

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 August 9, 2021

{¶ 1} In this Entry, the attorney examiner directs that the hearing be rescheduled for November 29, 2021, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 2} 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.

{¶ 3} 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 4928.143.

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 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.

{¶ 12} 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.

{¶ 13} 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.

{¶ 14} 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.

{¶ 15} 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.

{¶ 16} On May 28, 2021, the attorney examiner issued an Entry setting the procedural schedule and scheduling the hearing date. The procedural schedule included a deadline for intervenors to file supplemental testimony by July 23, 2021.

{¶ 17} Further, on July 23, 2021, the Companies filed a motion of a 90-day extension of the remaining procedural schedule. 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.

{¶ 18} On July 23, 2021, OEG and OCC filed supplemental direct testimony in accordance with the deadline established in the May 28, 2021 Entry.

{¶ 19} By Entry issued July 26, 2021, the attorney examiner granted the request for a 14-day extension of the procedural schedule, set a deadline for memoranda contra the Companies' request for a 90-day extension, and scheduled a prehearing conference for August 2, 2021, in order to discuss the Companies' request.

{¶ 20} On July 26, 2021, OCC filed a memorandum contra the Companies' motion for a 90-day extension of the procedural schedule, primarily questioning whether such a lengthy extension was warranted. No other memoranda contra were filed.

{¶ 21} On August 2, 2021, OCC and NOPEC filed a request for a court reporter to transcribe the August 2, 2021 prehearing conference.

{¶ 22} The prehearing conference occurred, as scheduled, on August 2, 2021. During the conference, the majority of parties did not contest the Companies' request for a 90-day extension in order to conduct settlement negotiations. Ultimately, the attorney examiner indicated that an extension would be granted and instructed the parties to provide their

availability for a hearing in November or December. Moreover, recognizing OCC's concerns regarding whether settlement was likely to occur in the event the extension request was granted, the attorney examiner informed the Companies that they would need to file a report in the docket every 30 days once an extension had been granted, in order to avail the attorney examiner of the status of settlement negotiations. The prehearing conference was not transcribed.

{¶ 23} Based on the discussions from the prehearing conference, the attorney examiner finds the Companies' request for an additional extension is reasonable and should be granted, including the date for the filing of intervenor testimony. The deadline for supplemental intervenor testimony should be extended to October 18, 2021. The attorney examiner finds that the hearing should be rescheduled at this time. The hearing shall convene on November 29, 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. The parties should register at the lobby desk and then proceed to the 11th floor in order to participate in the hearing. Consistent with CDC Guidelines and the May 17, 2021 Ohio Department of Health Order, individuals who are not fully vaccinated should continue to wear a face covering and socially distance. Any accommodations necessary to ensure availability of social distancing and plexiglass dividers should be made in advance of the hearing. As pandemic restrictions are evolving, additional instructions regarding further safety requirements or accommodations for the hearing room will be forthcoming, either posted on the Commission's website or communicated to the parties.

{¶ 24} Consistent with the discussion held at the prehearing conference, the Companies are directed to file correspondence every 30 days, beginning on September 1, 2021, providing the status of settlement negotiations, including the number of settlement meetings that have occurred in which all parties were invited to participate.

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That the hearing be rescheduled for November 29, 2021, as set forth in Paragraph 23. It is, further,

{¶ 27} ORDERED, That the deadline for filing supplemental intervenor testimony be extended to October 18, 2021, as set forth in Paragraph 23. It is, further,

{¶ 28} ORDERED, That the Companies file correspondence every 30 days regarding the status of settlement negotiations, in accordance with Paragraph 24. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Attorney Examiner

JRJ/mef

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in

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

Summary: Attorney Examiner Entry rescheduling the hearing for November 29, 2021, at 10:00 a.m.; extending the deadline to file supplemental intervenor testimony to October 18, 2021; and, requiring the companies to file correspondence every 30 days regarding the status of settlement negotiations, in accordance with Paragraph 24. electronically filed by Ms. Mary E. Fischer on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio