BEFORE
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 Administrative Code Chapter 4901:1-37	)))))	Case No. 17-974-EL-UNC

INITIAL COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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I. INTRODUCTION

On January 27, 2021, the Public Utilities Commission of Ohio ("PUCO" or "Commission") issued an Entry selecting Daymark Energy Advisors, Inc. ("Daymark"), to conduct audit services necessary to assist the Commission with the review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's (the "Ohio Companies" or "FirstEnergy") compliance with the corporate separation rules adopted by the Commission.

On September 13, 2021, Daymark filed its audit report with the Commission, with portions of the audit report designated as confidential information.

On September 17, 2021, the presiding Attorney Examiner issued an Entry requesting initial comments on the audit report by October 14, 2021.

On October 12, 2021, the presiding Attorney Examiner issued an Entry extending the deadline for initial comments on the audit report to November 8, 2021.

On November 12, 2021, the presiding Attorney Examiner issued an Entry further extending the deadline for initial comments to November 22, 2021.

Pursuant to the November 12, 2021, Entry, the Industrial Energy Users-Ohio ("IEU-Ohio") submits its initial comments.

II. COMMENTS

The Daymark audit report provides a textbook example of why structural separation, rather than merely functional separation, is necessary to comply with both the letter and spirit of Ohio's corporate separation rules. Although the audit report stops short of making any findings of major noncompliance with Ohio's corporate separation rules, the large number of room for improvement (13) and minor noncompliance (8) findings strongly indicate the Commission needs to take action to improve FirstEnergy's corporate separation compliance. IEU-Ohio provides its specific recommendations and its comments on the audit report in these initial comments.

A. <u>Products and Services</u>

The audit report identifies that FirstEnergy offered non-electric goods and services between 2016 and 2020 through FirstEnergy Products ("FEP") and Suvon LLC d.b.a. FirstEnergy Home and FirstEnergy Advisors.[1] Profits from these activities are recorded on the books of the Ohio Companies, but are recognized below the line. The Ohio Companies also engage in the practice of soft transfers, in which Ohio Company's call center staff redirect customer calls to FEP offered products when they make Ohio Company inquiries, a competitive advantage that other competing suppliers offering products and services similar or identical to FEP offered products, do not enjoy. The audit report offers several recommendations to address corporate separation concerns. First, it recommends a profit-sharing mechanism be put in place to recognize that Ohio Company customers may be subsidizing these activities as [redacted] of FEP revenue was

[1] Audit report at 9-10.

collected by an additional line item on electric distribution company customer bills.[2] Additionally, the audit report recommends that FEP, FirstEnergy Advisors and FirstEnergy Home be structurally separated, rather than staffed by employees of FirstEnergy Service Company ("FESC").[3]

IEU-Ohio does not believe a profit-sharing mechanism is practical. Such a mechanism would require additional regulatory proceedings and would require the Commission to regulate services that should be competitive and not subjected to additional regulation. Moreover, while a profit-sharing mechanism could potentially remedy some of the subsidy issues flagged by the auditor it would not address the competitive disadvantage faced by nonaffiliated providers of the nonelectric products and services.

Further, there would be no need for a profit-sharing mechanism if the non-regulated activities being conducted by FEP, FirstEnergy Advisors and FirstEnergy Home were structurally separated from the Ohio Companies and FESC. Ohio Revised Code 4928.17(A)(1) specifically states that corporate separation plans are required to:

> "provide[], at minimum, for the provision of the competitive retail electric service or the **nonelectric product or service through a fully separated affiliate of the utility,** and the plan includes separate accounting requirements, the code of conduct as ordered by the commission pursuant to a rule it shall adopt under division (A) of section 4928.06 of the Revised Code, and such other measures as are necessary to effectuate the policy specified in section 4928.02 of the Revised Code."
> (Emphasis added).

Fully separating the nonelectric products and services and any other competitive retail electric service offering from the Ohio Companies and FESC would also be

[2] Audit report at 63.

[3] *Id* at 70.

consistent with the state policies that promote competition and retail choice. R.C. 4928.02.

Accordingly, consistent with the structural separation requirements contained in R.C. 4928.17(A)(1), IEU-Ohio recommends the Commission order the Ohio Companies and FESC to structurally separate from FEP, FirstEnergy Advisors, FirstEnergy Home, and any other affiliated company that exists now or in the future and which offers nonelectric products and services or a competitive retail electric service.

B. Compliance Planning

The audit report finds that the Ohio Companies rely heavily upon Federal Energy Regulatory Commission ("FERC") Affiliate Restrictions rules and the Ohio Companies have not taken action to address gaps between FERC's rules and Ohio's requirements.[4] IEU-Ohio requests that the Commission order the Ohio Companies to promptly address this gap and demonstrate they have addressed the gaps between FERC's rules and Ohio Administrative Code subsections flagged on page 30 of the audit report. There is simply no reason to allow the Ohio Companies to ignore compliance requirements that have been in place for many years. Further, as indicated in the audit report the Ohio Companies began an internal effort to address these gaps but dropped the ball and indicated they were awaiting Commission directives in this case.[5] The Commission should accept this invitation.

C. Cost Allocation and Cost Allocation Manual

[4] *Id* at 6.

[5] *Id* at 31.

The audit report finds that the Ohio Companies did not have a complete cost allocation manual ("CAM") on hand at the start of the audit[6] and that the CAM was not sufficient to prevent cross-subsidization.[7] Additionally, the audit report found a lack of controls regarding time entry by FESC employees.[8] IEU-Ohio agrees with the audit report recommendation to require creating an internal audit and review mechanism to ensure time entries are being properly recorded.

Respectfully submitted,

*_/s/ Matt R. Pritchard_*

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[6] *Id* at 13.

[7] *Id* at 11.

[8] *Id* at 13.

CERTIFICATE OF SERVICE

In accordance with Ohio Adm.Code 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Initial Comments of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 22nd day of November 2021, *via* electronic transmission.

/s/ Matt R. Pritchard
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