

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 October 28, 2021

{¶ 1} In this Entry, the attorney examiner establishes the deadlines for the filing of comments and reply comments regarding the response to the show cause order, as supplemented on August 6, 2021, as November 29, 2021, and December 14, 2021, respectively.

{¶ 2} 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.

{¶ 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 Companies in support of Am. Sub. H.B.6 and the subsequent referendum effort. On that same date, 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.

{¶ 6} On September 21, 2020, the Ohio Consumers' Counsel (OCC) filed an interlocutory appeal and request for certification to the Commission 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. The prehearing conference was held 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, OCC filed a motion to compel discovery on November 6, 2020, and a revised motion to compel discovery on November 10, 2020. On December 10, 2020, the attorney examiner directed the parties to reengage in 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, 2020. 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*).

{¶ 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, 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 June 29, 2021, OCC filed motions to compel discovery with respect to its fifth and seventh sets of discovery and for an *in camera* review of documents. OCC also filed

motions to compel discovery with respect to its sixth set of discovery and for an *in camera* review of documents.

{¶ 13} On July 19, 2021, OCC and Ohio Manufacturers' Association Energy Group filed a joint motion to indefinitely stay the comment schedule. On July 20, 2021, the attorney examiner extended the deadlines for the filing of initial comments and reply comments by ten days, to July 30, 2021, and August 13, 2021, respectively. Parties were also directed to file any memoranda contra the joint motion by July 26, 2021.

{¶ 14} On July 23, 2021, the Companies filed a memorandum stating that they do not oppose the request for a stay or extension of the comment schedule. No party filed a memorandum contra the joint motion. On July 29, 2021, the attorney examiner granted the joint motion and stayed the comment period indefinitely.

{¶ 15} In addition, in their memorandum filed on July 23, 2021, the Companies represented that the Deferred Prosecution Agreement (DFA) entered into between the Companies' parent corporation, FirstEnergy Corp., and the United States Attorney's Office for the Southern District of Ohio may require that the Companies supplement their response to the September 15, 2020 show cause order. Further, the Companies represented that the DFA requires that the Companies supplement certain of their discovery responses in this proceeding.

{¶ 16} By Entry issued August 3, 2021, the attorney examiner scheduled a prehearing conference in this proceeding to address a variety of matters, including, but not limited to, the status of supplementing the original response to the show cause order and the motions to compel filed by OCC on June 29, 2021. Further, the Entry indicated that a new schedule would be established for the filing of comments and reply comments to the Companies' response to the show cause order.

{¶ 17} On August 6, 2021, the Companies filed a motion for leave to file a supplemental response to the September 15, 2020 show cause order. No memoranda contra the Companies' motion were subsequently filed.

{¶ 18} The prehearing conference was held, as scheduled, on August 31, 2021. The Companies' unopposed motion for leave to supplement their response to the Commission's show cause order was granted during the August 31, 2021 prehearing conference (Tr. Aug. 31, 2021 at 9). Further, in order to provide parties time to adhere to the directives provided during the prehearing conference, the attorney examiner instructed that the initial and reply comment period would be established by subsequent entry (Tr. Aug. 31, 2021 at 54).

{¶ 19} On October 27, 2021, OCC filed a motion for an independent auditor to investigate and audit the political and charitable activity of the "FirstEnergy entities,¹" as well as a request for the Commission to appoint a committee independent of the Commission to oversee the investigation and audit.

{¶ 20} At this time, the attorney examiner finds it appropriate to set the deadlines for the filing of initial comments and reply comments regarding the Companies' response to the show cause order, as supplemented on August 6, 2021, as November 29, 2021, and December 14, 2021, respectively. The relevant and probative evidence proffered in the comments and the reply comments will inform the Commission on the next steps to take in this proceeding. Therefore, the attorney examiner will defer ruling on OCC's October 27, 2021 motion until after comments have been received. Parties are directed to file any memoranda contra OCC's motion by November 12, 2021, as provided by Ohio Adm.Code 4901-1-12(C).

{¶ 21} It is, therefore,

¹ Although OCC does not define "FirstEnergy entities" in its filing, OCC appears to be referring to the Companies, as well as FirstEnergy Corp.

{¶ 22} ORDERED, That the deadlines for filing initial comments and reply comments regarding the Companies' response to the show cause order be set as November 29, 2021, and December 14, 2021, respectively, in accordance with Paragraph 20. It is, further,

{¶ 23} 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/kck

**This foregoing document was electronically filed with the Public Utilities
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10/28/2021 3:32:18 PM

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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 regarding the Companies' response to the show cause order be set as November 29, 2021, and December 14, 2021, respectively, in accordance with Paragraph 20. electronically filed by Kelli C. King on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio