

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

IN THE MATTER OF THE REVIEW OF THE DISTRIBUTION MODERNIZATION RIDER OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE NO. 17-2474-EL-RDR

IN THE MATTER OF THE REVIEW OF THE POLITICAL AND CHARITABLE SPENDING BY OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE NO. 20-1502-EL-UNC

IN THE MATTER OF THE 2020 REVIEW OF THE DELIVERY CAPITAL RECOVERY RIDER OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.

CASE NO. 20-1629-EL-RDR

ENTRY

Entered in the Journal on February 21, 2024

I. SUMMARY

{¶ 1} The Commission lifts the existing stay in the above-captioned cases, effective February 26, 2024, consistent with this Entry.

II. DISCUSSION

{¶ 2} Concurrent with the Commission’s four above-captioned investigations, the United States Department of Justice’s District Attorney for the Southern District of Ohio (DOJ or U.S. Attorney) has been conducting an ongoing investigation into alleged corruption relating to Am. Sub. H.B. 6 and action through the Commission, resulting in a Deferred Prosecution Agreement (DPA)¹ and several convictions. Throughout our four investigations, the Commission has sought to balance two principles: one, the Commission will follow the facts wherever they lead; and two, it is of the utmost importance that the Commission's investigations do not interfere with the DOJ’s ongoing criminal investigation, or the parallel civil action instituted by Ohio Attorney General Dave Yost.

{¶ 3} On August 16, 2022, the U.S. Attorney filed a letter in the above-captioned proceedings, pursuant to 28 U.S.C. § 517, requesting that the Commission stay these matters for a period of six months, citing its concern that continued discovery in the Commission’s four investigations may directly interfere with or impede the United States’ ongoing investigation into corruption relating to Am. Sub. H.B. 6.² Specifically, the DOJ referenced the trial for two individuals charged in the indictment was scheduled to begin in January 2023.

{¶ 4} On August 24, 2022, the Commission issued an Entry staying the above-captioned proceedings at the request of the U.S. Attorney for a period of six months, unless otherwise ordered by the Commission. In the Entry, the Commission made it clear that avoiding interference with the ongoing federal criminal investigation by the U.S. Attorney

¹ The DPA is between FirstEnergy Corp. and the United States Attorney for the Southern District of Ohio. *United States of America v. FirstEnergy Corp.*, Case: 1:21-cr-86, July 22, 2021, Doc. 3.

² According to the DOJ: “The United States understands that substantial discovery is underway in the PUCO Proceedings, including written discovery and the potential for depositions of numerous individuals and entities. The PUCO Proceedings involve issues related to the United States’ investigation, and the United States believes that continued discovery in the PUCO Proceedings may directly interfere with or impede the United States’ ongoing investigation.”

is of the utmost importance, specifically citing our concerns with discovery in these proceedings interfering with the criminal trial. Moreover, the Commission's Entry made clear that we would allow for requests of reconsideration and/or extension of the stay, as may be appropriate. Entry (Aug. 24, 2022) at ¶¶ 76, 82, 84, 86.

{¶ 5} By letter filed on February 23, 2023, the U.S. Attorney requested that the Commission extend the stay for an additional six months, citing the criminal trial for two individuals charged in the indictment that commenced in January 2023 was then underway.

{¶ 6} The Commission issued an Entry on March 8, 2023, granting the request of the U.S. Attorney to extend the stay for a period of six months.

{¶ 7} The criminal trial resulted in convictions for the two individuals charged in the indictment, who were later sentenced by federal Judge Timothy Black. *United States v. Larry Householder*, S.D. Ohio No. 1:20-cr-77.

{¶ 8} By letter filed on August 10, 2023, the U.S. Attorney requested a second extension of the existing stay. Similar to its August 16, 2022 request, the U.S. Attorney noted its concern that continued discovery in the Commission's four investigations may directly interfere with or impede the United States' ongoing investigation into alleged corruption relating to Am. Sub. H.B. 6.

{¶ 9} By Entry issued August 23, 2023, the Commission granted the request of the U.S. Attorney to extend the stay for a period of six months, through February 23, 2024. In the Entry, the Commission reiterated that "[w]e have made it clear that avoiding interference with the ongoing federal criminal investigation by the U.S. Attorney or the civil action brought by the Ohio Attorney General Dave Yost is of the utmost importance. See, e.g., Entry (Aug. 24, 2022) at ¶¶ 21, 68, 85, citing *In re the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 20-1629-EL-RDR (2020 Rider DCR Audit), Entry (Dec. 15, 2021) at ¶ 14; *In re the 2021 Review of the Delivery Capital Recovery Rider of Ohio Edison Co., The Cleveland Elec. Illum. Co.*,

and *The Toledo Edison Co.*, Case No. 21-1038-EL-RDR, Entry on Rehearing (Dec. 15, 2021) at ¶ 14; *In re the Review of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.'s Compliance with R.C. 4928.17 and Ohio Adm.Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Prehearing Tr. (June 30, 2021) at 13-14. Order.

{¶ 10} R.C. 4903.10 provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 11} On September 22, 2023, the Ohio Consumers' Counsel (OCC) filed an application for rehearing in each proceeding, asserting five separate assignments of error.

{¶ 12} On October 2, 2023, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the Companies or FirstEnergy) filed a memoranda contra the applications for rehearing.

{¶ 13} The Commission issued an Entry on Rehearing, denying OCC's application for rehearing, on October 18, 2023. In that Entry on Rehearing, the Commission noted the unique position of having an express request for a stay from the DOJ filed in our proceedings. Consistent with prior orders in these cases, we also expressly stated that "[n]o one should misread the intentions of this Commission. Our ongoing review of the Companies and their actions will continue to effectuate our goal, which is to protect the interests of all of the customers of all of the public utilities we regulate, and especially FirstEnergy's ratepayers. It is important that these proceedings move forward and provide answers, but not at the expense of ensuring effective criminal prosecution and justice. The Commission has not hesitated to follow the facts of these cases where they lead and has made rulings supporting, when legally appropriate, these facts to become public, as demonstrated by our initial expansion of the 2020 *Rider DCR Audit* to review vendor transactions involving our former Chairman and the expansion of the audit to include an

apparent nondisclosure of a ‘side agreement’ by the utilities that involved the Commission’s former Chairman’s contracts.” Entry (Aug. 24, 2022) at ¶ 86.

{¶ 14} Ultimately, “a court may decide in its discretion to stay civil proceedings * * * ‘when the interests of justice seem [] to require such action.’” *Securities & Exchange Comm. v. Dresser Indus.*, 628 F.2d 1368, 1375 (D.C.Cir.1980), quoting *United States v. Kordel*, 397 U.S. 1, 12, 90 S.Ct. 763, 769, 25 L.Ed.2d 1 (1970), fn. 27. We have noted that an indefinite stay would be inappropriate and have stated on numerous occasions that these investigations will continue as promptly as possible, but under no circumstances will we jeopardize the efforts of the DOJ to investigate and, if appropriate, address any underlying alleged criminal behavior, especially now that two convictions have been secured. However, to date, the U.S. Attorney has made no additional request for any further extension of the existing stay. Therefore, the Commission is prepared to proceed with its investigations and finds it appropriate, in its discretion, to lift the stay, effective February 26, 2024. We will clarify that our decision to lift the stay includes proceedings related to the alleged non-disclosure of a “side agreement”, which had previously been subject to a stay. Accordingly, we instruct the attorney examiners to issue procedural schedules in the four above-captioned proceedings within seven calendar days.

III. ORDER

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the existing stay in the above-captioned proceedings be lifted, effective February 26, 2024, consistent with this Entry. It is, further,

{¶ 17} ORDERED, That the attorney examiners issue procedural schedules in the above-captioned proceedings within seven calendar days. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon each party of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters

MJA/dmh

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**Case No(s). 17-0974-EL-UNC, 17-2474-EL-RDR, 20-1502-EL-UNC, 20-1629-EL-
RDR**

Summary: Entry lifting the existing stay in the above-captioned cases, effective February 26, 2024, consistent with this Entry electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.