

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating) Case No. 16-0481-EL-UNC
Company, and The Toledo Edison Company of)
a Grid Modernization Business Plan.)

In the Matter of the Filing by Ohio Edison)
Company, The Cleveland Electric Illuminating) Case No. 17-2436-EL-UNC
Company, and The 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) Case No. 18-1604-EL-UNC
Company, and The Toledo Edison Company to)
Implement Matters Relating to the Tax Cuts)
and Jobs Act of 2017.)

In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating) Case No. 18-1656-EL-ATA
Company, and The Toledo Edison Company for)
Approval of a Tariff Change.)

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

I. INTRODUCTION

Because of the Supplemental Settlement in these cases, residential consumers will receive \$125 million in greater bill reductions from FirstEnergy's federal tax savings.¹

That is a significant benefit for the 1.9 million FirstEnergy residential consumers represented by the Ohio Consumers' Counsel ("OCC"). The Public Utilities Commission

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.

of Ohio (“PUCO”) should approve the Supplemental Settlement, for the reasons discussed in OCC’s Initial Brief.²

In their briefs, the Ohio Manufacturers Association Energy Group (“OMAEG”) and Kroger, neither of which signed the Supplemental Settlement (or the Original Stipulation filed in November 2018³), claim that the Supplemental Settlement results in a rate design that disproportionately benefits residential customers at the expense of commercial and industrial customers. They are wrong. The rate design embodied in the Supplemental Settlement more equitably allocates FirstEnergy’s tax savings than under the Original Stipulation. The result is that residential consumers now receive a fair share of the tax-related electric bill reductions.

And contrary to assertions by the non-signatory Environmental Groups,⁴ the Supplemental Settlement contains much-needed safeguards that help protect consumers as the grid modernization program (and its costs) commences and progresses.⁵ These safeguards are an important factor supporting a PUCO determination that the Supplemental Settlement, as a package, benefits customers and the public interest.⁶

² If OCC does not respond to an argument made in another party’s initial brief, that fact should not be construed as OCC’s acquiescence to the argument.

³ Stipulation and Recommendation (November 9, 2018) (FirstEnergy Ex. 1) (“Original Stipulation”).

⁴ The Environmental Law & Policy Center, Natural Resources Defense Council, and Ohio Environmental Council.

⁵ The Environmental Defense Fund is a signatory party to the Supplemental Settlement.

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

II. RECOMMENDATIONS

- A. The PUCO should adopt the Supplemental Settlement’s rate design that increases by \$125 million the tax-related electric bill reductions for residential consumers, which is a more equitable allocation of costs and benefits.**

In their initial briefs, OMAEG and Kroger assert that the rate design in the Supplemental Settlement disproportionately benefits residential customers at the expense of commercial and industrial customers.⁷ They claim that the rate design adopted to allocate the tax savings does not benefit ratepayers or the public interest under the PUCO’s settlement standards.⁸ Oddly, OMAEG supports as “reasonable” the rate design in the Original Stipulation – even though OMAEG is not a signatory party to that stipulation.⁹

OMAEG did not present a witness on the allocation issue, so there is no evidence supporting its preference for the original allocation over the new allocation. But OCC did present a witness. OCC witness Ross Willis testified, “The allocation of the tax cut benefits under the Original Settlement was unjust and unreasonable because it did not allocate enough of the tax benefits to residential customers. The Supplemental Settlement, in contrast, will result in a just and reasonable credit to residential consumers’ monthly bills.”¹⁰

The rate design in the Original Stipulation was unreasonable because its allocation was unfair to residential consumers. Residential customers would not receive adequate tax savings under the Original Stipulation, and thus would pay a

⁷ OMAEG Brief at 17-18; Kroger Brief at 21.

⁸ OMAEG Brief at 18; Kroger Brief at 22.

⁹ OMAEG Brief at 18.

¹⁰ See OCC Ex. 1 (Willis Testimony) at 7.

disproportionate share of the costs under the Original Stipulation. The Supplemental Settlement cured this inequity by providing a more reasonable share of tax savings to residential customers.

OMAEG's claim that the rate design in the Supplemental Settlement is unfair to industrial and commercial customers is undermined by the fact that representatives of industrial and commercial customers (Industrial Energy Users-Ohio, Ohio Energy Group, and Ohio Hospital Association) are Signatory Parties to the Supplemental Settlement. Further, contrary to OMAEG's and Kroger's contention,¹¹ the PUCO *has* found that customers and the public interest benefit from settlements with rate designs that more equitably allocate costs and savings among customer classes.¹²

The arguments against the rate design in the Supplemental Settlement are without merit. The PUCO should approve the Supplemental Settlement without modification.

B. The PUCO should accord great weight to the Supplemental Settlement's grid modernization safeguards that help protect consumers.

The Environmental Groups assert that OCC signed the Supplemental Settlement in order to increase residential consumers' share of tax savings "while having to give up the opportunity to seek any substantive changes to the [grid modernization] investments."¹³ A couple matters should be noted in response.¹⁴

¹¹ OMAEG Brief at 19; Kroger Brief at 22.

¹² See, e.g., *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, et al., Opinion and Order (February 23, 2017), ¶119.

¹³ Environmental Groups Brief at 16.

¹⁴ Also, we are not addressing the Environmental Groups' position on the PUCO's settlement standards or settlement process.

We note that OCC did not sign the part of the Supplemental Settlement relating to grid modernization charges to consumers. Rather, OCC's approach was to not oppose the grid provisions of the Settlement.

Significantly, the Environmental Groups ignore the Supplemental Settlement's new consumer safeguards for grid modernization that OCC and others negotiated to help protect consumers in several ways. These safeguards are new and were not contained in the Original Stipulation. As OCC witness Willis testified, OCC agreed to not oppose charges for the initial grid upgrades "in exchange for obtaining improved terms for a future audit of the grid charges...."¹⁵ OCC witness Willis explained that several consumer safeguards in the Supplemental Settlement help to resolve OCC's concern about "smart meters and other grid upgrades that have not yet provided enough value to justify the increased charges to consumers."¹⁶

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.¹⁷ This helps protect consumers against charges for unlawful or unreasonable grid modernization investments. The regulatory review required by the Supplemental Settlement also may result in changes to FirstEnergy's grid modernization investments.

Another consumer protection in the Supplemental Settlement is the process for resolving issues that may arise during regulatory review of FirstEnergy's grid

¹⁵ OCC Ex. 1 (Willis Testimony) at 6.

¹⁶ *Id.*

¹⁷ *See* FirstEnergy Ex. 3 at 3.

modernization project.¹⁸ This process has 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.

Further, the Supplemental Settlement protects consumers in the mid-deployment regulatory review. This review examines 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.¹⁹

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.²⁰ And the Supplemental Settlement increases the amount of FirstEnergy's operational savings from grid upgrades that will be credited to residential consumers, which helps reduce their electric bills.²¹

The Supplemental Settlement benefits customers and the public interest.

III. CONCLUSION

The Supplemental Settlement gives more tax savings to residential customers and contains greater consumer protections than the Original Stipulation. The PUCO should approve the Supplemental Settlement without modification.

¹⁸ *Id.*

¹⁹ *Id.* at 4-5.

²⁰ *Id.* at 5-6.

²¹ *Id.* at 6.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief was served on the persons stated below via electric transmission this 12th day of March 2019.

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Summary: Brief Reply Brief in Support of the Supplemental Settlement by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.