

## 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 March 2, 2022

{¶ 1} In this Entry, the attorney examiner schedules a prehearing conference for 10:00 a.m. on March 11, 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} In a 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.

{¶ 9} 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.

{¶ 10} During a prehearing conference held on August 31, 2021, the Companies' unopposed motion for leave to supplement their response to the Commission's show cause order was granted (Tr. Aug. 31, 2021 at 9).

{¶ 11} 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,<sup>1</sup>" as well as a request for the Commission to appoint a committee independent of the Commission to oversee the investigation and audit.

{¶ 12} 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. In the same Entry, the ruling on OCC's October 27, 2021 motion was deferred until after comments have been received.

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

{¶ 14} On November 29, 2021, comments were filed by Citizens' Utility Board of Ohio, OCC, and Ohio Manufacturers' Association Energy Group (OMAEG).

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

{¶ 16} 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. FirstEnergy filed a memorandum contra, and OCC filed a reply brief on the issue.

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

{¶ 17} On February 10, 2022, a prehearing conference was held. At that conference, the attorney examiner granted OCC's motion for an *in camera* review of FirstEnergy documents. Additionally, the parties were invited to file memoranda discussing whether the documents produced to the Federal Energy Regulatory Commission (FERC) are still protected now that the FERC audit has been released.

{¶ 18} On February 18, 2022, FirstEnergy, OCC, and OMAEG timely filed memoranda regarding the discovery of documents produced to FERC.

{¶ 19} At this time, the attorney examiner finds that a prehearing conference should be held in this proceeding to discuss the *in camera* review and the pending motion regarding production of documents used in the FERC audit. Accordingly, the prehearing conference shall be held remotely, via Webex, on March 11, 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-PHC6>, and entering the password PUCO, or by calling 1-408-418- 9388, and entering code 2330 830 8727.

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That a prehearing conference be scheduled in accordance with Paragraph 19. It is, further,

{¶ 22} 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

GAP/mef

**This foregoing document was electronically filed with the Public Utilities  
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**in**

**Case No(s). 20-1502-EL-UNC**

Summary: Attorney Examiner Entry scheduling a prehearing conference for 10:00 a.m. on March 11, 2022, via Webex electronically filed by Ms. Mary E. Fischer on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio