BEFORE
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**

COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

I. Introduction

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies") appreciate the thorough review and constructive feedback provided by Daymark Energy Advisors.[1] As detailed during the audit and as FirstEnergy Corp. has publicly acknowledged, the company is engaged in improving its compliance and ethics framework in all aspects of its business. Daymark's Audit Report offers helpful solutions to improve the Companies' compliance efforts with respect to Ohio corporate separation rules. The Companies therefore agree with Daymark's recommendations regarding improvements to compliance, monitoring and training, and accounting processes.

Daymark's review also encompassed an examination of and recommendations for the products and services offered by the Companies with support from FirstEnergy Products ("FEP"), a business unit within FirstEnergy Service Company. These products are offered by the Companies consistent with the Commission's approvals of their Corporate Separation Plan,[2] as

[1] *See generally*, Case No. 17-974-EL-UNC, Compliance Audit Report (Sept. 13, 2021) ("Audit Report").

[2] Originally filed in Case No. 09-462-EL-UNC, approved in Case No. 10-388-EL-SSO, with continuation approved in Case Nos. 12-1230-EL-SSO and 14-1297-EL-SSO.

well as the Companies' Commission-approved tariffs.[3] The auditor's recommendations regarding FEP included additional audits to ensure appropriate protections are in place, enhanced physical separation of FEP personnel from certain other FirstEnergy Service Company employees, changes to the Companies' product branding practices, and profit-sharing measures. While the Companies agree with several of these recommendations, they offer a few targeted comments, as explained further below.

II. Daymark's Recommendations

A. Compliance, Monitoring, and Training

Daymark recommends that the Companies build a robust and effective compliance plan focused solely on Ohio's specific corporate separation requirements,[4] and that such compliance plan should proactively address gaps between Ohio corporate separation compliance requirements and FERC compliance requirements.[5] The Companies agree. The Companies further agree with the auditor's recommendation to develop a proactive compliance monitoring and tracking system with clear identified owners for all activities surrounding the compliance plan.[6] Additionally, as part of this compliance program, the Companies agree that they should develop a specific training curriculum focused on the Ohio corporate separation plan, including a holistic training for all

[3] For Ohio Edison Company, see P.U.C.O. No. 11, Original Sheet 4, Section X.C, ("Special Customer Services"), Page 13 of 21, available here, accessed October 11, 2021.

For The Cleveland Electric Illuminating Company, see P.U.C.O. No. 13, Original Sheet 4, Section X.C, ("Special Customer Services"), Page 13 of 21, available here, accessed October 11, 2021.

For The Toledo Edison Company, see P.U.C.O. No. 8, Original Sheet 4, Section X.C, ("Special Customer Services"), Page 13 of 21, available here, accessed October 11, 2021.

[4] Audit Report, at 32-33 (Section V.E).

[5] Audit Report, at 33 (Section V.E).

[6] Audit Report, at 33 (Section V.E).

employees employed by or doing work on behalf of the Companies, regardless of direct responsibilities, as well as trainings for upper management focused on interactions between affiliates, including how the Cost Allocation Manual ("CAM") applies to those interactions.[7]

B. Physical and IT Separation Related to Structural Safeguards

The Companies agree with Daymark's recommendations to bolster their IT and physical structural safeguards surrounding corporate separation.[8] Daymark also recommends that the Companies monitor and track cross-functional work groups, noting that a refresher on corporate separation training would be prudent at the start of meetings of cross-functional work groups that include regulated and unregulated personnel.[9] The Companies agree with this recommendation as well.

C. Accounting and Cost Allocation Manual

Daymark recommends several opportunities for improvement with respect to accounting and the CAM.[10] The Companies agree with the majority of these recommendations, including: (1) updating the CAM to include all information required by O.A.C. 4901:1-37-08(D);[11] (2) having an updated copy of the entire CAM on hand and readily available;[12] (3) updating the CAM once a year to make sure it is current;[13] (4) establishing a succession plan for Compliance Officers;[14] (5)

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[7] Audit Report, at 33 (Section V.E); Audit Report at 102 (Section X).

[8] Audit Report, at 11-12, 47 (Section VI).

[9] Audit Report, at 11-12, 47 (Section VI).

[10] Audit Report, at 13-14, 93-96 (Section IX).

[11] Audit Report, at 14.

[12] Audit Report, at 13, 96 (Section IX).

[13] Audit Report, at 13, 96 (Section IX).

[14] Audit Report, at 11.

implementing more robust internal and external cost allocation auditing processes;[15] and (6) implementing an internal timesheet auditing process to ensure timesheet entries are being properly monitored for compliance, including sampling.[16] While the Companies already have timesheet monitoring measures in place, the Companies plan to implement training on the charging of time and expenses to address Daymark's concern regarding directly charging time to a specific affiliate whenever possible.[17]

The Companies agree with Daymark's recommendation that the Companies' employees should understand and have visibility into their allocated charges. However, to the extent Daymark is recommending that the Companies should bear responsibility for monitoring and resolving any errors in the charges allocated to them from FirstEnergy Service Company,[18] this would negate the efficiency benefits of having these functions centralized at FirstEnergy Service Company. It is FirstEnergy Service Company, not the Companies, that administers budgeting of FirstEnergy Service Company costs and allocation of those costs to the Companies. Therefore, FirstEnergy Service Company is better positioned to monitor allocated charges, including comparisons against forecasts, identifying variances, and remedying issues as needed. Because the Companies are not responsible for budgeting or managing their indirect costs or associated activities, nor staffed to perform these duties, they are in no position to monitor them. Further, as noted above, the Companies have accepted the recommendations of implementing more robust internal and external cost allocation auditing processes, as well as an internal timesheet auditing process. These

[15] Audit Report, at 13, 93-94 (Section IX).

[16] Audit Report, at 13, 94 (Section IX).

[17] *See* Audit Report, at 13, 94 (Section IX).

[18] Audit Report, at 14, 94 (Section IX).

measures should address the need identified by Daymark, to better educate the Companies' employees on charges allocated to them from FirstEnergy Service Company.[19]

D. Code of Conduct

Daymark also offered recommendations concerning areas of the Code of Conduct, including supplier information, customer protection, marketing and branding, and products and services. The Companies agree with most of the auditor's recommendations in this section and offer observations on others as noted below.[20]

Supplier Information. The Companies train employees responsible for interacting with customers on communicating the availability of alternative competitive retail electric suppliers ("CRES") to any customer upon request. Nevertheless, the Companies have committed to bolstering their Ohio code of conduct training and will ensure that this requirement is captured in that enhanced training program for employees of the Companies and FirstEnergy Service Company employees performing work on behalf of the Companies.[21]

Customer Protection. The Companies agree with Daymark's recommendation regarding monitoring, tracking, and reporting customer complaints regarding CRES providers.[22]

Products and Services. The Companies agree with Daymark's recommendation that they perform an annual internal audit to ensure that adequate protections are in place to prevent the

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[19] *See* Audit Report, at 13, 94 (Section IX).

[20] Audit Report, at 50-77 (Section VIII).

[21] Audit Report, at 12, 50-54 (Section VIII.B); *see also* Section II.A. of the Companies' Comments (discussing Daymark's training recommendations).

[22] Audit Report, at 12, 54-56 (Section VIII.C).

cross-subsidization of any protected information between FEP, the Companies, and Suvon LLC d/b/a FirstEnergy Home.[23]

Daymark recommends a profit-sharing mechanism for utility products, "to allow for Ohio regulated customers to benefit from allowing unregulated affiliates access to its regulated customer billing system."[24] However, no unregulated affiliates have access to the Companies' regulated customer billing system. In addition, this recommendation does not sufficiently explain what the mechanism is, or how it would work, for the Companies to properly evaluate it and comment. Moreover, the Commission's approval of the continuation of the Companies' products business included no such profit-sharing condition. The Companies' corporate separation plan filed in Case No. 09-462-EL-UNC proposed continuation of the utilities' legacy products business.[25] That plan was supported by a number of diverse signatory parties who joined the Stipulation and Recommendation ultimately approved by the Commission in the Companies' ESP I case, which called for the approval of the corporate separation plan as filed in Case No. 09-462-EL-UNC.[26] There was no profit sharing agreed upon or required in ESP I, nor in any of the later ESP proceedings where the corporate separation plan was approved to continue. Unless and until there is a factual or legal basis to adopt this recommendation, it should not be accepted.

III. Conclusion

As noted in the Audit Report, FirstEnergy Corp. and the Companies are committed to enhancing their compliance practices. Corporate separation compliance is a critical component of

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[23] Audit Report, at 12, 70 (Section VIII.D).

[24] Audit Report, at 13, 71 (Section VIII.D).

[25] *See* Case No. 09-462-EL-UNC, Application, Section VI (June 1, 2009).

[26] Case No. 10-388-EL-SSO, Stipulation and Recommendation, Section H.1 (March 23, 2010); Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010), at 47 (approving initial and supplemental stipulations).

that effort. The Companies appreciate Daymark's feedback on ways to improve compliance, and ask the Commission to adopt Daymark's recommendations, subject to the Companies' comments above.

Dated: November 22, 2021

Respectfully submitted,

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On behalf of the Companies

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on November 22, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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