

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE 2015 REVIEW OF
THE DELIVERY CAPITAL RECOVERY RIDER
CONTAINED IN THE TARIFFS OF OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY, AND
THE TOLEDO EDISON COMPANY.

CASE NO. 15-1739-EL-RDR

ENTRY

Entered in the Journal on December 19, 2016

{¶ 1} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) are electric distribution utilities as defined in 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} On August 25, 2010, the Commission issued an Opinion and Order in *In re Application of Ohio Edison Co., The Cleveland Electric Illuminating Co., and the Toledo Edison Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO (*ESP II Case*). In that Opinion and Order, the Commission approved a combined stipulation, as modified, authorizing FirstEnergy to establish a delivery capital recovery rider (Rider DCR) effective January 1, 2012. Rider DCR provides for recovery of property taxes, commercial activity tax, and associated income taxes, and the opportunity to earn a return on and of plant-in-service associated with distribution, subtransmission, and general and intangible plant. Additionally, under the terms of the stipulation, FirstEnergy agreed to submit to an annual audit review process of Rider DCR. Thereafter, on July 18, 2012, the Commission issued an Opinion and Order in Case No. 12-1230-EL-SSO (*ESP III Case*), approving a stipulation filed by various parties extending, with modifications, the combined stipulation approved by the Commission in the *ESP II Case*.

{¶ 3} By Entry issued December 9, 2015, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge) to conduct the 2015 annual audit and investigation of FirstEnergy's Rider DCR. On April 22, 2016, Blue Ridge submitted its compliance audit of FirstEnergy's Rider DCR.

{¶ 4} On July 20, 2016, Ohio Consumers' Counsel (OCC) filed a motion to compel, requesting the Commission direct FirstEnergy to provide documents and information regarding the 2015 audit and investigation conducted by Blue Ridge, which OCC alleges FirstEnergy unreasonably withheld during the discovery process. FirstEnergy filed a memorandum contra OCC's motion to compel on August 4, 2016, to which OCC filed a reply on August 11, 2016.

{¶ 5} Subsequent to its motion to compel, OCC submitted a public records request regarding the same type of information that is the subject of the motion to compel. On October 28, 2016, FirstEnergy filed a motion for protective order. OCC filed a memorandum contra FirstEnergy's motion for protective order on November 14, 2016.

{¶ 6} At a discovery conference held on November 30, 2016, the attorney examiners granted OCC's motion to compel and denied FirstEnergy's motion for protective order, directing FirstEnergy to provide the requested information to the extent that it does not constitute confidential or proprietary trade secret information. The attorney examiners provided FirstEnergy the opportunity to provide Staff redacted copies of that information by noon on December 5, 2016. Moreover, in the event Staff disagreed with the proposed redactions of FirstEnergy, the attorney examiners indicated that disputes would be settled by a subsequent ruling following an in-camera review of the information.

{¶ 7} Upon review of the information provided by FirstEnergy in response to the attorney examiners' directives, it seems a significant portion of the information has been

redacted or withheld by counsel, without any accompanying information regarding the basis for doing so.

{¶ 8} Consistent with their directives set forth during the November 30, 2016 prehearing conference, the attorney examiners find that the requested information is generically appropriate subject matter for the purposes of discovery and the public records request. To the extent that FirstEnergy asserts that certain information is privileged or subject to protection, FirstEnergy should identify all such documents by December 30, 2016, and provide the attorney examiners, Staff and OCC with a privilege log that includes: (1) the nature of the documents, (2) the date that the document was prepared, (3) the identity of the person who prepared the document, (4) the person for whom the document was prepared, and (5) the basis for withholding or redacting the document.

{¶ 9} The attorney examiners find it necessary to schedule an additional prehearing conference in order to expeditiously resolve the pending discovery issues in this proceeding and allow for an in-camera review of the disputed documents and associated privilege log, if necessary. The conference will be transcribed. Accordingly, a prehearing conference shall be held on Wednesday, January 4, 2017, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That FirstEnergy provide the attorney examiners, Staff and OCC with a privilege log by December 30, 2016, in accordance with Paragraph 8 above. It is, further,

{¶ 12} ORDERED, That a prehearing conference in this case be scheduled in accordance with Paragraph 9. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Megan Addison

By: Megan J. Addison
Attorney Examiner

JRJ/sc

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Summary: Attorney Examiner Entry directing that FirstEnergy provide OCC, Staff, and the attorney examiners with a privilege log by December 30, 2016, and scheduling an additional prehearing conference for January 4, 2017. - electronically filed by Sandra Coffey on behalf of Megan Addison, Attorney Examiner, Public Utilities Commission of Ohio