

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 17-0974-EL-UNC
Illuminating Company, and The Toledo)	
Edison Company's Compliance with)	
R.C. 4928.17)	
)	
)	

**SUPPLEMENTAL COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY**

On May 14, 2018, SAGE Management Consultants, LLC (“SAGE”) filed its Audit Report, which supported that Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the “Companies”) were in compliance with corporate separation requirements.¹ Indeed, the Audit Report found that the Companies provided no anticompetitive subsidies to affiliates², gave no preferential treatment or advantages to affiliates or their customers³, and that the Companies’ Cost Allocation Manual (“CAM”) policies and procedures prevent cross-subsidization between the Companies and their affiliates.⁴

The Companies explained in their initial Comments in this proceeding that on March 31, 2018, FirstEnergy Solutions Corp. (“FES”) filed for Chapter 11 bankruptcy protection, that FES would emerge from bankruptcy as an entity not affiliated⁵ with FirstEnergy Corp., and that SAGE’s recommendations related to FES would become moot.⁶ On March 20, 2020, the Companies filed notice in this proceeding that FES had emerged from bankruptcy as Energy

¹ See generally Audit Report at 38-48. See also the Companies’ Initial Comments and Reply Comments in this proceeding, in which the Companies explained that any issues raised in the Audit Report are either moot, based on misunderstandings, or otherwise addressed.

² Audit Report Section III-B-1, at 68.

³ *Id.*, Section IV-B-I, at 80.

⁴ *Id.*, Section VI-B-1, at 118.

⁵ See O.A.C. 4901:1-37-01(A) (“‘Affiliates’ are companies that are related to each other due to common ownership or control....”).

⁶ Companies Comments at 1.

Harbor Corp. (“Energy Harbor”), a non-affiliate of FirstEnergy Corp. By Entry dated April 29, 2020, the Public Utilities Commission of Ohio (the “Commission”) solicited supplemental comments on the Audit Report in light of Energy Harbor’s emergence from bankruptcy and the Commission’s certification of Suvon, LLC d/b/a FirstEnergy Advisors (“Suvon”) as a CRES power broker and aggregator.⁷

The Companies are still in compliance with corporate separation requirements. Neither of the events leading the Commission to solicit supplemental comments in this proceeding changes SAGE’s findings in the Audit Report regarding the Companies’ compliance with corporate separation requirements.

I. Supplemental Comments

A. SAGE’s findings and recommendations regarding Energy Harbor are now moot.

The Audit Report included a number of findings and recommendations regarding FES.⁸ In their initial Comments, the Companies explained that on March 31, 2018 – subsequent to this audit proceeding but before the issuance of the Audit Report – FES had filed for Chapter 11 bankruptcy protection,¹ and that FES would emerge from bankruptcy as an entity not affiliated with FirstEnergy Corp. Therefore, SAGE’s recommendations regarding FES would become moot upon FES’ emergence from bankruptcy.”

On March 20, 2020, the Companies filed notice in this proceeding explaining that on February 27, 2020, FES emerged from bankruptcy as Energy Harbor and is no longer a FirstEnergy Corp. affiliate. Because FES emerged from bankruptcy as non-affiliate Energy Harbor, SAGE’s findings and recommendations related to FES are now moot.

⁷ Entry at ¶9.

⁸ *Id.*; see also Audit Report at 16-36.

B. The Companies are in compliance with corporate separation requirements.

The Commission's April 29, 2020 Entry suggested that issues raised in Suvon's broker certification proceeding with regard to compliance with the corporate separation requirements by the Companies and other FirstEnergy Corp. affiliates may be best addressed in this proceeding. However, the Audit Report shows that the Companies are in compliance with corporate separation requirements. Suvon's recent certification has changed nothing. The Companies have and will continue to treat Suvon as they would any competitive affiliate, in compliance with corporate separation requirements.

Suvon's application for certification as a CRES power broker and aggregator explains how Suvon complies with corporate separation requirements.⁹ This includes, without limitation, use of the CAM to properly allocate costs and employee time; restricted employee access to transmission and distribution information based on FERC classification; proper disclosures of who shared representatives or employees are representing; annual FERC classification training; marketing disclosures; separate books and records, accounting and insurance; and access to a separate, unregulated money pool.¹⁰ In addition, all FirstEnergy employees undergo annual training on Ohio's Corporation Separation Rules as a condition of employment.

C. SAGE's Audit Report does not substantiate any of the claims in the RESA Complaint.

In its Entry soliciting supplemental comments, the Commission granted Retail Energy Supply Association ("RESA")'s late-filed motion to intervene in this proceeding, on the grounds that the issues RESA raised in a complaint against the Companies in Case No. 18-736-EL-CSS (the "RESA Complaint"), which was stayed pending the outcome of this proceeding, "are

⁹ See PUCO Case No. 20-0103-EL-AGG, Correspondence supplementing Application Exhibits B-2 and B-3, at 2-4 (Apr. 1, 2020).

¹⁰ *Id.*

substantially similar to the issues raised” in SAGE’s Audit Report.¹¹ Indeed, RESA raised some of these issues in its initial comments in this proceeding, and the Companies addressed RESA’s arguments in their initial Reply Comments. Nothing in SAGE’s Audit Report substantiates any of the claims in the RESA Complaint.

As the Companies explained in their Reply Comments¹², the Companies’ Commission-approved Corporate Separation Plan and tariffs allow sales of products and services other than retail electric service. Specifically, Section VI of the Companies’ Corporate Separation Plan permits the Companies to offer products and services other than electric service:

The Companies offer a limited number of products and services other than retail electric service pursuant to existing tariff provisions and plan to continue offering the same types of products and services in the same manner. Upon customer request, the Companies may use contractors to provide other utility-related services, programs, maintenance and repairs related to customer-owned property, equipment and facilities. In addition, the Companies plan to provide products and services other than retail electric service in an effort to comply with energy efficiency and peak demand reduction benchmarks set out in R.C. Section 4928.66. These programs give the Companies the opportunity to more completely serve customers and assist in meeting statutory requirements.

Similarly, the Companies’ tariff provisions relating to Special Customer Services authorize the Companies to provide, among other things, “customer equipment maintenance, repair or installation.”¹³

Any sales by the Companies of products and services other than retail electric service are made pursuant to the Companies’ Commission-approved Corporate Separation Plan and tariffs. SAGE did not find fault with these practices in the Audit Report.

¹¹ *Id.* at ¶12.

¹² Companies Reply Comments at 4-5.

¹³ See Companies’ approved Electric Service Regulations tariff, Sheet No, 4, page 13.

II. Conclusion

The Companies respectfully request that the Commission adopt the findings and recommendations of SAGE's Audit Report subject to the Companies' initial Comments, initial Reply Comments, and these Supplemental Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Supplemental Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company were filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 29th day of May 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Emily V. Danford
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Case No(s). 17-0974-EL-UNC

Summary: Comments Supplemental Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company electronically filed by Ms. Emily V Danford on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company