

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE QUADRENNIAL  
REVIEW REQUIRED BY R.C. 4928.143(E)  
FOR THE ELECTRIC SECURITY PLANS OF  
OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON  
COMPANY.

CASE NO. 20-1476-EL-UNC

IN THE MATTER OF THE REVIEW OF THE  
DEMAND SIDE MANAGEMENT AND  
ENERGY EFFICIENCY RIDER OF OHIO  
EDISON COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY,  
AND THE TOLEDO EDISON COMPANY.

CASE NO. 13-2173-EL-RDR

CASE NO. 14-1947-EL-RDR

CASE NO. 15-1843-EL-RDR

CASE NO. 16-2167-EL-RDR

CASE NO. 17-2277-EL-RDR

IN THE MATTER OF THE DETERMINATION  
OF THE EXISTENCE OF SIGNIFICANTLY  
EXCESSIVE EARNINGS UNDER THE  
ELECTRIC SECURITY PLANS OF OHIO  
EDISON COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY,  
AND THE TOLEDO EDISON COMPANY.

CASE NO. 18-857-EL-UNC

CASE NO. 19-1338-EL-UNC

CASE NO. 20-1034-EL-UNC

CASE NO. 21-586-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. 21-1127-EL-ATA

### OPINION AND ORDER

Entered in the Journal on December 1, 2021

#### I. SUMMARY

{¶ 1} In this Opinion and Order, the Commission adopts the global stipulation and recommendation submitted by the parties, which resolves all issues in these proceedings.

## II. APPLICABLE LAW

{¶ 2} Ohio Edison Company (OE), The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) are electric distribution utilities (EDUs) as defined by R.C. 4928.01(A)(6), and public utilities as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO may be either a market rate offer (MRO), in accordance with R.C. 4928.142, or an electric security plan (ESP), in accordance with 4928.143.

{¶ 4} Pursuant to the directives of R.C. 4928.143(F), the Commission is required to evaluate annually the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility.

{¶ 5} Moreover, pursuant to R.C. 4928.143(E), if a Commission-approved ESP has a term that exceeds three years from the effective date of the plan, the Commission must test the plan in the fourth year to determine whether the ESP, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate during the remaining term of the plan as compared to the expected results that would otherwise apply under R.C. 4928.142, i.e., under an MRO. The Commission must also determine the prospective effect of the ESP to determine if that effect is substantially likely to provide the EDU with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that face comparable business and financial risk, with adjustments for capital structure as may be appropriate.

### III. HISTORY OF THE PROCEEDINGS

#### A. SEET Procedural History

{¶ 6} On May 15, 2018, FirstEnergy filed an application in Case No. 18-857-EL-UNC for the administration of the significantly excessive earnings test (SEET), as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2017.

{¶ 7} In Case No. 18-857-EL-UNC (*2017 SEET Review*), a stipulation and recommendation between FirstEnergy, Ohio Energy Group (OEG), and Staff was filed on October 26, 2018. On March 20, 2019, the Commission issued its Opinion and Order in this matter, adopting the stipulation, as modified, in the *2017 SEET Review*. In the Opinion and Order, the Commission found that it was appropriate to exclude the revenues from the distribution modernization rider (Rider DMR) from the 2017 SEET, consistent with the Commission's orders in FirstEnergy's latest ESP (ESP IV). *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶212, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶81.

{¶ 8} On July 15, 2019, Ohio Consumers' Counsel (OCC) appealed the Commission's decision in the *2017 SEET Review*, asserting that the Commission unreasonably and, under R.C. 4928.143(F), unlawfully failed to consider the Rider DMR revenues under OE's ESP, which caused ESP profits to be understated.

{¶ 9} On July 15, 2019, FirstEnergy filed an application in Case No. 19-1338-EL-UNC (*2018 SEET Review*) for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2018.

{¶ 10} On May 15, 2020, FirstEnergy filed an application in Case No. 20-1034-EL-UNC (*2019 SEET Review*) for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2019.

{¶ 11} Subsequently, on September 4, 2020, the Commission opened Case No. 20-

1476-EL-UNC (*Quadrennial Review*) in order to conduct the quadrennial review for FirstEnergy required by R.C. 4928.143(E). By Entry issued on September 4, 2020, the attorney examiner consolidated that case with the *2018 SEET Review* and *2019 SEET Review* for administrative efficiency, established a procedural schedule, and set the matters for hearing. On October 29, 2020, the attorney examiner established a new procedural schedule.

{¶ 12} On December 1, 2020, the Supreme Court of Ohio issued its decision in OCC's appeal of the *2017 SEET Review*, remanding with instructions to conduct a new SEET proceeding and include the Rider DMR revenue in the analysis. Specifically, the Court held that the Rider DMR revenue must be included in the annual SEET review pursuant to R.C. 4928.143(F). *In re Determination of Existence of Significantly Excessive Earnings for 2017 Under Elec. Sec. Plan of Ohio Edison Co.*, 162 Ohio St.3d 651, 2020-Ohio-5450, 166 N.E.3d 1191 at ¶¶ 14-21.

{¶ 13} On January 12, 2021, the attorney examiner consolidated the *2017 SEET Review* with the *2018 SEET Review*, *2019 SEET Review*, and *Quadrennial Review*, *sua sponte*, in the spirit of administrative efficiency and ordered that the procedural schedule should remain intact, unless otherwise ordered by the Commission.

{¶ 14} On February 4, 2021, OCC filed a motion of an indefinite continuance of the procedural schedule and evidentiary hearing. OCC contended that Senate Bill 10, pending before the General Assembly, would amend R.C. 4928.143(F), which governs the calculation of the SEET.

{¶ 15} On February 26, 2021, the attorney examiner denied the motion for an indefinite continuance and modified the procedural schedule. The attorney examiner also extended the date for intervenor testimony and the deadline for service of discovery.

{¶ 16} On May 27, 2021, a prehearing conference was held to discuss mutually agreeable dates for the hearing. Subsequently, on May 28, 2021, the attorney examiner

issued an Entry setting the procedural schedule and scheduling the hearing for September 22, 2021.

{¶ 17} Further, on July 23, 2021, the Companies filed a motion of a 90-day extension of the remaining procedural schedule. The Companies represented that OCC and Northeast Ohio Public Energy Council supported a 14-day extension and opposed a 90-day extension, while none of the remaining parties contacted by the Companies oppose the extension.

{¶ 18} On July 23, 2021, OEG and OCC timely filed supplemental direct testimony.

{¶ 19} By Entry issued July 26, 2021, the attorney examiner granted the request for a 14-day extension of the procedural schedule, set a deadline for memoranda contra the Companies' request for a 90-day extension, and scheduled a prehearing conference for August 2, 2021, in order to discuss the Companies' request.

{¶ 20} On July 26, 2021, OCC filed a memorandum contra the Companies' motion for a 90-day extension of the procedural schedule, primarily questioning whether such a lengthy extension was warranted. No other memoranda contra were filed.

{¶ 21} The prehearing conference occurred, as scheduled, on August 2, 2021. During the conference, the majority of parties did not contest the Companies' request for a 90-day extension in order to conduct settlement negotiations.

{¶ 22} On August 9, 2021, the attorney examiner granted the request for an additional extension, extended the deadline for supplemental intervenor testimony to October 18, 2021, and scheduled the evidentiary hearing for November 29, 2021. The attorney examiner also ordered that the Companies should file correspondence providing the status of settlement negotiations every 30 days.

{¶ 23} On October 15, 2021, the Companies filed a motion for a 14-day extension of the remaining case schedule to allow for ongoing settlement discussions. The Companies also requested expedited treatment, noting the October 18, 2021 deadline for intervenor

supplemental testimony. The Companies certified that no parties object to the motion or to the expedited treatment of the motion.

{¶ 24} On October 18, 2021, the attorney examiner granted the Companies' motion for a 14-day extension of the procedural schedule, including the date for the filing of intervenor testimony. The attorney examiner also rescheduled the evidentiary hearing for December 13, 2021, at 10:00 a.m.

***B. Demand Side Management and Energy Efficiency Rider Procedural History***

{¶ 25} The Commission has approved several riders in FirstEnergy's ESP proceedings, some of which require the Companies to file semi-annual updates no later than December 1st and June 1st of each year and are subject to an annual audit by the Commission. One of these Commission-approved riders is the Demand Side Management and Energy Efficiency Rider (Rider DSE). *In re FirstEnergy*, Case No. 08-935-EL-SSO, et al.; *In re FirstEnergy*, Case No. 10-388-EL-SSO; *In re FirstEnergy*, Case No. 12-1230-EL-SSO; *In re FirstEnergy*, Case No. 14-1297-EL-SSO. Rider DSE recovers costs incurred by the Companies associated with energy efficiency, peak demand reduction, and demand side management programs.

{¶ 26} On March 24, 2015, FirstEnergy filed an application in Case No. 13-2173-EL-RDR, in support of Staff's 2014 annual review of Rider DSE (*2014 Rider DSE Review*).

{¶ 27} On March 31, 2016, FirstEnergy filed an application in Case No. 14-1947-EL-RDR, in support of Staff's 2015 annual review of Rider DSE (*2015 Rider DSE Review*).

{¶ 28} On March 31, 2017, FirstEnergy filed an application in Case No. 15-1843-EL-RDR, in support of Staff's 2016 annual review of Rider DSE (*2016 Rider DSE Review*).

{¶ 29} On March 30, 2018, FirstEnergy filed an application in Case No. 16-2167-EL-RDR, in support of Staff's 2017 annual review of Rider DSE (*2017 Rider DSE Review*).

{¶ 30} On March 29, 2019, FirstEnergy filed an application in Case No. 17-2277-EL-RDR, in support of Staff's 2018 annual review of Rider DSE (*2018 Rider DSE Review*).

{¶ 31} On June 28, 2018, Staff filed its review and recommendations in the *2014 Rider DSE Review* and *2015 Rider DSE Review*. Subsequently, on July 29, 2019, Staff filed its review and recommendation in the *2016 Rider DSE Review*.

{¶ 32} FirstEnergy filed comments in response to Staff's recommendations in the *2014 Rider DSE Review* and *2015 Rider DSE Review* on February 28, 2019.

{¶ 33} By Entry issued January 29, 2020, the attorney examiner consolidated the *2014 Rider DSE Review*, *2015 Rider DSE Review*, *2016 Rider DSE Review*, *2017 Rider DSE Review*, and *2018 Rider DSE Review* and established a procedural schedule.

{¶ 34} On June 26, 2020, the attorney examiner rescheduled the hearing to commence on December 14, 2020; however, on November 2, 2020, the attorney examiner issued an Entry indicating that a new hearing date would be set by subsequent entry.

{¶ 35} On May 27, 2021, a prehearing conference was held to discuss mutually agreeable dates for the hearing.

{¶ 36} On May 28, 2021, the attorney examiner established a new procedural schedule with the evidentiary hearing to commence on September 22, 2021.

{¶ 37} On July 23, 2021, the Companies filed a motion of a 90-day extension of the remaining procedural schedule. The Companies represented that OCC supports a 14-day extension and opposes a 90-day extension while none of the remaining parties contacted by the Companies oppose the extension.

{¶ 38} By Entry issued July 26, 2021, the attorney examiner granted the request for a 14-day extension of the procedural schedule, set a deadline for memoranda contra the

Companies' request for a 90-day extension, and scheduled a prehearing conference for August 2, 2021, in order to discuss the Companies' request.

{¶ 39} On July 30, 2021, OCC filed a memorandum contra the Companies' motion for a 90-day extension of the procedural schedule, primarily questioning whether such a lengthy extension was warranted after the 14-day extension had already been granted. No other memoranda contra were filed.

{¶ 40} The prehearing conference occurred, as scheduled, on August 2, 2021. During the conference, the majority of parties did not contest the Companies' request for a 90-day extension in order to conduct settlement negotiations.

{¶ 41} On August 9, 2021, the attorney examiner granted the request for an additional extension and scheduled the evidentiary hearing for December 8, 2021. The attorney examiner also ordered that the Companies should file correspondence providing the status of settlement negotiations every 30 days.

{¶ 42} On October 15, 2021, the Companies filed a motion for a 14-day extension of the remaining case schedule to allow for ongoing settlement discussions. The Companies also requested expedited treatment. The Companies certified that no parties object to the motion or to the expedited treatment of the motion.

{¶ 43} On October 18, 2021, the attorney examiner granted the Companies' motion for a 14-day extension of the procedural schedule and rescheduled the evidentiary hearing for December 22, 2021.

### ***C. Consolidated Cases Procedural History***

{¶ 44} On May 17, 2021, FirstEnergy filed an application in Case No. 21-586-EL-UNC (2020 SEET Review) for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2020.



{¶ 45} On November 1, 2021, the Companies filed an application in Case No. 21-1127-EL-ATA (*Tariff Case*) for a tariff adjustment, pursuant to R.C. 4909.18.

{¶ 46} On November 1, 2021, the Companies filed a stipulation and recommendation (Global Stipulation), which was agreed to by all parties in the proceedings, in the *2014 Rider DSE Review*, *2015 Rider DSE Review*, *2016 Rider DSE Review*, *2017 Rider DSE Review*, *2018 Rider DSE Review*, *2017 SEET Review*, *2018 SEET Review*, *2019 SEET Review*, *Quadrennial Review*, *2020 SEET Review*, and *Tariff Case*.

{¶ 47} On November 2, 2021, the Companies filed a motion to consolidate the *2014 Rider DSE Review*, *2015 Rider DSE Review*, *2016 Rider DSE Review*, *2017 Rider DSE Review*, *2018 Rider DSE Review*, *2017 SEET Review*, *2018 SEET Review*, *2019 SEET Review*, *Quadrennial Review*, *2020 SEET Review*, and *Tariff Case*.

{¶ 48} On November 9, 2021, the attorney examiner granted the motion to consolidate the cases and directed that a hearing on the Global Stipulation be scheduled for November 22, 2021. The attorney examiner also directed that testimony in support of the Global Stipulation be filed by November 15, 2021.

{¶ 49} On November 22, 2021, the hearing was held as scheduled. Testimony in support of the Global Stipulation was provided by Tamara Turkenton on behalf of Staff, Matthew Kahal on behalf of OCC, Lane Kollen on behalf of the OEG, and Santino Fanelli on behalf of the Companies.

#### IV. DISCUSSION

##### A. *Summary of the Stipulation*

{¶ 50} As noted above, a Global Stipulation, signed by all parties, was filed on

November 1, 2021. The Global Stipulation<sup>1</sup> provides, inter alia:

**1. 2017-2019 SEET CONSUMER REFUNDS**

{¶ 51} The Companies agree to residential customer refunds in the amount of approximately \$50.8 million, which will be refunded equally to all residential customers on a one-time basis. The Companies also agree non-residential customer refunds in the amount of approximately \$45.3 million, which will be credited on a per MWh basis over a period of six months. These refunds shall begin within thirty days of the Commission order approving the Global Stipulation and shall be subject to final reconciliation. (Jt. Ex. 1 at 11.)

{¶ 52} The Companies' individual earned returns on equity shall be the values calculated in the testimony of the Companies filed on March 1, 2021, in Case No. 18-857-EL-UNC et al. The SEET thresholds shall be 16.7% for 2017; 15.8% for 2018; and 24.9% for 2019. (Jt. Ex. 1 at 10.)

**2. FUTURE CONSUMER RATE REDUCTIONS**

{¶ 53} The aggregate rate reductions for all customers will total \$80 million in 2022; \$60 million in 2023; \$45 million in 2024; and \$25 million in 2025, subject to the provisions of this Global Stipulation. Residential customers will receive 52.9 percent of these rate reductions, and the remaining share of reductions will be allocated to non-residential customers. The rate reductions will be subject to reconciliation. Any changes in the law after the date of the Global Stipulation will not eliminate or reduce these rate reductions. (Jt. Ex. 1 at 12-13.)

**3. CONSUMER RATE CREDIT RIDER**

{¶ 54} The Companies filed an application for tariff approval proceeding to establish a new Consumer Rate Credit Rider (Rider CRC) for each Company, which is not

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<sup>1</sup> The following is a summary of the Phase 3 Stipulation and is not intended to supersede or replace the Phase 3 Stipulation.

for an increase in rates.<sup>2</sup> The 2017-2019 SEET customer refunds and future customer rate reductions described above will be provided to customers through Rider CRC. (Jt. Ex. 1 at 13-14.)

#### **4. BASE RATE CASE**

{¶ 55} The Companies will file their next base rate case in May 2024. The Signatory Parties agree that they will not file a case to adjust the base distribution rates for any of the companies before May 2024. If a non-Signatory Party or the Commission files a case to adjust base distribution rates before May 2024 and the new base distribution rates cause a net revenue reduction for the Companies, then future rate reductions shall be reduced by the amount of the net revenue reduction. The Global Stipulation describes the calculation of net revenue reduction. The net revenue reduction may not result in a charge to consumers. (Jt. Ex. 1 at 14-15.)

#### **5. 2020 SEET TEST (CASE NO. 21-586-EL-UNC)**

{¶ 56} The Signatory Parties agree that the Companies did not have significantly excessive earnings in 2020 (Jt. Ex. 1 at 15).

#### **6. 2021-2024 SEET CALCULATIONS**

{¶ 57} The Signatory Parties shall not challenge the Companies' calculation of their individual SEET returns on equity for the Companies' 2021-2024 SEET proceedings, consistent with the methodology used in the Companies' direct and supplemental testimony and second supplemental testimony of Tracy M. Ashton.<sup>3</sup> However, the Signatory Parties reserve the right to challenge the calculation based on shared savings, PJM revenues, or other issues relating to new or changed circumstances after the Global

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<sup>2</sup> This ATA proceeding was consolidated with the other proceedings in this matter by the attorney examiner on November 9, 2021. *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 13-2173-EL-RDR, et al., Entry (Nov. 9, 2021).

<sup>3</sup> The testimony was filed in Case Nos. 18-857-ELUNC, 19-1338-EL-UNC, 20-1034-EL-UNC, and 20-1476-EL-UNC on March 1, 2021, and April 20, 2021, respectively.

Stipulation is approved. There will be no goodwill adjustments in the calculations for SEET years 2021-2024. Additionally, the future consumer rate reductions will be included as reductions to SEET net income. (Jt. Ex. 1 at 15-16.)

**7. QUADRENNIAL REVIEW (CASE NO. 20-1476-EL-UNC)**

{¶ 58} The Signatory Parties agree that the Companies' current ESP IV passes all required statutory tests, including the prospective SEET and the more favorable in the aggregate tests as set forth in R.C. 4928.143(E), as part of the ESP Quadrennial Review. The current ESP IV shall continue through its authorized term of May 31, 2024. The Signatory Parties reserve the right to raise arguments in the Companies' annual SEET filings for years 2021-2024, subject to other provisions of the Global Stipulation. (Jt. Ex. 1 at 16-17.)

**8. RIDER DSE/LOST DISTRIBUTION REVENUE**

{¶ 59} The Companies shall not seek to recover Lost Distribution Revenues (LDR) over the remaining term of ESP IV. The Signatory Parties agree there are no additional adjustments/refunds to consumers under Rider DSE for the years 2014-2018, and they will not seek or recommend further collection from customers or any refund of LDR during the ESP IV term. (Jt. Ex. 1 at 17.)

**9. RIDER ELR**

{¶ 60} The Signatory parties agree that the Economic Load Response Program Rider (Rider ELR) is not an energy efficiency program that should be terminated pursuant to R.C. 4928.66(G). No Signatory Party may oppose the continuation of Rider ELR or any associated cost recovery in Case Nos. 16-743-EL-POR and 20-1673-EL-RDR. The Signatory Parties shall withdraw any filings inconsistent with that obligation upon approval of the Global Stipulation. (Jt. Ex. 1 at 17-18.)

## 10. ADDITIONAL PROVISIONS

{¶ 61} Within 14 days of filing the Global Stipulation, the Companies will discuss with all interested stakeholders whether the Companies should offer their customers the option of contacting the Companies by electronic means as set forth in Ohio Adm.Code 4901:1-10-24(F)(4) (Jt. Ex. 1 at 18).

{¶ 62} The Companies attest that they have no side deal with any Signatory Party or associated entity regarding the settlement or litigation of the above captioned cases. The Companies have no knowledge of any side deal between their affiliates and any Signatory Party or associated entity. The Companies shall immediately disclose any side deal to all Signatory Parties if they obtain knowledge of any such arrangement. (Jt. Ex. 1 at 18.)

### B. Consideration of the Stipulation

{¶ 63} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are afforded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

{¶ 64} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable 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?

{¶ 65} 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.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 66} The Commission finds that the Global Stipulation meets the first prong of the three-part test. We note that, while diversity of parties to the settlement is not necessary in all settlements, diversity of interests can be a factor in favor of approval a stipulation; and, in this case, the signatory parties represent varied and diverse interests, including residential, commercial, and industrial consumers, a low-income consumer advocate, hospitals, competitive retail electric service providers and Commission Staff (Company Ex. 1 at 4). Staff witness Turkenton and Company witness Fanelli testified that all parties were invited to settlement meetings which took place on seven different occasions over several months (Staff Ex. 1 at 5; Co. Ex. 1 at 4). Staff witness Turkenton noted that the parties to the settlement were represented by competent and experienced counsel (Staff Ex. 1 at 6). Mr. Fanelli also represented that the Companies did not enter into any side deals in connection with the Global Stipulation and that the Companies have no knowledge of any side deals by any of their affiliates regarding the Global Stipulation (Co. Ex. 1 at 5). Accordingly, the Commission finds that the evidence in the record demonstrates that the Global Stipulation is the product of serious bargaining among capable knowledgeable

parties. The Commission further finds that the Global Stipulation, as a package, benefits ratepayers and the public interest.

{¶ 67} Further, the Commission finds that the Global Stipulation, as a package, benefits ratepayers and the public interest. Staff witness Turkenton testified that the Global Stipulation will provide direct benefits of \$306 million to the Companies' customers, with \$96 million to be refunded to customers in six months and \$210 million to be provided through annual rate reductions from 2022 through 2025. Ms. Turkenton notes that these direct benefits will further the state policy to ensure the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service (Staff Ex. 1 at 7; R.C. 4928.143.02(A)). OCC witness Kahal adds that residential customers will receive 52.9 percent of the refunds and future bill credits (OCC Ex. 1). OEG witness Kollen testified that the Global Stipulation results in a fair, just, and reasonable resolution of the issues raised in these proceedings (OEG Ex. 1 at 8).

{¶ 68} Staff witness Turkenton and Company witness Fanelli note that the Global Stipulation resolves a number of additional issues, including adjustments for excessive earnings pursuant to R.C. 4928.143(F), the quadrennial review ordered by the Commission under R.C. 4928.143(E), the timing of the Companies next distribution base rate case, and the continuation of Rider ELR (Staff Ex. 1 at 7-8; Co. Ex. 1 at 6). OCC witness Kahal testified that additional benefits of the Global Stipulation include protection of the credits and refunds against changes in law, promotion of public transparency and prohibition against the collection of lost distribution revenues during ESP IV (OCC Ex. 1). OEG witness Kollen and Company witness Fanelli testified that an additional benefit of the Global Stipulation is the resolution of the methodology for calculating the Companies' individual returns on equity in their 2021-2024 SEET filings, including the exclusion of goodwill adjustments (OEG Ex. 1 at 6; Co. Ex. 1 at 6, 7). Company witness Fanelli emphasized that the continuation of ESP IV benefits consumers and the public by providing clarity and stability through the procurement of generation service for non-shopping customers through competitive auctions, shareholder funded programs to support economic development and low-income

customers and the provisions to support grid modernization (Co. Ex. 7-8). Therefore, based upon the evidence in the record, the Commission finds that the Global Stipulation meets the second prong of the three-part test.

{¶ 69} Finally, the Commission finds that the record demonstrates that the Global Stipulation does not violate any important regulatory principles or practices. Staff witness Turkenton stated that the Global Stipulation does not violate any important regulatory principle or practice (Staff Ex. 1 at 8). Company witness Fanelli agreed that the Global Stipulation does not violate any important regulatory principles or practices and added that the Global Stipulation is consistent with state policy to: ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory and reasonably priced retail electric service; protect at-risk populations and facilitate the state's effectiveness in the global economy (Co. Ex 1 at 8; R.C. 4928.02(A), (L), and (N)).

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 70} The Companies are electric distribution utilities and public utilities as defined by R.C. 4928.01 and R.C. 4905.02, respectively. As such, the Companies are subject to the jurisdiction of this Commission.

{¶ 71} On March 24, 2015, FirstEnergy filed an application for the *2014 Rider DSE Review*.

{¶ 72} On March 31, 2016, FirstEnergy filed an application for the *2015 Rider DSE Review*.

{¶ 73} On March 31, 2017, FirstEnergy filed an application for the *2016 Rider DSE Review*.

{¶ 74} On March 30, 2018, FirstEnergy filed an application for the *2017 Rider DSE Review*.



{¶ 75} On May 15, 2018, FirstEnergy filed an application for the *2017 SEET Review*.

{¶ 76} On March 20, 2019, the Commission issued an Opinion and Order for the *2017 SEET Review*. OCC appealed this decision on July 15, 2019.

{¶ 77} On March 29, 2019, FirstEnergy filed an application for the *2018 Rider DSE Review*.

{¶ 78} On July 15, 2019, FirstEnergy filed an application for the *2018 SEET Review*.

{¶ 79} On May 15, 2020, FirstEnergy filed an application for the *2019 SEET Review*.

{¶ 80} On September 4, 2020, the Commission opened the case for the *Quadrennial Review*.

{¶ 81} On December 1, 2020, the Supreme Court of Ohio issued its decision in the *2017 SEET Review* and remanded the case with instructions to conduct a new SEET proceeding.

{¶ 82} On May 27, 2021, FirstEnergy filed an application for the *2020 SEET Review*.

{¶ 83} On November 1, 2021, FirstEnergy filed an application for the *Tariff Case*.

{¶ 84} On November 1, 2021, the Companies filed the Global Stipulation.

{¶ 85} On November 9, 2021, the attorney examiner consolidated the cases.

{¶ 86} On November 22, 2021, the hearing was held, as scheduled. Testimony in support of the Global Stipulation was provided by Tamara Turkenton on behalf of Staff, Matthew Kahal on behalf of OCC, Lane Kollen on behalf of the OEG, and Santino Fanelli on behalf of the Companies.

{¶ 87} The Global Stipulation submitted by the parties in these cases meets the criteria used by the Commission to evaluate stipulations, represents a just and reasonable resolution of the issues in these proceedings, and should be adopted.

## VI. ORDER

{¶ 88} It is, therefore,

{¶ 89} ORDERED, That the Global Stipulation be adopted and approved. It is, further,

{¶ 90} ORDERED, That the parties take all necessary steps to carry out the terms of the Global Stipulation and this Opinion and Order. It is, further,

{¶ 91} ORDERED, That nothing in this Opinion and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 92} ORDERED, That a copy of this Opinion and Order be served upon all parties and interested persons of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

GAP/JWS/kck

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**Case No(s). 20-1476-EL-UNC, 13-2173-EL-RDR, 14-1947-EL-RDR, 15-1843-EL-RDR, 16-2167-EL-RDR, 17-2277-EL-RDR, 18-0857-EL-UNC, 19-1338-EL-UNC, 20-1034-EL-UNC, 21-0586-EL-UNC, 21-1127-EL-ATA**

Summary: Opinion & Order adopting the global stipulation and recommendation submitted by the parties, which resolves all issues in these proceedings electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio