

## 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 June 17, 2021

{¶ 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} 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, on May 17, 2017, 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.

{¶ 3} Comments regarding the Sage audit report were timely filed by Interstate Gas Supply, Inc. (IGS), Ohio Consumers' Counsel (OCC), Northeast Ohio Public Energy Council (NOPEC), the Companies, and Retail Energy Supply Association (RESA). Reply comments were filed by NOPEC, FirstEnergy Solutions Corp. (FES), OCC, and the Companies. Joint reply comments were filed by RESA and IGS.

{¶ 4} In their comments, the Companies noted that, on March 20, 2018, FES filed a voluntary petition in the United States Bankruptcy Court for relief pursuant to Chapter 11

of Title 11 of the United States Code. Further proceedings in this case were deferred until the resolution of FES' bankruptcy proceeding.

{¶ 5} On March 20, 2020, the Companies filed a notice in this proceeding. The Companies represented that FES had emerged from bankruptcy as Energy Harbor Corp. (Energy Harbor) and that Energy Harbor is no longer an affiliate of the Companies' parent, FirstEnergy Corp.

{¶ 6} Further, on January 17, 2020, Suvon, LLC d/b/a FirstEnergy Advisors (Suvon) filed an application for certification as a competitive retail electric service power broker and aggregator in the state of Ohio. *In re Suvon LLC*, Case No. 20-103-EL-AGG. Suvon is an affiliate of the Companies. The Commission approved Suvon's application on April 22, 2020. The Commission also ruled that, although various parties in that case had raised issues both with Suvon's use of a trade name and with compliance with the corporation separation requirements by the Companies and other affiliates of FirstEnergy Corp., those issues were best addressed in this proceeding. *In re Suvon LLC*, Case No. 20-103-EL-AGG, Finding and Order (Apr. 22, 2020) at ¶ 20, 22.

{¶ 7} On April 29, 2020, the attorney examiner established a supplemental comment period regarding the audit report filed in this proceeding. Supplemental comments were timely filed by Vistra Energy Corp., NOPEC, IGS, OCC, RESA, and the Companies. Supplemental reply comments were timely filed by OCC, NOPEC, IGS, RESA, and the Companies.

{¶ 8} On September 8, 2020, the OCC filed motions in this proceeding for an investigation and management audit of FirstEnergy, its corporate governance, and its activities regarding Am. Sub. H.B. 6, to hire an independent auditor, to reopen the distribution modernization rider audit case, and to require FirstEnergy to show that it did not improperly use money collected from consumers or violate any utility regulatory laws, rules, or orders in its activities regarding Am. Sub. H.B. 6. The Companies filed a

memorandum contra OCC's motions on September 23, 2020. OCC filed a reply on September 30, 2020.

{¶ 9} On September 15, 2020, the Commission opened a proceeding to review whether any political and charitable spending by the Companies in support of Am. Sub. H.B. 6 and the subsequent referendum effort was included, directly or indirectly, in any rates or charges paid by ratepayers in this state. *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 20-1502-EL-UNC.

{¶ 10} On October 29, 2020, FirstEnergy Corp., the corporate parent of the Companies, filed a Form 8-K with the United States Securities and Exchange Commission reporting the termination of certain officers and appointment of new interim chief executive officers. The Form 8-K further stated that, during the course of FirstEnergy Corp.'s internal investigation related to ongoing government investigations, the Independent Review Committee of the Board of Directors determined that each of the terminated executives violated certain FirstEnergy Corp. policies and its code of conduct.

{¶ 11} On November 4, 2020, the Commission issued an Entry directing, in the instant case, Staff to issue a RFP to acquire audit services to assist the Commission with the review of FirstEnergy's compliance with the corporate separation provisions of R.C. 4928.17 and with the Companies' Commission-approved corporate separation plans for the period between November 1, 2016, and October 31, 2020. Bidders were directed to demonstrate their understanding of the project and the work required by showing a clear understanding of the tasks to be completed, the experience and qualifications of the personnel who will perform the work, and the anticipated breakdown of costs and timing. All proposals were submitted on November 25, 2020, in accordance with the terms of the RFP.

{¶ 12} On January 27, 2021, the Commission selected Daymark Energy Advisors, Inc. (Daymark) and directed the Companies to enter into a contract with Daymark, by February 3, 2021, to perform the audit services described in the RFP and its proposal.

{¶ 13} Thereafter, on February 22, 2021, OCC moved to compel discovery responses from FirstEnergy. Specifically, OCC requests that the Commission compel FirstEnergy to respond to OCC's fourth set of discovery,<sup>1</sup> served on December 29, 2020, seeking, among other information, the methods used by FirstEnergy to fund political and charitable spending, events leading up to the termination of certain named employees, and information reported on each of the Companies' respective FERC Form 1.

{¶ 14} FirstEnergy filed a memorandum contra OCC's motion to compel on March 9, 2021, arguing that no discovery in audit proceedings may be taken prior to the issuance of the final audit report.

{¶ 15} OCC filed its reply on March 15, 2021, ultimately reasserting that it was appropriate for discovery to proceed at this time.

{¶ 16} A prehearing conference was scheduled for April 29, 2021, to address the pending motion to compel. On April 29, 2021, the Companies and OCC filed a request to reschedule the prehearing conference, noting that the Companies had agreed to supplement their responses to OCC's fourth set of discovery. The attorney examiner contacted the parties that morning to inform them that the prehearing conference would be rescheduled.

{¶ 17} On May 13, 2021, FirstEnergy filed a motion for partial protective order regarding OCC's fourth set of discovery. In its memorandum in support, FirstEnergy argues that many of the requests are objectionable for several reasons, including that they seek information falling outside the Commission's jurisdiction to regulate the Companies' provision of retail electric service and are outside the scope of this proceeding. OCC filed a memorandum contra FirstEnergy's motion for protective order on May 28, 2021, to which the Companies filed a reply on June 4, 2021.

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<sup>1</sup> While this does represent OCC's fourth set of discovery served upon the Companies in this proceeding, OCC notes that it is the first set of discovery served since the new audit period was established by the November 4, 2020 Entry.

{¶ 18} On June 9, 2021, the Companies and OCC confirmed that they were ready to proceed with the prehearing conference.

{¶ 19} Accordingly, the prehearing conference shall be rescheduled for June 30, 2021, and 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/17-974-PHC3>, and entering the password PUCO, or by calling 1-408-418-9388, and entering code 173 486 1331.

{¶ 20} Additionally, on June 11, 2021, Staff filed a motion for an extension of time to file the final audit report, requesting that the deadline for the final audit report be extended to August 6, 2021. Staff also requests that the Commission grant its motion on an expedited basis pursuant to Ohio Adm.Code 4901-1-12(C) and certifies both that no party objects to the issuance of an immediate ruling or to the requested extension of the final audit report deadline.

{¶ 21} Upon review, the attorney examiner finds Staff's motion is reasonable and, therefore, should be granted. Accordingly, Daymark is directed to file its final audit report with the Commission by August 6, 2021, unless otherwise directed.

{¶ 22} Additionally, on May 24, 2021, Direct Energy Business, LLC and Direct Energy Services, LLC (collectively, Direct Energy) filed a motion for leave to intervene out of time. No memoranda contra Direct Energy's motion for leave to intervene were subsequently filed.

{¶ 23} The attorney examiner finds that Direct Energy has satisfied the intervention requirements set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11. As noted in the May 18, 2021 Entry, the expansion of this case to include the time period leading up to the passage of H.B. 6 constitutes extraordinary circumstances that warrant granting intervention. Further, there have been no substantial procedural developments in this case since the May 18, 2021 Entry, in which the attorney examiner granted other motions for leave to intervene

out of time. As such, the attorney examiner finds that the motion to intervene is reasonable and should be granted.

{¶ 24} Finally, given the recent expansion of the case, the attorney examiner finds it appropriate to establish a new intervention deadline of July 23, 2021. Accordingly, any subsequent motions to intervene filed by that date will be treated as timely filed; however, the attorney examiner will continue to evaluate whether any such petitioners meet the intervention standards set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11.

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That a prehearing conference be rescheduled in accordance with Paragraph 19. It is, further,

{¶ 27} ORDERED, That Staff's motion for an extension be granted. It is, further,

{¶ 28} ORDERED, That Daymark abide by the directives set forth in Paragraph 21. It is, further,

{¶ 29} ORDERED, That Direct Energy's motion for leave to intervene out of time be granted. It is, further,

{¶ 30} ORDERED, That a new intervention deadline of July 23, 2021, be established for this proceeding. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Megan J. Addison

By: Megan J. Addison  
Attorney Examiner

SJP/mef

**This foregoing document was electronically filed with the Public Utilities**

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

Summary: Attorney Examiner Entry scheduling a prehearing conference for June 30, 2021 at 10:00 a.m.; granting Staff's motion for extension; providing directives for Daymark; granting Direct Energy's intervention; and setting a new deadline for intervention of July 23, 2021 electronically filed by Ms. Mary E Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio