

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Filing by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company of a Grid Modernization Business Plan	:	Case No. 16-0481-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
	:	

**INITIAL POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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Company, The Cleveland Electric :
Illuminating Company, and The Toledo : Case No. 16-0481-EL-UNC
Edison Company of a Grid :
Modernization Business Plan :

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Edison Company, The Cleveland :
Electric Illuminating Company, and The : Case No. 17-2436-EL-UNC
Toledo Edison Company Application for :
Approval of a Distribution Platform :
Modernization Plan :

In the Matter of the Application of Ohio :
Edison Company, The Cleveland :
Electric Illuminating Company, and the : Case No. 18-1604-EL-UNC
Toledo Edison Company to Implement :
Matters Relating to the Tax Cuts and :
Jobs Act of 2017 :

In the Matter of the Application of Ohio :
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Electric Illuminating Company, and The : Case No. 18-1656-EL-ATA
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INTRODUCTION

These consolidated cases concern both a return to customers of tax savings associated with the Tax Cuts and Jobs Act of 2017 (TCJA) and the first phase of grid

modernization investments by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“Companies”). Both the tax savings and the grid modernization proposals offer significant benefits for the Companies’ customers. The Companies, the Commission Staff, and numerous intervening parties entered into a stipulation providing a mechanism for returning tax savings and specifying various grid improvements that the Companies will undertake. Staff submits this brief to demonstrate that the stipulation meets the Commission’s test for consideration of stipulations and should be adopted.

PROCEDURAL HISTORY

On March 31, 2016, the Commission approved the Companies’ application for their fourth electric security plan (*ESP IV*).¹ The *ESP IV* order required the Companies to undertake grid modernization initiatives and to file a grid modernization business plan.² The Companies filed a grid modernization plan on February 29, 2016.³ Subsequently, in the Fifty Entry on Rehearing in the *ESP IV* case, the Commission stated that it would conduct a detailed policy review of grid modernization and that the Companies’ grid

¹ *In re Ohio Edison Co., The Cleveland Electric 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) (March 31, 2016).

² *Id.* at 22.

³ *In the Matter of Filing by Ohio Edison Co., The Cleveland Electric Illum. Co., and The Toledo Edison Co. of a Grid Modernization Business Plan*, Case No. 16-0481-EL-UNC.

modernization business plan would be addressed following that review.⁴ Following the policy review (called PowerForward), the Commission released *PowerForward: A Roadmap to Ohio's Electricity Future* (Roadmap) on August 29, 2018. In the interim, the Companies filed an application for approval of a distribution platform modernization plan.⁵

On January 10, 2018, the Commission opened an investigation into the financial impacts of the federal Tax Cuts and Jobs Act of 2017 (TCJA)⁶ on regulated public utilities in this state.⁷ After receiving comments, the Commission on October 24, 2018, directed public utilities to file applications by January 1, 2019, for the return to consumers of tax savings resulting from the TCJA.⁸ On October 30, 2018, the Companies filed an application to establish a process to resolve TCJA issues.⁹

On November 9, 2018, a Stipulation and Recommendation was filed in case nos. 16-0481-EL-UNC, 17-2436-EL-UNC, 18-1604-EL-UNC, and 18-1656-EL-ATA, recommending a resolution of all issues in each case. Signatory parties include the

⁴ *ESP IV* Case, Fifty Entry on Rehearing 96-97.

⁵ *In the Matter of the Filing of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Approval of a Distribution Platform Modernization Plan.*

⁶ Tax Cuts and Jobs Act, P.L. 115-97, 131 Stat. 2054 (2017).

⁷ *In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (Entry) (Jan. 10, 2018).

⁸ *TCJA* Case (Finding and Order) (Oct. 30, 2018).

⁹ *In the Matter of the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. to Implement Matters Relating to the Tax Cuts and Jobs Act of 2017*, Case No. 18-1604-EL-UNC.

Companies, Commission staff, Direct Energy Services, LLC, and Direct Energy Business, LLC, Environmental Defense Fund, Ohio Energy Group (OEG), Industrial Energy Users – Ohio (IEU), Ohio Cable Telecommunications Association (OCTA), Ohio Hospital Association (OHA), and Interstate Gas Supply, Inc. (IGS). On November 13, 2018, the Companies filed a motion to consolidate the four cases into a single proceeding. The Attorney Examiner granted this motion on November 15, 2018.

On January 25, 2019, a Supplemental Stipulation and Recommendation was filed in the consolidated cases. The signatory parties included all those that signed the original stipulation with the addition of the Office of the Ohio Consumers' Counsel, The Northeast Ohio Public Energy Council, and Ohio Partners for Affordable Energy. The Supplemental Stipulation modified the allocation of customer credits, provided additional customer benefits and safeguards, and enhanced the grid modernization collaborative process outlined in the original stipulation.

An evidentiary hearing began on February 5, 2019. The Companies, Staff, IGS, OEG, and OCTA presented testimony supporting the Stipulation. The Environmental Law & Policy Center (ELPC), Natural Resources Defense Council (NRDC), Ohio Environmental Council (OEC), and the Smart Thermostat Coalition (STC) offered testimony recommending modification of the Stipulation, principally concerning adding smart thermostat rebates to the grid modernization plan. At the conclusion of the hearing, the Attorney Examiners established a briefing schedule. This initial post-hearing brief is timely submitted on behalf of the Commission Staff.

ARGUMENT

I. Criteria for Review of Stipulations

Parties to proceedings before the Commission are permitted by Rule 4901-1-30 of the Ohio Administrative Code to enter into stipulations.¹⁰ Although the terms of such stipulations are not binding on the Commission, they are given substantial weight.¹¹ In a number of prior proceedings, the Commission has addressed the standard of review for stipulations recommended by the parties.¹² Essentially, the Commission considers whether the stipulation, which is the result of considerable time and effort by the parties, is reasonable and should be adopted. The Commission applies the following criteria, which have been endorsed by the Supreme Court of Ohio, in determining the reasonableness of a stipulation:

- (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?

¹⁰ Ohio Adm. Code 4901-1-30(A) (“Any two or more parties may enter into a written or oral stipulation concerning issues of fact or the authenticity of documents.”).

¹¹ *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370, 1373 (1992) (“The commission, of course, is not bound to the terms of any stipulation; however, such terms are properly accorded substantial weight.” (*quoting Akron v. Pub. Util. Comm.* 55 Ohio St.3d 155, 157, 378 N.E. 2d 480, 483 (1978))); see also Ohio Adm. Code 4901-1-30(D) (“No stipulation shall be considered binding upon the commission”).

¹² See, e.g. *In re Duke Energy Ohio*, Case No. 17-0032-EL-AIR, et al. (Opinion and Order) (Dec. 19, 2018); *In re Columbia Gas of Ohio*, Case No. 16-1309-GA-UNC (Opinion and Order) (Dec. 16, 2016).

- (3) Does the settlement package violate any important regulatory principle or practice?¹³

The Stipulation, as recommended by the signatory parties, complies fully with the Commission's three-part test and should therefore be adopted by the Commission.

A. The Stipulations are a product of serious bargaining among capable, knowledgeable parties.

The original Stipulation was signed by the Companies, the Commission Staff, and several other parties comprising a diverse range of interests. The Supplemental Stipulation added three additional parties representing residential customers, low income customers, and local governments. All of the signatory parties regularly participate in regulatory proceedings, and all were represented by experienced counsel.¹⁴ Companies' witness Santino Fanelli described the multiple meetings, discussions, and information exchanges that led to the filing of both Stipulations.¹⁵ The Stipulations thus are the product of serious bargaining among capable and knowledgeable parties.

B. The Stipulation, as a package, benefits ratepayers and the public interest.

The public will benefit both from the tax savings that the Companies have agreed to return to customers and from the grid modernization investments that the Companies will undertake. Staff witness Jonathan Borer explained that the Companies will flow

¹³ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St. 3d 559, 561, 629 N.E.2d 423, 426 (1994); Consumers' Counsel, 64 Ohio St. 3d at 126, 592 N.E.2d at 1373.

¹⁴ FirstEnergy Ex. 2 (Direct Testimony of Santino L. Fanelli) at 7.

¹⁵ *Id.*

back to customers two categories of tax savings: (1) the savings in federal income tax expense as a result of the reduction in the federal corporate income tax rate from a top bracket of 35% down to a flat rate of 21%, and (2) the savings associated with Excess Accumulated Deferred Income Taxes.¹⁶ Mr. Borer explained that the Companies have agreed to return to customers all tax savings deferred from January 1, 2018, until the tax credit savings mechanism goes into effect.¹⁷ In total, approximately \$900 million in tax savings will be returned to customers.¹⁸ Illustrative examples of the tax credit mechanism are included as attachments to the Stipulations.

Staff witness Krystina Schaefer presented testimony explaining the benefits of the grid modernization investments provided in the Stipulations. These investments fall into three main categories: advanced metering infrastructure (AMI), distribution automation (DA), and integrated volt-VAR control (IVVC).¹⁹ The deployment of AMI will include installation of 700,000 advanced meters and a meter data management system (MDMS), along with system and process updates needed to enable advanced data access.²⁰

As explained by Ms. Schaefer, AMI investments will produce operational savings for the Companies that will be passed back to ratepayers.²¹ Specifically, the estimated operational benefits contained in ‘Attachment D’ of the Stipulation will be credited

¹⁶ Staff Ex. 1 (Testimony of Jonathan J. Borer) at 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Staff Ex. 2 (Testimony of Krystina Schaefer) at 3.

²⁰ *Id.*

²¹ *Id.* at 4.

against the revenue requirement of Rider AMI during the quarterly update and reconciliation process and will continue until the next base rate case, at which point the actual operational savings will be reflected in base rates.²² These operational benefits include reductions in meter reading expenses, increased revenues from improved theft detection and meter accuracy, and improved operational efficiencies.²³ Midway through the Grid Mod I deployment, the level of operational savings for all included technologies will be reviewed by a third-party consultant and the credit to Rider AMI may be modified, based on the findings of the review and subject to Commission approval.²⁴ Additionally, and in furtherance of Ohio state policy, AMI investments will produce more direct benefits to customers by providing access to innovative products and services available in the market.²⁵

Ms. Schaefer further explained that the AMI deployment will include a MDMS, which will produce interval data that has gone through the validation, editing and estimation process, i.e., “bill-quality” data.²⁶ The Companies will upgrade the systems and processes used for settlement purposes, so the interval data can be used for settling

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ “It is the policy of this state to do the following throughout this state: (D) Encourage 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.” R.C. 4928.02(D).

²⁶ Staff Ex. 2 (Testimony of Krystina Schaefer) at 5.

individual total hourly energy obligation, peak load contribution, and network service peak load values for each customer, instead of relying on generic load profiles.²⁷ In addition, the Companies will implement system enhancements to enable competitive retail electric service providers to access the AMI data, so more customized products and services can be developed in the retail market.²⁸

Customers will be able to access their energy usage data through a web portal and near real-time data through a home area network.²⁹ With customer authorization, third parties will also be able to access customer energy usage data.³⁰ Overall, these investments will offer customers new opportunities to understand and manage their energy usage, e.g., invest in less energy-intensive products, shift usage to off-peak periods, etc.³¹

Finally, within six months of an Opinion & Order in the current case, and after consultation with the Collaborative,³² the Companies will propose a time-varying rate designed to achieve the energy and capacity savings detailed in the cost-benefit analysis,

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Pursuant to the Stipulation, a Grid Mod Collaborative group will be established by the Companies to provide updates to stakeholders on the status of the project throughout implementation and gather stakeholder input. *FirstEnergy* Ex. 1 at 14.

which will remain until sufficient competitive retail offerings exist, as detailed in the Stipulation.³³

Ms. Schaefer further explained that the Companies will install DA on at least 200 circuits and IVCC on at least 202 circuits.³⁴ In conjunction with an ADMS, the DA deployment will improve reliability and outage management through: remote fault isolation and diagnostics, automated feeder switching, outage status monitoring and notification, and optimized restoration operations, as detailed in the Stipulation.³⁵ Further, the IVVC deployment in conjunction with an ADMS will optimize voltage management through: IVVC, automated voltage regulation, conservation voltage reduction, real-time load balancing, and automated power factor corrections.³⁶

As Ms. Schaefer explained, these DA and IVVC investments will improve reliability, enable faster restoration of outages, and reduce energy usage and peak demand.³⁷ In addition, the savings will further state policy, as savings count toward the Companies' benchmarks for energy efficiency and peak demand reduction programs, pursuant to Chapter 4928.66 of the Ohio Revised Code.³⁸

³³ Staff Ex. 2 (Testimony of Krystina Schaefer) at 5-6.

³⁴ *Id.* at 6.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 7.

³⁸ *Id.*

The Stipulation also requires the Companies to quantify the reliability improvements associated with these investments against minimum performance standards using the Customer Average Interruption Duration Index³⁹ (CAIDI) and System Average Interruption Frequency Index⁴⁰ (SAIFI). Within six months of an Opinion and Order in this case, the Companies will file an application to revise the Companies' current reliability performance standards, pursuant to Chapter 4901:1-10(B)(7) of the Ohio Administrative Code.⁴¹ In addition, no later than one year after deployment of Grid Mod I, the Companies will file another application to revise their reliability performance standards in order to incorporate actual performance improvements from these investments.⁴²

Finally, Ms. Schaefer explained that customers will benefit from operational savings associated with the installation of DA and an ADMS, which will be credited against the revenue requirement of Rider AMI during the quarterly update and reconciliation process until the next base rate case, at which point the actual operational savings will be reflected in base rates.⁴³

³⁹ CAIDI represents the average interruption duration or average time to restore service per interrupted customer. CAIDI is expressed by the following formula: sum of customer interruption durations (minutes) divided by total number of customer interruptions. Ohio Adm. Code 4901:1-10-10(B)(1).

⁴⁰ SAIFI represents the average number of interruptions per customer. SAIFI is expressed by the following formula: total number of customer interruptions divided by total number of customers served. Ohio Adm. Code 4901:1-10-10.

⁴¹ FirstEnergy Ex. 1 at 21.

⁴² *Id.*

⁴³ Staff Ex. 2 (Testimony of Krystina Schaefer) at 8.

C. The settlement package does not violate any important regulatory principle or practice.

Neither the Original Stipulation nor the Supplemental Stipulation violates any important regulatory principle or practice. Both stipulations are consistent with policies established by the General Assembly and the Commission. The settlement package furthers the state policy enunciated in R.C. 4928.02(D), to “encourage innovation and market access for cost-effective supply- and demand-side retail electric service including . . . smart grid programs, and implementation of advanced metering infrastructure.”⁴⁴ Additionally, the settlement supports the Commission’s objectives in the Roadmap to promote a more reliable and resilient distribution grid.⁴⁵ Moreover, the settlement complies with the Commission’s directive to return tax savings from the TCJA to customers.⁴⁶ Therefore, the settlement package is completely consistent with all important regulatory principles and practices.

CONCLUSION

The Stipulations amply satisfy the Commission’s test for approval of stipulations. The settlement package reflects serious bargaining among capable and knowledgeable parties, it benefits ratepayers and the public interest, and it is thoroughly consistent with all important regulatory principles and practices. The Stipulations should be adopted.

⁴⁴ Staff Ex. 2 (Direct Testimony of Krystina Schaefer) at 4.

⁴⁵ FirstEnergy Ex. 2 (Direct Testimony of Santino Fanelli) at 12.

⁴⁶ *Id.*

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Initial Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 1st day of March, 2019.

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Summary: Brief Initial Post-Hearing Brief on behalf of the Public Utilities Commission of Ohio electronically filed by Ms. Yvette L Yip on behalf of PUCO