BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of 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

BRIEF IN SUPPORT OF THE SUPPLEMENTAL SETTLEMENT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

The Supplemental Settlement in these cases provides residential consumers with $126 million in greater bill reductions from FirstEnergy's tax savings.[1] This Supplemental Settlement helps to better convert the FirstEnergy federal tax savings into utility bill savings for 1.9 million residential consumers (which is a key consumer goal of the Ohio Consumers' Counsel ("OCC")).

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[1] Supplemental Stipulation and Recommendation (January 25, 2019) (FirstEnergy Ex. 3) ("Supplemental Settlement"). "FirstEnergy" refers to Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

These cases address two issues affecting consumers: (i) passing along to customers the benefits of a reduction in FirstEnergy's federal corporate income tax; and (ii) making changes to FirstEnergy's distribution system (grid upgrades) that will cost consumers more money. The Public Utilities Commission of Ohio ("PUCO") should approve the Supplemental Settlement because, among other things, residential customers will get $125.9 million more in tax savings as compared to the Original Stipulation.[2]

OCC, the Northeast Ohio Public Energy Council ("NOPEC"), and some other parties to these cases did not sign the Original Stipulation because it lacked sufficient benefits for residential consumers. Nevertheless, OCC and NOPEC continued to discuss settlement with FirstEnergy, the PUCO Staff, and others. These discussions led to a new agreement, the Supplemental Settlement, which replaced the Original Stipulation.[3]

In addition to saving residential consumers an additional $125.9 million (over the number of years to be determined by the PUCO[4]) for FirstEnergy's tax savings, residential customers will receive other benefits from the Supplemental Supplement that were not included in the Original Stipulation. Other improvements include consumer protections concerning FirstEnergy's grid modernization program. As a result of these improvements, OCC agreed to sign the Supplemental Settlement as it pertains to the tax benefits for consumers, but to not oppose the Supplemental Settlement as it pertains to grid modernization (without actually supporting that part). The Supplemental Settlement

[2] Stipulation and Recommendation (November 9, 2018) (FirstEnergy Ex. 1) ("Original Stipulation").

[3] OCC, NOPEC, and others agreed to all terms and conditions of the Original Stipulation except the terms and conditions of Sections V.B through V.I. related to grid modernization. In the interests of reaching a global settlement on a variety of issues, including providing the benefits of the Tax Cuts and Jobs Act of 2017 to customers, OCC, NOPEC, and others agreed not to oppose Sections V.B through V.I. of the Original Stipulation (but did not agree to support those Sections). *See* FirstEnergy Ex. 3 at 10.

[4] *See* FirstEnergy Ex. 1 at 27.

is in the public interest and does not violate any important regulatory principles or practices. Therefore, the PUCO should approve the Supplemental Settlement.

II. STANDARD OF REVIEW

The standard of review for consideration of a settlement has been discussed in a number of PUCO cases and by the Ohio Supreme Court. As the Supreme Court of Ohio stated in *Duff*:

> A stipulation entered into by the parties present at a commission hearing is merely a recommendation made to the commission and is in no sense legally binding upon the commission. The commission may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing.[5]

The PUCO's review of a settlement for reasonableness must meet three criteria: (1) the stipulation must be a product of serious bargaining among capable, knowledgeable parties (and the PUCO will consider whether the parties have diverse interests); (2) it must, as a package, benefit customers and the public interest; and (3) it must not violate any important regulatory principle or practice.[6] The ultimate question to be answered is whether, in light of the record, the stipulation is reasonable and complies with Ohio law. The evidence in this proceeding shows that the Supplemental Settlement meets the PUCO's standard for approving stipulations.

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[5] *Duff v. Pub. Util. Comm.* (1978), 56 Ohio St.2d 367, 379.

[6] *See Consumers' Counsel v. Pub. Util. Comm'n.* (1992), 64 Ohio St.3d 123, 126.

III. RECOMMENDATIONS

A. The PUCO should find that the Supplemental Settlement, as a package, benefits customers and the public interest.

The Supplemental Settlement gives more tax savings to residential customers and contains greater consumer protections than the Original Stipulation. The Supplemental Settlement benefits customers and the public interest.

The Supplemental Settlement provides additional tax-related benefits to FirstEnergy's 1.9 million residential customers that the Original Stipulation did not. The Supplemental Settlement will enable residential customers to receive a larger share (approximately $125.9 million more) of an $808 million rate reduction.[7] The tax cut benefits are reflected in refunds to residential customers related to Excess Accumulated Deferred Income Taxes ("EDIT") from the Federal Tax Cuts and Jobs Act of 2017 ("federal tax cuts").[8] The increased residential allocation percentages and variances between the Original Stipulation and the Supplemental Settlement related to the EDIT are explained in Attachment B to the testimony of OCC witness Willis (OCC Ex. 1).

The Supplemental Settlement improves for consumers the terms of FirstEnergy's proposals to charge consumers for expensive grid upgrades. Because electric grid upgrades can be very expensive for consumers, adequate regulatory reviews are needed to safeguard that consumer benefits exceed the costs to consumers. OCC is concerned that smart meters and other grid upgrades have not yet provided enough customer value to justify the increased charges to consumers. Many of the benefits promised for

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[7] *See* OCC Ex. 1 (Direct Testimony of Wm Ross Willis) at 5.

[8] *Id.*

consumers through grid modernization will not be realized for years. Yet consumers pay grid modernization costs from the beginning of the project.[9]

The Supplemental Settlement provides several consumer protections that were not contained in the Original Stipulation. The Supplemental Settlement establishes criteria under which a regulatory review can occur to determine if investments in (and charges for) grid modernization are "used and useful" for consumers and if the costs are prudently incurred.[10] The Supplemental Settlement also provides due process protections for resolving issues that may arise during the regulatory reviews, including the potential for disallowance of costs being collected from customers where ratemaking standards such as used and useful and prudence are not met by FirstEnergy.[11]

Further, the Supplemental Settlement requires additional consumer protections in the mid-deployment regulatory review by examining the sufficiency and prudence of FirstEnergy's efforts to maximize the salvage value (for rate offsets) of traditional meters that are being replaced with smart meters.[12] The Supplemental Settlement also supports a full examination of the cost-effectiveness of the first phase of grid modernization deployment before customers are charged for the second phase of grid modernization.[13] And the Supplemental Settlement increases the amount of FirstEnergy's operational

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[9] OCC is not agreeing to FirstEnergy's proposal to spend $516 million in grid upgrades. However, OCC will not oppose charges for the initial grid upgrades in exchange for obtaining improved terms for a future audit of the grid charges and more consumer benefits from the federal tax reduction (and other consumer benefits). *See* FirstEnergy Ex. 3 at 5-6.

[10] *See* OCC Ex. 1 (Willis Testimony) at 6.

[11] *Id.*

[12] *Id* at 6-7.

[13] *Id* at 7.

savings from grid upgrades that will be credited to residential consumers and help reduce their electric bills.[14]

These are just some of the ways the Supplemental Settlement benefits customers and the public interest. The Supplemental Settlement thus meets the second criterion for PUCO approval.

B. The PUCO should find that the Supplemental Settlement does not violate any important regulatory principle or practice.

The Supplemental Settlement provides the benefits listed above without violating any important regulatory principle or practice. The allocation of the tax cut benefits under the Original Stipulation was unjust and unreasonable because residential customers would pay too much of grid modernization costs compared to the tax benefits they would receive.[15] The Supplemental Settlement is more equitable for residential consumers. It allocates more of the tax benefits to residential customers, resulting in a just and reasonable credit to residential consumers' monthly bills.[16]

The Supplemental Settlement also is consistent with the PUCO's PowerForward Roadmap. PowerForward is the PUCO's initiative to shape Ohio's electricity future. The "Roadmap" resulted from the PUCO's review of the latest in technological and regulatory innovations for enhancing the consumer's electricity experience. The "Roadmap" includes consumer protection for what electric grid upgrades could cost consumers.[17]

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[14] *Id.*

[15] *See id.* at 8.

[16] *Id.*

[17] *See id.*

The Supplemental Settlement also removed an inappropriate restriction on the Signatory Parties' ability to communicate with legislators. The Original Stipulation contained the following provision: "Except for enforcement purposes or to establish that the terms of the Stipulation are lawful, neither the Stipulation nor any information or data contained in, supporting, or attached to the Stipulation shall be offered or relied upon in any other proceedings or *before the General Assembly*."[18] That provision would limit the flow of information between stakeholders and the people's elected government. The provision was contrary to government transparency and public policy. That provision was deleted as part of the Supplemental Settlement that OCC, NOPEC, and others negotiated.

The Supplemental Settlement thus promotes important regulatory principles. It meets the third criterion for PUCO approval.

IV. CONCLUSION

Through the Supplemental Settlement in these cases, consumers will realize $125.9 million in savings that were not contained in the Original Stipulation. This will help offset the charge on consumers' bills for FirstEnergy's grid modernization. The Supplemental Settlement provides much-needed consumer protections. It benefits the public and does not violate important regulatory principles and practices. The PUCO should approve the Supplemental Settlement without modification.

[18] FirstEnergy Ex. 1 at 29 (emphasis added).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief was served on the persons stated below via electric transmission this 1st day of March 2019.

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