

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE DETERMINATION
OF THE EXISTENCE OF SIGNIFICANTLY
EXCESSIVE EARNINGS FOR 2017 UNDER
THE ELECTRIC SECURITY PLANS OF OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY.

CASE NO. 18-857-EL-UNC

IN THE MATTER OF THE DETERMINATION
OF THE EXISTENCE OF SIGNIFICANTLY
EXCESSIVE EARNINGS FOR 2018 UNDER
THE ELECTRIC SECURITY PLANS OF OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY.

CASE NO. 19-1338-EL-UNC

IN THE MATTER OF THE DETERMINATION
OF THE EXISTENCE OF SIGNIFICANTLY
EXCESSIVE EARNINGS FOR 2019 UNDER
THE ELECTRIC SECURITY PLANS OF OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY.

CASE NO. 20-1034-EL-UNC

IN THE MATTER OF THE QUADRENNIAL
REVIEW REQUIRED BY R.C. 4928.143(E)
FOR THE ELECTRIC SECURITY PLANS OF
OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY.

CASE NO. 20-1476-EL-UNC

ENTRY

Entered in the Journal on January 12, 2021

{¶ 1} Ohio Edison Company (OE), The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) are electric distribution utilities (EDUs) 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} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO may be either a market rate offer (MRO), in accordance with R.C. 4928.142, or an electric security plan (ESP), in accordance with 4928.143.

{¶ 3} Pursuant to the directives of R.C. 4928.143(F), the Commission is required to evaluate annually the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility. Moreover, R.C. 4928.143(E) requires that, if a Commission-approved ESP has a term that exceeds three years from the effective date of the plan, the Commission must test the plan in the fourth year (the quadrennial review) to determine whether the ESP, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under R.C. 4928.142, i.e., under an MRO. The Commission must also determine the prospective effect of the ESP to determine if that effect is substantially likely to provide the EDU with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that face comparable business and financial risk, with adjustments for capital structure as may be appropriate.

{¶ 4} On May 15, 2018, FirstEnergy filed an application in Case No. 18-857-EL-UNC for the administration of the significantly excessive earnings test (SEET), as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2017.

{¶ 5} In Case No. 18-857-EL-UNC, a stipulation and recommendation (Stipulation) between FirstEnergy, Ohio Energy Group (OEG), and Staff was filed on October 26, 2018. On March 20, 2019, the Commission issued its Opinion and Order in this matter, adopting the Stipulation, as modified, regarding FirstEnergy's 2017 SEET. In the Opinion and Order,

the Commission found that it was appropriate to exclude the revenues from the distribution modernization rider (Rider DMR) from the 2017 SEET, consistent with the Commission's orders in FirstEnergy's latest ESP. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (ESP IV), Fifth Entry on Rehearing (Oct. 12, 2016) at ¶212, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶81.

{¶ 6} OCC appealed the Commission's decision, asserting that the Commission unreasonably and, under R.C. 4928.143(F), unlawfully failed to consider the Rider DMR revenues under OE's ESP, which caused ESP profits to be understated.

{¶ 7} On July 15, 2019, FirstEnergy filed an application in Case No. 19-1338-EL-UNC for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2018.

{¶ 8} On May 15, 2020, FirstEnergy filed an application in Case No. 20-1034-EL-UNC for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2019.

{¶ 9} Subsequently, the Commission opened Case No. 20-1476-EL-UNC in order to conduct the quadrennial review for FirstEnergy required by R.C. 4928.143(E). By Entry issued on September 4, 2020, the attorney examiner consolidated that case with Case Nos. 19-1338-EL-UNC and 20-1034-EL-UNC for administrative efficiency, established a procedural schedule, and set the matters for hearing. On October 29, 2020, the attorney examiner established a new procedural schedule and set the consolidated cases for hearing no earlier than May 3, 2021.

{¶ 10} On December 1, 2020, the Supreme Court of Ohio issued its decision in OCC's appeal of Case No. 18-857-EL-UNC, remanding with instructions to conduct a new SEET proceeding and include the Rider DMR revenue in the analysis. Specifically, the Court held that the Rider DMR revenue must be included in the annual SEET review pursuant to R.C.

4928.143(F). *In re Determination of Existence of Significantly Excessive Earnings for 2017 Under Elec. Sec. Plan of Ohio Edison Co.*, Slip Opinion No. 2020-Ohio-5450 at ¶¶ 14-21.

{¶ 11} Because the above-captioned cases relate to annual SEET reviews, the attorney examiner finds that the above cases should be consolidated, *sua sponte*, in the spirit of administrative efficiency. Not only will consolidation promote efficiency in the resolution of these cases, the attorney examiner also notes that no party will be prejudiced by the consolidation. Motions to intervene already filed in at least one of the above-captioned cases will be treated as a motion to intervene in all the cases.

{¶ 12} The procedural schedule, issued on October 29, 2020, should remain intact, unless otherwise ordered by the Commission.

{¶ 13} Given the current COVID-19 health emergency, this hearing may be held remotely. The attorney examiners will provide additional information to the parties at a prehearing conference to be scheduled by subsequent entry.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the above-captioned cases be consolidated. It is, further,

{¶ 16} 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

GAP/kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/12/2021 11:02:52 AM

in

Case No(s). 18-0857-EL-UNC, 19-1338-EL-UNC, 20-1034-EL-UNC, 20-1476-EL-UNC

Summary: Attorney Examiner Entry ordering the above-captioned cases be consolidated.
electronically filed by Kelli C. King on behalf of Jacky Werman St. John, Attorney Examiner,
Public Utilities Commission of Ohio