

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Phase Two of Their Distribution Grid Modernization Plan.) Case No. 22-0704-EL-UNC

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Review of Rider AMI (2019).) Case No. 18-1647-EL-RDR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Review of Rider AMI (2020).) Case No. 19-1903-EL-RDR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Review of Rider AMI (2021).) Case No. 20-1672-EL-RDR

**JOINT POST-HEARING BRIEF
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP
AND
THE KROGER CO.**

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I. INTRODUCTION

The record evidence submitted in this case overwhelmingly demonstrates that the Stipulation and Recommendation that was filed on April 12, 2024 (Stipulation),¹ as a package, represents a just and reasonable resolution of the issues related to the July 15, 2022 Application to

¹ See Companies Ex. 1 (Stipulation and Recommendation (Stipulation)) (April 12, 2024).

implement phase two of The Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's (collectively, FirstEnergy or the Companies) distribution grid modernization plan (Grid Mod II).² With two exceptions,³ all of the parties in this proceeding, including the Ohio Manufacturers' Association Energy Group (OMAEG) and The Kroger Co. (Kroger), agreed to either join or not oppose the Stipulation.⁴ Given this large, diverse group of knowledgeable and capable Signatory and Non-Opposing Parties, the Commission should adopt the Stipulation in its entirety to efficiently and equitably resolve numerous complex issues related to FirstEnergy's Grid Mod II Application in a just and reasonable manner that is in the public interest.

Contrary to claims raised by the Office of the Ohio Consumers' Counsel (OCC) and the Northwest Ohio Aggregation Coalition (NOAC), the Stipulation is the product of serious bargaining between capable, knowledgeable parties, and, as a package, is reasonable, serves the public interest, benefits ratepayers, and does not violate any important regulatory principles or practices. Notably, only two parties, OCC and NOAC, oppose the Stipulation.

In short, the manifest weight of the record evidence in this case demonstrates that the Stipulation, as a package, satisfies the criteria established by the Commission's three-part test for evaluating the reasonableness of a settlement. As such, OMAEG and Kroger respectfully request

² FirstEnergy Grid Mod II Application (July 15, 2022) (hereinafter, Application).

³ Only the Office of the Ohio Consumers' Counsel (OCC) and Northwest Ohio Aggregation Coalition (NOAC) opposed the Stipulation.

⁴ FirstEnergy, OMAEG, Kroger, Citizens Utility Board of Ohio (CUB), Environmental Law & Policy Center (ELPC), Interstate Gas Supply, LLC. (IGS), Northeast Ohio Public Energy Council (NOPEC), Ohio Energy Group (OEG), Ohio Energy Leadership Council (OELC), Ohio Environmental Council (OEC), Retail Energy Supply Association (RESA), and Walmart Inc. (Walmart) joined the Stipulation as Signatory Parties. Additionally, Staff, the Utility Workers Union of America, and One Energy Enterprises Inc. (OEE) did not oppose the Stipulation. Companies Ex. 1 at 1–2 (Stipulation); Companies Ex. 2 at 3–4 (Direct Testimony of Matt Quirk (Quirk Direct)) (May 3, 2024).

that the Commission adopt the Stipulation in its entirety and issue an order consistent with the recommendations therein.

II. FACTS AND BACKGROUND

On July 15, 2022, FirstEnergy filed its Application requesting that the Public Utilities Commission of Ohio (Commission) authorize it to implement Grid Mod II.⁵ Grid Mod II is a continuation of FirstEnergy's previous grid modernization plan, phase one (Grid Mod I), which was approved by the Commission on July 17, 2019.⁶ In addition to continuing to use Advanced Distribution Management System (ADMS), Advanced Metering Infrastructure (AMI), Integrated Volt/VAR Control (IVVC), and Distribution Automation (DA), FirstEnergy's Application also requested to include in Grid Mod II pilot projects to assess the impact of FirstEnergy's technologies on the distribution system and collect and validate results.⁷ Pilot projects included a lateral electronic circuit protection pilot, a distributed energy resource front-of-the-meter battery energy storage system pilot (DER Pilot), and residential and commercial electric vehicle (EV) charging pilot programs.⁸

In its Application, FirstEnergy proposed implementing Grid Mod II over a four-year budget period that would have a capital investment of \$626.4 million.⁹ FirstEnergy further requested authorization to recover through its Advanced Metering Infrastructure/Modern Grid Rider (Rider

⁵ Application at 1.

⁶ Application at 1; *In the Matter of the Filing by Ohio Edison Company, The Cleveland Electric Company, and The Toledo Edison Company Application for Approval of a Distribution Platform Modernization Plan*, Case Nos. 16-481-EL-UNC, et al., Opinion and Order (July 17, 2019) (adopting the Stipulation that authorized Grid Mod I)

⁷ Application at 5.

⁸ Application at 5.

⁹ Application at 5.

AMI) the actual Grid Mod II capital costs, up to \$626.4 million, and incremental O&M expenses associated with Grid Mod II up to an aggregate of \$144.1 million over the deployment period.¹⁰

In order to protect their interests and their members' interests from excessive and unreasonable increases in electric charges, OMAEG and Kroger intervened in the Grid Mod II case on August 16, 2022¹¹ and September 8, 2023, respectively.¹² The Commission granted both motions to intervene on July 20, 2023 and October 2, 2023, respectively.¹³

Following months of robust and lengthy settlement negotiations, as well as extensive discovery by many intervening parties,¹⁴ the Signatory and Non-Opposing Parties reached a settlement agreement and filed the Stipulation on April 12, 2024.¹⁵ The Stipulation resolves all outstanding issues in the Grid Mod II case, as well as three different Rider AMI audit cases,¹⁶ in a manner that is consistent with the Commission's three-part test.

More specifically, a large and diverse group of Signatory and Non-Opposing Parties joined or agreed to not oppose the Stipulation. The Signatory Parties include FirstEnergy, OMAEG, Kroger, Citizens Utility Board of Ohio (CUB), Environmental Law & Policy Center (ELPC), Interstate Gas Supply, LLC. (IGS), Northeast Ohio Public Energy Council (NOPEC), Ohio Energy Group (OEG), Ohio Energy Leadership Council (OELC), Ohio Environmental Council (OEC),

¹⁰ Application at 5.

¹¹ Motion to Intervene and Memorandum of Support of The Ohio Manufacturers' Association Energy Group (August 16, 2022).

¹² Motion to Intervene and Memorandum of Support of The Kroger Co. (September 8, 2023).

¹³ Entry at ¶ 18 (July 20, 2023); Entry at ¶ 14 (October 2, 2023).

¹⁴ Companies Ex. 2 at 7 (Quirk Direct).

¹⁵ See Companies Ex. 1 (Stipulation).

¹⁶ On May 23, 2024, the ALJs consolidated the Grid Mod II application with three separate annual Rider AMI audits in the spirit of administrative efficiency. Entry at ¶ 25 (May 23, 2024).

Retail Energy Supply Association (RESA), and Walmart Inc. (Walmart).¹⁷ Additionally, Staff, The Northwest Ohio Aggregation Coalition (NOAC), Utility Workers Union of America, and One Energy Enterprises Inc. (OEE) did not oppose the Stipulation.

The Stipulation recommends a settlement package that provides significant benefits for customers and the public interest and complies with Ohio law and Commission regulations. As described in detail below, the Stipulation offers many benefits for customers, including, but not limited to the following:

1. Reduction of the total estimated capital cost of Grid Mod II from \$626 million to approximately \$421 million;¹⁸
2. Agreement to an Operational Benefit Assessment (OBA) of Grid Mod II commencing three years following Commission approval of Grid Mod II, which shall be completed no later than one year following completion of Grid Mod II deployment;¹⁹
3. Implementation of a circuit capacity hosting “heat map” that will provide power capacity ratings within two years after the approval of Grid Mod II;²⁰
4. Removal of legacy meter costs associated with Grid Mod II deployment;²¹
5. Implementation of the recommendations from the Grid Mod I OBA as part of Grid Mod II;²²
6. Elimination of FirstEnergy’s request to complete additional DA installations and related costs;²³

¹⁷ Companies Ex. 1 at 1–2 (Stipulation); Companies Ex. 2 at 3–4 (Quirk Direct).

¹⁸ Companies Ex. 1 at 5 (Stipulation); Companies Ex. 2 at 4 (Quirk Direct).

¹⁹ Companies Ex. 1 at 18 (Stipulation); Companies Ex. 2 at 5 (Quirk Direct).

²⁰ Companies Ex. 1 at 7–8 (Stipulation); Companies Ex. 2 at 15 (Quirk Direct).

²¹ Companies Ex. 1 at 5 (Stipulation); Companies Ex. 2 at 4 (Quirk Direct).

²² Companies Ex. 1 at 7–8 (Stipulation); Companies Ex. 2 at 14 (Quirk Direct).

²³ Companies Ex. 1 at 6 (Stipulation).

7. Elimination of FirstEnergy's request to complete additional IVVC installations and related costs;²⁴
8. Elimination of FirstEnergy's proposal to implement an ADMS and recover related costs through Rider AMI;²⁵
9. Elimination of FirstEnergy's proposal to implement a utility-owned managed EV charging pilot;²⁶
10. Elimination of FirstEnergy's proposal to implement a utility-owned front-of-the-meter battery energy storage system pilot;²⁷ and
11. Elimination of FirstEnergy's proposal to implement a utility-owned lateral electronic circuit protection pilot.²⁸

After filing the Stipulation, an evidentiary hearing was held that concluded on July 2, 2024, wherein testimony and evidence were presented in support of the Commission's approval of the Stipulation as a package. Following the evidentiary hearing, the Commission directed interested parties to submit initial post-hearing briefs by July 31, 2024, and reply briefs by August 21, 2024.²⁹

In accordance with that directive, OMAEG and Kroger hereby submit this joint initial post-hearing brief in support of the Stipulation. As was demonstrated at the evidentiary hearing and as explained herein, the Stipulation is a product of serious bargaining among capable and knowledgeable parties; will create significant benefits for customers and, as a package, is in the public interest; and does not violate any important regulatory principles or practices. As a whole,

²⁴ Companies Ex. 1 at 6 (Stipulation).

²⁵ Companies Ex. 1 at 6 (Stipulation).

²⁶ Companies Ex. 1 at 27 (Stipulation); Companies Ex. 2 at 6 (Quirk Direct).

²⁷ Companies Ex. 1 at 27 (Stipulation); Companies Ex. 2 at 6 (Quirk Direct).

²⁸ Companies Ex. 1 at 27 (Stipulation); Companies Ex. 2 at 6 (Quirk Direct).

²⁹ Tr. Vol. II at 269.

the Stipulation is just and reasonable and in the public interest, and accordingly, should be approved by the Commission.

III. ARGUMENT

The record in this case clearly demonstrates that the Stipulation should be adopted because the manifest weight of the evidence establishes that the Stipulation, as a package, satisfies the Commission's three-part test for evaluating settlements and determining whether to adopt the recommendations from a stipulation. The Supreme Court of Ohio has endorsed the Commission's use of this three-part test "to resolve cases in a manner economical to ratepayers and public utilities" and has "affirmed that the Commission may place substantial weight on the terms of a stipulation."³⁰ As part of its evaluation, the Commission considers the following:

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?³¹

In this case, all parties, who are capable and knowledgeable, participated in numerous settlement meetings, over the course of several months, where the parties engaged in negotiations regarding FirstEnergy's proposed Grid Mod II. These settlement meetings ultimately led to the almost unanimous Stipulation, which expeditiously and equitably resolves all of the issues in this proceeding— in a way that benefits ratepayers and the public interest, and does not violate any important regulatory principles or practices. The weight of the evidence presented by the

³⁰ *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 v. Public Util. Comm.*, Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373 (1992).

³¹ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125–26 (1992).

Signatory Parties demonstrates that the Stipulation, as a package, satisfies the Commission’s three-part test, and should be adopted by the Commission in its entirety.

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

When considering whether the parties are capable and knowledgeable, the Commission acknowledges that the parties involved in the proceeding are in the best position to evaluate their own best interests and costs, and “expects that parties to Settlement negotiations will bargain in support of their own interest in deciding whether to support a stipulation.”³² There is no requirement that every party, or the parties most adverse to a stipulation, join a stipulation as a signatory party.³³ Additionally, the Commission has consistently considered “knowledgeable” in terms of whether parties are knowledgeable about the Commission’s processes, regulatory matters, and the terms of the settlement being negotiated.³⁴

The record in this case clearly demonstrates that the Stipulation resulted from an extensive and robust bargaining process between a large and diverse group of parties, who were represented by experienced and knowledgeable counsel. As noted by FirstEnergy witness Quirk:

The Signatory Parties have an extensive history of participation and experience in matters before the Commission and are represented by experienced and competent counsel. The Signatory Parties represent a broad cross-section of stakeholders with varied and diverse interests including commercial and industrial customer advocates,

³² *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 (December 30, 2020).

³³ *Id.*

³⁴ *See In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 21-887-EL-AIR et al., Opinion and Order at ¶ 100 (December 14, 2022) (“all parties, both signatory and non-signatory, are represented by capable and knowledgeable counsel familiar with Commission proceedings”); Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 (“each of the parties is represented by competent, capable, and knowledgeable counsel familiar with Commission proceedings and with access to technical experts”).

residential and small business customers, environmental advocates, and CRES providers.³⁵

Additionally, neither of the two lone parties opposing the Stipulation, in part or in whole, contested whether the parties involved are capable and knowledgeable.³⁶

All of the parties are capable and knowledgeable as they were represented by attorneys, most if not all of whom have years of experience in regulatory matters before the Commission and who possess or their clients possess extensive information.³⁷ Over the course of several months, these parties engaged in “several group settlement meetings regarding the potential settlement of Grid Mod II. These meetings and the information exchanged in them facilitated inclusive and meaningful negotiations of a potential settlement.”³⁸ Numerous discussions occurred between the parties, and numerous versions of the settlement were circulated amongst the parties, which allowed parties many opportunities to share their perspectives, ask questions, and engage in productive discussions about issues.³⁹ These settlement negotiations were conducted at arm’s length, and all intervening parties were invited to these meetings, and no party was excluded from the opportunity to negotiate the proposed Stipulation provisions.⁴⁰

Moreover, although diversity of interests of the parties involved in settlement negotiations is not a requirement of the Commission’s review of the reasonableness of a Stipulation,⁴¹ to the

³⁵ Companies Ex. 2 at 7 (Quirk Direct).

³⁶ See OCC Ex. 5 at 2 (Direct Testimony of Paul J. Alvarez (Alvarez Direct)) (June 11, 2024); Tr. Vol. I; Tr. Vol. II.

³⁷ Companies Exhibit 1 at 2 (Stipulation); Companies Ex. 2 at 7 (Quirk Direct).

³⁸ Companies Ex. 2 at 7 (Quirk Direct).

³⁹ Companies Ex. 2 at 7 (Quirk Direct).

⁴⁰ See Companies Ex. 2 at 7 (Quirk Direct).

⁴¹ *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposed to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 52 (March 31, 2016) (noting that “[t]he three-prong test utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate [a] diversity of interest component [. . .]”).

extent the Commission may consider it, not only do the Signatory and Non-Opposing Parties represent a diverse group of varied interests, but so do all of the parties in this case.⁴² In addition to FirstEnergy, “commercial and industrial customer advocates, residential and small business customers, environmental advocates, and CRES providers” were all involved in negotiations and signed onto or agreed to not oppose the Stipulation.⁴³

Therefore, the record in this case clearly demonstrates that the Stipulation results from a fair and open bargaining process between a large and diverse group of knowledgeable and capable parties. While there is no requirement that the negotiating parties represent diverse interests to satisfy this prong, the parties involved in this case do in fact represent diverse and competing interests, which resulted in a number of perspectives being considered during the lengthy bargaining process. As such, the Stipulation satisfies the first prong of the Commission’s three-part test.

B. The Stipulation, as a package, benefits ratepayers and the public interest.

As the Commission has affirmed, “the second part of the test specifically requires that [it] evaluate the settlement as a package.”⁴⁴ In this regard, the Commission “has repeatedly found value in the parties’ resolution of pending matters through a settlement package, as an efficient and cost-effective means of bringing their issues before the Commission, while also, at times, avoiding the considerable time and expense associated with the litigation of a fully contested

⁴² Companies Exhibit 1 at 2 (Stipulation); Companies Ex. 2 at 7 (Quirk Direct).

⁴³ Companies Ex. 2 at 7 (Quirk Direct).

⁴⁴ *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 77 (March 31, 2016).

case.”⁴⁵ The Commission does not focus on individual settlement provisions because “[t]he question before the Commission is not whether there are other mechanisms that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest.”⁴⁶ To the degree that any Stipulation provisions differ from a Signatory or Non-Opposing Party’s pre-settlement position, such differences represent the product of serious bargaining between parties with diverse, and sometimes adverse, interests.

When analyzed as a package, the Stipulation in this case benefits ratepayers and the public interest by lowering the costs to customers over the course of Grid Mod II’s deployment, obtaining other concessions from FirstEnergy, and enabling FirstEnergy to make future electric distribution grid modernization investments.⁴⁷ Any focus on individual provisions, rather than the Stipulation as a whole, is contrary to the Commission’s precedent.⁴⁸

FirstEnergy witness Quirk testified as to the terms and concessions contained in the Stipulation.⁴⁹ For example, in addition to the benefits listed above, FirstEnergy witness Quirk and others testified that the Stipulation secures the following benefits for customers:

1. FirstEnergy will implement a circuit-level solar accommodation map showing the accommodation limit for each circuit within six months after the approval of Grid Mod II;⁵⁰

⁴⁵ *Id.* at 77–78 (internal citations omitted).

⁴⁶ *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (December 30, 2020).

⁴⁷ See Companies Ex. 1 at 2 (Stipulation); Companies Ex. 2 at 7–8 (Quirk Testimony).

⁴⁸ See *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (December 30, 2020).

⁴⁹ Companies Ex. 2 at 4–6 (Quirk Testimony).

⁵⁰ Companies Ex. 1 at 7 (Stipulation); Companies Ex. 2 at 14–15 (Quirk Direct).

2. FirstEnergy will implement a circuit capacity hosting “heat map” that will provide power capacity ratings similar to that utilized by JCP&L in New Jersey within two years after the approval of Grid Mod II;⁵¹
3. FirstEnergy will make efforts to increase awareness and understanding of their time-varying rate options for eligible residential and non-residential SSO customers;⁵²
4. FirstEnergy will apply the fixed savings as indicated in the Grid Mod I Stipulation’s Attachment D for years 4–6 going forward;⁵³
5. FirstEnergy will provide credits through Rider AMI equal to the estimated Grid Mod II operational savings included in the cost-benefit analysis;⁵⁴
6. FirstEnergy will make available to Commission-certified competitive retail electric service (CRES) providers that are retail electric generation providers and NOPEC certain hourly interval data for residential customers;⁵⁵
7. FirstEnergy will implement favorable modifications to Rider AMI;⁵⁶ and
8. FirstEnergy will examine whether federal funding is available for any aspect of Grid Mod II and present the results of their findings to the Grid Mod Collaborative.⁵⁷

Overall, the Stipulation secures numerous reductions or limitations to the costs that FirstEnergy will collect from customers as a result of Grid Mod II’s deployment by significantly reducing the scope of the as-filed proposed Grid Mod II plan until data can be achieved regarding the actual benefits of Grid Mod I. As noted by OCC/NOAC’s own witness Alvarez, the Stipulation reduces the total estimated capital cost from \$626 million to approximately \$421 million, and of that \$421 million, \$418 million is for the capital costs of installing 1.4 million meters to residential

⁵¹ Companies Ex. 1 at 7–8 (Stipulation); Companies Ex. 2 at 15 (Quirk Direct).

⁵² Companies Ex. 1 at 8 (Stipulation); Companies Ex. 2 at 5 (Quirk Direct).

⁵³ Companies Ex. 1 at 14 (Stipulation).

⁵⁴ Companies Ex. 1 at 26 (Stipulation).

⁵⁵ Companies Ex. 1 at 19 (Stipulation); Companies Ex. 2 at 6 (Quirk Direct).

⁵⁶ Companies Ex. 1 at 25 (Stipulation); Companies Ex. 2 at 6 (Quirk Direct).

⁵⁷ Companies Ex. 1 at 28 (Stipulation); Companies Ex. 2 at 6 (Quirk Direct).

customers.⁵⁸ By agreeing to install 1.4 million meters to residentials, Grid Mod II will “thus complet[e] smart meter installations for all remaining consumers who did not yet have one upon the completion of Grid Mod I,”⁵⁹ which will, among other things, promote energy usage awareness and reductions, increase participation in energy efficiency opportunities, increase digital engagement (e.g. through the Companies’ Customer Portal), provide bill savings, and achieve carbon emission reductions.⁶⁰

Additionally, the Stipulation will benefit customers by requiring FirstEnergy to implement hosting capacity maps. These maps will enable current and prospective customers to check the available capacity for potential expansion of load and proactively determine if their existing or prospective sites could support additional load.⁶¹ Hosting capacity maps also provide transparency on any needed upgrades to the system necessary to support the new load and are useful tools to determine when additional load could be added to the grid and utilized during off-peak hours. Rather notably, OCC and NOAC’s witness Alvarez did not analyze these benefits as part of his testimony or analysis of the Stipulation, despite later agreeing that “hosting capacity maps would be beneficial to customers looking to place new or expanded load on the system.”⁶² Similarly, despite opposing the stipulated peak-time rebate program, OCC/NOAC witness Alvarez admitted that he did not perform an analysis to determine the actual costs of this program.⁶³

⁵⁸ Tr. Vol. II at 237 (Alvarez Cross).

⁵⁹ OCC Ex. 5 at 11 (Alvarez Direct).

⁶⁰ Companies Ex. 3 at 1 (Direct Testimony of Edward C. Miller (Miller Direct)) (May 3, 2024).

⁶¹ Companies Ex. 2 at 16 (Quirk Direct).

⁶² Tr. Vol. II at 240 (Alvarez Cross).

⁶³ Tr. Vol. II at 244–45 (Alvarez Cross).

Moreover, the Stipulation, as a package, further benefits the public interest by developing a reliable and resilient distribution grid and establishing a just and reasonable resolution to numerous contested issues, thereby conserving the resources of the parties and avoiding potentially costly, extended litigation.⁶⁴

Most of the foregoing benefits, both to the public interest and to customers, would not have occurred absent the Stipulation. Importantly, among other things, the decreased capital investment amount, the implementation of heat maps, operational savings credits, and federal offsets were not part of FirstEnergy's as-filed Application.⁶⁵

In sum, the Stipulation, as a package, provides meaningful and valuable benefits to customers and benefits the public interest. The Stipulation significantly lowers costs to customers as compared to the as-filed Application, while still allowing FirstEnergy to improve reliability for customers across all rate classes. Therefore, the Stipulation, as a package, benefits customers and the public interest, and satisfies the second prong of the Commission's three-part test.

C. The Stipulation does not violate any important regulatory principles or practices.

Lastly, the Stipulation, as a package, complies with the Ohio Revised Code, the Ohio Administrative Code, and Commission precedent. When determining whether a stipulation violates any important regulatory principles or practices, the Commission tends to consider its own precedent, and favor stipulations that follow that precedent.⁶⁶

⁶⁴ Companies Ex. 2 at 8 (Quirk Direct).

⁶⁵ See Application.

⁶⁶ See, e.g., *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 79 (December 30, 2020) (Where the stipulating parties had “presented adequate justification for the Commission to uphold the precedent” and “no argument presented by opposing intervenors [convinced] the Commission to change or revise this practice,” the Commission adopted the stipulation.).

The record in this case clearly demonstrates that the Stipulation does not contain any provisions that run contrary to Commission precedent, nor does it violate any important regulatory principles or practices. As FirstEnergy witness Quirk testified:

The Stipulation benefits customers and the public interest by resolving the Grid Mod II case, providing for grid modernization investments such as advanced metering infrastructure along with the necessary supporting communications infrastructure, and expanding the existing meter data management system and associated systems and processes.⁶⁷

Resolving Grid Mod II will further the development of a reliable and resilient distribution grid, allow customers to make more informed choices about energy usage and available capacity on the grid, facilitate access to customer data, and also help enable FirstEnergy to make future grid modernization investments.⁶⁸ Moreover, the Stipulation advances state policies that: (1) promote adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service for customers; and (2) encourage innovation and market access through smart grid programs and implementation of advanced metering infrastructure.⁶⁹ Additionally, as noted by RESA/IGS witness Dierksheide, the data access provisions of the Stipulation will encourage innovation and market access for cost-effective supply and demand-side retail electric service.⁷⁰ And as noted above, hosting capacity maps provide transparency on where existing grid infrastructure has additional capacity for new electric load, and help project developers find advantaged project sites that can support new load and may require less infrastructure investment, which will “[f]acilitate the state’s effectiveness in the global economy.”⁷¹

⁶⁷ Companies Ex. 2 at 8 (Quirk Direct).

⁶⁸ Companies Ex. 1 at 1 (Stipulation); Companies Ex. 2 at 8 (Quirk Direct).

⁶⁹ Companies Ex. 2 at 8 (Quirk Direct); R.C. 4928.02(A)

⁷⁰ See RESA/IGS Joint Ex. 1 at 16 (Direct Testimony of Andrew Dierksheide) (May 3, 2024); R.C. 4928.02(D).

⁷¹ R.C. 4928.02(N).

Overall, the Stipulation serves a variety of important regulatory principles and practices. As compared to FirstEnergy's proposals in its Application, the Stipulation provides many benefits to customers while remaining consistent with regulatory principles and practices. Therefore, the Stipulation satisfies the third prong of the Commission's three-part test.

IV. CONCLUSION

The record evidence presented at the evidentiary hearing clearly demonstrates that the Stipulation, as a package, filed on April 12, 2024 satisfies the Commission's three-part test for evaluating stipulations. A large, diverse group of capable, knowledgeable parties participated in a fair and open settlement process where all parties were invited to negotiate the Stipulation's provisions. The Stipulation, as a package, which expeditiously and equitably resolves all of the issues in this proceeding, serves the public interest by reducing costs to customers and avoiding costs associated with a fully litigated Grid Mod II case. And by promoting State policy pursuant to R.C. 4928.02, the Stipulation, as a package, complies with important regulatory principles and practices.

Accordingly, for the foregoing reasons, the weight of the evidence presented by FirstEnergy and the other Signatory Parties demonstrates that the Stipulation, as a package, satisfies the Commission's three-part test for evaluating stipulations. Therefore, OMAEG and Kroger respectfully request that the Commission adopt the Stipulation in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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RDR**

Summary: Brief Joint Post Hearing Brief FirstEnergy Grid Mod II (Case No. 22-704-
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Manufacturers' Association Energy Group and The Kroger Co..