

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 July 20, 2021

{¶ 1} In this Entry, the attorney examiner finds that the deadlines for filing initial comments and reply comments should be extended by an additional 10 days to July 30, 2021, and August 13, 2021, respectively.

{¶ 2} 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.

{¶ 3} 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.

{¶ 4} 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; and to the records and accounts of the business thereof done within this state.

{¶ 5} 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 the 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.

{¶ 6} On September 21, 2020, the Ohio Consumers' Counsel (OCC) filed an interlocutory appeal and request for certification to the Commission (*First Interlocutory Appeal*) regarding the attorney examiner's September 15, 2020 Entry. The Companies filed a memorandum contra the interlocutory appeal and request for certification to the Commission on September 28, 2020.

{¶ 7} 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.

{¶ 8} On October 9, 2020, 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. Subsequently, on October 20, 2020, the attorney examiner vacated the deadlines for filing comments and reply comments regarding the Companies response to the show cause order and directed that a prehearing conference be held after the filing of memoranda contra the motion for protective order and replies to any memoranda contra. Entry (Oct. 20, 2020) at ¶ 8, 11. Memoranda contra the motion for protective order were timely filed on November 2, 2020, by: Ohio Manufacturers' Association Energy Group (OMAEG); Ohio Partners for Affordable Energy; Ohio Consumers' Counsel (OCC); and Environmental Law

and Policy Center, Natural Resources Defense Council, and Ohio Environmental Council. The Companies filed a reply to the memoranda contra on November 9, 2020. The prehearing conference was held on January 7, 2021. At the prehearing conference, the attorney examiners ruled that the motion for protective order should be denied (Tr. Jan. 7, 2021 at 11, 34-36).

{¶ 9} Further, on November 17, 2020, OCC filed a motion to compel discovery on November 6, 2020, and a revised motion to compel discovery on November 10, 2020. The Companies filed a memorandum contra the motion to compel discovery on November 17, 2020. On December 10, 2020, the attorney examiner directed the parties to reengage discussions to resolve the discovery dispute. On December 15, 2020, OCC filed an interlocutory appeal and request for certification to the Commission (*Second Interlocutory Appeal*). FirstEnergy filed a memorandum contra the interlocutory appeal on December 21, 2021. A prehearing conference was held on March 25, 2021, at which the attorney examiners granted, in part, and denied, in part, the motion to compel filed by OCC (Tr. Mar. 25, 2021 at 9-41, 51).

{¶ 10} At the March 25, 2021 prehearing conference, the attorney examiners also advised the parties that the comment periods to respond to the Companies' September 30, 2020 response to the show cause order would be re-established by subsequent entry (Tr. Mar. 25, 2021 at 53-55). Subsequently, on April 22, 2021, the attorney examiner directed parties to file initial comments by May 21, 2021, and reply comments by June 4, 2021. Entry (Apr. 22, 2021) at ¶¶ 8, 12. On April 27, 2021, OCC filed an interlocutory appeal and request for certification to the Commission regarding the April 22, 2021 Entry (*Third Interlocutory Appeal*). On May 3, 2021, the Companies filed a memorandum contra the interlocutory appeal.

{¶ 11} On May 13, 2021, the attorney examiner ruled that the *Second Interlocutory Appeal* and the *Third Interlocutory Appeal* should not be certified to the Commission. In addition, in order to allow additional time to resolve numerous outstanding discovery

disputes, the attorney examiner extended the deadline for filing initial comments and reply comments for an additional 60 days to July 20, 2021, and August 3, 2021, respectively. Entry, May 13, 2021 at ¶¶ 24, 28.

{¶ 12} On April 28, 2021, OCC filed motions to compel discovery regarding OCC's third and fourth sets of discovery. The Companies filed memoranda contra the motions on May 5, 2021. A prehearing conference was held on June 30, 2021, to address the motions to compel.

{¶ 13} Subsequently, OCC filed motions to compel discovery regarding its fifth, sixth and seventh sets of discovery. The Companies filed memoranda contra the motions on July 9, 2021.

{¶ 14} On July 19, 2021, OCC and OMAEG filed a joint motion to indefinitely stay the comment schedule. In the alternative, OCC and OMAEG propose that the comment schedule be extended for 120 days. OCC and OMAEG also requested an expedited ruling on the joint motion.

{¶ 15} In order to allow time to fully consider the joint motion, the attorney examiner will extend the deadlines for the filing of initial comments and reply comments by ten days, to July 30, 2021, and August 13, 2021, respectively. Parties are directed to file memoranda contra the joint motion by July 26, 2021, as provided by Ohio Adm.Code 4901-1-12(C).

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the deadlines for filing initial comments and reply comments be extended by an additional 10 days to July 30, 2021 and August 13, 2021, respectively. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Gregory A. Price

By: Gregory A. Price
Attorney Examiner

MJA/hac

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

Summary: Attorney Examiner Entry ordering that the deadlines for filing initial comments and reply comments be extended by an additional 10 days to July 30, 2021 and August 13, 2021, respectively electronically filed by Heather A. Chilcote on behalf of Michael L. Williams, Attorney Examiner, Public Utilities Commission of Ohio