

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE DETERMINATION
OF THE EXISTENCE OF SIGNIFICANTLY
EXCESSIVE EARNINGS FOR 2017 UNDER
THE ELECTRIC SECURITY PLANS OF OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY.

CASE NO. 18-857-EL-UNC

IN THE MATTER OF THE DETERMINATION
OF THE EXISTENCE OF SIGNIFICANTLY
EXCESSIVE EARNINGS FOR 2018 UNDER
THE ELECTRIC SECURITY PLANS OF OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY.

CASE NO. 19-1338-EL-UNC

IN THE MATTER OF THE DETERMINATION
OF THE EXISTENCE OF SIGNIFICANTLY
EXCESSIVE EARNINGS FOR 2019 UNDER
THE ELECTRIC SECURITY PLANS OF OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY.

CASE NO. 20-1034-EL-UNC

IN THE MATTER OF THE QUADRENNIAL
REVIEW REQUIRED BY R.C. 4928.143(E)
FOR THE ELECTRIC SECURITY PLANS OF
OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY.

CASE NO. 20-1476-EL-UNC

ENTRY

Entered in the Journal on July 26, 2021

{¶ 1} Ohio Edison Company (OE), The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) are electric distribution utilities (EDUs) 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} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO may be either a market rate offer (MRO), in accordance with R.C. 4928.142, or an electric security plan (ESP), in accordance with R.C. 4928.143.

{¶ 3} Pursuant to the directives of R.C. 4928.143(F), the Commission is required to evaluate annually the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility. Moreover, R.C. 4928.143(E) requires that, if a Commission-approved ESP has a term that exceeds three years from the effective date of the plan, the Commission must test the plan in the fourth year (the quadrennial review) to determine whether the ESP, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under R.C. 4928.142, i.e., under an MRO. The Commission must also determine the prospective effect of the ESP to determine if that effect is substantially likely to provide the EDU with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that face comparable business and financial risk, with adjustments for capital structure as may be appropriate.

{¶ 4} On May 15, 2018, FirstEnergy filed an application in Case No. 18-857-EL-UNC for the administration of the significantly excessive earnings test (SEET), as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2017.

{¶ 5} In Case No. 18-857-EL-UNC, a stipulation and recommendation (Stipulation) between FirstEnergy, Ohio Energy Group (OEG), and Staff was filed on October 26, 2018. On March 20, 2019, the Commission issued its Opinion and Order in this matter, adopting the Stipulation, as modified, regarding FirstEnergy's 2017 SEET. In the Opinion and Order,

the Commission found that it was appropriate to exclude the revenues from the distribution modernization rider (Rider DMR) from the 2017 SEET, consistent with the Commission's orders in FirstEnergy's latest ESP. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶212, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶81.

{¶ 6} Ohio Consumers' Counsel (OCC) appealed the Commission's decision, asserting that the Commission unreasonably and, under R.C. 4928.143(F), unlawfully failed to consider the Rider DMR revenues under OE's ESP, which caused ESP profits to be understated.

{¶ 7} On July 15, 2019, FirstEnergy filed an application in Case No. 19-1338-EL-UNC for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2018.

{¶ 8} On May 15, 2020, FirstEnergy filed an application in Case No. 20-1034-EL-UNC for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2019.

{¶ 9} Subsequently, the Commission opened Case No. 20-1476-EL-UNC in order to conduct the quadrennial review for FirstEnergy required by R.C. 4928.143(E). By Entry issued on September 4, 2020, the attorney examiner consolidated that case with Case Nos. 19-1338-EL-UNC and 20-1034-EL-UNC for administrative efficiency, established a procedural schedule, and set the matters for hearing. On October 29, 2020, the attorney examiner established a new procedural schedule.

{¶ 10} On December 1, 2020, the Supreme Court of Ohio issued its decision in OCC's appeal of Case No. 18-857-EL-UNC, remanding with instructions to conduct a new SEET proceeding and include the Rider DMR revenue in the analysis. Specifically, the Court held that the Rider DMR revenue must be included in the annual SEET review pursuant to R.C.

4928.143(F). *In re Determination of Existence of Significantly Excessive Earnings for 2017 Under Elec. Sec. Plan of Ohio Edison Co.*, Slip Opinion No. 2020-Ohio-5450 at ¶¶ 14-21.

{¶ 11} On January 12, 2021, the attorney examiner consolidated the above cases, *sua sponte*, in the spirit of administrative efficiency and ordered that the procedural schedule, issued on October 29, 2020, should remain intact, unless otherwise ordered by the Commission.

{¶ 12} On February 4, 2021, OCC filed a motion of an indefinite continuance of the procedural schedule and evidentiary hearing. OCC contended that Senate Bill 10, currently pending before the General Assembly, would amend R.C. 4928.143(F), which governs the calculation of the SEET. FirstEnergy filed a memorandum contra on February 16, 2021. OCC filed a reply on February 23, 2021.

{¶ 13} On February 26, 2021, the attorney examiner denied the motion for an indefinite continuance and modified the procedural schedule. In that entry, the attorney examiner extended the date for intervenor testimony to be filed to April 5, 2021, and the deadline for service of discovery, except for notices of deposition, be extended to April 19, 2021. The attorney examiner also stated that a prehearing conference will be scheduled after the deadline for the service of discovery to discuss mutually agreeable hearing dates.

{¶ 14} On May 27, 2021, a prehearing conference was held to discuss mutually agreeable dates for the hearing. During that conference, the parties requested the discovery deadline be extended to June 11, 2021. No party objected to the extension request.

{¶ 15} By Entry issued on May 28, 2021, the attorney examiner established the following procedural schedule:

- a. The deadline for the service of discovery, except for notices of deposition, shall be June 11, 2021.
- b. Intervenors should file testimony by July 23, 2021.

- c. The evidentiary hearing shall convene on August 30, 2021, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio 43215.

{¶ 16} On July 23, 2021, OEG and OCC each filed supplemental direct testimony in this proceeding.

{¶ 17} Further, on July 23, 2021, the Companies filed a motion for a 90-day extension of the remaining procedural schedule, including the date for the filing of intervenor testimony. The Companies represent that OCC and Northeast Ohio Public Energy Council only support a 14-day extension and oppose a 90-day extension while none of the remaining parties contacted by the Companies oppose the extension. The attorney examiner notes that a similar motion was filed in *In the Matter of the 2014 Review of the Demand Side Management and Energy Efficiency Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case Nos. 13-2173-EL-RDR et al. (*Rider DSE Review*).

{¶ 18} The attorney examiner finds that a 14-day extension of the procedural schedule should be granted, including the date for the filing of intervenor testimony. The attorney examiner also finds that, although the Companies did not request expedited consideration of its motion, the time period for the filing of memoranda contra should be shortened to seven days and no replies will be permitted. Finally, the attorney examiner finds that, in order to discuss whether a longer extension of the procedural schedule is warranted, a prehearing conference should be held by telephone on Monday, August 2, 2021, at 10:00 a.m. At the designated time of the conference, the parties shall dial 614-721-2972 and enter access code 407 206 720# to join in the prehearing conference. For administrative convenience, the prehearing conference will be held concurrently with a prehearing conference in the *Rider DSE Review*, but the attorney examiner notes that these cases have not been consolidated.

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That the procedural schedule be extended by 14 days as set forth in Paragraph 18. It is, further,

{¶ 21} ORDERED, That memoranda contra the motion for extension be filed by July 30, 2021. It is, further,

{¶ 22} ORDERED, That a prehearing conference be scheduled for August 2, 2021, at 10:00 a.m. It is, further,

{¶ 23} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Gregory A. Price

By: Gregory A. Price
Attorney Examiner

JRJ/mef

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Case No(s). 18-0857-EL-UNC, 19-1338-EL-UNC, 20-1034-EL-UNC, 20-1476-EL-UNC

Summary: Attorney Examiner Entry extending the procedural schedule by 14 days and requiring memoranda contra the motion for extension be filed by 7/30/21; and scheduling a prehearing conference for 8/2/21 at 10:00am electronically filed by Ms. Mary E. Fischer on behalf of Gregory A. Price, Attorney Examiner, Public Utilities Commission of Ohio