

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 2, 2020

I. SUMMARY

{¶ 1} The Commission selects Marcum LLP to conduct the audit services necessary to assist the Commission with the review of FirstEnergy's compliance with the corporate separation rules adopted by the Commission.

II. DISCUSSION

{¶ 2} 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.

{¶ 3} 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, on May 17, 2017, to issue a request for proposal (RFP) for audit services. 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.

{¶ 4} On September 20, 2018, the attorney examiner directed that all motions to intervene in this proceeding be filed by October 9, 2018.

{¶ 5} On November 30, 2018, the attorney examiner granted motions to intervene filed by Ohio Consumers' Counsel (OCC) and Interstate Gas Supply, Inc. (IGS). The attorney examiner also established a comment period regarding the audit report. Comments were filed by IGS, OCC, Northeast Ohio Public Energy Council (NOPEC), the Companies, and Retail Energy Supply Association (RESA). Reply comments were filed by NOPEC, FirstEnergy Solutions Corp. (FES), OCC and the Companies. Joint reply comments were filed by RESA and IGS.

{¶ 6} In their comments, the Companies noted that, on March 20, 2018, FES filed a voluntary petition in the United States Bankruptcy Court for relief pursuant to Chapter 11 of Title 11 of the United States Code. Further proceedings in this case were deferred until the resolution of FES' bankruptcy proceeding.

{¶ 7} On March 20, 2020, the Companies filed a notice in this proceeding. The Companies represented that FES had emerged from bankruptcy as Energy Harbor Corp. (Energy Harbor) and that Energy Harbor is no longer an affiliate of the Companies' parent, FirstEnergy Corp.

{¶ 8} Further, on January 17, 2020, Suvon, LLC d/b/a FirstEnergy Advisors (Suvon) filed an application for certification as a CRES power broker and aggregator in the state of Ohio. *In re Suvon LLC*, Case No. 20-103-EL-AGG. Suvon is an affiliate of the Companies. The Commission approved Suvon's application on April 22, 2020. The Commission also ruled that, although various parties in that case had raised issues both with Suvon's use of a trade name and with compliance with the corporation separation requirements by the Companies and other affiliates of FirstEnergy Corp., those issues were best addressed in this proceeding. *Suvon*, Case No. 20-103-EL-AGG, Finding and Order (Apr. 22, 2020) at ¶ 20, 22.

{¶ 9} In light of both the emergence of Energy Harbor from bankruptcy and the Commission's ruling in Suvon's certification case, on April 29, 2020, the attorney examiner established a supplemental comment period regarding the audit report filed in this proceeding. Supplemental comments were timely filed by Vistra Energy Corp., NOPEC,

IGS, OCC, RESA, and the Companies. Supplemental reply comments were timely filed by OCC, NOPEC, IGS, RESA, and the Companies.

{¶ 10} Further, the attorney examiner took administrative notice in this proceeding of the certification application filed by Suvon in its certification case on January 1, 2020, and the supplement filed by Suvon on April 1, 2020. *Suvon*, Case No. 20-103-EL-AGG.

{¶ 11} On September 8, 2020, the OCC filed motions in this proceeding for an investigation and management audit of the FirstEnergy, its corporate governance and its activities regarding Am. Sub. H.B. 6, to hire an independent auditor, to reopen the distribution modernization rider audit case, and to require FirstEnergy to show that it did not improperly use money collected from consumers or violate any utility regulatory laws, rules or orders in its activities regarding Am. Sub. H.B. 6.

{¶ 12} The Companies filed a memorandum contra OCC's motions on September 23, 2020, arguing that the Commission lacks jurisdiction to examine expenditures made by FirstEnergy Corp. The Companies further argue that each of OCC's motions lacks factual and legal support for the requested relief.

{¶ 13} In its reply filed on September 30, 2020, OCC contends that the Commission has jurisdiction to examine FirstEnergy's compliance with law and Commission orders without evidence of a violation. OCC also argues that the Commission has authority to conduct an independent management review of public utilities in conjunction with its review of corporate separation issues.

{¶ 14} On September 15, 2020, the Commission opened a proceeding to review whether any political and charitable spending by the Companies in support of Am. Sub. H.B. 6 and the subsequent referendum effort was included, directly or indirectly, in any rates or charges paid by ratepayers in this state. *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 20-1502-EL-UNC.

{¶ 15} On October 29, 2020, FirstEnergy Corp., the corporate parent of the Companies, filed a Form 8-K with the United States Securities and Exchange Commission reporting the termination of certain officers and appointment of a new interim chief executive officers. The Form 8-K further stated that, during the course of FirstEnergy Corp.'s internal investigation related to ongoing government investigations, the Independent Review Committee of the Board of Directors determined that each of the terminated executives violated certain FirstEnergy Corp. policies and its code of conduct.

{¶ 16} On November 4, 2020, the Commission issued an Entry directing, in the instant case, Staff to issue a Request for Proposal (RFP) to acquire audit services to assist the Commission with the review of FirstEnergy's compliance with the corporate separation provisions of R.C. 4928.17 and with the Companies' Commission-approved corporate separation plans for the period between November 1, 2016 and October 31, 2020. Bidders were directed to demonstrate their understanding of the project and the work required by showing a clear understanding of the tasks to be completed, the experience and qualifications of the personnel who will perform the work, and the anticipated breakdown of costs and timing. All proposals were submitted on November 25, 2020, in accordance with the terms of the RFP.

{¶ 17} The proposals received in response to the RFP have been evaluated and, after consideration of those proposals, the Commission selects Marcum LLP (Marcum). The Commission finds that Marcum has the necessary experience to complete the required work.

{¶ 18} The Companies shall enter into a contract with Marcum by December 23, 2020, for the purpose of providing payment for its auditing services. The contract shall incorporate the terms and conditions of the RFP, the auditor's proposal, and relevant Commission entries in this case.

{¶ 19} The Commission shall solely direct the work of the auditor. Staff will review and approve of payment invoices submitted by the auditor.

{¶ 20} Marcum will execute its duties pursuant to the Commission's statutory authority to investigate and acquire records, contracts, reports, and other documentation under R.C. 4903.02, 4903.03, 4905.06, 4905.15, and 4905.16. Marcum is subject to the Commission's statutory duty under R.C. 4901.16, which provides:

Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent. Whoever violates this section shall be disqualified from acting as agent, or acting in any other capacity under the appointment or employment of the commission.

{¶ 21} Upon request of Marcum or Staff, the Companies shall provide any and all documents or information requested. The Companies may conspicuously mark such documents or information "confidential" if the Companies believe the document should be deemed as such. In no event, however, shall the Companies refuse or delay in providing such documents or information.

{¶ 22} Once disclosure is permitted by R.C. 4901.16, the following process applies to the release of any document or information marked as confidential. Three days' prior notice of intent to disclose shall be provided to the party claiming confidentiality. Three days after such notice, Staff or the auditor may disclose or otherwise make use of such documents or information for any lawful purpose, unless the Commission receives a request for a protective order pertaining to such documents or information within the three-day notice period. The three-day notice period will be computed according to Ohio Adm.Code 4901-1-07.

{¶ 23} Marcum shall perform its audit and investigation as an independent contractor. Any conclusions, results, or recommendations formulated by Marcum may be

examined by any participant to this proceeding. Further, it shall be understood that the Commission and/or its Staff shall not be liable for any acts committed by Marcum or its agents in the preparation and presentation of the report.

III. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That Marcum be selected to perform the consulting activities set forth above and in the RFP. It is, further,

{¶ 26} ORDERED, That FirstEnergy and Marcum shall observe the requirements set forth herein. It is, further,

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

COMMISSIONERS:

Approving:

M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JWS/mef

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

Summary: Entry selecting Marcum LLP to conduct the audit services necessary to assist the Commission with the review of FirstEnergy's compliance with the corporate separation rules adopted by the Commission electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio