

## 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  
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

### ENTRY

Entered in the Journal on January 29, 2019

{¶ 1} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (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.

{¶ 2} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail

electric services necessary to maintain essential electric service to customers, including a firm supply of electric generation service. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 3} On March 31, 2016, in Case No. 14-1297-EL-SSO, the Commission approved FirstEnergy's application for its fourth ESP (*ESP IV*). *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 14-1297-EL-SSO (*ESP IV Case*), Opinion and Order (Mar. 31, 2016). Moreover, on October 12, 2016, the Commission issued the Fifth Entry on Rehearing in the *ESP IV Case*, further modifying *ESP IV*. *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016).

{¶ 4} Among other terms, *ESP IV* requires the Companies to undertake grid modernization initiatives that promote customer choice in Ohio and to file a grid modernization business plan. *ESP IV Case*, Opinion and Order at 22, 95-96. Accordingly, on February 29, 2016, the Companies filed a grid modernization plan with the Commission in Case No. 16-481-EL-UNC. Subsequently, in the Fifth Entry on Rehearing in the *ESP IV Case*, the Commission noted that we intended to undertake a detailed policy review of grid modernization and that FirstEnergy's grid modernization business plan would be addressed following such review. *ESP IV Case*, Fifth Entry on Rehearing at 96-97. The Commission commenced this detailed policy review, entitled *PowerForward*, in 2017, and, on August 29, 2018, the Commission released *PowerForward: A Roadmap to Ohio's Electricity Future*. On December 4, 2017, the Companies filed an application for approval of a distribution platform modernization plan in Case No. 17-2436-EL-UNC.

{¶ 5} On November 9, 2018, a Stipulation and Recommendation (Stipulation) was filed in Case No. 17-2436-EL-UNC, as well as Case Nos. 16-481-EL-UNC, 18-1656-EL-ATA, and 18-1604-EL-UNC, recommending a resolution of all issues in each case. The Stipulation was signed by the following parties: the Companies; Direct Energy Services, LLC and Direct

Energy Business, LLC (collectively, Direct Energy); Environmental Defense Fund (EDF); Ohio Energy Group (OEG); Industrial Energy Users-Ohio (IEU-Ohio); Ohio Cable Telecommunications Association (OCTA); Ohio Hospital Association (OHA); Interstate Gas Supply, Inc. (IGS); and Staff. A Supplemental Stipulation and Recommendation was later filed on January 25, 2019, which was signed by Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), and Northeast Ohio Public Energy Council (NOPEC), in addition to the parties that had signed the Stipulation.

{¶ 6} On November 15, 2018, the attorney examiner issued an Entry consolidating the above-captioned cases and setting a procedural schedule, including setting the deadline for intervention as November 27, 2018, and scheduling an evidentiary hearing to commence on February 4, 2019.

*A. Pending Motions to Intervene*

{¶ 7} Timely motions to intervene were filed<sup>1</sup> by OCC, Environmental Law & Policy Center (ELPC), Ohio Environmental Council and Environmental Defense Fund (collectively, OEC/EDF), OPAE, The Kroger Co. (Kroger), OEG, OHA, Ohio Manufacturer's Association Energy Group (OMAEG), Direct Energy, IGS, Calpine Energy Solutions, LLC (Calpine), IEU-Ohio, OCTA, NOPEC, and Natural Resources Defense Council (NRDC).<sup>2</sup> No memoranda contra these motions to intervene have been filed.

{¶ 8} Upon review, the attorney examiner finds that the unopposed motions to intervene listed in Paragraph 7 are reasonable and should be granted.

{¶ 9} A motion to intervene and request for leave to file out of time was filed by The Smart Thermostat Coalition (STC) on December 28, 2018. In its memorandum in support,

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<sup>1</sup> While the attorney examiner recognizes that several parties only moved to intervene in one of the above-captioned cases, the motions to intervene will be treated as applying to all four cases due to the fact that most motions to intervene were filed before these cases were consolidated for administrative efficiency.

<sup>2</sup> The Northwest Ohio Aggregation Coalition and its 15 individual NOAC communities filed a motion to intervene on November 23, 2018, but subsequently withdrew its motion to intervene on January 23, 2019.

STC requests that the Commission grant STC intervention pursuant to R.C. 4903.221(A)(2). As the Commission's PowerForward initiative discussed smart meter deployment, STC argues that the installation of smart meters should be accompanied by the deployment of smart thermostats to enable customers to benefit from the enhanced information. Specifically, 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 if the resulting smart thermostat program as envisioned by the PowerForward initiative is not ultimately obtained. STC further argues that it also satisfies the Commission's intervention requirements as stated in Ohio Adm.Code 4901-1-11(A), specifically noting that its intervention will not unduly prolong or delay the proceedings and its real and substantial interest regarding the deployment of smart thermostats is not represented by any other party of record. While STC recognizes that it failed to file its motion to intervene before the deadline had passed, STC avers that it only recently learned that the Stipulation addressed smart thermostat deployment and retained counsel as promptly as reasonably possible. Finally, STC quickly notes that the Commission's stated policy regarding intervention is to "encourage the broadest possible participation in its proceedings." *See, e.g., The Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry (Jan. 14, 1986).

{¶ 10} On January 14, 2019, the Companies filed a memorandum contra STC's motion to intervene and request for leave to file for intervention out of time, namely arguing that the request had been filed one month after the deadline for intervention had passed and STC fails to demonstrate the existence of extraordinary circumstances, as required by Ohio Adm.Code 4901-1-11(F). Furthermore, the Companies allege that STC has also failed to demonstrate that it has a real and substantial interest in this proceeding, noting that the Stipulation only authorizes the first phase of FirstEnergy's grid modernization plan, over a three-year budget period, without smart thermostat installations. Finally, FirstEnergy alleges that STC will be afforded adequate opportunities by the terms of the Stipulation in order to share its concerns.

{¶ 11} STC filed a reply to FirstEnergy’s memorandum contra on January 16, 2019, reiterating that the Commission is afforded substantial latitude in its discretion to grant intervention to any interested party in proceedings before it, including such instances in which intervention is requested after a prescribed deadline. Moreover, STC contends that, while the Commission will frequently apply the “extraordinary circumstances” test when evaluating untimely motions to intervene to determine if good cause exists for intervention, good cause is the appropriate legal standard to apply, pursuant to R.C. 4903.221.

{¶ 12} After reviewing the arguments submitted by STC and FirstEnergy, the attorney examiner finds that, although the motion was untimely filed, based on the unique circumstances applicable to these proceedings, there is good cause to grant the motion, pursuant to R.C. 4903.221(A)(2), and that STC otherwise satisfies the Commission's criteria for intervention. Initially, the attorney examiner notes that, in cases where a stipulation is filed following the deadline for motions to intervene, the Commission has established that the filing of a stipulation that may resolve issues differently than initially proposed, or that expands the issues, does not, alone, constitute extraordinary circumstances warranting untimely intervention. *In re Dayton Power & Light Co.*, Case No. 02-2779-EL-ATA, et al., Opinion and Order (Sept. 2, 2003) at 8-9; *In re Ohio Power Co. and Columbus S. Power Co.*, Case No. 10-2376-EL-UNC, et al., Opinion and Order (Dec. 14, 2011) at 9-10. However, the attorney examiner agrees that STC’s involvement will significantly contribute to the full development of the record in these proceedings, especially as to its interest in smart thermostat deployment and ensuring such deployment is consistent with the overall objectives of the PowerForward initiative. *See In re the Application for Establishment of a Reasonable Arrangement between ASHTA Chemicals Inc. and The Cleveland Elec. Illum. Co.*, Case No. 12-1494-EL-AEC, Entry (Nov. 5, 2012); *See also In re the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case No. 10-501-EL-FOR, Opinion and Order (Jan. 9, 2013). No other parties of record are similarly situated, and thus, do not adequately represent this interest. Furthermore, as the evidentiary hearing is scheduled to commence on February 4, 2019, and parties will have the opportunity to depose STC’s proffered

witness, whose testimony was filed by the respective deadline, the attorney examiner notes that no party will be unduly prejudiced by STC's intervention in these matters. Thus, for the reasons described above, and as authorized by the wide discretion afforded to the Commission when evaluating motions for intervention, the attorney examiner finds STC's motion is reasonable and should be granted.

***B. ELPC Motion to Compel***

{¶ 13} On January 25, 2019, ELPC filed a motion to compel discovery responses from IGS. In its attached memorandum in support, ELPC alleges that it served limited discovery requests on IGS seeking information related to important issues raised by the proposed Stipulation, as well as testimony filed in support of that Stipulation. Specifically, ELPC contends that IGS has wrongfully refused to respond to ELPC's interrogatories regarding alleged customer benefits of the proposed grid modernization investment by asserting improper objections. ELPC requests that IGS be compelled to answer the interrogatories at issue and also seeks an expedited ruling in order to ensure IGS provides its responses before cross-examination of relevant witnesses, suggesting that any memoranda contra be filed by Tuesday, January 29, 2019.

{¶ 14} Upon review, the attorney examiner finds that ELPC's request for memoranda contra to be filed on an expedited basis is reasonable and, therefore, should be granted, in part, and directs that any responsive memoranda contra be filed by 12:00 p.m. on Thursday, January 31, 2019. In the event that no entry resolving this discovery dispute is issued by February 1, 2019, parties should be prepared to discuss this motion and any responsive memoranda contra when the hearing commences as scheduled on February 4, 2019.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the motions to intervene filed by OCC, ELPC, OEC/EDF, OP&E, Kroger, OEG, OCTA, IEU-Ohio, Calpine, OHA, OMAEG, Direct Energy, IGS, NOPEC, and NRDC be granted. It is, further,

{¶ 17} ORDERED, That STC's motion to intervene and request for leave to file out of time be granted. It is, further,

{¶ 18} ORDERED, That ELPC's request that memoranda contra its motion to compel be filed on an expedited basis be granted and any responsive memoranda contra be filed by 12:00 p.m. on January 31, 2019. It is, further,

{¶ 19} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Megan J. Addison

By: Megan J. Addison  
Attorney Examiner

JRJ/mef

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**Case No(s). 16-0481-EL-UNC, 17-2436-EL-UNC, 18-1604-EL-UNC, 18-1656-EL-ATA**

Summary: Attorney Examiner Entry granting motions to intervene; and, setting the deadline to file memoranda contra the motion to compel for 1/31/19 at 12:00pm electronically filed by Ms. Mary E Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio