

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION  
FOR ESTABLISHMENT OF A UNIQUE  
ARRANGEMENT FOR TOSHI CMC, LLC.

CASE NO. 21-1205-EL-AEC

## FINDING AND ORDER

Entered in the Journal on June 1, 2022

### I. SUMMARY

{¶ 1} The Commission approves the Joint Stipulation and Recommendation, filed May 5, 2022, related to Toshi CMC, LLC's request for a unique arrangement with Ohio Edison Company.

### II. PROCEDURAL HISTORY

{¶ 2} Toshi CMC, LLC (Toshi) is a mercantile customer, as defined by R.C. 4928.01(A)(19) as a commercial or industrial customer that consumes more than 700,000 kilowatt hours of electricity per year for nonresidential use, or the customer is part of a national account involving multiple facilities in one or more states. Ohio Adm.Code 4901:1-38-03 and 4901:1-38-05 provide rules for the filing of applications, pursuant to R.C. 4905.31, for approval of economic development and unique arrangements that further the policy of the state of Ohio embodied in R.C. 4928.02.

{¶ 3} The Ohio Edison Company (Ohio Edison), is electric distribution utility, as defined in R.C. 4928.01(A)(6), and a public utility as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On November 29, 2021, Toshi filed an application pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05 (Application) seeking approval of a reasonable arrangement with Ohio Edison to enter a rate structure which mirrors FirstEnergy Corp.'s (FirstEnergy) non-market-based services rider opt-out pilot program. Toshi states that this arrangement will result in a zero delta for consumers and would allow Toshi to make substantial capital

investment, expand employment, provide employment benefits, and undertake operations which require access to and successful deployment of capital.

{¶ 5} Also on November 29, 2021, Toshi filed a motion for protective order concerning certain capital expenditure, employee count, and wage information in its Application. In its motion, Toshi argues that this information is competitively sensitive, proprietary information protected as trade secrets under R.C. 1333.61(D) and that the Commission should order it be kept confidential in accordance with Ohio Adm.Code 4901-1-24.

{¶ 6} On December 20, 2021, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in the case.

{¶ 7} On January 4, 2022, Toshi filed a memorandum contra OCC's motion to intervene.

{¶ 8} On January 11, 2022, OCC filed a reply to Toshi's memorandum contra and in support of its motion to intervene.

{¶ 9} On January 24, 2022, Toshi filed notice of letters of support for a reasonable arrangement. Such letters are from various parties, indicating support for the arrangement.

{¶ 10} On May 5, 2022, Toshi filed a Stipulation and Recommendation (Stipulation) entered into by Toshi and Staff. The Stipulation provides that, while the agreement is between Staff and Toshi, OCC indicates that it does not oppose the Stipulation, and likewise, while not a party, FirstEnergy also does not oppose the Stipulation or Toshi's request for a unique arrangement.

### **III. REVIEW OF THE PROPOSED ARRANGEMENT**

{¶ 11} R.C. 4905.31 provides that a public utility may enter into a reasonable arrangement with one of its customers and that a public utility may request recovery of costs

incurred in conjunction with any economic development and job retention program of the utility. Ohio Adm.Code 4901:1-38-03 authorizes an electric utility, with one or more of its mercantile customers, to file an application for approval to enter into an economic development arrangement and prescribes certain verifiable information to be included within the application. Ohio Adm.Code 4901:1-38-05 authorizes either an electric utility or a mercantile customer to file an application for approval to enter into a unique arrangement, but unlike the economic development arrangement, no certain verifiable information is required of the applicant by our rules other than proof that the proposed arrangement is “reasonable” and that information is submitted detailing the rationale for the arrangement. Additionally, the arrangement must not violate R.C. 4905.33 or R.C. 4905.35, which prohibit the utility from providing service at discriminatory rates, or for free, or less than actual cost for the purpose of destroying competition.

{¶ 12} Toshi is a mercantile customer served by Ohio Edison in its certified service territory. Toshi anticipates significant investment of its initial capital to facilitate development of technology sites that could be utilized for different data processing capabilities, including crypto currency mining operations, covering a total of 150,000 square feet at three Ohio locations. Toshi plans to use warehouse and factory space that in some cases has previously been distressed or blighted and therefore difficult to market to tenants. Toshi states that it can restore these properties to productive use and avoid the need for significant new infrastructure that would otherwise be necessary to serve large energy consumers. Toshi’s three facilities are located in Norwalk and Sandusky, Ohio. For both locations, Toshi states it has worked with representatives of Norwalk to rehabilitate a facility on Ontario Street. Further, Toshi states the facility it plans to utilize in Sandusky, Ohio, is a historic manufacturing plant that has been largely unused for a decade. Toshi states, therefore, that its returning the facility to productive use will be a material benefit to the local community. Toshi states that crypto currency mining, which is performed by using various and sophisticated computers solving extremely complex computations, is very energy intensive. Further, Toshi provides that its data centers will comprise one of Ohio’s

largest independent data processing centers and will, long-term, be well suited to support other new and emerging technologies, aiding Ohio in becoming a preeminent technology hub in the Midwestern United States and employing an increasing number of both temporary construction contractors and full-time operational employees by 2025. Finally, Toshi states that it expects its facilities will operate continuously with a flexible operation style that will allow Toshi to engage in activities designed to lower coincident peak demand, thereby helping to avoid the need for future expansion of the transmission grid. (Application at 1-3.)

{¶ 13} Toshi states that in order to be competitive with other companies entering similar business in the United States and elsewhere, it requires access to a reasonable rate framework for its energy use. Such framework should incentivize Toshi's high and relatively consistent new energy demand while allowing Toshi to deploy its versatile operational flexibility to manage its energy costs, including deploying its demand response capabilities to reduce coincident peak demand from Toshi on the electric grid. Toshi states that the unique arrangement will provide it with service quality and pricing optionality that is minimally necessary to operate, optimize and eventually expand its facilities in Ohio, while competing as a technology service provider globally. (Application at 4-6.)

{¶ 14} Under the proposed arrangement, Toshi would enter into a rate structure through agreement with Ohio Edison that mirrors FirstEnergy's pilot program under which specific customers are permitted to opt-out of the Non-Market-Based Services Rider (Rider NMB) and instead obtain all transmission and ancillary services through a retail supplier. The Commission approved the pilot program in FirstEnergy's most recent ESP case. *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO (*FirstEnergy ESP IV Stipulation Case*), Fifth Entry on Rehearing (Oct. 12, 2016) at 139; *see also FirstEnergy ESP IV Stipulation Case*, Eighth Entry on Rehearing (Aug. 16, 2017) at 42. This pilot program matches retail transmission cost responsibility with how transmission costs are assigned by PJM Interconnection (PJM).

This program sends appropriate market signals to consumers to consume less energy during times of peak demand, allowing consumers to reduce the need for additional investment in the transmission grid by reacting to these signals. (Application at 15.)

{¶ 15} Under the unique arrangement, Toshi would secure electric distribution service from Ohio Edison under the GT or GSU tariff, as those terms and conditions are modified from time to time, except that Toshi may elect to be exempt from Rider NMB for one or more of its accounts. Toshi shall be authorized to designate its account or accounts to be exempt from Rider NMB within 60 days of approval of its application filed with the Commission, or within 60 days after Ohio Edison issues, assigns, and communicates to Toshi the account and customer numbers for its current or future sites, whichever comes later. After electing for an exemption, Toshi may then secure transmission services provided through Rider NMB either directly or through a competitive retail electric service (CRES) provider, and Toshi's allocation of transmission cost responsibility would be based on its NSPL, like participants in the Rider NMB pilot. Toshi, or Toshi's CRES provider, would need to undergo certain electronic data interchange or similar changes necessary to transfer transmission cost responsibility associated with the customer away from FirstEnergy and to the CRES provider, which would be Toshi's choice to do so or choose a CRES provider to do so. (Application at 22.)

{¶ 16} Further, under the unique arrangement, Toshi would make capital expenditures in excess of millions of dollars, maintain efforts to retain an aggregate level of employees during the term of the arrangement, and to continue identifying future locations suitable for its operations with the goal of hiring more employees at those sites. Toshi states that, through the arrangement, it seeks to utilize self-help efforts to proactively manage its overall delivery price of electricity by matching its retail transmission cost responsibility with how Toshi's load generated a transmission cost allocation from PJM. Toshi states that it is not seeking a reasonable arrangement that would produce any delta revenue to be recovered from other customers. (Application at 27-29.)

{¶ 17} Finally, Toshi states that under the agreement, it will be able to revitalize available warehouse and factory space that has, in some cases, been distressed, difficult to market to tenants, or subject to environmental issues. Toshi states that it will be able to actively promote further technology investment and development in Ohio, which can provide a lynchpin for future investment in Ohio by Toshi or other similarly situated companies. Toshi states that approval of its unique arrangement will not prejudice other customers since no delta revenue will be created as a result. Further, Toshi states that it will pay for the costs of upgrading the transmission infrastructure. Lastly, Toshi indicates that the agreement and approval of its application is revenue neutral to FirstEnergy and Ohio Edison where it is a zero-cost method to help secure a significant new economic development project. (Application at 32-35.)

{¶ 18} The Commission notes both the unique facts and circumstances of this case and the novelty of Toshi's operations in terms of those operations being based in mining crypto currency, including Toshi's efforts to rehabilitate certain areas via its capital investments, removal of blight by putting property out of the economy back into productive use, and its proposed creation of both permanent and temporary jobs in the areas in which it will operate facilities.

#### IV. CONSIDERATION OF THE STIPULATION AND RECOMMENDATION

{¶ 19} 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 accorded substantial weight, particularly where the stipulation is unopposed by any party and resolves all issues in the proceeding. *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).

{¶ 20} The Commission has established a three-part test in considering whether a stipulation is reasonable and should be adopted:

- a. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- b. Does the settlement, as a package, benefit ratepayers and the public interest?
- c. Does the settlement package violate any important regulatory principle or practice?

{¶ 21} The Supreme Court of Ohio has endorsed the Commission's use of 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. In determining the reasonableness of a stipulation, the Commission should consider the agreement as a package. *In re Ohio Edison Co., et al.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at 99-100.

**A. *Is the settlement a product of serious bargaining among capable, knowledgeable parties?***

{¶ 22} The Commission notes that Staff is a signatory party to the Stipulation. Further, no opposition to the Stipulation has been filed by any party to the case. Finally, the Stipulation states that all parties and intervenors participated in settlement discussions. (Stipulation at 1.) Upon review of the evidence, the Commission finds that the first prong of the three-part test for the reasonableness of a stipulation has been met.

**B. *Does the settlement, as a package, benefit ratepayers and the public interest?***

{¶ 23} The parties state in the Stipulation that the Stipulation and underlying reasonable arrangement will benefit ratepayers and public interest because Toshi's new load will pick up a portion of existing costs paid by other customers resulting in cost savings for

existing customers. Further, the Stipulation indicates that Toshi will commit to substantial capital investment in the state of Ohio, which will create both permanent and temporary jobs in the areas where Toshi operates. (Stipulation at 4-5.) Upon review of the evidence, the Commission finds that the second prong of the Commission's three-part test for stipulations has been met.

**C. *Does the stipulation violate any important regulatory principle or practice?***

{¶ 24} The Stipulation provides that it is consistent with regulatory practices and principles, that Toshi will provide such annual reports as required by the Commission under the reasonable arrangement, and that all issues raised by the parties have been addressed in the substantive provisions of the Stipulation and reflect, as a result, an overall reasonable resolution of all such issues. (Stipulation at 5.) No party has offered evidence to refute these statements. Accordingly, the Commission finds that the third prong of the three-part test for the reasonableness of a stipulation has been met and, thus, the Stipulation should be approved.

{¶ 25} Finally, as we have found that the arrangement does not appear to be unjust or unreasonable, in accordance with Ohio Adm.Code 4901:1-38-05(B), we do not find a hearing is necessary to consider the Stipulation in this matter.

**V. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶ 26} Ohio Edison is an electric distribution utility, as defined by R.C. 4928.01(A)(6), and a public utility, as defined by R.C. 4905.02, and as such, is subject to the jurisdiction of this Commission.

{¶ 27} Toshi is currently Ohio Edison's customer and qualifies as a mercantile customer, as defined by R.C. 4928.01(A)(19).

{¶ 28} On November 29, 2021, Toshi filed an Application pursuant to Ohio Adm.Code 4901:1-38 for approval of a reasonable arrangement, pursuant to R.C. 4905.31.



{¶ 29} On November 29, 2021, pursuant to Ohio Adm.Code 4901:1-38-05(B)(2), Toshi filed an affidavit executed, Kim E. Zadeh, verifying the accuracy of the application.

{¶ 30} One public comment was filed in support of the Application, no public comments were filed opposing the Application.

{¶ 31} On December 20, 2021, OCC filed a motion to intervene and objections to the Application.

{¶ 32} On January 4, 2022, Toshi filed a memorandum contra OCC's motion to intervene and a motion to strike OCC's objections.

{¶ 33} On January 11, 2022, OCC filed a reply memorandum in support of its motion to intervene, and contra Toshi's motion to strike OCC's objections.

{¶ 34} On January 24, 2022, Toshi filed notice of letters in support of its Application.

{¶ 35} On May 5, 2022, Toshi filed a joint stipulation and recommendation signed by Toshi and Staff.

{¶ 36} The Stipulation filed by Toshi and Staff satisfies the Commission's three-part test for reasonableness.

{¶ 37} The proposed arrangement has met the burden of proof for obtaining a reasonable arrangement under Ohio Adm.Code 4901:1-38. Furthermore, the proposed arrangement does not violate R.C. 4905.33 or 4905.35 and constitutes a unique arrangement in accordance with R.C. 4905.31. Therefore, we find that the proposed arrangement is reasonable and should be approved.

## VI. ORDER

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That Toshi's application for an arrangement between Ohio Edison and Toshi reflecting a rate structure mirroring FirstEnergy's pilot program, pursuant to the Stipulation, is reasonable and should be approved. It is, further,

{¶ 40} ORDERED, That Toshi and Ohio Edison file all documentation and take all steps necessary to implement the Stipulation and carry out the terms of this Finding and Order. It is, further,

{¶ 41} ORDERED, That nothing in this Finding 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, or the environmental compatibility of, or public need for, any facility. It is, further,

{¶ 42} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

JMD/mef

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Summary: Finding & Order approving the Joint Stipulation and Recommendation, filed May 5, 2022, related to Toshi CMC, LLC's request for a unique arrangement with Ohio Edison Company electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio