

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 10, 2021

I. SUMMARY

{¶ 1} The Commission directs Blue Ridge Consulting Services, Inc. to expand the scope of the 2020 annual audit of FirstEnergy's delivery capital recovery rider costs to include payments made to a number of vendors, recently disclosed by FirstEnergy Corp.

II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) are electric distribution utilities (EDUs) 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. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer 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 4928.143.

{¶ 4} On August 25, 2010, the Commission issued an Opinion and Order (Order) approving FirstEnergy's second electric security plan. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Authority to Establish a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) (*ESP II Case*). In that Order, the Commission approved

a joint stipulation, as modified, authorizing FirstEnergy to establish a delivery capital recovery rider (Rider DCR) effective January 1, 2012. Additionally, under the terms of the stipulation, FirstEnergy agreed to submit to an annual audit review process of Rider DCR. Thereafter, on July 18, 2012, in Case No. 12-1230-EL-SSO, the Commission issued an Order approving a joint stipulation extending, with modification, the terms of the joint stipulation approved by the Commission in the *ESP II Case. 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. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) (*ESP III Case*). Thereafter, by Order issued on March 31, 2016, in Case No. 14-1297-ELSSO, the Commission approved an extension, with modification, of FirstEnergy's Rider DCR. *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*).

{¶ 5} On November 4, 2020, the Commission issued an Entry directing Staff to issue a request for proposal (RFP) for the audit services necessary to assist with the compliance audit of the Companies. On December 16, 2020, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge).

{¶ 6} On March 8, 2021, Staff filed a letter in this docket, requesting that the Commission expand the scope of the audit being performed in this case. Specifically, Staff notes that following a review of the 10K filed by FirstEnergy Corp. on February 18, 2021, Staff immediately filed a data request with the Companies for additional records related to the disclosure of "certain transactions... that were either improperly classified, misallocated...or lacked supporting documentation" according to the 10K. The Companies responded to this data request on February 25, 2021.

{¶ 7} Based upon the response to the data request, Staff recommends that the Commission expand the scope of the audit in this case and direct Blue Ridge to review the

disclosed transactions to determine whether funds collected from ratepayers were used to pay the vendors and if so, whether or not the funds associated with those payments should be returned to ratepayers in this proceeding or in an alternative proceeding.

{¶ 8} The Commission agrees with the recommendation filed by Staff. Expansion of the scope of the review by the independent auditor in this case to include the disclosed vendor payments is consistent with our commitment to act in a reasoned and methodical manner, based upon facts rather than speculation, in light of the recent allegations surrounding FirstEnergy Corp. *In the Matter of the Review of Ohio Edison Co., Cleveland Elec. Illum. Co., and Toledo Edison Co.'s Compliance with R.C. 4928.17 and Ohio Adm.Code 49.1:1-37*, Case No. 17-974-EL-UNC, Entry (Nov. 4, 2020) at ¶ 17. Therefore, the Commission directs Blue Ridge to expand the scope of its review in this proceeding to determine whether any funds collected from ratepayers were used to pay the vendors and if so, whether the funds associated with those payments should be returned to ratepayers through Rider DCR or through an alternative proceeding. Pursuant to Staff's recommendation, in the event that Blue Ridge or Staff find that ratepayers would be entitled to a refund in an alternative proceeding, Blue Ridge or Staff should file a supplemental report that references and incorporates the relevant findings of Blue Ridge and Staff in that proceeding.

{¶ 9} This is the fourth investigation initiated by the Commission related to the allegations surrounding FirstEnergy Corp. We continue to believe that it is appropriate to keep each investigation focused on its purpose. In this case, a focused investigation will ensure that any funds which should be returned to ratepayers are returned as expeditiously as possible. Nonetheless, if, in the future, the facts demonstrate that two or more of these investigations should be consolidated, we will do so.

{¶ 10} Accordingly, the Companies shall enter into a revised contract with Blue Ridge by March 31, 2021, for the purpose of providing payment for the expanded scope of the auditing services. The contract shall incorporate the terms and conditions of the RFP, the auditor's proposal, and all relevant Commission orders in this case, including this Entry.

{¶ 11} The Commission understands that the expansion of the audit may require additional time and resources. In the event that Blue Ridge declines acceptance of the expanded duties, Blue Ridge shall provide written notice to staff within fourteen days of entering a revised contract. In any circumstance, Blue Ridge should continue its work under the existing RFP. In this event, Staff should prepare a new RFP to be issued by the Commission to seek a second auditor to perform the expanded duties.

{¶ 12} Blue Ridge will execute its duties pursuant to the Commission's statutory authority to investigate and acquire records, contracts, reports, and other documentation under R.C. 4903.02, 4903.03, 4905.06, 4905.15, and 4905.16. Blue Ridge is subject to the Commission's statutory duty under R.C. 4901.16, which provides:

Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent. Whoever violates this section shall be disqualified from acting as agent, or acting in any other capacity under the appointment or employment of the commission.

{¶ 13} Upon request of Blue Ridge or Staff, the Companies shall provide any and all documents or information requested. The Companies may conspicuously mark such documents or information "confidential" if the Companies believe the document should be deemed as such. In no event, however, shall the Companies refuse or delay in providing such documents or information.

{¶ 14} Once disclosure is permitted by R.C. 4901.16, the following process applies to the release of any document or information marked as confidential. Three days' prior

notice of intent to disclose shall be provided to the party claiming confidentiality. Three days after such notice, Staff or the auditor may disclose or otherwise make use of such documents or information for any lawful purpose, unless the Commission receives a request for a protective order pertaining to such documents or information within the three-day notice period. The three-day notice period will be computed according to Ohio Adm.Code 4901-1-07.

{¶ 15} Blue Ridge shall perform its audit and investigation as an independent contractor. Any conclusions, results, or recommendations formulated by Blue Ridge may be examined by any participant to this proceeding. Further, it shall be understood that the Commission and/or its Staff shall not be liable for any acts committed by Blue Ridge or its agents in the preparation and presentation of the report.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That Blue Ridge be directed to perform the auditing services or provide notice of their election to decline as set forth above. It is, further,

{¶ 18} ORDERED, That the Companies and Blue Ridge shall observe the requirements set forth herein. It is, further,

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

COMMISSIONERS:

Approving:

M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GAP/hac

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

Summary: Entry directing Blue Ridge Consulting Services, Inc. to expand the scope of the 2020 annual audit of FirstEnergy's delivery capital recovery rider costs to include payments made to a number of vendors, recently disclosed by FirstEnergy Corp electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio