

**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
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	:	
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
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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
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**REPLY BRIEF  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**INTRODUCTION**

In accordance with the procedural schedule established by the Attorney Examiners at the conclusion of the hearing, the Commission Staff (Staff), Ohio Edison Company,

The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“Companies”), Direct Energy Services, LLC, The Kroger Company, the Ohio Manufacturers’ Association Energy Group (OMAEG), Environmental Law and Policy Center (ELPC)<sup>1</sup>, Interstate Gas Supply, Inc. (IGS), Ohio Energy Group (OEG), Ohio Cable Telecommunications Association (OCTA), Ohio Consumers’ Counsel (OCC), The Smart Thermostat Coalition (STC), and Ohio Partners for Affordable Energy (OPAE) filed initial briefs on March 1, 2019. In this reply brief, Staff responds to certain arguments made by parties advocating for a modification of the stipulations filed in the consolidated cases.<sup>2</sup>

## **ARGUMENT**

### **I. Criteria for Review of Stipulations**

As Staff explained in its initial brief, the Commission applies the following criteria 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?
- (3) Does the settlement package violate any important regulatory principle or practice?<sup>3</sup>

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<sup>1</sup> Also on behalf of the Natural Resources Defense Council and the Ohio Environmental Council.

<sup>2</sup> The absence of a response to any argument should not be construed to mean agreement by Staff.

<sup>3</sup> *Indus. Energy Consumers of Ohio v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423, 426 (1994).

Staff demonstrated in its initial brief that the Stipulations filed in this case fully comply with each element of the test. While several parties offer criticism of various aspects of the settlement package, none of these arguments has any merit.

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

As Staff showed in its initial brief, the signatory parties comprise a broad range of interests. Moreover, all of the signatory parties regularly participate in regulatory proceedings, and all were represented by experienced counsel.<sup>4</sup> Prior to the filing of the Stipulations, multiple meetings were held, along with one-on-one discussions and information exchanges.<sup>5</sup>

Some parties complain about the settlement process being rushed, focusing solely on the eight-day interval between the initial group meeting and the filing of the initial Stipulation. This argument is flawed for two reasons. First, it ignores the lengthy history that preceded the discussions. The grid modernization aspects of the Stipulations can be traced back to the filing of the Companies' business plan in February of 2016.<sup>6</sup> This was followed by the filing of the Companies' Distribution Platform Modernization Plan in December, 2017.<sup>7</sup> Both proceedings afforded intervening parties opportunities to become familiar with the issues that were ultimately addressed by the Stipulations. The tax

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<sup>4</sup> FirstEnergy Ex. 2 (Direct Testimony of Santino L. Fanelli) at 7.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.*

issues, meanwhile, derive from an investigation initiated by the Commission in January, 2018.<sup>8</sup>

Second, the filing of the initial Stipulation did not end the negotiations. Meetings and discussions continued for over two months after the first Stipulation was filed.<sup>9</sup> These negotiations culminated in the filing of a Supplemental Stipulation that added several customer benefits and safeguards that were not included in the initial Stipulation. 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. Far from being a “done deal,” then, the ultimate settlement package was the product of lengthy negotiations.

Certain parties also allege that the settlement process was tainted because the Staff and Companies met prior to the group meeting to which all parties were invited. This argument lacks any merit. No statute, rule, or decision precludes parties from having preliminary discussions prior to initiating settlement discussions with all parties. While OMAEG cites an Ohio Supreme Court decision<sup>10</sup> discussing the exclusion of a party from settlement negotiations, that decision is inapposite. No party was excluded from the

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<sup>8</sup> FirstEnergy Ex. 4 (Supplemental Testimony of Santino L. Fanelli) at 3-4.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, fn. 2 (1996).

group meetings where the stipulations were discussed. The Companies and Staff even contacted other parties who did not attend the first meeting to encourage participation.<sup>11</sup> The negotiation process was open and transparent. The first prong of the Commission's test for stipulations, then, is fully satisfied.

**B. The Stipulations, as a package, benefit ratepayers and the public interest.**

Staff demonstrated in its initial brief that the settlement package offers significant benefits for ratepayers and the public interest. These benefits include both tax savings that the Companies will return to customers and the grid modernization investments that the Companies will undertake. The parties have carefully crafted a plan that strikes an appropriate balance between competing interests. Modifying the settlement package as some parties desire could alter that balance and possibly make it unfeasible. There would be a real danger of making the grid investments uneconomic. The Commission should reject these arguments in order to preserve the benefits of the Stipulations.

As Staff pointed out in its initial brief, the Stipulations provide for the return to customers of two categories of tax savings.<sup>12</sup> This includes all tax savings deferred from January 1, 2018 until the tax credit savings mechanism goes into effect.<sup>13</sup> The total return to customers will be approximately \$900 million.<sup>14</sup> ELPC, however, advocates for

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<sup>11</sup> FirstEnergy Ex. 1 (Direct Testimony of Santino L. Fanelli) at 7.

<sup>12</sup> Staff Ex. 1 (Testimony of Jonathan L Borer) at 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

a delay in approval of the Stipulations so that parties can gain more information.<sup>15</sup> This would necessarily delay the return of the tax savings to customers. Such delay would harm customers and would not be in the public interest.

Likewise, Staff previously described the significant benefits expected from the grid modernization investments provided in the Stipulations. The plan provides for the deployment of 700,000 advanced meters and a meter data management system (MDMS), along with system upgrades needed to enable data access.<sup>16</sup> These investments will produce operational savings that will be passed on to ratepayers.<sup>17</sup> Additionally, the MDMS will allow customers to access data, giving them more control over their energy usage.<sup>18</sup> Authorized third parties will also be able to access this data, leading to more customized products and services.<sup>19</sup> Once again, any delay in approval of the settlement will delay realization of these benefits for customers.

OMAEG and ELPC criticize the grid modernization plans on the grounds that they may not prove to be cost-effective. This argument ignores the important safeguards that are included in the Stipulations. These safeguards include a set of performance metrics and a mid-deployment review by a third-party consultant.<sup>20</sup> The consultant will conduct an independent cost-benefit analysis, which could result in an adjustment to the level of

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<sup>15</sup> ELPC Ex. 32 (Pub. Testimony of Curt Volkmann) at 3.

<sup>16</sup> Staff Ex. 2 (Testimony of Krystina Schaefer) at 3.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 5.

<sup>20</sup> FirstEnergy Ex. 1 at 22.



operational savings credited to the revenue requirement of the applicable rider.<sup>21</sup> These safeguards will operate to ensure that customers receive value from the grid investments.

ELPC and STC also argue that the grid investment plan is insufficient because it does not include the deployment of smart thermostats. This argument is flawed for several reasons. First, it ignores the fact that thermostats are installed on customer premises and are not part of the grid. Additionally, the argument ignores the fact that smart thermostats may be included in electric utilities' energy efficiency and portfolio plans that are not part of these proceedings.<sup>22</sup> Staff witness Schaefer testified that the Companies' current portfolio plan includes over 60,000 smart thermostats through two different programs.<sup>23</sup> Moreover, the argument ignores the potential for customers to obtain smart thermostats through other channels. Finally, adding additional programs would inflate the costs of the overall package, possibly rendering it uneconomic.

**C. The Stipulations do not violate any important regulatory principle or practice.**

As Staff demonstrated in its initial brief, the Stipulations comport fully with Ohio law and Commission precedent. The settlement package furthers the state policy articulated by the General Assembly, to “encourage innovation and market access for cost-effective supply-and demand-side retail electric service including . . . smart grid

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<sup>21</sup> *Id.*

<sup>22</sup> *In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 through 2019*, Case No. 16-743-EL-POR (Opinion and Order at 12) (Nov. 21, 2017).

<sup>23</sup> Tr. Vol. I at 211.

programs, and implementation of advanced metering infrastructure.”<sup>24</sup> Additionally, the Stipulations are consistent with the Commission’s PowerForward roadmap, which encourages “investments that will enhance the customer electricity experience and promote a distribution grid that is reliable and resilient.”<sup>25</sup> While certain parties advocate modifications to favor their own interests, no party has shown that the settlement package violates any important regulatory principle or practice.

## CONCLUSION

Notwithstanding the criticism from a few parties, the Stipulations fully satisfy the Commission’s test for approval of stipulations. The Commission should adopt the Stipulations without modification.

Respectfully submitted,

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<sup>24</sup> R.C. 4928.02 (D).

<sup>25</sup> FirstEnergy Ex. 2 at 12.

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## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply 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 12<sup>th</sup> day of March, 2019.

/s/ Thomas G. Lindgren

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