

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 August 11, 2022

I. SUMMARY

{¶ 1} The attorney examiner grants the joint motion to extend and continue the procedural schedule to the extent described in this Entry.

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} Comments regarding the Sage audit report were timely filed by Interstate Gas Supply, Inc. (IGS), Ohio Consumers' Counsel (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} 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.

{¶ 8} On September 8, 2020, the OCC filed motions in this proceeding for an investigation and management audit of 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. The Companies filed a memorandum contra OCC's motions on September 23, 2020. OCC filed a reply on September 30, 2020.

{¶ 9} 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.

{¶ 10} 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 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.

{¶ 11} In light of these disclosures, on November 4, 2020, the Commission issued an Entry, in the instant case, directing Staff to issue an 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.

{¶ 12} On January 27, 2021, the Commission selected Daymark Energy Advisors, Inc. (Daymark) and directed the Companies to enter into a contract with Daymark to perform the audit services described in the RFP and its proposal. In the Entry, the Commission also set the deadline for the completion of the audit report as June 21, 2021. Motions to extend the filing date of the audit report were subsequently filed and granted.

{¶ 13} On September 13, 2021, Daymark filed the final audit report with the Commission.

{¶ 14} By Entry issued April 7, 2022, the hearing in this case is currently scheduled to commence on August 22, 2022.

{¶ 15} On June 22, 2022, OCC, NOPEC, and Ohio Manufacturers' Association Energy Group (OMAEG) filed a joint motion to continue the procedural schedule for four months, including the hearing date. The moving parties state that there is good cause to continue the hearing because of the volume of documents produced by the Companies and by FirstEnergy Corp., as well as the delay in resolving the depositions of Ms. Yeboah Amankwah, Mr. Lisowski, and a FirstEnergy Corp. corporate representative.

{¶ 16} On July 7, 2022, the Companies filed their response to the motion to continue, stating that they are prepared to move forward with the current schedule but take no position on the request.

{¶ 17} On July 14, 2022, OCC filed correspondence indicating that it would not be filing a reply to the Companies' response.

{¶ 18} On August 11, 2022, OCC, OMAEG, and NOPEC (joint movants) filed a joint motion to amend their June 22, 2022 motion. In the filing, the parties provide additional updates that they state were not available to them when they filed the motion on June 22, 2022. They state that the FirstEnergy Corp. document production is now expected to be complete on September 30, 2022, and a number of requested subpoenas have not yet been signed, among other updates.

{¶ 19} Noting that no party filed opposition to the motion to continue, the attorney examiner finds good cause to continue the procedural schedule to allow parties ample opportunity to prepare for the hearing. At this time, the attorney examiner finds that the procedural schedule should be extended as follows:

- a. The Companies should file testimony by December 5, 2022.
- b. Intervenors should file testimony by December 19, 2022.
- c. The evidentiary hearing will commence on January 9, 2023, at 10:00 a.m. The hearing shall take place 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 to participate in the hearing.

{¶ 20} Further, the Companies are directed to work in conjunction with other parties, namely joint movants, to file a status report on the discovery process in this docket on August 26, 2022, September 23, 2022, October 21, 2022, November 18, 2022, and December 19, 2022. These reports are intended to inform the attorney examiner as to whether the parties are adequately prepared for the scheduled hearing and whether additional extensions are warranted. The reports should indicate the number of pages of documents that have been produced through discovery; how many pages of documents have been reviewed; and how many pages of documents still require review. The attorney examiner finds these reports will provide the “meaningful, quantified assessments on the progress of reviewing discovery in this proceeding,” as contemplated by the February 10, 2022 Entry. Entry (Feb. 10, 2022) at ¶ 30.

III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the procedural schedule be extended as set forth in Paragraph 19. It is, further,

{¶ 23} ORDERED, That the hearing be rescheduled for January 9, 2023, as set forth in Paragraph 19. It is, further,

{¶ 24} ORDERED, That the parties file discovery status updates, as directed in Paragraph 20. It is, further,

{¶ 25} 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

NJW/mef

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in

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

Summary: Attorney Examiner Entry rescheduling the hearing for for January 9, 2023 and extending the procedural schedule as follows: companies testimony due December 5, 2022; intervenors testimony due December 19, 2022; and requiring the parties to file status reports on the discovery process, as detailed herein electronically filed by Ms. Mary E. Fischer on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio