

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE 2020 REVIEW OF
THE DELIVERY CAPITAL RECOVERY
RIDER OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY.

CASE NO. 20-1629-EL-RDR

ENTRY

Entered in the Journal on August 27, 2021

{¶ 1} In this Entry, the attorney examiner finds that a prehearing conference should be scheduled for September 14, 2021, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, 180 E. Broad Street, Columbus, Ohio 43215. The attorney examiner also finds that all interested parties should file initial and reply comments regarding the auditor's report by October 4, 2021, and October 14, 2021, respectively.

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or 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. 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, in accordance with R.C. 4928.142, or an electric security plan (ESP), in accordance with R.C. 4928.143.

{¶ 4} On August 25, 2010, the Commission issued an Opinion and Order approving FirstEnergy's second electric security plan. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Establish a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) (*ESP II Case*). In that Order, the Commission approved

a joint stipulation, as modified, authorizing FirstEnergy to establish a delivery capital recovery rider (Rider DCR) effective January 1, 2012. Additionally, under the terms of the stipulation, FirstEnergy agreed to submit to an annual audit review process of Rider DCR. Subsequently, on July 18, 2012, in Case No. 12-1230-EL-SSO, the Commission issued an Order approving a joint stipulation extending, with modification, the terms of the joint stipulation approved by the Commission in the *ESP II Case. In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012). Thereafter, by Order issued on March 31, 2016, in Case No. 14-1297-EL-SSO, the Commission approved an extension, with modification, of FirstEnergy's Rider DCR. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016).

{¶ 5} On November 4, 2020, the Commission issued an Entry directing Staff to issue a request for proposal for the audit services necessary to assist with the compliance audit of the Companies. Prospective bidders were directed by the Commission to submit proposals to Staff by December 2, 2020.

{¶ 6} By Entry issued December 16, 2020, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge) from the submitted proposals to complete the required audit services.

{¶ 7} According to the timeline ordered by the Commission, Blue Ridge was required to submit a draft audit report to Staff by May 5, 2021, and file a final audit report with the Commission by May 17, 2021.

{¶ 8} By Entry issued March 10, 2021, the Commission granted a request from Staff and directed Blue Ridge to expand the scope of the audit to include payments made to a

number of vendors disclosed by FirstEnergy Corp. in its annual 10-K filing with the Securities and Exchange Commission.

{¶ 9} After two extensions of the deadline were granted, Blue Ridge filed the final audit report with the Commission on August 3, 2021.

{¶ 10} On June 25, 2021, Ohio Consumers' Counsel (OCC) filed a motion for subpoena duces tecum for FirstEnergy Corp., FirstEnergy Service Company, and FirstEnergy Foundation. Those subpoenas were issued to the respective companies on June 25, 2021.

{¶ 11} On July 19, 2021, FirstEnergy Corp. and FirstEnergy Service Company filed a motion to quash the subpoenas duces tecum. They argue that the subpoenas seek information outside the scope of the proceedings and privileged information. They also note that OCC has not tailored its requests in a way that would limit the burden of nonparty discovery. Finally, they argue that the only relevant, non-privileged information was already provided to OCC, including the consulting agreement and its amendments, as well as the vendor payments and associated details. The attorney examiner notes that a similar motion was filed in *In re 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 (*Corporate Separation Audit*).

{¶ 12} On August 3, 2021, OCC filed a memorandum contra to the motion to quash the subpoenas. OCC argues that its document requests are reasonably calculated to lead to the discovery of admissible evidence and that the Companies already agreed to make its affiliates' records available to the Commission and OCC in its merger commitment. OCC also argues that a privilege log has not been provided and that the privilege was waived for certain documents when the documents were discussed publicly. OCC asserts that although certain documents that were requested in the subpoenas were already produced by the Companies, those documents may be different versions of the documents in the possession of FirstEnergy Corp. and FirstEnergy Service Company.

{¶ 13} On August 10, 2021, FirstEnergy Corp. and FirstEnergy Service Company filed a reply in support of their motion to quash the subpoenas. They argue that OCC failed to address in its memorandum contra the significant burden imposed by the subpoenas. They also reaffirm their arguments as to privilege and that the subpoenas are moot as to the documents already produced.

{¶ 14} On August 26, 2021, OCC filed a motion to compel the Companies to answer discovery requests as to its second and third sets of discovery.

{¶ 15} The attorney examiner finds that, although OCC did not request expedited consideration of its motion to compel, the time period for the filing of memoranda contra should be shortened to seven days and no replies will be permitted.

{¶ 16} The attorney examiner also finds that, in order to discuss the pending motion to quash and motion to compel, a prehearing conference should be scheduled for September 14, 2021, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, 180 E. Broad Street, 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. Consistent with CDC Guidelines and the May 17, 2021 Ohio Department of Health Order, individuals who are not fully vaccinated should continue to wear a face covering and socially distance. Any accommodations necessary to ensure availability of social distancing and plexiglass dividers should be made in advance of the hearing. As pandemic restrictions are evolving, additional instructions regarding further safety requirements or accommodations for the hearing room will be forthcoming, either posted on the Commission's website or communicated to the parties. For administrative convenience, the prehearing conference will be held concurrently with a prehearing conference in the *Corporate Separation Audit*, but the attorney examiner notes that these cases have not been consolidated.

{¶ 17} At this time, the attorney examiner finds it appropriate to set a comment period in this proceeding. Accordingly, all interested parties should file initial and reply

comments regarding the auditor's report by October 4, 2021, and October 14, 2021, respectively.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That a prehearing conference be scheduled in accordance with Paragraph 16. It is, further,

{¶ 20} ORDERED, That all interested parties file initial and reply comments as directed in Paragraph 17. It is, further,

{¶ 21} 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

NJW/kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/27/2021 10:24:19 AM

in

Case No(s). 20-1629-EL-RDR

Summary: Attorney Examiner Entry ordering that a prehearing conference be scheduled in accordance with Paragraph 16 and ordering that all interested parties file initial and reply comments as directed in Paragraph 17.
electronically filed by Kelli C. King on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio