

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 September 20, 2018

{¶ 1} 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.

{¶ 2} On December 12, 2012, the Commission issued an Entry initiating an investigation into the health, strength, and vitality of Ohio's competitive retail electric service (CRES) market. *In re the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI (*CRES Market Investigation Case*). The investigation was intended to establish actions that the Commission can take to enhance the health, strength, and vitality of the CRES market. In the Entry initiating the investigation, the Commission presented a series of questions to stakeholders regarding market design and corporate separation as they impact the CRES market.

{¶ 3} On March 26, 2014, the Commission issued its Finding and Order in the *CRES Market Investigation Case*, adopting, in part, Staff's recommendations, with modifications. The Commission, in adopting one such recommendation, directed that each of the Ohio electric distribution utilities would be subject to an audit to ensure their compliance with R.C. 4928.17 and the Commission's corporate separation rules, as enumerated in Ohio Adm.Code Chapter 4901:1-37, as well as to further Ohio's policies pursuant to R.C. 4928.02. *CRES Market Investigation Case*, Finding and Order (Mar. 26, 2014) at 16-17. According to

Staff's recommended audit schedule, FirstEnergy will be the first electric distribution utility to undergo the prescribed audit.

{¶ 4} 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 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.

{¶ 5} On June 9, 2017, the Office of the Ohio Consumers' Counsel (OCC) moved to intervene in this proceeding. In support of its motion, OCC asserts that it is the state agency that represents Ohio's residential utility consumers and that it seeks intervention to protect the interests of FirstEnergy customers. OCC adds that it satisfies the intervention standard in R.C. 4903.221. OCC also asserts that its role as a residential utility consumer advocate complies with the standards set forth in Ohio Adm.Code 4901-1-11(A)(2), which require that a party must have a real and substantial interest in a proceeding to intervene. Further, OCC asserts that the Supreme Court of Ohio has confirmed OCC's right to intervene. See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20. No memoranda contra OCC's motion to intervene were filed.

{¶ 6} On August 30, 2017, Interstate Gas Supply, Inc. (IGS) moved to intervene in this proceeding. In support of its motion, IGS averred it has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceeding, and that it is so situated that the disposition of these proceedings without IGS's participation may, as a practical matter, impair or impede IGS's ability to protect that interest.

{¶ 7} On September 14, 2017, FirstEnergy filed a memorandum contra IGS's motion to intervene stating that IGS has not met its burden of demonstrating a real or substantial interest in this proceeding that will be impaired. Further, FirstEnergy avers that IGS's intervention will unduly prolong and delay this proceeding suggesting that IGS will seek premature discovery from the Companies prior to the final audit report being issued in this case.

{¶ 8} In response to FirstEnergy's memorandum contra, IGS filed a reply in support of its motion to intervene on September 21, 2017. In its reply, IGS restated that it has a substantial interest in the proceeding because FirstEnergy's corporate separation compliance—or non-compliance—has a direct bearing on IGS's ability to provide products and services in the FirstEnergy service territory and throughout the state. Furthermore, IGS avers that its participation will streamline this proceeding and refine the issues under consideration.

{¶ 9} As an initial matter, the attorney examiner finds that both IGS and OCC have satisfied the intervention requirements set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11. The attorney examiner specifically notes that FirstEnergy's arguments regarding premature discovery attempts are moot, as the final audit report has already been filed. Accordingly, the attorney examiner finds IGS's and OCC's motions to intervene reasonable and should be granted.

{¶ 10} On March 29, 2018, OCC filed a motion to compel responses to discovery requests. In support of its motion to compel, OCC states that the information it seeks is reasonably calculated to lead to the discovery of admissible evidence, and FirstEnergy has failed to show how OCC's requests are overly broad and/or unduly burdensome. Furthermore, OCC states that FirstEnergy misinterprets R.C. 4909.16, and that a promise to supplement discovery, once the auditor issues a report, is an insufficient and evasive response to discovery. Finally, OCC states that it undertook reasonable efforts to resolve the discovery dispute.

{¶ 11} On April 13, 2018, FirstEnergy filed a memorandum contra OCC's motion to compel responses to discovery requests. In opposition to OCC's motion to compel, FirstEnergy states that OCC's discovery requests are premature, and even if timely, are irrelevant and overbroad.

{¶ 12} Thereafter, the parties engaged in several discussions to determine whether the number of documents in dispute could be reduced. Although the parties informed the attorney examiner that a majority of these issues had been resolved through these discussions, there were still several documents subject to the motion to compel that required a formal ruling.

{¶ 13} At this time, the attorney examiner finds that it is appropriate, and consistent with previous discussions with the parties, to allow FirstEnergy to file a supplemental memorandum relating to the remaining documents subject to the discovery dispute by October 1, 2018, with any reply memoranda to be filed by October 9, 2018. Additionally, interested persons may file motions to intervene no later than October 9, 2018.

{¶ 14} In order to resolve OCC's pending motion to compel in an expeditious manner, the attorney examiner finds it necessary to schedule a prehearing discovery conference. The conference will be on the record, and the parties should come prepared to discuss the remaining documents subject to the motion to compel. Accordingly, a prehearing conference shall be scheduled for October 16, 2018, at 1:30 p.m., at the offices of the Commission, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That IGS's and OCC's motions to intervene be granted. It is, further,

{¶ 17} ORDERED, That FirstEnergy file a supplemental memorandum no later than October 1, 2018, and reply memoranda be filed by October 9, 2018. It is, further,

{¶ 18} ORDERED, That interested persons file motions to intervene no later than October 9, 2018. It is, further,

{¶ 19} ORDERED, That a prehearing discovery conference be scheduled in accordance with Paragraph 14. It is, further,

{¶ 20} 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 Addison
Attorney Examiner

JRJ/LLA/mef

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in

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

Summary: Attorney Examiner Entry granting motions to intervene, setting procedural deadlines, and scheduling a prehearing discovery conference for 10/16/18 at 1:30pm electronically filed by Ms. Mary E Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio