

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 May 18, 2021

{¶ 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} 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.

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

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} In light of both the emergence of Energy Harbor from bankruptcy and the Commission's ruling in Suvon's certification case, the attorney examiner established a supplemental comment period regarding the audit report filed in this proceeding. Supplemental comments were timely filed by Vistra Energy Group, NOPEC, IGS, OCC, RESA, and the Companies. These supplemental comments addressed the trade name and corporate governance issues deferred in *Suvon* to this case.

{¶ 9} 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.

{¶ 10} On April 29, 2020, the attorney examiner granted a motion to intervene out of time filed by Retail Energy Supply Association.

{¶ 11} On May 29, 2020, Northeast Ohio Public Energy Council (NOPEC) filed a motion for leave to file a motion to intervene and a motion to intervene in this proceeding. NOPEC acknowledges that motions to intervene in this case were due by October 9, 2018. However, NOPEC argues that on that date, it could not have reasonably foreseen the issues that have since arisen in this case. In support of its motion to intervene, NOPEC asserts that it is a regional council of governments and the largest governmental retail energy aggregator in Ohio. NOPEC argues that its member communities may be directly affected by the outcome of this proceeding. NOPEC adds that it satisfies the intervention standard in R.C. 4903.221 and Ohio Adm.Code 4901-1-11(A)(2), which require that a party must have a real and substantial interest in a proceeding to intervene.

{¶ 12} On June 15, 2020, FirstEnergy filed a memorandum contra NOPEC's motion to intervene stating that the motion is untimely. FirstEnergy also argues that NOPEC has not met its burden of demonstrating extraordinary circumstances for intervention, as required by Ohio Adm.Code 4901-1-11(F).

{¶ 13} In response to FirstEnergy's memorandum contra, NOPEC filed a reply in support of its motion to intervene on June 22, 2020. In its reply, NOPEC emphasized that the proceeding has changed dramatically since the intervention deadline of October 9, 2018 was initially set. NOPEC restated that it has a substantial interest in the proceeding and that there are extraordinary circumstances for late intervention because additional issues are under consideration in this case than were involved in the case at time of the intervention deadline.

{¶ 14} On November 4, 2020, the Commission issued an Entry in this proceeding directing Staff to issue an RFP for audit services to conduct an additional corporate

separation audit which includes examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum.

{¶ 15} On various dates from December 2020 through March 2021, motions for intervention out of time were filed by Environmental Law and Policy Center (ELPC), Ohio Partners for Affordable Energy (OPAE), Calpine Energy Solutions, LLC (Calpine), Natural Resources Defense Council (NRDC), Citizens' Utility Board of Ohio (CUB), Industrial Energy Users-Ohio (IEU-Ohio), and Ohio Manufacturers' Association Energy Group (OMAEG). These intervenors acknowledge that motions to intervene in this case were due by October 9, 2018 but assert that they should be granted leave to intervene because the proceeding has changed dramatically since the intervention deadline was initially set. No memoranda contra were filed in response to these motions.

{¶ 16} The attorney examiner finds that NOPEC, ELPC, OPAE, Calpine, NRDC, CUB, IEU-Ohio, and OMAEG have satisfied the intervention requirements set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11. The expansion of this case to include the time period leading up to the passage of H.B. 6 is one of four separate investigations initiated by the Commission into the Companies' activities related to H.B. 6. Accordingly, the attorney examiner finds that the expansion of this case to include the time period leading up to the passage of H.B. 6 constitutes extraordinary circumstances that warrant granting intervention. Further, the examiner finds that the motions to intervene are reasonable and should be granted.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the motions to intervene filed by NOPEC, ELPC, OPAE, Calpine, NRDC, CUB, IEU-Ohio, and OMAEG be granted. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Attorney Examiner

GAP/kck

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

Summary: Attorney Examiner Entry granting the motions to intervene filed by NOPEC, ELPC, OPAC, Calpine, NRDC, CUB, IEU-Ohio, and OMAEG. electronically filed by Kelli C. King on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio