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 January 21, 2022

{¶ 1} In this Entry, the attorney examiner schedules a prehearing conference for 10:00 a.m. on February 10, 2022, via Webex.

{¶ 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. 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; 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, 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 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, with initial comments likely to be due 30 days after FirstEnergy's deadline to serve discovery responses pursuant to the rulings on the motion to compel and with reply comments to be due 15 days after the filing of initial comments (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, 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. The Companies timely filed memoranda contra the motions to compel on July 9, 2021 and memoranda contra the motions for an *in camera* review on July 14, 2021. OCC filed replies to the Companies' memoranda contra the motions for an *in camera* review on July 21, 2021.

{¶ 13} 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.

{¶ 14} 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.

{¶ 15} 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.

{¶ 16} In addition, in their memorandum filed on July 23, 2021, the Companies represent 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 represent that the DFA

requires that the Companies supplement certain of their discovery responses in this proceeding.

{¶ 17} 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.

{¶ 18} 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.

{¶ 19} A prehearing conference was held 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).

{¶ 20} 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.

{¶ 21} On October 28, 2021, the attorney examiner set 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. In the same Entry, the ruling on OCC's October 27, 2021 motion was deferred until after comments have been received.

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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} On November 12, 2021, the Companies filed a memorandum contra to OCC's October 27, 2021 motion.

{¶ 23} On November 29, 2021, comments were filed by Citizens' Utility Board of Ohio, OCC, and OMAEG.

{¶ 24} On December 14, 2021, reply comments were filed by OCC, Ohio Hospital Association, the Companies, and OMAEG.

{¶ 25} On January 13, 2022, OCC filed a motion for an *in camera* review to resolve the Companies' claim of privilege against responding to OCC's discovery and a motion to require the Companies to file notice if they disclose any records they claim to be privileged.

{¶ 26} At this time, the attorney examiner finds that a prehearing conference should be held in this proceeding to discuss OCC's newly filed motions. Accordingly, the prehearing conference shall be held remotely, via Webex, on February 10, 2022, at 10:00 a.m. ET. Instructions for participation in the prehearing conference shall be emailed to the parties. Anyone interested in observing the prehearing conference as a nonparty can access the prehearing using the link https://bit.ly/20-1502-EVH2, and entering the password PUCO, or by calling 1-408-418- 9388, and entering code 2343 523 9393.

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That a prehearing conference be scheduled in accordance with Paragraph 26. It is, further,

{¶ 29} 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/kck

Summary: Attorney Examiner Entry ordering that a prehearing conference be scheduled in accordance with Paragraph 26. electronically filed by Kelli C. King on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio