

**BEFORE
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 of an 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 BRIEF OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

I. Introduction

The Ohio Cable Telecommunications Association (“OCTA”) submits this Initial Brief in support of the Stipulation and Recommendation as supplemented (“Stipulation”). The OCTA is a signatory party to the Stipulation and it is a reasonable and beneficial resolution of many issues raised in these proceedings. The Stipulation was seriously negotiated by many different parties with extensive knowledge of the complicated regulatory issues involved. The Stipulation, as a package, contains benefits for ratepayers and the public interest, including specific benefits for

those who attach to the electric poles of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy”). Those attachers have unique concerns because of the excess accumulated deferred income taxes stemming from the Tax Cuts and Jobs Act of 2017 (“TCJA”). The negotiated resolution proposed by the Stipulation will provide clarity and benefits to the attachers for many years to come. The Commission should approve the Stipulation, particularly Section V.J which includes terms related to pole attachments.

II. Standard of Review

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (January 31, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Opinion and Order (November 26, 1985). In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (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?

The Ohio Supreme Court has endorsed the Commission’s analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of*

Ohio Power Co. v. Pub. Util. Comm. (1994), 68 Ohio St.3d 559, 561, citing *Consumers' Counsel, Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126. The Court has stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel, supra*, at 125.

III. Argument

The Stipulation presented in these proceedings is a compromise. It reflects the desire by a number of parties to resolve a number of issues on mutually agreeable terms. It does not resolve every issue that could be raised in these proceedings and it does not necessarily resolve every issue in the manner that every party would have liked. Nonetheless, the Stipulation is reasonable and worthy of substantial weight. The Stipulation is the product of serious bargaining among capable, knowledgeable parties; it is beneficial to ratepayers and the public interest; and it does not violate any important regulatory principle or practice. The Stipulation should be approved.

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

This criterion has been met. The evidence of record reflects that the issues were discussed with the parties at multiple meetings to which all parties were invited. Company Ex. 2 at 7-8; Company Ex. 4 at 3-4. Resolution of various issues was agreed upon by many parties with varying interests. A simple review of the signatory parties demonstrates the wide variety of parties and interests involved:

- **Utilities:** Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company
- **Staff** of the Commission
- **Residential Customer Representatives:** Ohio Consumers' Counsel and Northeast Ohio Public Energy Council
- **Business Customer Representatives:** Ohio Energy Group, Industrial Energy Users-Ohio, Ohio Hospital Association and the OCTA

- **Competitive Suppliers:** Direct Energy Services LLC; Direct Energy Business LLC, and Interstate Gas Supply Inc.
- **Other Parties:** Ohio Partners for Affordable Energy and Environmental Defense Fund

Company Ex. 1 at 31; Company 3 at 10. These parties have participated in numerous Commission proceedings and have experienced counsel.

The Stipulation was discussed and debated, and the OCTA seriously negotiated. OCTA Ex. 1 at 4. The fact that some parties did not sign stipulation or reach an accord does not negate the fact that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

B. The Stipulation is beneficial, including multiple benefits for pole-related issues.

The testimony of Patricia D. Kravtin identifies that Section V.J of the Stipulation provides multiple and important benefits for pole-related matters. OCTA Ex. 1 at 4-5 and OCTA Ex. 2. Specifically, those benefits are:

First: FirstEnergy agreed to include, when it calculates its future pole attachment rates, two important changes resulting from the TCJA: (1) the amount of excess accumulated deferred income taxes (“EDIT”) that has not yet been returned to customers and (2) the tax expense savings due to the tax law’s lower corporate tax rate. *See*, Company Ex. 1 at 27-28. The Stipulation identifies FirstEnergy’s accounts through which the EDIT-related debits and credits are to be recorded. These commitments are critical for many years as the Staff and the OCTA analyze future pole attachment rate calculations, and for preventing the perverse impact of increasing pole attachment rates through inappropriate EDIT values in the calculations. The accounting commitment also will be important for the Commission to ensure compliance with the pass back of the tax savings resulting from the TCJA to millions of FirstEnergy customers.

Second: The Stipulation includes a proposed resolution for three other pending Commission cases in which there is a current dispute regarding FirstEnergy’s pole attachment rates. *See*, Company Ex. 1 at 25-26 related to Case Nos. 18-563-EL-ATA et al. Specifically, FirstEnergy agreed to propose revised pole attachment rates in those cases, which FirstEnergy did on November 29, 2018. Contingent upon the Commission approving those revised rates, the OCTA filed a notice of withdrawal of its applications for rehearing in those three cases and awaits a

Commission ruling. Through this provision of the Stipulation, FirstEnergy and the OCTA seek to resolve without further litigation the dispute spanning several other Commission proceedings.

Third: FirstEnergy agreed to revise its tariff at the time it next seeks to adjust its pole attachment rates to reflect that it will file to adjust the pole attachment rates only once in a given calendar year period unless otherwise required by law. *See*, Company Ex. 1 at 26. With this added language in the utilities' tariffs, they will be clearer and correspond with the concept that the pole attachment rate is a year-long rate, and potentially avoid future disputes.

Fourth: FirstEnergy agreed to provide specific information of importance to the OCTA at the time of its next pole attachment applications so that the OCTA can quickly evaluate those future applications. *See*, Company Ex. 1 at 26-27. Specifically, FirstEnergy will (a) serve the OCTA with a copy of its next pole rate adjustment filings, (b) provide the OCTA with certain information listed in Section V.J.c, and (c) work with the OCTA regarding other additional information. This is beneficial given the expedited review process for the pole attachment rate adjustment filings. This provision of the Stipulation will allow the OCTA an opportunity for timely analysis of the amortization of EDIT, given that those future applications should include calculations that recognize the impact of the TCJA.¹

Fifth: Approval of the Stipulation will trigger further conversations between FirstEnergy, the OCTA and Staff with a goal of improving and clarifying the process(es) and schedule for FirstEnergy's pole attachment rate adjustments. *See*, Company Ex. 1 at 28. This provision will allow additional discussions to start within 60 days of the Commission's approval of the Stipulation, creating a forum for possible resolution of other pole-related issues.

As reflected in Ms. Kravtin's testimony, these provisions are not only beneficial for the OCTA and its members, they will assist the Staff and the Commission by resolving complex issues, providing critical information for many years to come and avoiding protracted litigation. Ms. Kravtin's testimony was not challenged or questioned. Transcript Volume I at 25-26. As a

¹ The Commission specifically ruled in another proceeding that the pole-owning utilities should not remove, for purposes of the pole attachment rate calculation, the EDIT in a one-time lump sum adjustment, but should deduct, in addition to accumulated deferred income taxes and depreciation reserves, any unamortized EDIT resulting from the TCJA from total gross plant and gross pole investment in their pole attachment rate calculations. *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, Finding and Order at ¶30 (October 24, 2018).

result, the evidence establishes and the Commission should find that the Stipulation is beneficial. It should accept and specifically approve Section V.J of the Stipulation in its entirety.

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

The Stipulation, including Section V.J, does not violate any important regulatory principle or practice. Rather, the Stipulation resolves the debate of how these three utilities will pass along the benefits of the TCJA and handle the EDIT in multiple rates, including pole-attachment rates, in a manner consistent with the Commission’s regulatory principles and practices. For example, the Stipulation is consistent with the Commission’s prior determination that “[c]ustomers should receive the savings derived from this [tax] change, as these savings were never meant to compensate the utilities or increase their respective rates of return, but merely reflect the reality that utilities are required to pay federal income taxes.” *Investigation, supra*, at ¶27.

Also, this Stipulation will resolve complex TCJA-related issues for three more Ohio utilities. The Commission has reviewed TCJA-related proposals and approved pass-back terms for multiple Ohio utilities. *See, e.g., In the Matter of Ohio Power Company's Implementation of the Tax Cuts and Jobs Act of 2017*, Case Nos. 18-1007-EI-UNC et al., Finding and Order (October 3, 2018); and *In the Matter of the Application of Duke Energy Ohio, Inc., for Implementation of the Tax Cuts and Jobs Act of 2017*, Case Nos. 18-1185-EL-UNC et al., Finding and Order (February 29, 2019). The Stipulation in the instant proceedings is consistent with the Commission’s previously stated willingness to consider proposals that pass all tax savings on to customers, have the full agreement of Staff and provide for input from other interested stakeholders. *Investigation, supra* at ¶29.

This Stipulation also proposes to resolve issues for an initial deployment of grid modernization initiatives in the FirstEnergy service territory and the related cost recovery. It will not resolve every issue associated with the utilities' actions in modernizing their electric grids. It will start the process and, at the same time, establish a collaborative for updates and continued discussions by stakeholders as the utilities' grid modernization process continues. Company Ex. 1 at 3, 14; Company Ex. 3 at 4. The collaborative in particular is consistent with the Commission's current regulatory practice associated with grid modernization endeavors. *See, In the Matter of the PowerForward Collaborative*, Case No. 18-1595-EL-GRD; *In the Matter of the PowerForward Distribution System Planning Workgroup*, Case No. 18-1596-EL-GRD; and *In the Matter of the PowerForward Data and Modern Grid Workgroup*, Case No. 18-1597-EL-GRD.

Lastly, to the extent there is opposition to resolving the TCJA issues in conjunction with an initial phase of grid modernization initiatives and cost-recovery issues, there is no prohibition against settlements of multiple or disparate issues. Notably, the Commission approved a stipulation just a few months ago that resolved another Ohio utility's TCJA-related issues in conjunction with a capital expenditure program. *See, In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 17-2202-GA-ALT, Opinion and Order (November 28, 2018).

For these reasons, the Commission should find that the Stipulation, including Section V.J, does not violate any important regulatory principle or practice. The Stipulation, instead, resolves numerous issues, including pole-related issues, consistent with the Commission's regulatory principles and practices.

IV. Conclusion

For all of the reasons set forth above, the proposed Stipulation is a compromise by a diverse group of parties to resolve a variety of complex issues. The Stipulation is the result of considerable time and effort by knowledgeable parties. As a package, it is reasonable and is beneficial without violating regulatory principles or practices. The Stipulation includes multiple important benefits associated with pole-related issues that were not questioned or challenged. These pole-related settlement terms in particular should be adopted in their entirety.

Respectfully Submitted,

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Summary: Brief Initial Brief electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telecommunications Association