

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the 2020 :
Review of the Delivery :
Capital Recovery Rider of :
Ohio Edison Company, The : Case No. 20-1629-EL-RDR
Cleveland Electric :
Illuminating Company, and :
The Toledo Edison Company. :

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PROCEEDINGS

before Ms. Jacky St. John Werman, Mr. Gregory Price,
and Ms. Megan Addison, Attorney Examiners, at the
Public Utilities Commission of Ohio, via Webex,
called at 10:00 a.m. on Friday, January 14, 2022.

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APPEARANCES:

FirstEnergy Service Company
By Mr. Brian Knipe
76 South Main Street
Akron, Ohio 44308

Jones Day
By Mr. Michael Gladman
325 John H. McConnell Boulevard
Suite 600
Columbus, Ohio 43215

Jones Day
By Mr. Ryan A. Doringo
North Point
901 Lakeside Avenue E
Cleveland, Ohio 44114

On behalf of the Ohio Edison Company, The
Cleveland Electric Illuminating Company,
and The Toledo Edison Company.

Carpenter, Lipps & Leland, LLP
By Thomas Donadio
280 North High Street, Suite 1300
Columbus, Ohio 43215.

On behalf of the Ohio Manufacturers
Association Energy Group.

Bruce J. Weston, Ohio Consumers' Counsel
By Mr. William Michael
Assistant Consumers' Counsel
65 East State Street, Suite 200
Columbus, Ohio 43215

On behalf of the FirstEnergy Utilities'
Residential Utility Consumers.
Environmental Law & Policy Center
By Ms. Janean R. Weber
21 West Broad Street, 8th Floor
Columbus, Ohio 43215.

On behalf of the Environmental Law &
Policy Center.

APPEARANCES: (Continued)

The Ohio Environmental Council
By Chris Tavenor
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212

On behalf of The Ohio Environmental
Council.

Ohio Hospital Association
By Ms. Rachel Mains
and Mr. Devin Parram
100 South Third Street
Columbus, Ohio 43215

On behalf of the Ohio Hospital
Association.

Interstate Gas Supply, Inc.
By Mr. Evan Betterton
6100 Emerald Parkway
Dublin, Ohio 43016.

On behalf of Interstate Gas Supply, Inc.

Ohio Cable Telecommunications Association
By Ms. Gretchen Petrucci
Vorys, Sater, Seymour and Pease
52 East Gay Street
Columbus, Ohio 43215

On behalf of the Ohio Cable
Telecommunications Association.

Dave Yost, Ohio Attorney General
Mr. John Jones, Section Chief
By Mr. Thomas Lindgren
and Werner L. Margard, III
Assistant Attorneys General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

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Friday Morning Session,
January 14, 2022.

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ATTORNEY EXAMINER ST. JOHN: Good morning, everyone. I see the time is now 10:00. Let's go ahead and jump right in and let's go ahead and go on the record.

The Public Utilities Commission of Ohio calls for a prehearing conference at this time and place Case No. 20-1629-EL-RDR, being 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.

My name is Jackie St. John, and with me are Gregory Price and Megan Addison, and we are the Attorney Examiners assigned to preside over this prehearing conference.

Let's begin by taking appearances, starting with the company.

MR. KNIPE: Good morning, your Honors. Appearing on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Brian Knipe, 76 South Main Street, Akron, Ohio 44308.

Also appearing on behalf of the

Companies, the law firm of Jones Day, Michael Gladman, 2325 John H. McConnell Boulevard, Columbus, Ohio 43215, and Ryan Doringo, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114.

ATTORNEY EXAMINER ST. JOHN: Thank you.
Ohio Manufacturers Association Energy Group.

MR. DONADIO: Good morning, your Honors.
Thomas Donadio appearing on behalf of the Ohio Manufacturers Association Energy Group, with the law firm of Carpenter, Lipps & Leland, located at 280 North High Street, Suite 1300, Columbus, Ohio 43215.

ATTORNEY EXAMINER ST. JOHN: Thank you.
Ohio Consumers' Counsel.

MR. MICHAEL: Good morning, your Honors.
On behalf of the FirstEnergy Utilities' Residential Utility Consumers, the Office of the Ohio Consumers' Counsel by Bill Michael.

ATTORNEY EXAMINER ST. JOHN: Thank you.
Environmental Law & Policy Center.

MS. WEBER: Good morning. Janean Weber on behalf of the Environmental Law & Policy Center, 21 West Broad Street, 8th Floor, Columbus, Ohio 43215.

ATTORNEY EXAMINER ST. JOHN: Thank you.
Mr. Duff, Ohio Environmental Council?

1 MR. TAVENOR: Good morning, your Honors.
 2 On behalf of Ohio Environmental Council, Chris
 3 Tavenor, address 1145 Chesapeake Avenue, Suite I,
 4 Columbus, Ohio 43212.

5 ATTORNEY EXAMINER ST. JOHN: Thank you.
 6 Ohio Hospital Association.

7 MS. MAINS: Good morning, your Honors.
 8 Rachel Mains and Devin Parram appearing on behalf of
 9 the Ohio Hospital Association, with Bricker & Eckler,
 10 100 South Third Street, Columbus, Ohio 43215. Thank
 11 you.

12 ATTORNEY EXAMINER ST. JOHN: Thank you.
 13 Interstate Gas Supply, Inc.

14 MR. BETTERTON: Good morning, your
 15 Honors. On behalf of Interstate Gas Supply, Inc. is
 16 myself, Evan Betterton, we're located at 6100 Emerald
 17 Parkway, Dublin, Ohio 43016.

18 ATTORNEY EXAMINER ST. JOHN: Thank you.
 19 Ohio Cable Telecommunications Association.

20 MS. PETRUCCI: Good morning. On behalf
 21 of the OCTA, the law firm of Vorys, Sater, Seymour
 22 and Pease, I'm Gretchen Petrucci, and the address is
 23 52 East Gay Street, Columbus, Ohio 43215.

24 ATTORNEY EXAMINER ST. JOHN: Thank you.
 25 And on behalf of Staff.

1 MR. MARGARD: Thank you, your Honors.
 2 On behalf of the Commission Staff, Dave Yost, Ohio
 3 Attorney General, John Jones, Section Chief, Public
 4 Utilities Section, by Assistant Attorney General
 5 Werner Margard and Thomas Lindgren, 30 East Broad
 6 Street, 26th floor, Columbus, Ohio.

7 ATTORNEY EXAMINER ST. JOHN: Thank you.
 8 I believe that's all the parties we were expecting
 9 today.

10 The first issue that we'd like to
 11 address today are the pending motions to intervene.
 12 We have pending motions for Ohio Cable
 13 Telecommunications Association, Interstate Gas
 14 Supply, Inc., the Ohio Hospital Association, the Ohio
 15 Environmental Council, Natural Resource Defense
 16 Council, Ohio Partners for Affordable Energy,
 17 Environmental Law & Policy Center, Ohio Consumers'
 18 Counsel, and the Ohio Manufacturers Association
 19 Energy Group.

20 I'll note that there were no memoranda
 21 contra filed in response to any of those motions to
 22 intervene, and we find these motions to be reasonable
 23 and they are granted at this time.

24 And with that, I will go ahead and turn
 25 things over to Judge Addison.

1 ATTORNEY EXAMINER ADDISON: Thank you
2 very much, Judge St. John. And good morning
3 everyone.

4 Similar to some other conferences that
5 we have had over the course of the last two weeks in
6 other proceedings, we do have a few items to get
7 through, so we'll just dive right in.

8 We hope, again, that we can get through
9 these items very quickly so as not to take up too
10 much of your time this morning, but we certainly
11 appreciate everyone being here today to see where
12 things stand.

13 The first item on my list should be of
14 no surprise to anyone, I believe we have addressed
15 this in other conferences as well; a motion for
16 subpoena filed by OCC on September 24th, 2021,
17 against FirstEnergy Corp.

18 I believe we have mentioned that the
19 Bench can be somewhat in the dark as to what's been
20 produced and what disputes remain after a subpoena
21 has been issued if nothing is subsequently filed or
22 otherwise brought to our attention.

23 However, as indicated by parties in
24 conferences held in proceedings over the last two
25 weeks, it's some 230,000 pages of documents were

1 produced by FirstEnergy Corp. in response to the
2 subpoena, and additional documents may be provided on
3 a rolling basis, and that as a result of this
4 production and continuing effort to produce
5 information responsive to the subpoena, it seems that
6 this subpoena is essentially resolved.

7 I would like to confirm on the record
8 for this case that the summary is accurate, and
9 inquire if there's anything in addition to this that
10 the parties would like to raise as would be
11 particularly relevant to this proceeding.

12 Mr. Michael, would you care to respond
13 to this?

14 MR. MICHAEL: Certainly, your Honor,
15 thank you. I have nothing additional to raise
16 related to that subpoena in this case.

17 ATTORNEY EXAMINER ADDISON: Thank you
18 very much. And that would certainly follow the
19 discussions had in the other conferences.

20 And I would note Mr. Lee unfortunately
21 is not here to respond, but I would expect his
22 response to be the same given his response in other
23 prehearing conferences earlier this week and last
24 week. Thank you. And of course, please keep the
25 Bench updated as to any changes to that status.

1 The next item I have is a request for
2 interlocutory appeal filed by OCC on September 1st,
3 2021, a response to which was filed by FirstEnergy
4 Utilities on September 7th, 2021.

5 In its request for certification of its
6 interlocutory appeal OCC argued that the Attorney
7 Examiners' Entry issued on August 27th, 2021,
8 prematurely required the filing of comments and reply
9 comments when it was unclear if the pending
10 discovery disputes would be fully resolved by the
11 September 14th, 2021 prehearing conference, or if OCC
12 would not -- or would not have sufficient time to
13 review the discovery responses before the comment
14 deadlines.

15 At this time the request for
16 certification of the interlocutory appeal will be
17 denied. OCC has not demonstrated that the appeal
18 presenting new or novel question of interpretation of
19 law or policy or is taken from a ruling which
20 represents a departure from past precedent as
21 required by Ohio Admin Code 4901-1-15B.

22 The Attorney Examiners have extensive
23 experience with respect to setting comment periods,
24 or extending comment periods when there's good cause
25 for doing so, or quite frankly, establishing any

1 aspect of a procedural schedule, all of which are
2 routine matters that do not involve a new or novel
3 question of interpretation law or policy.

4 See In Re: The Application of Ohio
5 Edison Company, The Cleveland Electric Illuminating
6 Company, and The Toledo Edison Company, Case Nos.
7 12-2190-EL-POR, et al., entry dated August 27th,
8 2012.

9 At any rate, I will note the comments
10 have been submitted rendering the interlocutory
11 appeal moot.

12 Our next item, we had a motion to accept
13 statement of additional authority regarding OCC's
14 October 18th, 2021 interlocutory appeal, which was
15 filed on November 19th, 2021 in this case, as well as
16 Case No. 17-974-EL-UNC.

17 A memorandum contra was filed on
18 December 6th, 2021, with a reply being filed
19 December 13th, 2021.

20 Similar to our ruling during the latest
21 prehearing conference in Case No. 17-974-EL-UNC, the
22 motion will be granted.

23 As noted, during that conference an
24 interlocutory appeal was subsequently filed during --
25 regarding the ruling provided as additional

1 authority.

2 In that conference held on January 4th,
3 2022, in Case No. 17-974-EL-UNC, we noted that OCC
4 and FirstEnergy Corp would be under a continuing
5 obligation to provide the Bench with updates filed in
6 the docket when the Maryland Public Service
7 Commission has issued a ruling on the interlocutory
8 appeal, and if and when any documents are actually
9 provided under any ruling.

10 Subsequently, counsel for the
11 FirstEnergy Utilities notified the Bench and parties
12 to that case that a decision had been issued by the
13 Maryland Public Service Commission.

14 On a related note, we'll group these two
15 items together, the request for interlocutory appeal
16 to which the previous motion for additional authority
17 applied, was filed by OCC on October 18th, 2021, in
18 this case as well as Case No. 17-974-EL-UNC, a
19 memorandum contra jointly filed on October 25th,
20 2021, by the FirstEnergy Utilities and FirstEnergy
21 Corp.

22 The request for certification of the
23 interlocutory appeal was filed in response to the
24 October 12th, 2021 Attorney Examiner entry granting
25 the FirstEnergy Utilities and FirstEnergy Corp joint

1 motion to quash.

2 In that same prehearing conference as
3 noted before in Case No. 17-974-EL-UNC, we indicated
4 that we would defer ruling on certification of the
5 interlocutory appeal until after the Maryland Public
6 Service Commission ruled on its interlocutory appeal.

7 Parties were further instructed again to
8 notify the Bench by filing an update in that docket
9 in the event a decision was issued by the Maryland
10 Public Service Commission.

11 As noted earlier, parties informed the
12 Bench late last week that a decision had indeed been
13 issued.

14 As an initial matter, the decision from
15 the Maryland Public Service Commission should be
16 filed in this docket, as well Case No. 17-974-EL-UNC.

17 We will defer ruling on the
18 certification of the interlocutory appeal until after
19 the decision from the Maryland Public Service
20 Commission has been filed. Parties should anticipate
21 our ruling on this issue via subsequent entry in this
22 case as well as Case No. 17-974-EL-UNC. Are there
23 any questions as to that particular ruling? Okay,
24 thank you.

25 Briefly just moving on, we did have a

1 motion for protective order that was filed by the
2 FirstEnergy Utilities on November 19th, 2021, in
3 conjunction with the Audit Report of Investigation
4 into Ohio ratepayer funding of stadium rights filed
5 by Blue Ridge Consulting Services, Incorporated.

6 This audit report was directed to be
7 filed by Blue Ridge. In the September 29th, 2021
8 Attorney Examiner entry expanding the scope of the
9 audit in this case to determine if the cost of the
10 naming rights for FirstEnergy Stadium have been
11 recovered from ratepayers by the FirstEnergy
12 Utilities.

13 The motion seeks protective treatment of
14 the amounts and timing of payments to the Cleveland
15 Browns organization to maintain a sponsorship
16 agreement, as argued claiming that they qualify as
17 trade secret information.

18 A memorandum contra was filed by OCC on
19 December 6th, 2021, and the FirstEnergy Utilities
20 filed the reply on December 13th, 2021.

21 We will also be deferring ruling on this
22 motion for protective order to be addressed at a
23 later time. We wanted to acknowledge it for the
24 purposes of today's conference just to ensure
25 everyone that it is on our radar.

1 The last item for today, similar to our
2 other conferences, is more of a discovery update for
3 the Bench. We would like to open the floor to
4 confirm that there are no outstanding discovery
5 issues from the latest prehearing conference held on
6 September 14th, 2021, or other conferences. For that
7 matter, just to close the loop for the Bench,
8 specifically, I had at least one item on my list.

9 The -- we wanted to ensure that
10 production had been completed to the extent that
11 OCC's August 26th, 2021 motion to compel was granted,
12 or to the extent the Companies has offered to
13 supplement certain responses for that motion to
14 compel.

15 Would the Companies care to address
16 first?

17 MR. DORINGO: Yes. Thank you, your
18 Honor. So that is not complete just yet. In the
19 coming days we will be providing some supplemental
20 documents to the OCC and other parties with
21 protective agreements to the extent we have
22 confidential information included in those.

23 It would just be, I would say by mid
24 next week that that should be complete. Otherwise we
25 have continued to get and receive -- respond to

1 discovery requests from the other parties. I don't
2 believe there are any new discovery issues arising
3 from those.

4 ATTORNEY EXAMINER ADDISON: Terrific.
5 Mr. Michael, would you care to add anything?

6 MR. MICHAEL: I believe, your Honor,
7 that Mr. Doringo accurately characterized the status
8 of discovery in this case. Thank you.

9 ATTORNEY EXAMINER ADDISON: Wonderful.
10 Thank you both. And we will certainly entertain any
11 issues to the extent that there are any once those
12 supplemental responses have been provided. But thank
13 you again both for that update.

14 Just to wrap everything up, we will note
15 initial and reply comments were submitted in this
16 proceeding on October 4th, 2021, and October 14th,
17 2021 respectively.

18 Additionally, as already indicated, the
19 scope of the audit in this case has been expanded on
20 numerous occasions based on the facts and
21 circumstances at hand.

22 While today's conference is meant to be
23 more of a touch base with parties and resolve some
24 outstanding housekeeping matters since the last
25 prehearing conference, we would expect to issue an

entry at some point in the near future detailing the next steps in this case.

We're obviously not at that point to give any additional guidance today, but would advise everyone to stay tuned for those updates.

So at this point I will open it up to see if there's anything else the parties would like to raise for the Bench's attention at this time.

Okay. Hearing none, I believe we have covered everything that we aimed to cover today, and with nothing further, we are adjourned. Thank you all.

(Thereupon, the hearing was
adjourned at 10:18 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the proceedings
taken by me in this matter on Friday, January 14,
2022, and carefully compared with my original
stenographic notes.

Valerie J. Grubaugh,
Court Reporter and Notary
Public in and for the State
of Ohio.

My commission expires August 11, 2026.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

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in

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

Summary: Transcript in the matter of the Ohio Edison Company hearing held on 01/14/22 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Grubaugh, Valerie