

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

IN THE MATTER OF THE REVIEW OF THE
DISTRIBUTION MODERNIZATION RIDER
OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY.

CASE NO. 17-2474-EL-RDR

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

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.

CASE NO. 20-1629-EL-RDR

ENTRY

Entered in the Journal on August 24, 2022

I. SUMMARY

{¶ 1} The Commission denies the motions filed by the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition on July 7, 2022, and August 10, 2022.

II. PROCEDURAL HISTORY

{¶ 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.

A. Case No. 17-974-EL-UNC (*Corporate Separation Audit*)

{¶ 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 the *Corporate Separation Audit* were deferred until the resolution of FES' bankruptcy proceeding.

{¶ 6} On March 20, 2020, the Companies filed a notice in the *Corporate Separation Audit*. 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} On April 29, 2020, the attorney examiner established a supplemental comment period regarding the audit report. 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.

{¶ 8} On September 8, 2020, OCC filed motions 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.

{¶ 9} 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. In light of these disclosures, 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. 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 January 27, 2021 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.

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

{¶ 11} In response to a subpoena filed by OCC on September 24, 2021, FirstEnergy Corp. and OCC negotiated a protective agreement to facilitate the exchange of certain proprietary or confidential information during discovery, including all productions to the plaintiffs in *In re FirstEnergy Corp. Securities Litigation*,¹ which include all documents produced by FirstEnergy Corp. to the United States District Attorney for the Southern District of Ohio (US Attorney or DOJ) and the Securities and Exchange Commission (SEC) as part of ongoing federal investigations. Under the negotiated protective agreement, OCC is required to notify FirstEnergy Corp. of any intent to disclose publicly any documents with a confidential designation, after which FirstEnergy Corp. is provided an opportunity to seek a motion for protective order.

{¶ 12} On February 7, 2022, OCC filed a motion for a subpoena duces tecum for FirstEnergy Corp.'s former Chief Ethics Officer, Ebony Yeboah-Amankwah, to testify in a deposition and to produce several documents in advance of the deposition. The subpoena was signed by the attorney examiner. On March 7, 2022, counsel for Ms. Yeboah-Amankwah moved to quash the subpoena pursuant to Ohio Adm.Code 4901-1-25 as unreasonable and oppressive. OCC filed a memorandum contra to the motion to quash on March 22, 2022. Counsel for Ms. Yeboah-Amankwah filed a reply on March 29, 2022.

{¶ 13} Similarly, on February 22, 2022, OCC filed a motion for a subpoena duces tecum for FirstEnergy Corp.'s Vice President, Controller and Chief Accounting Officer, Jason Lisowski, to testify in a deposition and to produce several documents in advance of

¹ Case No. 2:20-cv-3785 (S.D. Ohio).

the deposition.² The subpoena was signed by the attorney examiner. FirstEnergy Corp. moved to quash the subpoena for Mr. Lisowski on March 10, 2022. OCC filed a memorandum contra to the motion to quash on March 25, 2022, to which FirstEnergy Corp. filed a reply on April 1, 2022, emphasizing that Mr. Lisowski is not responsible for compliance with Ohio corporate separation rules.

{¶ 14} On March 3, 2022, OCC notified FirstEnergy Corp. that it seeks to publicly disclose certain documents from the productions noted above.³

{¶ 15} On March 10, 2022, FirstEnergy Corp. filed a motion for protective order seeking to protect from public disclosure certain documents produced in discovery that (1) contain commercially sensitive information and/or (2) are non-public documents produced to the DOJ and SEC as part of ongoing federal investigations.

{¶ 16} OCC filed a memorandum contra FirstEnergy Corp.'s motion for protective order on March 25, 2022.

{¶ 17} FirstEnergy Corp. filed a reply in support of its motion for protective order on April 1, 2022.

{¶ 18} By Entry issued June 16, 2022, the attorney examiner found that the motions to quash as to the Yeboah-Amankwah and Lisowski depositions should be denied, and the depositions may proceed. In making this determination, the attorney examiner declined to opine on relevancy, noting relevancy concerns could be addressed at the hearing. Rather, the attorney examiner found that the depositions may result in information reasonably

² Two additional motions may require rulings from the attorney examiners; however, the attorney examiner found it appropriate to defer ruling on the Fernandez and general FirstEnergy Corp. depositions until the other requested depositions had been conducted and OCC had filed notice in the docket that it will still seek these depositions. June 16, 2022 Entry at ¶ 51, OCC Notice Filing (July 1, 2022).

³ OCC made a similar notice filing on June 24, 2022, in which it indicated that it sought to publicly disclose approximately 20 documents from the securities productions. FirstEnergy filed a motion for protective order in response to the notice on July 5, 2022.

calculated to lead to the discovery of admissible evidence, pursuant to Ohio Adm.Code 4901-1-16(B).

{¶ 19} The deposition of Ms. Ebony Yeboah-Amankwah was scheduled to take place on July 21, 2022. The attorney examiners were requested by the parties to join the deposition over the phone in order to settle various disputes regarding the questioning being conducted.

{¶ 20} On July 26, 2022, OCC, OMAEG, IGS, and NOPEC filed a joint interlocutory appeal and request for certification regarding the attorney examiner's rulings made during the deposition.

{¶ 21} On August 1, 2022, memoranda contra the joint interlocutory appeal were filed by the Companies, FirstEnergy Corp., and counsel for Ms. Yeboah-Amankwah.

{¶ 22} Thereafter, on August 4, 2022, OCC filed motions for subpoena duces tecum for the following current and former employees of FirstEnergy Corp.: Eileen Mikkelsen (Former Vice President of Rate and Regulatory Affairs and Acting Vice President of External Affairs); Charles Jones (Former CEO); Justin Biltz (Former Lobbyist and Director of State Regulatory Affairs); Robert Reffner (Former Chief Legal Officer and Senior Vice President); Ty Pine (Former Lobbyist and Director of State Affairs); Steven Strah (Current President and CEO); Michael Dowling (Former Senior Vice President of External Affairs); Joel Bailey (Former Vice President for State and Local Affairs and Economic Development); and Dennis Chack (Former Senior Vice President of Product Development, Marketing and Branding).

{¶ 23} An evidentiary hearing is currently scheduled to commence on January 9, 2023, at the Commission offices in Columbus.

{¶ 24} To date, five prehearing conferences have been held and 30 Commission attorney examiner entries have been issued, as well as eight interlocutory appeals filed and one application for rehearing filed.

B. Case No. 17-2474-EL-RDR (Rider DMR Audit)

{¶ 25} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO may be either a market rate offer, in accordance with R.C. 4928.142, or an electric security plan (ESP), in accordance with R.C. 4928.143.

{¶ 26} On March 31, 2016, in Case No. 14-1297-EL-SSO, the Commission approved FirstEnergy's application for an ESP. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Authority to Provide for a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) (*ESP IV Case*). Further, on October 12, 2016, the Commission issued the Fifth Entry on Rehearing in the *ESP IV Case*. On rehearing, the Commission authorized FirstEnergy to implement a distribution modernization rider (Rider DMR). *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶185. Additionally, the Commission ruled that Staff will review the expenditure of Rider DMR revenues to ensure that Rider DMR revenues are used, directly or indirectly, in support of grid modernization. *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶282. Subsequently, the Commission determined that this review should be conducted with the assistance of a third-party monitor and that the monitor should prepare a mid-term report, to inform the Commission when evaluating any proposed extensions of the DMR, and a final report. On January 24, 2018, the Commission selected Oxford Advisors, LLC, (Oxford) as the third-party monitor. Entry (Jan. 24, 2018) at ¶7.

{¶ 27} On June 14, 2019, Oxford filed its mid-term report.⁴

⁴ The mid-term report was prepared to inform the Commission on whether Rider DMR should be extended and was filed in this docket inadvertently; rather, the mid-term report was meant to be filed in Case No. 19-361-EL-RDR. *ESP IV Case*, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 113.

{¶ 28} Numerous parties appealed the Commission's decision in the *ESP IV Case*, challenging Rider DMR and other aspects of the Commission's orders. On June 19, 2019, the Supreme Court of Ohio issued its decision in those appeals, affirming the Commission's order in part, reversing it in part as it relates to Rider DMR, and remanding with instructions to remove Rider DMR from FirstEnergy's ESP. Specifically, the Court held that Rider DMR does not qualify as an incentive under R.C. 4928.143(B)(2)(h) and the conditions placed on the recovery of Rider DMR revenues were not sufficient to protect ratepayers. *In re Application of Ohio Edison Co. v. Pub. Util. Comm.*, 157 Ohio St.3d 73, 2019-Ohio-2401, 131 N.E.3d 906 at ¶¶ 14-29 (*Ohio Edison*), reconsideration denied, 156 Ohio St.3d 1487, 2019-Ohio-3331, 129 N.E.3d 458.

{¶ 29} On August 22, 2019, pursuant to the *Ohio Edison* decision, the Commission directed the Companies to immediately file proposed revised tariffs setting Rider DMR to \$0.00. The Companies were further directed to issue a refund to customers for monies collected through Rider DMR for services rendered after July 2, 2019, subject to Commission review. Once the refund had been appropriately issued, the Companies were instructed to file proposed, revised tariffs removing Rider DMR from the Companies' ESP. *ESP IV Case*, Order on Remand (Aug. 22, 2019) at ¶¶ 14-16.

{¶ 30} The Companies complied with the Commission's directives as instructed in the Order on Remand and filed tariffs removing Rider DMR from their ESP on October 18, 2019.

{¶ 31} On February 26, 2020, the Commission issued an Entry in which the Commission stated that the provisions for a final review of Rider DMR were an essential part of the terms and conditions related to Rider DMR in the *ESP IV Case*. *ESP IV Case*, Fifth Entry on Rehearing at ¶282, Eighth Entry on Rehearing at ¶113, Ninth Entry on Rehearing (Oct. 11, 2017) at ¶¶ 17-20. Additionally, the Commission cited the Court's objections in *Ohio Edison* to the usefulness of the proposed final review after the Court questioned the lack of an effective remedy resulting from such review. *Ohio Edison* at ¶26. As such, the

Commission found that, when the provisions of Rider DMR were eliminated, so too were the provisions requiring a final review of the rider. The Commission then dismissed and closed the case of record. Entry (Feb. 26, 2020) at ¶9. No party filed an application for rehearing regarding the Commission's ruling.

{¶ 32} Thereafter, on September 8, 2020, OCC filed a motion requesting that the Commission reopen the *Rider DMR Audit* and initiate an audit of Rider DMR. On December 30, 2020, the Commission determined that, in the interests of both transparency and state policy, good cause existed to initiate an additional review of Rider DMR.

{¶ 33} Accordingly, by Entry issued December 30, 2020, the Commission directed Staff to prepare a RFP to solicit the services of a third-party monitor to assist Staff with the full review of Rider DMR, as contemplated in the *ESP IV Case*. Due to an insufficient number of submitted proposals, the Commission directed Staff to reissue the RFP for audit services, in accordance with a revised RFP. The Commission specified that the audit to be conducted should also include an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in the *ESP IV Case*. *ESP IV Case*, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶282.

{¶ 34} On June 2, 2021, the Commission selected Daymark to perform the audit services described in the RFP and its proposal. *Id.* at ¶14. In the Entry, the Commission ordered Daymark and the Companies to incorporate the terms and conditions of the RFP into the contract, which set the deadline for the draft audit report as October 15, 2021, and the deadline to file the final audit report as October 29, 2021. *Id.*; Entry (Apr. 7, 2021), Attachment at 3.

{¶ 35} On September 24, 2021, OCC filed a motion for subpoena duces tecum for FirstEnergy Corp. The subpoena duces tecum was issued by the attorney examiner as requested by OCC.

{¶ 36} On October 14, 2021, Staff filed a motion for an extension of time to file the draft audit report and final audit report, which was granted by Entry on October 22, 2021. In that Entry, the deadlines for Daymark to provide its draft and final audit reports were set for December 2, 2021, and December 16, 2021, respectively.

{¶ 37} On October 20, 2021, OCC filed a motion for a subpoena for any drafts of the final report prepared by Oxford. Staff filed a memorandum contra the motion for subpoena on November 4, 2021. OCC filed its reply to the memorandum contra on November 12, 2021. Subsequently, on December 10, 2021, OCC filed a motion for a second subpoena, a subpoena duces tecum for Oxford to attend and provide testimony at a deposition and for waiver of Ohio Adm.Code 4901-1-25(D). Staff filed a memorandum contra the motion on December 27, 2021. OCC filed a reply to the memorandum contra on January 3, 2022.

{¶ 38} On December 14, 2021, Staff filed a motion for extension of time to file the final audit report, which was granted by Entry on December 15, 2021. The deadline for Daymark to file its final report was set for January 14, 2022.

{¶ 39} On January 7, 2022, a prehearing conference was held in order to address pending motions and for parties to provide an update as to discovery matters. At the prehearing conference, the attorney examiner deferred ruling on the two motions for subpoenas requested to be issued to Oxford by OCC until after the final report was filed by Daymark.

{¶ 40} Nonetheless, on January 12, 2022, and only two days prior to the filing deadline for Daymark's final audit report, OCC filed an interlocutory appeal of the "ruling" of the attorney examiner to defer ruling on the two motions for subpoenas filed by OCC.

{¶ 41} Subsequently, Daymark filed the final report on January 14, 2022.

{¶ 42} By Entry issued February 18, 2022, the attorney examiner denied the motions for subpoenas duces tecum, directed Staff to produce a witness from Oxford Advisors, LLC, at the hearing to be held in this matter, and extended the comment period, while noting that

further reasonable requests for extension of the comment period would be entertained if OCC, or any other party, provided meaningful, quantified assessments on the progress of reviewing discovery in the *Rider DMR Audit*.

{¶ 43} On February 23, 2022, OCC filed an interlocutory appeal, request for certification of the denial of the motions for subpoena in the February 18, 2022 Entry.

{¶ 44} On February 28, 2022, Staff filed a memorandum contra OCC's interlocutory appeal and request for certification of the denial of the motions for subpoena.

{¶ 45} By Entry issued March 8, 2022, the interlocutory appeal was certified to the Commission, pursuant to Ohio Adm.Code 4901-1-15(B). The Commission affirmed the February 18, 2022 Entry in its entirety by Entry issued March 9, 2022.

{¶ 46} Initial comments were filed by the Companies, OMAEG, and OCC on April 19, 2022, and reply comments were filed by The Ohio Hospital Association (OHA), the Companies, OCC, and OMAEG on May 4, 2022.

{¶ 47} To date, no hearing has been scheduled in the *Rider DMR Audit*; however, two prehearing conferences have been held and 20 Commission and attorney examiner entries have been issued, including two interlocutory appeals and an application for rehearing.

C. Case No. 20-1502-EL-UNC-EL-UNC (*Political and Charitable Spending Audit*)

{¶ 48} The Commission opened the *Political and Charitable Spending Audit* 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.

{¶ 49} 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.

{¶ 50} In a memorandum filed on July 23, 2021, the Companies represented that the Deferred Prosecution Agreement⁵ (DPA) entered into between the Companies' parent corporation, FirstEnergy Corp., and the US Attorney may require that the Companies supplement their response to the September 15, 2020 show cause order. Further, the Companies represented that the DPA requires that the Companies supplement certain portions of their discovery responses.

{¶ 51} The Companies filed a supplemental response on August 6, 2021.

{¶ 52} By Entry issued July 29, 2021, the attorney examiner granted a joint motion by the parties to indefinitely suspend a previously set comment period.

{¶ 53} By Entry issued October 28, 2021, the attorney examiner established a comment period regarding the Companies' response to the show cause order, as supplemented on August 6, 2021, with initial and reply comments to be filed by November 29, 2021, and December 14, 2021, respectively.

{¶ 54} Initial comments regarding the Companies' show cause order were timely filed by Citizens' Utility Board of Ohio, OCC, and OMAEG on November 29, 2021. Reply comments were timely filed by OCC, OHA, FirstEnergy Ohio, and OMAEG. The comments generally supported an update from the Companies to ensure that political and charitable contributions are not recovered in rates.

⁵ *United States of America v. FirstEnergy Corp.* Case No. 1:21-cr-86, July 22, 2021, Doc. 3.

{¶ 55} By Entry issued May 4, 2022, the Commission selected Marcum LLP to assist Staff in its review. In accordance with the May 4, 2022 Entry, an audit report is due to be filed on December 16, 2022.

{¶ 56} To date, no hearing has been scheduled in the *Political and Charitable Spending Audit*; however, nine prehearing conferences have been held and over 20 Commission and attorney examiner entries have been issued, including five interlocutory appeals and an application for rehearing.

D. Case No. 20-1629-EL-UNC (2020 Rider DCR Audit)

{¶ 57} By Opinion and Order issued on March 31, 2016, in the *ESP IV Case*, the Commission modified and approved stipulations which included an extension, with modification, of FirstEnergy's delivery capital recovery rider (Rider DCR). *ESP IV Case*, Opinion and Order (Mar. 31, 2016).

{¶ 58} On November 4, 2020, the Commission issued an Entry directing Staff to issue a request for proposal for the audit services necessary to assist with the annual compliance audit of the Companies. Subsequently, on December 16, 2020, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge) from the submitted proposals to complete the required audit services.

{¶ 59} On March 8, 2021, Staff filed a request in the *2020 Rider DCR Audit* to expand its scope. Staff noted that, upon review of FirstEnergy Corp.'s 10-K filed on February 18, 2021, Staff issued a data request to the Companies for additional records related to the disclosure of certain transactions that were either improperly classified, misallocated, or lacked supporting documentation. The Company responded to this data request on February 25, 2021. By Entry issued March 10, 2021, the Commission granted the request from Staff and directed Blue Ridge to expand the scope of the audit to include payments made to a number of vendors disclosed by FirstEnergy Corp. in its annual 10-K filing with

the Securities and Exchange Commission. Blue Ridge filed the final audit report, which included the expanded scope of investigation, with the Commission on August 3, 2021.

{¶ 60} On September 29, 2021, the Commission requested Staff to direct Blue Ridge to expand the scope of the audit in the *2020 Rider DCR Audit* to determine if the costs of the naming rights for FirstEnergy Stadium have been recovered from ratepayers by the Companies. Subsequently, Blue Ridge filed a supplemental audit report in this docket on November 19, 2021.

{¶ 61} Comments were timely filed by the Companies, the Ohio Cable Telecommunications Association, OHA, OMAEG, and OCC on October 4, 2021. Reply comments were timely filed by OHA, OCC, OMAEG, and the Companies on October 14, 2021.

{¶ 62} On December 15, 2021, the Commission noted that there is information in this docket and in the public domain which may demonstrate a potential violation of the Companies' obligation under R.C. 4928.145 to disclose a "side agreement" during the *ESP IV Case*. This information included the Statement of Facts included in the DPA. Accordingly, the Commission further expanded the scope of the *2020 Rider DCR Audit* to include an investigation into whether the Companies violated R.C. 4928.145 by failing to disclose the amended agreement during the proceedings in the *ESP IV Case*. However, having put the Companies and interested parties on notice that the potential violation of R.C. 4928.145 will be investigated by the Commission, we stayed further action, including discovery, until otherwise ordered by the Commission in order to avoid interference with the ongoing criminal investigation by the United State Attorney and the civil action by Ohio Attorney General Dave Yost pursuant to Ohio's civil RICO statute.

{¶ 63} On January 14, 2022, OCC filed an application for rehearing pursuant to R.C. 4903.10, claiming that the Commission erred by indefinitely delaying its and parties' investigations involving a revelation of FirstEnergy's unreasonable and unlawful failure to disclose apparent secret side deals in the *ESP IV Case*.

{¶ 64} The Commission issued an Entry on Rehearing on February 9, 2022, denying OCC's application for rehearing.

{¶ 65} To date, the *2020 Rider DCR Audit* has not been scheduled for hearing; however, two prehearing conferences have been conducted and 12 Commission and attorney examiner entries have been issued, including two interlocutory appeals and an application for rehearing.

E. Common Filings Made in Each of the Above-Captioned Proceedings

{¶ 66} On July 7, 2022, OCC and Northwest Ohio Aggregation Coalition (NOAC) filed a motion for the Commission to adopt the Ohio Code of Judicial Conduct (OCJC). No responsive memoranda were filed in response.

{¶ 67} Thereafter, on August 10, 2022, OCC and NOAC filed a motion for clarification of Attorney Examiner Gregory Price's March 4, 2022 letter of withdrawal, motion to treat the withdrawal as a "disqualification" under the OCJC, and motion to vacate the rulings by Attorney Examiner Price that predated the withdrawal and request that the issues be reconsidered through an independent review, de novo, by a magistrate not affiliated with the Commission. No responsive memoranda were filed in response.

{¶ 68} While the Commission, in an act of administrative efficiency, chooses to address these motions in a collective fashion, we remind the parties that these cases have not been consolidated. The Supreme Court of Ohio has recognized the Commission's broad discretion to regulate its proceedings and manage its docket. *See, e.g., Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 19, 734 N.E.2d 775 (2000). To date, no party has presented a formal request to consolidate these proceedings to the Commission, nor do we believe the existing circumstances warrant consolidation.

III. DISCUSSION

{¶ 69} On July 7, 2022, OCC and NOAC filed a motion for the Commission to adopt the OCJC, specifically citing the potential ex parte violations included in a filing involving

former Chair Randazzo and one or more FirstEnergy Corp. officials related to FirstEnergy Advisors' pending certificate case. *In re the Application of Suvon LLC for Certification as a Competitive Retail Elec. Serv. Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Motion to Withdraw the Certification Application of Suvon, Memorandum at 6 (Nov. 2, 2021). According to the moving parties, the OCJC establishes standards for the ethical conduct of judges and is intended "to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct and provide a basis for regulating their conduct through disciplinary agencies." OCJC, Preamble, ¶3. The commissioners and attorney examiners, states OCC and NOAC, have a prime role in the administration of justice in Commission proceedings and the Commission, overall, has an "obligation, as a quasi-judicial body, to conduct hearings in a manner that comports with the elements of fundamental fairness and due process." *In re Complaint of the City of Cincinnati v. Cincinnati Gas & Elec. Co.*, No. 91-377-EL-CSS, Finding and Order (June 27, 1991). See, e.g., *Withrow v. Larkin*, 421 U.S. 35, 46, 95 S.Ct. 1456, 1464, 43 L.Ed.2d 712 (1975) (holding that "a fair trial in a fair tribunal is a basic requirement of due process [that] applies to administrative agencies which adjudicate as well as to courts.") Further, the moving parties note, to the extent the OCJC has been adopted by the Commission, that fact should be posted publicly. If it has not, OCC and NOAC suggest that it should be adopted for the purposes of these proceedings, as its application to commissioners and attorney examiners involved would provide appropriate guidance and standards for the administration of justice in these proceedings. Furthermore, OCC and NOAC claim applying the OCJC to commissioners and attorney examiners is also consistent with the Ohio Rules of Professional Conduct, including that "[a] lawyer should * * * advance the administration of justice." In support of its request, the parties note that hearing examiners overseeing adjudication proceedings before the Ohio Environmental Protection Agency are required to "behave in the manner prescribed for judges generally in the 'Ohio Code of Judicial Conduct' (2010)." Ohio Adm.Code 3745-47-20(D). Further, OCC and NOAC also point out that commissioners and employees of the Ohio Industrial Commission and Bureau of Workers Compensation are required, by rule, to avoid the appearance of impropriety. Ohio Adm.Code 4123-15-03(G).

Beyond Ohio, the moving parties cite to agencies located in other states that also apply codes of judicial conduct or have adopted their own variations to apply to administrative law judges.

{¶ 70} Thereafter, on August 10, 2022, OCC and NOAC filed a motion for clarification of Attorney Examiner Gregory Price's March 4, 2022 letter of withdrawal, motion to treat the withdrawal as a "disqualification" under the OCJC, and motion to vacate the rulings by Attorney Examiner Price that predated the withdrawal and request that the issues be reconsidered through an independent review, de novo, by a magistrate not affiliated with the Commission. OCC and NOAC raise a concern that the letter of withdrawal is ambiguous, and leaves open the possibility for Attorney Examiner Price to otherwise participate directly or indirectly in these four cases. First, the moving parties request clarification as to whether Attorney Examiner Price is "disqualified" from these investigations, pursuant to the OCJC Rule 2.11. Second, if Attorney Examiner Price continues to have involvement in the four FirstEnergy investigation cases after his withdrawal, such as to supervise or consult, then OCC and NOAC argue that the Commission should be required to disclose the involvement and end it. In addition to seeking clarification, OCC and NOAC move that Attorney Examiner Price be disqualified as set out in Rule 2.11. In support of its request, the parties note that the Supreme Court of Ohio has stated that " '[p]reservation of public confidence in the integrity of the judicial system is vitally important,' and '[a]n appearance of bias can be just as damaging to public confidence as actual bias.' " Thus, the OCJC provides that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned[.]"

{¶ 71} Further, OCC and NOAC move to vacate allegedly "prejudicial" and "not substantively valid" rulings by Attorney Examiner Price, which were made prior to the withdrawal: (1) The Entry issued in the *Corporate Separation Audit*, dated February 10, 2022, deferring a ruling on the OCC/NOPEC request for a supplemental audit until after the evidentiary hearing; (2) The Entry issued in the *Rider DMR Audit*, dated February 18, 2022,

preventing OCC from deposing Commission-selected auditor Oxford Advisors and from obtaining audit-related documents; (3) The Entry issued in the *2020 Rider DCR Audit*, dated December 15, 2021, staying further action, including staying parties' discovery, on the Companies' potential violation of OCC's discovery rights under R.C. 4928.145 in the *ESP IV Case*; (4) The ruling issued during the September 14, 2021 prehearing conference in the *Corporate Separation Audit* and the *2020 Rider DCR Audit*, denying OCC's discovery of the internal investigation report of FirstEnergy Corp.'s Board of Directors related to H.B. 6 matters; and (5) The ruling at a January 4, 2022 prehearing conference in the *Corporate Separation Audit*, prohibiting multi-case-captioning for filings in the non-consolidated investigations of the Companies absent prior attorney examiner approval, thus denying parties the legal benefit of filing single pleadings in multiple investigation cases on common issues. OCC and NOAC also argue that they were prejudiced by the above rulings, citing *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-2190, Entry at ¶ 20 (Dec. 30, 2020) citing to *Cincinnati v. Pub. Util. Comm.*, 64 Ohio St.3d 279, 281-282, 595 N.E.2d 858 (1992) and *Ohio Transp. v. Pub. Util. Comm.*, 164 Ohio St. 98, 128 N.E.2d 22 (1955).

{¶ 72} First, the Commission and our attorney examiners already rely on the OCJC as a guiding authority, where appropriate. In response to the motion filed July 7, 2022, the Commission initially recognizes that the suggestion for the Commission to adopt the OCJC in these four investigations would be more appropriate to raise in one of the Commission's rules proceedings, consistent with those Ohio administrative agencies cited by the moving parties that have formally adopted the OCJC.⁶ As the more appropriate forum for such a request, the Commission would be able to entertain comments from any interested stakeholder, rather than the limited parties associated with these four proceedings, and consider the request in a more uniform application to all Commission proceedings. Moreover, while an administrative agency, such as the Commission, is not a "court" in the

⁶ The Commission is not aware of any interested stakeholder raising the adoption of the OCJC in any prior proceedings, including those related to our administrative rules.

true or literal sense of the term, many principles and rules that govern judicial proceedings and determinations can be applied to an agency's quasi-judicial or adjudicative functions. Judicial rules "of procedure and practice are transferrable to administrative agencies when these are conducive to ensuring fairness, independence, integrity, and efficiency in administrative adjudications," even if administrative agencies are not strictly bound by them. *State Emp. Relations Bd. v. Springfield Local School Dist. Bd. of Edn.*, SERB No. 93-ULP-07-0397, 11 Ohio Pub. Employee Rep. ¶ 1444 (July 7, 1994). At the very least, these rules may be illustrative of the types of conflicts a commissioner or attorney examiner should be mindful of in order to avoid an appearance of impropriety. For all these reasons, the Commission already holds itself to the highest standards of ethical conduct, including following the Ohio Ethics Code, more specific ethics laws in Title 49 of the Revised Code, the OCJC for guidance, as well as licensed attorneys being bound by the Ohio Rules of Professional Conduct. Given this acknowledgement, the Commission assures OCC, NOAC, and all other parties practicing before us that we, and our attorney examiners, already rely on the OCJC as a guiding authority, where appropriate.

{¶ 73} However, with respect to the specific instance raised by OCC and NOAC in support of their motion that the Commission adopt the OCJC, an alleged ex parte contact between the former Chairman and a FirstEnergy Corp. executive, the Commission has already adopted a rule governing ex parte contacts and providing for the proper disclosure to all parties of any such contact. Ohio Adm.Code 4901-1-09. This rule amplifies a specific statute. R.C. 4903.081. This statute and rule are more than sufficient to address this issue, regardless of the provisions of the OCJC. In any event, a party that intentionally violates the existing ex parte rule is unlikely to be deterred by the adoption of the OCJC ex parte rule instead.

{¶ 74} If an attorney examiner were to abide by the rules prescribed by the OCJC, even though they are not strictly bound by such rules, they would certainly fall within the standards applicable to Commission proceedings. *Disciplinary Counsel v. ELUM*, 133 Ohio St. 3d 500, 2012-Ohio-4700, 979 N.E.2d 289. Nonetheless, even assuming strict application

of the OCJC, it is clear that Attorney Examiner Price was not required to disqualify himself pursuant to OCJC Rule 2.11. The general standard of disqualification found under that rule provides that a judge must disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. Although the rule provides specific situations in which this may be the case, this list is not exhaustive and all situations potentially subject to recusal should be evaluated on a case-by-case basis. Bd. of Commrs. on Grievances & Discipline No. 91-008 (Apr. 12, 1991); *Buell v. Mitchell*, 274 F.3d 337 (6th Cir.2001) (where the court held that a judge who, as a legislator, sponsored or voted for legislation implementing or favoring the death penalty cannot be presumed to be disqualified from reviewing capital cases as a judge, further noting that establishing a rule that a judge must recuse himself in cases involving legislation that had been enacted when a judge served as a legislator would force recusal in an inordinate amount of cases, and it might prevent individuals who are or were legislators from serving as members of the judiciary and from bringing their unique perspectives to the bench) ; *In re Schweikert*, 155 Ohio St.3d 1220, 2018-Ohio-5421, 120 N.E.3d 12 (where the Court held that a judge who was heavily involved in legislative activities related to medical malpractice statutes cannot be presumed to be disqualified from reviewing medical malpractice cases as a judge); *State ex rel. Chagrin Falls v. Geauga Cty. Bd. of Commrs.*, 96 Ohio St.3d 400, 2002-Ohio-4906, 775 N.E.2d 512, ¶ 16 (where the Court refused to reverse a judge who dismissed a village's request for a writ of mandamus to annex land from a township although the judge had previously served as a state legislator and sponsored annexation legislation, noting that the record evidence did not support a claim of bias). Notably, the motion requesting disqualification makes no attempt to analyze the examples of potential impartiality in the OCJC Rule 2.11 or legal decisions on this point. OCJC Rule 2.11 includes, but is not limited to, examples of "impartiality" such as personal knowledge of the facts in dispute in the proceeding, the judge's spouse having an interest in the proceeding, the judge or their family having an economic interest in the controversy, and the judge served as a lawyer in the matter. OCC does not claim that any of these circumstances are in operation here. Moreover, the motion did not appear to contain any legal research of precedent, and, as demonstrated by the above

cases, higher courts' interpretations of OCJC Rule 2.11 leads us to the conclusion there is no need for withdrawal as a presiding attorney examiner, let alone disqualification of a judge. This precedent, directly on point, demonstrates a judge's prior involvement as a legislator drafting legislation does not disqualify them as a judge on matters involving that same law.

{¶ 75} OCC and NOAC appear to rely upon the fact that Attorney Examiner Price reviewed various versions of H.B. 6 during the legislative process and provided legal advice to the former Chairman on the potential impact of the legislation. Contrary to the insinuation of OCC and NOAC, the circumstances surrounding these proceedings, i.e., discussions and the provision of legal advice regarding proposed legislation, did not give rise to any basis upon which Attorney Examiner Price's impartiality might reasonably be questioned in these proceedings. Bd. of Commrs. on Grievances & Discipline No. 2002-03 (April 5, 2002) (where the Board found it is proper under Canon 2(A)(1) of the OCJC for a judge to communicate to the public about a proposed state constitutional amendment regarding drug treatment in lieu of incarceration, to explain the proposed amendment, to compare it to current law, and to describe its potential impact on the constitution, the law, and the operation of the courts and, likewise, also is proper, under Canon 4(C)(1), for a judge to meet with an executive or legislative body or official to discuss a proposed state constitutional amendment); *Leaman v. Ohio Dept. of Mental Retardation*, 825 F.2d 946, 949-50 and fn.1 (6th Cir.1987) (judge is not automatically disqualified from a case on the basis of having sponsored or voted upon a law in the state legislature that he is later called upon to review as a judge). Accordingly, we find that an attorney examiner who provides advice to the Commission on legislation is not subject to disqualification from presiding over a subsequent case resulting from such legislation. Further, we find that the allegations regarding Attorney Examiner Price's impartiality in proceedings before the Commission have been nothing more than baseless, unsupported speculation.

{¶ 76} To the extent further clarification is necessary, Attorney Examiner Price did not "recuse" or "disqualify" himself from these cases; instead, he withdrew from the cases as a presiding hearing officer in order to proactively respond to and end a manufactured

controversy and keep the Commission's and the parties' time and resources focused on FirstEnergy's conduct, which is the actual subject matter of these investigations. Attorney Examiner Price retained no supervisory duties with respect to these cases. The lead attorney examiner, as a senior utilities examiner, already reported directly to the Legal Director, and is empowered by statute to hold inquiries and hearings on behalf of the Commission. R.C. 4901.18. However, the Commission continues to rely upon the expertise of Attorney Examiner Price in all matters involving all of the electric distribution utilities in this state, given his decades of experience with the Commission. His integrity and knowledge of utility law are of the highest caliber and the Commission accepts and values his insight and counsel whenever we deem it helpful or necessary.

{¶ 77} Equally baseless are OCC and NOAC's claim of prejudice as a result of the various rulings cited in its August 10, 2022 filing and claims that such rulings were substantively invalid. As a general matter, we reiterate the comments made by Commissioner Conway at the March 9, 2022 Commission meeting when discussing the proposed entry in the *Rider DMR Audit* and emphasize that the attorney examiner's role is one of delegation by the Commission to manage the proceedings that come before us, as well as provide advice on legal matters on "[h]ow we should regard, interpret, implement the statutes that guide our work here at the Commission." With that in mind, we turn now to the specific rulings OCC and NOAC claim were prejudicial or not substantively valid.

{¶ 78} As to the February 10, 2022 Entry issued in the *Corporate Separation Audit*, we note that this Entry was addressing the interlocutory appeal filed by OCC and NOPEC⁷ after the attorney examiner had deferred ruling on its request for a supplemental audit during the January 4, 2022 prehearing conference, despite noting that "[i]f the evidence presented at the [scheduled] hearing demonstrates a need for supplemental audit, the Commission will consider supplemental audit after the hearing." *Corporate Separation Audit*,

⁷ Although NOAC claims it is prejudiced by the ruling, NOAC did not file the interlocutory appeal that was the subject of this ruling.

Prehearing Conf. Tr. (Jan. 4, 2022) at 24-25.⁸ Specifically, the February 10, 2022 Entry properly denied the interlocutory appeal as improper because the interlocutory appeal was not taken from an actual “ruling,” as prescribed by the Commission’s rules, consistent with past precedent. *Corporate Separation Audit*, Entry (Feb. 10, 2022) at ¶ 25. The decision not to expand the scope of the *Corporate Separation Audit* at that time, but rather to defer taking up the issue until after the scheduled hearing on the existing scope that we had already established for that case, is a matter well within our discretion to manage our proceedings efficiently. Furthermore, it does not prejudice OCC and NOPEC that we are not addressing their request at this juncture.

{¶ 79} Next, is the Entry issued in the *Rider DMR Audit* on February 18, 2022, which denied OCC’s request to depose a Commission-selected auditor.⁹ Raising this ruling by the attorney examiner at this point is misleading because this ruling has already been reviewed by the Commission in an interlocutory appeal filed by OCC and was affirmed in its entirety on March 9, 2022, giving rise to Commissioner Conway’s comments cited above. In the Entry, we stated “[t]he Commission notes that, in its interlocutory appeal, OCC alleges a number of errors by the attorney examiner. Upon review, we find that none of these alleged errors have merit.” *Rider DMR Audit*, Entry (Mar. 9, 2022) at ¶ 38.

{¶ 80} OCC and NOAC incorrectly attribute to Attorney Examiner Price the ruling in the December 15, 2021 Entry in the *2020 Rider DCR Audit*. This claim of prejudice is easily dismissed as that particular Entry was issued by the Commission itself rather than an attorney examiner.

⁸ It should be noted that the attorney examiner granted leave to OCC to file its interlocutory appeal after the five-day timeframe prescribed by rule as OCC’s initial attempt to timely file its interlocutory appeal rendered the document completely illegible. *Corporate Separation Audit*, Entry (Jan. 13, 2022).

⁹ NOAC did not file the request to depose the auditor, although it now claims it has been prejudiced by the denial of that request.

{¶ 81} Next, OCC and NOAC raise the ruling issued during the September 14, 2021 prehearing conference in the *Corporate Separation Audit* and *2020 Rider DCR Audit*,¹⁰ which they claim denied OCC's discovery of the internal investigation report of the FirstEnergy Corp. Board of Directors. Interestingly, this ruling did no such thing. Instead, FirstEnergy Corp. and FirstEnergy Service Company were ordered to produce to the attorney examiners a privilege log and a copy of the investigation report for an in-camera review. After conducting the in-camera review, the attorney examiner found the investigation report to be protected by both attorney-client privilege and the attorney-work-product-doctrine and, on October 12, 2021, granted the motion to quash the production of it through discovery. *Corporate Separation Audit*, Entry (Oct. 12, 2021). Even more unfavorable to OCC's argument to this "prejudicial ruling" was the fact that, after OCC had been granted leave to file notice of additional authority in its interlocutory appeal of the October 12, 2021 Entry, the additional authority, a decision subsequently provided by the Maryland Public Service Commission, was consistent with the attorney examiner's determinations that the internal investigation was, indeed, protected, as detailed in the subsequent notice filed by OCC. See *Corporate Separation Audit*, Notice of a Decision by the Maryland Public Service Commission (Jan. 25, 2022).

{¶ 82} Finally, OCC and NOAC claim prejudice from Attorney Examiner Price's instruction prohibiting multi-captioning of motions *without the express prior permission from the attorney examiners*. Attorney Examiner Price aptly explained that "[t]hese cases are not consolidated, and we are blurring the records of these various proceedings. * * * I know we have said we will take administrative notice of evidence produced in one proceeding in these other proceedings, but I want to keep the records clear, these various cases, when --if and when these cases go up to the Ohio Supreme Court." *Corporate Separation Audit*, Prehearing Conference Tr. (Jan. 4, 2022). Neither OCC nor NOAC filed an interlocutory appeal of this ruling. While OCC and NOPEC filed an interlocutory appeal regarding the

¹⁰ The attorney examiners held the conferences simultaneously for the benefit of administrative efficiency to address motions that had been dual-captioned.

procedural schedule and the attorney examiner's decision to defer ruling on OCC and NOPEC's request for a supplemental audit, there was no mention of the instruction regarding multi-captioned documents in that appeal. *Corporate Separation Audit*, OCC Interlocutory Appeal (Jan. 14, 2022).

{¶ 83} It is important to note that just because a party receives an unfavorable ruling does not mean there was anything inherently prejudicial or wrong with the ruling itself or that an attorney examiner did not act with impartiality upon its issuance. See *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7 (where the Court stated that there is a presumption of impartiality accorded all judges in affidavit-of-disqualification proceedings); *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4, citing *In re Disqualification of Murphy*, 36 Ohio St.3d 605, 522 N.E.2d 459 (1988) (where the Court noted that dissatisfaction or disagreement with a judge's ruling of law, without more, does not constitute bias or prejudice and thus is not grounds for disqualification.); *In re Disqualification of Eyster*, 105 Ohio St.3d 1246, 2004-Ohio-7350, 826 N.E.2d 304, ¶ 4, citing *Solovan* at ¶ 4 (where the Court observed that "[a]n affidavit of disqualification 'is not a vehicle to contest matters of substantive or procedural law.' ") (internal citation omitted); *In re Disqualification of Bates*, 134 Ohio St.3d 1249, 2012-Ohio-6342, 984 N.E.2d 17, ¶ 12, citing *In re Disqualification of Russo*, 110 Ohio St.3d 1208, 2005-Ohio-7146, 850 N.E.2d 713, ¶ 6 (where the Court stated "[i]n short, trial judges are entitled to exercise their discretion in ruling on many matters, and it is not the chief justice's role in deciding an affidavit of disqualification to second-guess each ruling. The remedy for these and other legal claims, if any, lies on appeal, not through the filing of an affidavit of disqualification.")

{¶ 84} As OCC and NOAC have provided no basis whatsoever to claim how any of these rulings cited in the August 10, 2022 motion prejudiced them or were otherwise not substantively valid, we are able to summarily reject such unfounded collateral attacks on prior (and sound) rulings.

{¶ 85} Finally, we note that the Ohio Rules of Professional Conduct set forth various standards for every attorney in Ohio, including, but not limited to, Prof.Cond.R. 3.5(a)(6) (prohibiting a lawyer from engaging in undignified or discourteous conduct that is degrading to a tribunal) and 8.2(a) (prohibiting a lawyer from making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judicial officer).

{¶ 86} Further, we believe that it is important to reaffirm, on a general basis, the principle that attorneys, who serve as officers of the court, have the first line task of assuring the integrity of the process of all judicial forums. “[T]he obligation which attorneys impliedly assume, if they do not by express declaration take upon themselves, when they are admitted to the bar, is not to merely be obedient to the Constitution and laws, but to maintain at all times the respect due to courts of justice and judicial officers. This obligation is not discharged by merely observing the rules of courteous demeanor in open court, but it includes abstaining out of court from all insulting language and offensive conduct toward the judges personally and for their judicial acts.” *Bradley v. Fisher*, 80 U.S. 335, 355, 20 L.Ed. 646 (1871); *see also Cleveland Metro. Bar Assn. v. Morton*, 166 St.3d 266, 2021-Ohio-4095, 185 N.E.3d 65 (where the attorney’s conduct in making statements that impugned the integrity of judicial officers in documents filed with the court by indicating a judicial decision was based upon politics and not law violated the professional rules that prohibited a lawyer from engaging in undignified or discourteous conduct that was degrading to a tribunal, from making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judicial officer, and from engaging in conduct that was prejudicial to the administration of justice. Ohio R. Prof. Conduct 3.5(a)(6), 8.2(a), 8.4(d))¹¹. The Supreme Court of Ohio has found that attorneys have violated the Rules of Professional Conduct by making undignified or discourteous

¹¹ Ohio R. Prof. Conduct 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

statements degrading to a tribunal in documents that have been filed in a court.¹² Furthermore, the Supreme Court of Ohio has found that unfounded attacks on the judiciary in publicly filed documents are prejudicial to the administration of justice.¹³ All parties who appear in judicial or quasi-judicial proceedings must balance their duty to advocate for their client with their duty to conduct themselves with a professional temperament.

IV. ORDER

{¶ 87} It is, therefore,

{¶ 88} ORDERED, That the July 7, 2022, and August 10, 2022, motions filed by OCC and NOAC be denied, as detailed herein. It is, further,

{¶ 89} ORDERED, That a copy of this Entry be served upon each party of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MJA/JWS/mef

¹² See *Toledo Bar Assn. v. Yoder*, 162 Ohio St.3d 140, 2020-Ohio-4775, 164 N.E.3d 405 (statements were made in an affidavit of bias and prejudice); *Disciplinary Counsel v. Proctor*, 131 Ohio St.3d 215, 2012-Ohio-684, 963 N.E.3d 806 (statements were made in a supplement to a trial-court motion and reiterated in an appellate brief); *Disciplinary Counsel v. Pullins*, 127 Ohio St.3d 436, 2010-Ohio-6241, 940 N.E.2d 952 (statements were made in an affidavit of disqualification).

¹³ See *Disciplinary Counsel v. Frost*, 122 Ohio St.3d 219, 2009-Ohio-2870, 909 N.E.2d 1271, ¶ 5, 18 (an attorney engaged in conduct that was prejudicial to the administration of justice by falsely accusing several common-pleas-court judges of bias in the execution of their duties and by leveling unfounded accusations of racial bias and other impropriety against a federal judge); *Disciplinary Counsel v. Stafford*, 131 Ohio St.3d 385, 2012-Ohio-909, 965 N.E.2d 971, ¶ 57-58 (an attorney violated Prof.Cond.R. 8.4(d) by making false statements regarding the integrity of the judge that intentionally, unnecessarily, and recklessly demeaned the judge in a memorandum in support of a motion that was in the public record).

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**Case No(s). 17-0974-EL-UNC, 17-2474-EL-RDR, 20-1502-EL-UNC, 20-1629-EL-
RDR**

Summary: Entry denying the motions filed by the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition on July 7, 2022, and August 10, 2022 electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio