

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

Entered in the Journal on March 4, 2021

{¶ 1} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the FirstEnergy Utilities 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} R.C. 4905.06 states, in relevant part, that the Commission has general supervision over all public utilities within its jurisdiction as defined in R.C. 4905.05, and may examine such public utilities and keep informed as to their general condition, capitalization, and franchises, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, the safety and security of the public and their employees, and their compliance with all laws, orders of the Commission, franchises, and charter requirements.

{¶ 3} R.C. 4905.05 states, in relevant part, that the jurisdiction, supervision, powers, and duties of the Commission extend to every public utility, the plant or property of which lies wholly within this state and when the property of a public utility lies partly within and partly without this state to that part of such plant or property which lies within this state; to the persons or companies owning, leasing, or operating such public utilities; to the records and accounts of the business thereof done within this state; and to the records and accounts of any companies which are part of an electric utility holding company system exempt under section 3(a)(1) or (2) of the "Public Utility Holding Company Act of 1935," 49 Stat. 803, 15 U.S.C. 79c, and the rules and regulations promulgated thereunder, insofar as such records and accounts may in any way affect or relate to the costs associated with the

provision of electric utility service by any public utility operating in this state and part of such holding company system.

{¶ 4} The Commission opened this proceeding on September 15, 2020, to review the political and charitable spending by the FirstEnergy Utilities in support of Am. Sub. H.B.6 and the subsequent referendum effort. Also on September 15, 2020, the attorney examiner directed the Companies to show cause, by September 30, 2020, demonstrating that the costs of any political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, were not included, directly or indirectly, in any rates or charges paid by ratepayers in this state. Further, the attorney examiner directed interested parties to file comments regarding the Companies' response by October 29, 2020, and to file reply comments by November 13, 2020.

{¶ 5} The Companies timely filed their response to the show cause order on September 30, 2020. As part of the response, the Companies included an affidavit of Santino L. Fanelli.

{¶ 6} On October 9, 2020, the Ohio Consumers' Counsel (OCC) filed a notice to take deposition and request for production of documents, seeking to depose Mr. Fanelli on October 22, 2020. On October 16, 2020, the Companies filed a motion for protective order to preclude the deposition of Mr. Fanelli.

{¶ 7} Memoranda contra the motion for protective order were filed on November 2, 2020, by Ohio Manufacturers' Association Energy Group (OMAEG), Ohio Partners for Affordable Energy (OPAE), OCC, and jointly by Environmental Law & Policy Center (ELPC), Natural Resources Defense Council (NRDC), and Ohio Environmental Council (OEC). The FirstEnergy Utilities filed a reply on November 9, 2020.

{¶ 8} OCC filed a motion to compel discovery on November 6, 2020, as revised on November 10, 2020. In its motion, OCC avers the information it is seeking relates to expenditures and efforts made by the FirstEnergy Utilities in support of H.B. 6 and is

reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Moreover, OCC alleges that it undertook reasonable efforts to resolve the discovery dispute.

{¶ 9} The Companies filed a memorandum contra OCC's motion to compel on November 17, 2020, primarily arguing that much of the motion requests information that falls outside of the predetermined scope of this proceeding.

{¶ 10} By Entry issued on December 10, 2020, the attorney examiner scheduled a prehearing conference for January 7, 2021, to address the motion for protective order. Further, the attorney examiner instructed the parties to continue negotiations to resolve the motion to compel. Parties were directed to file a letter with the Commission on or before December 30, 2020, demonstrating what good faith efforts were taken to resolve the dispute and informing the attorney examiner whether the parties were able to reach a resolution.

{¶ 11} On December 30, 2020, OCC filed correspondence indicating the parties had continued to negotiate in good faith; however, no resolution was reached.

{¶ 12} At the prehearing conference held on January 7, 2021, the attorney examiner deferred ruling on OCC's motion to compel filed on November 6, 2020, and stated that the motion would be addressed in a subsequent entry or discovery prehearing conference (Jan. 7, 2021 Tr. at 18-21, 40).

{¶ 13} Accordingly, in order to address the pending motion to compel, the parties shall participate in a prehearing conference on March 25, 2021, at 10:00 a.m. EST. Additionally, given the current state of emergency in Ohio, the prehearing conference will be held remotely. Instructions for participation in the prehearing conference shall be emailed to the parties. Anyone interested in observing the prehearing conference as a non-party can access the prehearing using the link <http://bit.ly/20-1502-PHC2>, and entering the password PUCO, or by calling 1-408-418-9388, and entering code 129 451 0692. The attorney examiner will notify the parties in advance of the conference if any additional matters will need to be addressed.

{¶ 14} As a final matter, there are numerous pending motions to intervene that have been filed by the following parties: Ohio Hospital Association (OHA); OMAEG; OEC; Interstate Gas Supply, Inc. (IGS); NRDC; OPAE; Industrial Energy Users-Ohio (IEU-Ohio); ELPC; Northwest Ohio Aggregation Coalition (NOAC); and OCC.

{¶ 15} FirstEnergy had previously filed opposition to the motions to intervene filed by OMAEG, OHA, NOAC, OPAE, IGS, OEC, NRDC, and ELPC.

{¶ 16} At the January 7, 2021 prehearing conference, counsel for the FirstEnergy Utilities withdrew the opposition to the motions to intervene and indicated that the Companies would no longer be opposing the motions (Jan. 7, 2021 Tr. at 40-41).

{¶ 17} Subsequently, on January 21, 2021, the Citizens' Utility Board of Ohio (CUB) filed a motion to intervene in this proceeding. No memoranda contra were filed in response.

{¶ 18} As such, the attorney examiner finds that the motions to intervene filed by OCC, OHA, OMAEG, OEC, IGS, NRDC, OPAE, IEU-Ohio, ELPC, NOAC, and CUB satisfy the Commission's intervention standards set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, are reasonable, and should be granted.

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That a prehearing conference be scheduled in accordance with Paragraph 13. It is, further,

{¶ 21} ORDERED, That the motions to intervene filed by OCC, OHA, OMAEG, OEC, IGS, NRDC, OPAE, IEU-Ohio, ELPC, NOAC, and CUB be granted. It is, further,

{¶ 22} 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

SJP/kck

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 20-1502-EL-UNC

Summary: Attorney Examiner Entry scheduling a prehearing conference for 3/25/21 at 10:00 a.m. and granting the motions to intervene filed by OCC, OHA, OMAEG, OEC, IGS, NRDC, OPAE, IEU-Ohio, ELPC, NOAC, and CUB. electronically filed by Kelli C. King on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio