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Via E-FILE

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Public Utilities Commission of Ohio
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Columbus, Ohio 43215

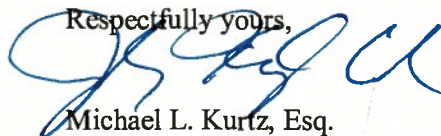
In re: Case No. 16-481-EL-UNC, 17-2436-EL-UNC, 18-1604-EL-UNC and 18-1656-EL-ATA

Dear Sir/Madam:

Please find attached the POST-HEARING BRIEF OF THE OHIO ENERGY GROUP e-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



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Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

MLKkew

Encl.

Cc: Certificate of Service

**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
	:	

**POST-HEARING BRIEF OF THE
THE OHIO ENERGY GROUP**

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March 1, 2019

COUNSEL FOR THE OHIO ENERGY GROUP

**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
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	:	
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**POST-HEARING BRIEF OF THE
THE OHIO ENERGY GROUP**

The Ohio Energy Group (“OEG”) submits this Brief in support of its recommendations to the Public Utilities Commission of Ohio (“Commission”) in these proceedings. OEG members take service on the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (“FirstEnergy” or “Companies”) systems. OEG’s recommendations are set forth below.

INTRODUCTION

On November 9, 2018, FirstEnergy submitted a Stipulation and Recommendation outlining a proposed resolution of these proceedings, which was subsequently amended by a Supplemental Stipulation and Recommended filed on January 25, 2019 (collectively, the “Stipulations”). Both are now before the Commission for consideration. The Stipulations are either explicitly supported by or, at minimum, not opposed by a wide variety of entities, including: the Company, Commission Staff, OEG, Industrial Energy Users-Ohio, The Office of the Ohio

Consumers' Counsel, Direct Energy Services, LLC, Direct Energy Business, LLC, Ohio Cable Telecommunications Association, Environmental Defense Fund, Ohio Hospital Association, Interstate Gas Supply, Inc., Northeast Ohio Public Energy Council, and Ohio Partners for Affordable Energy.

The Stipulations not only enjoy widespread support among the parties, but also satisfy the Commission's traditional standard for reviewing proposed settlements. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.¹ While not binding on the Commission, the terms of stipulations are accorded substantial weight.² The ultimate issue for the Commission's consideration is whether the agreement, which embodies significant time and effort by the Signatory Parties, is reasonable, and should be adopted. 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?³

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to customers and public utilities.

As discussed below, the Stipulations: 1) are the product of serious bargaining among capable, knowledgeable parties; 2) benefit customers and the public interest as a package; and 3) do not violate any important regulatory principle or practice. Accordingly, the Commission should approve the Stipulations without modification.

¹ Opinion and Order, Case No. 14-1297-EL-SSO (March 31, 2016) at 39 (citing *e.g. Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993)).

² Opinion and Order, Case No. 11-3549-EL-SSO (November 22, 2011) ("Duke ESP Order") at 41; Opinion and Order, Case No. 12-1230-EL-SSO (July 18, 2012) ("FirstEnergy ESP Order") at 24 (citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) and *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978)).

³ Duke ESP Order at 41; FirstEnergy ESP Order at 24 (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, (68 Ohio St.3d 559, 629 N.E.2d 423 (1994) and *Consumers' Counsel* at 126).

ARGUMENT

I. The Stipulations Satisfy the Commission's Three-Prong Test For Determining Whether A Settlement Is Reasonable And Should Be Adopted.

A. The Stipulations Are The Product Of Serious Bargaining Among Capable And Knowledgeable Parties.

The parties supporting the Stipulations represent a wide variety of diverse interests, including the interests of the utility, Commission Staff, industrial customers, commercial customers, residential customers, low-income advocates, hospitals, competitive retail electric suppliers, a cable provider association, and environmental advocates. Most if not all of those parties have significant experience in Commission proceedings and each was represented by competent counsel. Moreover, the parties had sufficient time to review and analyze issues surrounding FirstEnergy's proposals in these proceedings and were given an opportunity to address those issues during the course of settlement discussions. In those discussions, significant compromises were made on behalf of many of the parties in order to reach a reasonable settlement. The Stipulations therefore satisfy the first prong of the Commission's test.

B. The Stipulations As A Package Benefit Customers And The Public Interest.

The Stipulations benefit customers and the public interest in several ways. First, the Stipulations provide for the flowback to FirstEnergy's customers of 100% of the savings associated with the Tax Cuts and Jobs Act of 2017 ("TCJA"), estimated at \$900 million.⁴ For residential customers, this would result in estimated annual TCJA-related savings of \$43.785 million.⁵ Additionally, the Stipulations outline grid modernization investments that would increase the reliability and resilience of the Companies' distribution system. And those grid modernization investments would be subject to several safeguards (performance metrics, a third-party consultant, etc.) in order to

⁴ Company Ex. 1 (Stipulation and Recommendation) at 7-10; Company Ex. 2 (Direct Testimony of Santino L. Fanelli) at 2:22-3:4 and 9:1-13; Company Ex. 3 (Supplemental Stipulation and Recommendation) at 2; Company Ex. 4 (Supplemental Testimony of Santino L. Fanelli) at 2:5-12.

⁵ OCC Ex. 1 (Direct Testimony of William Ross Willis), WRW Attachment B at 1.

ensure that the associated costs and benefits are consistent with the Stipulations.⁶ The Stipulations therefore satisfy the second prong of the Commission's test.

The Commission should reject the untenable positions of opponents, who advocate for proposals that could harm customers and the public interest. For example, Environmental Law & Policy Center, Natural Resources Defense Council, and Ohio Environmental Council ("ELPC/NRDC/OEC") seek to "[d]elay approval of the Stipulation until questions are answered and Staff and stakeholders fully understand the Grid Mod 1 [Cost Benefit Analysis]."⁷ But granting the delay recommended by ELPC/NRDC/OEC would likewise delay the refund to customers of millions of dollars in TCJA-related savings.⁸ Moreover, it is unclear when the parties' understanding of the cost-benefit analysis would be sufficient to satisfy ELPC/NRDC/OEC. Nor is there any indication that Staff does not fully understand the grid modernization cost-benefit analysis. Indeed, Staff witness Schaefer analyzed the grid modernization proposal and concluded that it "*will benefit ratepayers and the public interest.*"⁹ Accordingly, the Commission should not indulge ELPC/NRDC/OEC's request for an indefinite and needless delay.

Additionally, the Commission should reject the Smart Thermostat Coalition's ("STC") recommendation in this proceeding, which seems primarily aimed at increasing their members' already substantial market share at the expense of FirstEnergy's customers. STC is comprised of two entities - Google, LLC, the manufacturer of the Nest Learning Thermostat, and ecobee, an industry leader in smart thermostat technology.¹⁰ STC proposes that FirstEnergy "*be required to provide smart thermostat incentives to customers that have Central AC and Wifi and do not currently own a smart thermostat.*"¹¹ More specifically, STC requests that the Commission force FirstEnergy customers to subsidize \$100 rebates on 210,000 smart thermostats.¹² Factoring in administrative costs associated with its proposal, STC's recommendation would cost FirstEnergy's customers \$30 million over three years.¹³ These costs would be incurred largely to help increase Google and ecobee's share of the smart thermostat market, which

⁶ Company Ex. 1 at 10:25; Company Ex. 2 at 10:14-11:15; Company Ex. 3 at 2-8; Company Ex. 4 at 2:5-12.

⁷ ELPC Exs. 32 and 33C (Public and Confidential Direct Testimony of Curt Volkmann on Behalf of Environmental Law & Policy Center, Natural Resources Defense Council, and Ohio Environmental Council) at 3:9-11.

⁸ Tr. Vol. II at 251:24-252:5.

⁹ Staff Ex. 2 (Direct Testimony of Krystina Schaefer) at 3:4-8.

¹⁰ STC Exs. 4 and 4A (Direct Testimony of Tamara Dzubay) at 1:9-12.

¹¹ STC Exs. 4 and 4A at 16:14-17.

¹² Tr. Vol. II at 293:10-16 (citing Attorney Examiner Ex. 1).

¹³ STC Exs. 4 and 4A at 19:1-4.

(as Attorney Examiner Price uncovered at the hearing) is already substantial (*"Since its founding in 2007, ecobee has acquired more than a third of the smart thermostat market and experienced over 100 percent year-over-year growth, demonstrating strong market demand"*).¹⁴ STC's self-serving criticism of the Stipulations should therefore be dismissed.

Accordingly, in light of the benefits of the Stipulations to customers and the public interest as well as the potential harm that could result from adopting opponent's recommendations, the Commission should reject the calls of opponents to modify or reject the Stipulations.

C. The Stipulations Do Not Violate Any Important Regulatory Principle Or Practice.

None of the individual provisions of the Stipulations are inconsistent with or violate any important Commission principle or practice. Rather, as discussed below, the Stipulations advance important policies and principles, including ensuring the availability to customers of adequate and reliable service and promoting innovation in technology for infrastructure. The Stipulations therefore satisfy the third prong of the Commission's test.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should approve the Stipulations without modification.

Respectfully submitted,



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March 1, 2019

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¹⁴ STC Exs. 4 and 4A at 19:1-4; Tr. Vol. II at 307:15-308:9.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 29th day of February, 2019 to the following:



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Summary: Brief Ohio Energy Group's (OEG) Post-Hearing Brief electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group