BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37. | )))))) | Case No. 17-974-EL-UNC |

**JOINT DISCOVERY STATUS REPORT**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

**AND OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP**

In accordance with the Attorney Examiners’ April 7, 2022 Entry, the Office of the Ohio Consumers’ Counsel (“OCC”), the Northeast Ohio Public Energy Council (“NOPEC”) and the Ohio Manufacturers’ Association Energy Group (“OMAEG”) (collectively, the “Consumer Parties”) respectfully file this discovery status update.

**Written Discovery**

The Public Utilities Commission of Ohio (“PUCO”) previously established a written discovery cut-off date of November 24, 2021.[[1]](#footnote-3) The PUCO also scheduled a February 10, 2022 hearing date at that time.[[2]](#footnote-4) Since that time, FirstEnergy Corp. and the FirstEnergy Ohio Utilities (“FirstEnergy Utilities”) have produced several hundred thousand pages of documents, which have created a need for the parties to conduct additional discovery. The Consumer Parties have challenged this extraordinarily premature written discovery cut-off date of November 24, 2021, in an interlocutory

appeal that remains pending.[[3]](#footnote-5) The Consumer Parties request that the PUCO grant the interlocutory appeal and extend the cut-off date to the date of the hearing. The PUCO should enable parties to serve additional written discovery in order to properly prepare our case for hearing.

In Case No. 20-1502-EL-UNC, the PUCO ordered the FirstEnergy Utilities to complete the production of FERC documents by May 20, 2022.[[4]](#footnote-6) A discovery dispute has arisen in the same case which will impede the Consumer Parties’ preparation for a hearing in this case. The discovery dispute concerns documents FirstEnergy produced to FERC related to an audit in Docket FA19-01-000, which also dealt with corporate separation and code of conduct issues. The discovery seeks documents FirstEnergy included in its response to the FERC audit. If resolution of the discovery dispute cannot be reached, OCC may file a motion to compel.

**Depositions**

Since the parties’ last discovery status update on May 10, 2022, OCC took, and NOPEC and OMAEG participated in, the depositions of FirstEnergy employees Mr. Robert Mattiuz and Mr. Olenger Pannell. Other pending depositions have yet to occur.[[5]](#footnote-7)

In this regard, OCC intended to take the depositions of Ms. Ebony Yeboah-Amankwah, Mr. Antonio Fernandez and Mr. Jason Lisowski. But these depositions are subject to pending FirstEnergy and other motions to quash OCC’s subpoenas and await PUCO rulings. As more discovery responses from FirstEnergy are reviewed, additional depositions will be sought.

As a result of the depositions of Messrs. Mattiuz and Pannell, there may not be a need to depose Mr. Fernandez at this time. However, OCC reserves the right to seek a deposition from Mr. Fernandez at a later date if it becomes necessary to obtain information from him.

In addition, OCC filed a motion for subpoena on March 10, 2022 to take the deposition of a FirstEnergy witness on certain topics. FirstEnergy Corp. filed a motion to quash on April 6, 2022 and this matter is still pending.

**Procedural Schedule**

The PUCO’s April 7, 2022 Entry established a new procedural schedule to provide the parties with adequate time to review the documents that FirstEnergy had produced in discovery. Since the date of this Entry, FirstEnergy Utilities have produced approximately 187,785 additional pages of documents as follows:

**Table: Additional Documents Since 4/7/22[[6]](#footnote-8)**

|  |  |  |
| --- | --- | --- |
| **Date** | **Description** | **Approximate Number of Pages** |
| 4/11 | FE\_CIV\_SEC\_\_PROD 11 |  90,255 |
| 4/11 | FE\_CIV\_SEC\_\_PROD 12 |  74,337 |
| 4/15 | FE\_PUCO\_VOL 9 |  115 |
| 4/27 | FE\_PUCO\_VOL 10 |  3,338 |
| 5/6 | FE\_PUCO\_VOL 11 |  9,033 |
| 5/20 | FE\_PUCO\_VOL 12 |  1,573 |
| 6/10 | FE\_CIV\_SEC\_\_PROD 13 |  9,134 |
| Total Pages: | 187,785 |

When the PUCO issued the April 7, 2022 Entry, it revised the procedural schedule due to the large volume of documents that the FirstEnergy Utilities produced as of that date. As shown above, the FirstEnergy Utilities have now produced an additional approximately 187,785 pages of documents since the current procedural schedule was issued.

As a result of additional productions of documents and FirstEnergy’s tactics of delay, the Consumer Parties believe that additional time is necessary to review the additional documents and that a new procedural schedule is warranted. There is a massive amount of new information produced by FirstEnergy since November 2021. And there thus is a need to serve follow-up discovery for consumer justice.

Respectfully submitted,

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| */s/ Dane Stinson* Dane Stinson (0019101)**Bricker & Eckler LLP**100 South Third StreetColumbus, Ohio 43215Telephone: (614) 227-2300dstinson@bricker.com(willing to accept service by email)Glenn S. Krassen (0007610)General Counsel**Northeast Ohio Public Energy Council** 31360 Solon Road, Suite 33 Solon, Ohio 44139 Telephone: (440) 249-7831 gkrassen@nopec.org(willing to accept service by e-mail)*Counsel for Northeast Ohio Public* *Energy Council**/s/ Kimberly W. Bojko*Kimberly W. Bojko (0069402)Counsel of RecordJonathan Wygonski (100060) **Carpenter Lipps & Leland LLP**280 North High Street, Suite 1300Columbus, Ohio 43215Telephone: (614) 365-4124bojio@carpenterlipps.comwygonski@carpenterlipps.com(willing to accept service by email)*Counsel for the Ohio Manufacturers’ Association Energy Group* | Bruce Weston (0016973)Ohio Consumers’ Counsel */s/ Maureen R. Willis*Maureen R. Willis (0020847) Counsel of Record John Finnigan (0018689)Connor D. Semple (0101102)Assistant Consumers’ Counsel **Office of the Ohio Consumers’ Counsel**65 East State Street, Suite 700Columbus, Ohio 43215Telephone [Willis]: (614) 466-9567Telephone [Finnigan]: (614) 466-9585Telephone [Semple]: (614) 466-9565maureen.willis@occ.ohio.govjohn.finnigan@occ.ohio.govconnor.semple@occ.ohio.gov (willing to accept service by email)**Isaac Wiles & Burkholder, LLC**Brian M. Zets (0066544)Two Miranova Place, Suite 700Columbus, Ohio 43215Telephone: (614) 221-2121bzets@isaacwiles.com(willing to accept service by e-mail)*Counsel for Office of the Ohio Consumers’ Counsel* |
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Joint Discovery Status Report was served on the persons stated below viaelectric transmission this 13th day of June 2022.

*/s/ Maureen R. Willis*

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. Entry at ¶ 24 (Oct. 12, 2021). [↑](#footnote-ref-3)
2. *Id.* [↑](#footnote-ref-4)
3. Interlocutory Appeal (Apr. 12, 2022). [↑](#footnote-ref-5)
4. Transcript of Prehearing Conference held on April 20, 2022 at 17 (May 3, 2022). [↑](#footnote-ref-6)
5. However, OCC and NOPEC reserve all rights to obtain sufficient responses to their existing interrogatories. [↑](#footnote-ref-7)
6. The discovery listed as FE\_PUCO\_VOL 9 through 11 was produced in Case No. 20-1502-EL-UNC, but these documents relate to the FERC audit of FirstEnergy Corp. and its affiliates in Docket No. FA19-1-001 and are equally relevant to this case because this case involves cost misallocation issues. [↑](#footnote-ref-8)