

## THE PUBLIC UTILITIES COMMISSION OF OHIO

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 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 July 16, 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 stay and instructing the administrative law judges (ALJs) to issue procedural schedules in Case Nos. 17-974-EL-UNC, 17-2474-EL-RDR, 20-1502-EL-UNC, and 20-1629-EL-RDR (collectively, the *FirstEnergy Investigation Cases*). Furthermore, the Commission clarified that the decision to lift the stay includes proceedings related to an alleged violation of the Companies' obligation under R.C. 4928.145 to disclose a "side agreement," which had been previously subject to a stay.

{¶ 3} On February 26, 2024, the ALJ issued procedural schedules in the *FirstEnergy Investigation Cases*, pursuant to the Commission's directives. After consolidating the above-captioned proceedings, the ALJ established testimony filing deadlines, scheduled a

prehearing conference, and set the evidentiary hearing to commence on June 3, 2024, approximately 90 days from the time of the Entry.

{¶ 4} On March 4, 2024, the Ohio Consumers' Counsel (OCC) and the Ohio Manufacturers' Association Energy Group (OMAEG) jointly filed an interlocutory appeal of the February 26, 2024 Entry and request for certification to the Commission.

{¶ 5} On March 11, 2024, the Companies and Northeast Ohio Public Energy Council (NOPEC) filed responsive memoranda to the interlocutory appeal.

{¶ 6} By Entry issued March 15, 2024, the ALJ denied certification of the interlocutory appeal, request for certification, and application for review. The ALJ also vacated the hearing date, discovery deadline, and testimony filing deadlines established in the February 26, 2024 Entry and preserved the May 21, 2024 prehearing conference to discuss a new procedural schedule. Further, parties were directed to provide discovery status updates consistent with the Entry.

{¶ 7} The May 21, 2024 prehearing conference took place, as scheduled. At the conference, the ALJ made several rulings and the parties discussed the procedural schedule.

{¶ 8} On June 4, 2024, the Companies filed a motion to govern further proceedings in the *FirstEnergy Investigation Cases*. OCC, OMAEG, Interstate Gas Supply, Inc., NOPEC, and the Northwest Ohio Aggregation Coalition jointly filed a memorandum contra the Companies' motion on June 20, 2024.

{¶ 9} By Entry issued June 21, 2024, the ALJ denied the Companies' motion and set a procedural schedule consistent with the schedule discussed at the May 21, 2024 prehearing conference. The evidentiary hearing was scheduled to commence on August 26, 2024.

{¶ 10} On July 5, 2024, OMAEG, OCC, and NOPEC (Joint Movants) filed a motion to extend and continue the procedural schedule, noting the considerable amount of discovery review yet to be conducted by each party. Finally, Joint Movants requested an expedited ruling, pursuant to Ohio Adm.Code 4901-1-12(C), as intervenor testimony is currently due in six weeks.

{¶ 11} The Companies filed a memorandum contra the Joint Movants' motion on July 12, 2024. While the Companies do not believe an extension of the procedural schedule is warranted, they would not oppose a short extension that considers upcoming deadlines and events scheduled in other cases involving the Companies. The Companies again argue that Joint Movants have failed to demonstrate the relevancy of any of the documents produced by FirstEnergy Corp. to these proceedings. The Companies also assert that the ALJs have previously rejected "generalized assertions" for more time for case preparation as an unpersuasive basis for extensions of the procedural schedule. Finally, the Companies point out that their broader proposal to consolidate certain matters in the *FirstEnergy Investigation Cases* for a hearing to be held in early 2025 was already considered and rejected by the ALJs. As such, the Companies oppose Joint Movants' request.

{¶ 12} The ALJ finds good cause exists to grant Joint Movants' extension request, as adjusted herein. Despite the Commission's best efforts to expeditiously resolve these proceedings, it has become clear upon reviewing the periodic discovery status updates and the Joint Movants' motion that they will not be prepared for the hearing as scheduled.

{¶ 13} That said, as noted previously, indefinite continuances are discouraged in Commission proceedings. Entry (Mar. 15, 2024), citing *In re the Determination of the Existence of Significantly Excessive Earnings for 2017 under the Electric Security Plans of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 18-857-EL-UNC, et al., Entry (Feb. 26, 2021) at ¶ 16. Consistent with prior directives, these cases will be moving forward. While the ALJ recognizes that discovery production and review are important components to determining when the hearing takes place, Joint Movants are also advised that an

expeditious resolution to these proceedings is also of paramount importance, and they should prioritize their efforts to review produced discovery in order to proceed to hearing. To be clear, affording due process during discovery does not mean that the ALJ will agree to unduly delay these proceedings. *In re the Commission's Investigation into Xoom Energy Ohio, LLC*, Case No. 22-267-GE-COI, Entry (Aug. 26, 2022). As OCC previously stated, "Ohio consumers deserve to have the agency responsible for regulating the [Companies] – the [Commission] – fulfill its responsibilities in parallel with pending civil litigation just like the regulators elsewhere have." *FirstEnergy Investigation Cases*, Ohio Consumers Counsel Application for Rehearing (Apr. 7, 2023) at 16; *see also*, *FirstEnergy Investigation Cases*, Ohio Consumers' Counsel Application for Rehearing (Sept. 23, 2022) at 6 (where OCC argued that the "potential harm to consumers is great" and "[p]arties are substantially prejudiced by the delay.")

{¶ 14} At this time, the ALJ revises the procedural schedule as follows:

- a. Except for notices of deposition, discovery requests, including requests regarding the potential violation of the Companies' obligation under R.C. 4928.145 to disclose a "side agreement" during Case No. 14-1297-EL-SSO, should be served no later than December 12, 2024. As noted previously, any discovery responses should be provided within ten calendar days.
- b. Testimony on behalf of the Companies is due by January 6, 2025.
- c. Testimony on behalf of intervenors is due by January 17, 2025.
- d. A procedural/prehearing conference shall be scheduled for January 28, 2025, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio.

- e. The evidentiary hearing shall commence on February 3, 2025, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio.

{¶ 15} Additional procedural conferences will be scheduled if the ALJ deems them necessary, including providing opportunities for the ALJ to inquire into the rate of discovery review being conducted by Joint Movants.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the Joint Movants' motion filed on July 5, 2024, be granted, consistent with this Entry. It is, further,

{¶ 18} ORDERED, That the procedural schedule be revised in accordance with Paragraph 14. It is, further,

{¶ 19} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Megan J. Addison

By: Megan J. Addison  
Administrative Law Judge

PAS/mef

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

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

Summary: Administrative Law Judge Entry granting the joint motion and revising the procedural schedule: disclosure of the "side agreement" during Case No. 14-1297-EL-SSO, should be served no later than December 12, 2024; Testimony on behalf of the Companies is due by January 6, 2025; Testimony on behalf of intervenors is due by January 17, 2025; a procedural/prehearing conference shall be scheduled for January 28, 2025, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A; and; an evidentiary hearing shall commence on February 3, 2025, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, as further detailed herein electronically filed by Ms. Mary E. Fischer on behalf of Megan J. Addison, Administrative Law Judge, Public Utilities Commission of Ohio.