

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 May 28, 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, 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. Ilium. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶212, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶81.

{¶ 6} Ohio Consumers' Counsel (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.

{¶ 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} On January 12, 2021, the attorney examiner consolidated the above cases, *sua sponte*, in the spirit of administrative efficiency and ordered that the procedural schedule, issued on October 29, 2020, should remain intact, unless otherwise ordered by the Commission.

{¶ 12} On February 4, 2021, OCC filed a motion of an indefinite continuance of the procedural schedule and evidentiary hearing. OCC contended that Senate Bill 10, currently pending before the General Assembly, would amend R.C. 4928.143(F), which governs the calculation of the SEET. FirstEnergy filed a memorandum contra on February 16, 2021. OCC filed a reply on February 23, 2021.

{¶ 13} On February 26, 2021, the attorney examiner denied the motion for an indefinite continuance and modified the procedural schedule. In that entry, the attorney examiner extended the date for intervenor testimony to be filed to April 5, 2021, and the deadline for service of discovery, except for notices of deposition, be extended to April 19, 2021. The attorney examiner also stated that a prehearing conference will be scheduled after the deadline for the service of discovery to discuss mutually agreeable hearing dates.

{¶ 14} On May 27, 2021, a prehearing conference was held to discuss mutually agreeable dates for the hearing. During that conference, the parties requested the discovery deadline be extended to June 11, 2021. No party objected to the extension request.

{¶ 15} The attorney examiner finds that these proceedings should now be set for hearing. Accordingly, the parties should adhere to the following procedural schedule:

- a. The deadline for the service of discovery, except for notices of deposition, shall be extended to June 11, 2021.
- b. Intervenors should file supplemental testimony by July 23, 2021.

- c. The evidentiary hearing shall convene on August 30, 2021, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio 43215. The parties should register at the lobby desk and then proceed to the 11th floor in order to participate in the hearing.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That parties adhere to the procedural schedule set forth in Paragraph 15. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Attorney Examiner

MJA/mef

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

Summary: Attorney Examiner Entry setting a procedural schedule: discovery, except notices of deposition due June 11, 2021; supplemental testimony due July 23, 2021; and evidentiary hearing at the PUCO offices on August 30, 2021 at 10:00 a.m. electronically filed by Ms. Mary E Fischer on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio