

**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) Case No. 16-481-EL-UNC
Edison Company of a Grid Modernization)
Business Plan)

In the Matter of the Filing by Ohio Edison)
Company, The Cleveland Electric)
Illuminating Company and The Toledo) Case No. 17-2436-EL-UNC
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 Company and The Toledo) Case No. 18-1604-EL-UNC
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 Company, and The Toledo) Case No. 18-1656-EL-ATA
Edison Company for Approval of a Tariff)
Change)

REPLY BRIEF OF DIRECT ENERGY

I. INTRODUCTION

The Stipulation¹ in this case takes care to resolve two major ongoing issues of great importance to the Commission, namely grid modernization in the Companies'² territory and the refund of tax savings to customers. It manages to do so with the agreement of a majority of the parties in this proceeding, representing a variety of interests. The arguments raised by the few remaining opposing parties are misguided and heavy with self-interest. The most egregious of these arguments involves a proposal to require the Companies to either perform a large-scale

¹ Original Stipulation (Nov. 8, 2018), as modified by the Supplemental Stipulation (Jan. 25, 2019).

² Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, collectively.

deployment of smart thermostats or to provide ratepayer-funded rebates to customers for such technologies as part of Grid Mod I. This proposal is unreasonable and must be rejected. The Commission should adopt the Stipulation as proposed by the Signatory Parties.

II. ARGUMENT

The Smart Thermostat Coalition (STC) and, jointly, the Environmental Law & Policy Center, Natural Resources Defense Council, and Ohio Environmental Council (collectively, the Environmental Groups), propose that the Commission modify the Stipulation and require the Companies to provide rebates to customers for smart thermostats. This proposal is unnecessary and will result in significant added costs to Grid Mod I that will jeopardize the Stipulation as a package. This proposal must be rejected.

A. The Commission does not have statutory authority to require the Companies to deploy smart thermostats or provide rebates for such competitive technologies.

Nowhere in either STC’s or the Environmental Group’s briefs is there any discussion about whether it is lawful for the Commission to require the Companies to perform a mass deployment of smart thermostats or to provide large-scale rebates to customers as part of Grid Mod I. Moreover, neither Environmental Groups witness Volkmann nor STC witness Dzubay were able to confirm that such a proposal would be allowed under Ohio law.³ This is because the proposal is clearly unlawful.

It is a well-known policy of the state of Ohio that the retail electric market must be protected from anticompetitive subsidies for competitive services.⁴ The corporate separation

³ Tr. II at 261, 298.

⁴ R.C. 4928.02(H).

policy further states that electric utilities are not to provide competitive services directly.⁵ Such products and services must be offered on a nondiscriminatory basis to abide by state policy.

The proposal by STC and the Environmental Groups goes well beyond the scope of the law. Both witnesses make clear that their proposal is not just for the Companies to provide rebates for smart thermostats as part of Grid Mod I, but that the Commission *require* them to do so:

ELPC witness Volkmann: “I recommend that the Commission *require* the Companies to modify the Grid Mod I scope to include investments in the deployment of smart thermostats in conjunction with the AMI deployment.”⁶

STC witness Dzubay: “I recommend that, during the smart meter rollout, the Companies also be *required* to provide smart thermostat incentives to customers that have Central AC and WiFi and do not currently own a smart thermostat.”⁷

While utilities may certainly offer rebates for smart thermostats and other technologies, such programs must be nondiscriminatory; further, there is no statutory authority for the Commission to require utilities to offer such programs.

B. There is no evidence that a mass deployment of smart thermostats is the only way to realize the benefits of Grid Mod I.

Notwithstanding the fact that the Commission is precluded by law from requiring the inclusion of the opposing parties’ smart thermostat proposal, there is no evidence that such a proposal is even necessary.

As Direct stated in its initial brief, no party disputes the benefits of smart thermostats. STC and the Environmental Groups’ briefs go to great lengths to espouse the virtues of smart

⁵ R.C. 4928.17(A)(1); *see also In re Application of Duke Energy Ohio., Inc. for Approval of its Fourth Amended Corporate Separation Plan*, Case Nos. 14-689-EL-UNC et al, Order on Remand ¶ 8 (“Under a corporate separation plan under R.C. 4928.17(A), nonelectric products and services can only be provided by a utility through a fully separated affiliate.”)

⁶ ELPC Ex. 32, Volkmann Direct at 23; *see also* Tr. II at 261 (“Q: I’m looking at the public version. I don’t know if that helps. So you recommend here that the Commission *require* the Companies to modify Grid Mod I to include investments in the deployment of smart thermostats; is that right? A: Correct.”) (emphasis added).

⁷ STC Ex. 4, Dzubay Direct at 16; *see also* Tr. II at 297 (“Q: If we turn to page 16, lines 15 through 17, you make the recommendation that the Companies be *required* to provide smart thermostat incentives to customers; is that right? A: Correct.”) (emphasis added).

thermostats, but pay no attention to the fact that those benefits are not in dispute. The only dispute is whether it is necessary for a wide-scale deployment of smart thermostats in conjunction with the rollout of smart meters for customers to realize the benefits of Grid Mod I.

Despite the lengthy explanations of the many benefits of smart thermostats, neither the STC or the Environmental Groups' briefs explain why their proposal is the only method "to maximize the benefits to the Companies' customers and the grid and achieve the Commission's PowerForward objectives."⁸ There is a suggestion that a smart meter deployment without a concurrent smart thermostat program "will not produce the maximum benefits in terms of customer savings, peak load reduction, and energy efficiency."⁹ But as the Environmental Groups admit in their brief, they do not know what the actual number of smart thermostats already in use in the Companies' territory is.¹⁰ Additionally, there is already approval for over 60,000 smart thermostats in a separate proceeding.¹¹ There is simply no evidence that the only way to realize the benefits of Grid Mod I is with a required rebate program, when the parties proposing that program do not even know how many smart thermostats are already in use.

The Environmental Groups attempt to persuade the Commission to their side by appealing to the PowerForward Roadmap, specifically to what appears to be an exception to the well-established behind-the-meter/in-front-of-the-meter dichotomy.¹² Under this exception, the Commission stated that it may consider "deploy[ing] *for residential customers only*, a behind the meter application of *minimal invasion* and cost that is *deemed essential* for residential customers to realize the benefits of grid architecture investments."¹³ According to the Environmental

⁸ STC Br. At 18.

⁹ *Id.* at 19.

¹⁰ Environmental Groups Br. at 32.

¹¹ *Id.*

¹² *Id.* at 35-36.

¹³ *Id.*; *see also* Roadmap at 24 (emphasis added).

Groups, this “backstop,” as it is referred to in the Roadmap, describes the very proposal they are making here – to provide smart thermostats to customers throughout the Companies’ territory as part of Grid Mod I. What the Environmental Groups fail to discuss are the various limitations and restrictions made explicit in the Roadmap to this backstop, both emphasized above and omitted entirely by the Environmental Groups’ brief. The Roadmap makes clear that this backstop would be given “due consideration” (not an automatic stamp of approval) “to a request by an EDU” for a behind the meter application; nowhere in the Roadmap does the Commission suggest that it will unilaterally require an EDU to institute such a backstop.¹⁴ The proposal by the Environmental Groups and STC to modify the Stipulation and require the subsidization of wide-scale smart thermostat deployment fails to satisfy these elements on numerous fronts: first and foremost, this is not a request by an EDU, it is an attempt by stakeholders with an outside interest to force their will onto the Companies and other Signatory Parties. Second, no one other than these two opposing parties (or group of parties) has deemed such deployment essential; one would presume that if they had, it would have been part of the Stipulation from the beginning. Third, the proposal sidesteps the idea of “due consideration” and instead asks the Commission to put the proposal in place without any discussion of the ramifications, other than the purported “benefits.”

Further, the Roadmap lists two “social policy justifications” that must be in place before an EDU would be allowed to participate in behind-the-meter customer applications:

(i) in circumstances where there is social inequity in the deployment of customer applications; and (ii) in circumstances where the application is deemed crucial to advance the state, but the marketplace has not developed to allow for that application to be deployed competitively to customers.¹⁵

¹⁴ *Id.*

¹⁵ Roadmap at 23-24.

The Environmental Groups completely ignore these two requirements, let alone try to explain how their proposal could possibly satisfy them. Setting aside the fact that again, this is not a request by an EDU, there is no evidence on the record to suggest that there is “social inequity” in the deployment of smart thermostats, nor that “the marketplace has not developed” to the point of smart thermostats being deployed competitively to customers. Smart thermostats are available at numerous retail outlets for customers to purchase of their own accord. A number of CRES suppliers provide smart thermostats to customers at reduced rates. There are programs throughout the state that provide rebates to low-income customers for smart thermostats. The suggestion that customers are incapable of acquiring smart thermostats without a Commission-mandated program is, at best, misguided, and at worst, deliberately deceitful.

C. The smart thermostat program will raise the costs of Grid Mod I by at least \$30 million.

By STC witness Dzubay’s own estimates, the cost of the smart thermostat program as proposed will be at least \$30 million.¹⁶ Given that agreement to the Stipulation rests in large part on the balance of costs vs. benefits, an additional \$30 million jeopardizes that balance and could call the entire Stipulation into question, particularly when there is no evidence that such additional cost will bring guaranteed added benefits. The proposal is unnecessary and would inflate the cost of Grid Mod I simply to satisfy the self-interest of a few specific parties. It must be rejected.

III. CONCLUSION

The Stipulation satisfies the Commission’s three-part test for approval of settlements. There are no grounds for the Commission to modify the Stipulation as proposed by the opposing parties. It is reasonable and should be adopted without modification.

¹⁶ STC Br. at 20.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail this 12th day of March, 2019, to the following:

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