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Federal

Audit Recommends That FirstEnergy Refund Customers for HB 6 Lobbying Costs (Docket No. FA19-1-000)

Summary: FERC staff recently filed an [audit](#) report on FirstEnergy Corp. and its subsidiaries' (collectively, FirstEnergy) compliance with federal regulations, including cross-subsidization restrictions on affiliate transactions and accounting, recordkeeping, and reporting requirements.

The report determined that FirstEnergy charged and collected from its utility customers \$1.5 million to support the scandal-ridden House Bill 6 and dark money groups such as Generation Now Inc., which pleaded guilty to racketeering in the federal criminal case. The audit report also cites that FirstEnergy made \$22.8 million in payments to former PUCO Chair Randazzo's entities – Sustainability Funding Alliance of Ohio, Inc. (SFA) and Industrial Energy Users-Ohio Administration Company, LLC (IEU-A). FirstEnergy identified that between 2013 and 2018, \$13.8 million of the payments made to SFA and IEU-A was allocated to FirstEnergy's subsidiaries and transmission companies.

FirstEnergy further disclosed that an additional \$9 million – which was paid in part to SFA under a different vendor number and in part to IEU-A – was allocated to FirstEnergy's Ohio utilities.

FERC concluded that, “[e]ven more concerning, several factual assertions agreed to by FirstEnergy in the [Deferred Prosecution Agreement] and the remedies FirstEnergy agreed to undertake point towards internal controls having been possibly obfuscated or circumvented to conceal or mislead as to the actual amounts, nature, and purpose of lobbying expenditures made, and as a result, the improper inclusion of lobbying and other nonutility costs in wholesale transmission billing rates.”

Overall, the report made seven findings of non-compliance and 38 recommendations for corrective action, which FirstEnergy largely accepted. FirstEnergy must submit a plan for implementing the recommendations within 30 days of the filing of the audit report.

Statewide

Governor DeWine Reappoints Commissioner Conway to PUCO

Summary: On Thursday, Gov. Mike DeWine reappointed Daniel Conway (Republican) to the PUCO for another five-year term. The governor stated, "Commissioner Conway has a track record of being judicious and weighing issues from all sides," adding that he "appreciate[s] Commissioner Conway's continued service on the PUCO." Commissioner Conway's new term begins April 11, 2022. His appointment is subject to confirmation by the Ohio Senate.

Stakeholders File Comments in Advance of PUCO's EE Workshops

Summary: Stakeholders filed [comments](#) on various questions the PUCO posed before launching its series of energy efficiency (EE) workshops.

AEP, AES Ohio (formerly DP&L), and Duke advocated that as electric distribution utilities (EDUs), they are the logical entities to provide EE programs at scale through "voluntary" programs (although each has proposed collecting EE costs for such programs through customers' unavoidable rates or charges).

The Office of the Ohio Consumers' Counsel (OCC) asserted that third parties should monitor the EE programs, which have often "come at a significant cost to consumers, especially for non-participants subsidizing the participation of others." Gas utilities, including Dominion, Vectren, and Columbia, touted their longstanding "voluntary" EE programs and the benefits the programs provide to customers. The Ohio Gas Association raised concerns regarding the impact that any future EE mandates may have on smaller gas utilities. Environmental groups argued that EE programs can increase cost savings for Ohio's at-risk citizens while also improving the environment.

FirstEnergy

Developments Occur in PUCO's HB 6-Related Audits (Case Nos. 17-974-EL-UNC, et al.)

Summary: This week, the PUCO denied OCC's challenge to a prior PUCO ruling in the HB 6 corporate separation case, which OCC argued prematurely set deadlines for testimony and an evidentiary hearing while discovery is still ongoing. OCC also challenged the ruling because the attorney examiner deferred ruling on OCC's request for a supplemental audit regarding FirstEnergy Advisors' Competitive Retail Electric

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Service (CRES) application. However, given the volume of discovery and issues in the proceeding, the PUCO once again extended the procedural schedule and set a new hearing date of May 9, 2022.

Also this week, the PUCO held a prehearing conference in another PUCO case regarding whether customers funded political or charitable spending in support of HB 6. At the prehearing, the attorney examiner granted OCC's request for a review of 234 documents that FirstEnergy claimed were privileged in order to determine whether such documents are actually privileged. The attorney examiner also directed parties to file memoranda explaining whether FirstEnergy's document production in a FERC-related audit is protected from disclosure.