

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF OHIO  
EDISON COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY,  
AND THE TOLEDO EDISON COMPANY'S  
COMPLIANCE WITH R.C. 4928.17 AND  
OHIO ADM.CODE CHAPTER 4901:1-37.

CASE NO. 17-974-EL-UNC

### ENTRY

Entered in the Journal on December 14, 2018

{¶ 1} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are electric distribution utilities, 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.

{¶ 2} On December 12, 2012, the Commission issued an Entry initiating an investigation into the health, strength, and vitality of Ohio's competitive retail electric service (CRES) market. *In re the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI (*CRES Market Investigation Case*). The investigation was intended to establish actions that the Commission can take to enhance the health, strength, and vitality of the CRES market. In the Entry initiating the investigation, the Commission presented a series of questions to stakeholders regarding market design and corporate separation as they impact the CRES market.

{¶ 3} On March 26, 2014, the Commission issued its Finding and Order in the *CRES Market Investigation Case*, adopting, in part, Staff's recommendations, with modifications. The Commission, in adopting one such recommendation, directed that each of the Ohio electric distribution utilities would be subject to an audit to ensure their compliance with R.C. 4928.17 and the Commission's corporate separation rules, as enumerated in Ohio Adm.Code Chapter 4901:1-37, as well as to further Ohio's policies pursuant to R.C. 4928.02. *CRES Market Investigation Case*, Finding and Order (Mar. 26, 2014) at 16-17. According to Staff's recommended audit schedule, FirstEnergy will be the first electric distribution utility to undergo the prescribed audit.

{¶ 4} To assist the Commission with the review of FirstEnergy's compliance with the corporate separation rules set forth in Ohio Adm.Code Chapter 4901:1-37, the Commission directed Staff to issue a request for proposal (RFP) for audit services on May 17, 2017.

{¶ 5} On July 5, 2017, the Commission issued an Entry selecting Sage Management Consultants, LLC (Sage) to conduct the requested audit services, in accordance with the terms set forth in the RFP. Pursuant to the terms of the RFP, a draft audit report was to be submitted by February 28, 2018, with the final audit report due on March 14, 2018. The deadline for the draft audit report and final audit report was extended to April 30, 2018, and May 14, 2018, respectively. Sage filed the final audit report on May 14, 2018.

{¶ 6} By Entry issued September 20, 2018, the attorney examiner granted the motions to intervene filed by Ohio Consumers' Counsel (OCC) and Interstate Gas Supply, Inc. in this case, set procedural deadlines, and scheduled a prehearing conference regarding OCC's March 29, 2018 motion to compel discovery. OCC's motion to compel was subsequently withdrawn on October 9, 2018.

{¶ 7} On May 24, 2018, OCC submitted a public records request seeking documents relating to the records containing drafts of the audit report, communications between FirstEnergy and the Commission, information requests made to FirstEnergy, responses to information requests by FirstEnergy, documents and work papers in connection to this case, and records containing communications related to this case. The Companies were notified of the request pursuant to the process set forth in the Commission's July 5, 2017 Entry and afforded an opportunity to file a motion for protective order pursuant to Ohio Adm.Code 4901-1-24.

{¶ 8} Thereafter, on October 26, 2018, the Companies filed a motion for a protective order regarding OCC's public records request to the Commission for certain materials confidentially provided to Sage by the Companies. The motion for a protective order appears to cover similar, if not identical, information that was the subject of OCC's motion to compel.

The Companies state that R.C. 4901.16 bars the release of its responses to Sage's audit requests, and said responses are therefore not "public records" under R.C. 149.43.

{¶ 9} On November 13, 2018, OCC filed a memorandum contra stating that the Commission should deny FirstEnergy's motion for a protective order. Specifically, OCC claims the information it seeks constitutes a public record and that the Commission's disclosure of said records is not prohibited under R.C. 4901.16 because the Commission has strictly limited the application of R.C. 4901.16 to Commission Staff and ongoing investigations.

{¶ 10} The Companies filed a reply memorandum on November 20, 2018.

{¶ 11} In order to resolve the Companies' pending motion for a protective order in an expeditious manner, the attorney examiner finds it necessary to schedule a hearing. Accordingly, a hearing shall be scheduled for January 17, 2019, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-D, Columbus, Ohio 43215. All parties should register at the lobby desk and then proceed to the 11th floor in order to participate. in the hearing.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That a hearing be scheduled in accordance with Paragraph 11. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Megan J. Addison

By: Megan J. Addison  
Attorney Examiner

JRJ/LLA/mef

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**Case No(s). 17-0974-EL-UNC**

Summary: Attorney Examiner Entry scheduling a hearing for 1/17/19 at 10:00am at the Commission offices electronically filed by Ms. Mary E Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio