

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 March 1, 2024

{¶ 1} 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.

{¶ 2} The Commission issued an Entry on February 21, 2024, lifting the then-existing stay¹ and instructing the attorney examiners to issue procedural schedules in the above-captioned cases (collectively, the *FirstEnergy Investigation Cases*).

{¶ 3} On February 26, 2024, the attorney examiner issued procedural schedules in the *FirstEnergy Investigation Cases*, pursuant to the Commission's directives.

{¶ 4} On February 29, 2024, in Case No. 20-1502-EL-UNC (*Political and Charitable Spending Audit*), the Ohio Consumers' Counsel (OCC) filed a notice that it would be withdrawing its request for a subpoena duces tecum for Charles E. Jones, which was filed on July 7, 2022, and subsequently signed by the attorney examiner on August 11, 2022.

{¶ 5} Additionally on February 29, 2024, the Office of the Ohio Attorney General (Attorney General)² filed a letter, alerting the Commission of a potential issue with the resumption of the *FirstEnergy Investigation Cases*. The Attorney General cites R.C. 4903.08, which states in pertinent part: "No such person shall be prosecuted or subjected to any penalty or forfeiture on account of, any transaction or matter concerning which he has testified or produced any documentary evidence." According to the Attorney General, if the Commission were to enforce subpoenas requiring Samuel Randazzo, Charles Jones, or Michael Dowling to produce documents or testify regarding any of the transactions at issue in the ongoing criminal proceedings, these individuals may be able to claim transactional immunity under R.C. 4903.08, potentially resulting in the dismissal of criminal charges. As such, the Attorney General requests that no subpoenas for these individuals be enforced

¹ The stay was first implemented by Commission Entry issued August 24, 2022, upon consideration of a request from United States Department of Justice's District Attorney for the Southern District of Ohio (DOJ). The initial request was granted for a period of six months, and was later extended twice for two additional six-month periods. The stay was lifted effective February 26, 2024.

² The letter is signed by the Deputy Attorney General for Law Enforcement, Carol Hamilton O'Brien, Principal Attorney General, Matthew E. Meyer, and Chief Counsel for the Summit County Prosecutor's Office, Brad Gessner.

while the criminal proceedings are pending. In its correspondence, the Attorney General notes that it does not make the request lightly, and is only doing so because it believes that it “is necessary to ensure the integrity and viability of the ongoing criminal proceedings involving Samuel Randazzo, Charles Jones, and Michael Dowling.”

{¶ 6} The Commission has consistently stated that its “ongoing review of the Companies and their actions will continue to effectuate our goal, which is to protect the interests of all of the customers of all of the public utilities we regulate, and especially FirstEnergy’s ratepayers. It is important that these proceedings move forward and provide answers, *but not at the expense of ensuring effective criminal prosecution and justice.* The Commission has not hesitated to follow the facts of these cases where they lead and has made rulings supporting, when legally appropriate, these facts to become public, * * * .” Entry (Aug. 24, 2022) at ¶ 86 (emphasis added).

{¶ 7} R.C. 4903.08 should not be permitted to be used as a mechanism for individuals under investigation to subvert criminal prosecution. The attorney examiner finds that, in order to maintain the Commission’s objective to not interfere with ongoing criminal proceedings, the limited request of the Attorney General is reasonable and should be granted. Thus, no subpoenas requiring Samuel Randazzo, Charles Jones, or Michael Dowling to produce documents or testify in any Commission proceeding will be enforced during the pendency of the ongoing criminal proceedings. Accordingly, the attorney examiner accepts OCC’s withdrawal of its subpoena duces tecum of Charles Jones. The attorney examiner notes that, in addition to the signed subpoena duces tecum now being withdrawn by OCC in the *Political and Charitable Spending Audit*, there are two pending motions for subpoena for Michael Dowling and Charles Jones in Case No. 17-974-EL-UNC (*Corporate Separation Audit*), which were filed by OCC on August 4, 2023. Consistent with the directives in this Entry, those motions will be denied. The remaining motions for subpoena filed in the *Corporate Separation Audit* will be addressed either via subsequent entry or a transcribed prehearing conference. Furthermore, pursuant to the broad authority granted to attorney examiners in R.C. 4901.13 and 4901.18 regarding the regulation of

Commission proceedings, including imposing limitations on discovery to be had, parties are notified that they are hereby precluded from taking or offering the testimony of Charles Jones, Michael Dowling, or Samuel Randazzo through deposition or other means, or requiring these individuals to produce documents, in any Commission proceeding, until otherwise ordered.

{¶ 8} It is, therefore,

{¶ 9} ORDERED, That OCC's withdrawal of the subpoena duces tecum for Charles Jones in the *Political and Charitable Spending Audit* be accepted. It is, further,

{¶ 10} ORDERED, That the request of the Attorney General be granted, in accordance with Paragraph 7. It is, further,

{¶ 11} ORDERED, That OCC's motions for subpoena for Charles Jones and Michael Dowling in the *Corporate Separate Audit* be denied. It is, further,

{¶ 12} ORDERED, That parties adhere to the directives contained in Paragraph 7. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Megan J. Addison

By: Megan J. Addison
Attorney Examiner

JRJ/dmh

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

Summary: Attorney Examiner Entry that OCC's withdrawal of the subpoena duces tecum for Charles Jones in the Political and Charitable Spending Audit be accepted; the request of the Attorney General be granted; OCC's motions for subpoena for Charles Jones and Michael Dowling in the Corporate Separate Audit be denied; and that parties adhere to the directives contained in Paragraph 7 electronically filed by Ms. Donielle M. Hunter on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio.