

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 January 13, 2022

{¶ 1} In this Entry, the attorney examiner extends the deadline to file an interlocutory appeal of rulings made during the January 4, 2022 prehearing conference.

{¶ 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} 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.

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 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.

{¶ 12} On November 4, 2020, the Commission issued an Entry directing, in the instant case, Staff to issue an 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.

{¶ 13} On January 27, 2021, the Commission selected Daymark Energy Advisors, Inc. (Daymark) and directed the Companies to enter into a contract with Daymark to perform the audit services described in the RFP and its proposal. In the Entry, the Commission also set the deadline for the completion of the audit report as June 21, 2021. Motions to extend the filing date of the audit report were subsequently filed and granted.

{¶ 14} On September 13, 2021, Daymark filed the final audit report with the Commission.

{¶ 15} On September 17, 2021, the attorney examiner set a comment period and procedural schedule for this proceeding, which was extended by Entry dated October 12, 2021.

{¶ 16} A prehearing conference was held on January 4, 2022. During that conference, numerous rulings were issued, including an extension of the procedural schedule and the evidentiary hearing. The Companies' testimony deadline was set for February 14, 2022, the intervenors' testimony deadline was set for February 28, 2022, and the evidentiary hearing was rescheduled for March 14, 2022. No party objected to the procedural schedule at the prehearing conference.

{¶ 17} OCC and NOPEC filed a document on January 10, 2022, which was intended to be an interlocutory appeal of certain rulings made at the January 4, 2022 prehearing conference. The document file was corrupted and most of the document is illegible.

{¶ 18} On January 12, 2022, OCC and NOPEC filed a motion for the Commission to resolve the issue with the interlocutory appeal document and to consider it as timely filed.

{¶ 19} On January 12, 2022, the attorney examiner contacted the parties via email to schedule a prehearing conference to be held on January 13, 2022, to discuss a resolution for the corrupted document and corresponding motion.

{¶ 20} At the prehearing conference on January 13, 2022, the attorney examiner ruled that the filing deadline provided by Ohio Adm.Code 4901-1-15 for interlocutory appeals of rulings made at the January 4, 2022 prehearing conference would be extended to January 14, 2022, which would give OCC and NOPEC an opportunity to timely file the interlocutory appeal. Additionally, the attorney examiner ruled that OCC and NOPEC should file their interlocutory appeal via paper to ensure that no further filing issues arise with this document. Further, the attorney examiner clarified that memorandum contra the

interlocutory appeal should be filed five days after the actual paper filing of the interlocutory appeal. The attorney examiner also recommended that OCC and NOPEC work with the docketing division to determine the source of the corruption issue in order to prevent this issue from occurring in the future.

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the filing deadline for interlocutory appeals of rulings made at the January 4, 2022 prehearing conference be extended to January 14, 2022. It is, further,

{¶ 23} ORDERED, That any memoranda contra to the interlocutory appeal be filed within five days of the interlocutory appeal, unless otherwise ordered by the attorney examiners. It is, further,

{¶ 24} 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

MJA/mef

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in

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

Summary: Attorney Examiner Entry extending the deadline for filing interlocutory appeals to January 14, 2022 and requiring any memoranda contra be filed within five days of the interlocutory appeal filing electronically filed by Ms. Mary E. Fischer on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio