without modification, could produce a less than optimal result, STC acted immediately to retain counsel, and has filed its motion to intervene as promptly as was reasonably possible. If granted intervention, STC will, of course, take the record as it finds it. Thus, the existing parties will not be prejudiced by STC's participation with respect to the very narrow issue it seeks to pursue. Moreover, it would be inconsistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings"⁹ to deny STC's motion to intervene under these circumstances. Accordingly, STC respectfully requests that the Commission find that good cause exists for

⁹ See, e.g., *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR (Entry dated January 14, 1986, at 2).

entertaining STC's motion to intervene out of time and that the Commission exercise its discretion under R.C. 4903.221(A)(2) and grant STC leave to intervene.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Royer', with a long horizontal flourish extending to the right.

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Certificate of Service

I hereby certify that a copy of the foregoing was served upon the following persons by electronic mail this 28th day of December 2018.


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