

In the Matter of the Review of the)
Political and Charitable Spending by Ohio) Case No. 20-1502-EL-UNC
Edison Company, The Cleveland Electric)
Illuminating Company, and the Toledo)
Edison Company.)

Attorneys for the Ohio Consumers' Counsel

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This is a case that *should* be about whether FirstEnergy used funds collected from FirstEnergy Utility customers for alleged illegal activities to support H.B. 6, the \$1.5 billion bailout bill for its two, uneconomic nuclear units. In fact, when the PUCO opened this proceeding, it described its purpose that way: “to review the political and charitable *spending* by First Energy in support of H.B.6.”¹ (emphasis added).

But when OCC sought to learn the truth about whether FirstEnergy *spent* or *used* funds collected from Ohio utility customers for HB 6 (instead of for providing utility service) the FirstEnergy Utilities refused to answer a single question. The backdrop for this regulatory dispute includes the extraordinary² events alleged in the U.S. Government's criminal complaint, apparently involving FirstEnergy, regarding corruption

¹ *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison, the Cleveland Electric Illuminating Company and the Toledo Edison Company*, Case No. 20-1502-EL-UNC, Entry at ¶5 (Sept. 15, 2020).

² On October 29, 2020, FirstEnergy Corp. announced the termination of its Chief Executive Officer (Charles E. Jones), its Senior Vice President of Product Development, Marketing and Branding (Dennis Chack), and its Senior Vice President of External Affairs (Michael Dowling). FirstEnergy announced that the Independent Review Committee of its Board of Directors determined that these executives violated certain FirstEnergy policies and its code of conduct.

in the passage of House Bill 6. Far from extraordinary, the discovery that OCC seeks from FirstEnergy Utilities is the type of discovery ordinarily permitted and encouraged under PUCO rule and Ohio law. The OCC files this motion to compel to get answers about what FirstEnergy did for H.B. 6 and who paid for it.

Under Ohio Administrative Code (“Ohio Admin. Code”) 4901-1-12 and 4901-1-23,³ OCC moves the Public Utilities Commission of Ohio (“PUCO”), the legal director, the deputy legal director, or an attorney examiner for an order compelling FirstEnergy Utilities to expeditiously respond to OCC’s First and Second Sets of Discovery.(Attachments 1,2).

Specifically, OCC requests that the PUCO compel FirstEnergy Utilities to fully respond to almost the entire set of OCC’s First Set of discovery, consisting of OCC Interrogatories No. 2, 5, 11, 12, 13, 14, 19-21; OCC’s Requests for Production of Documents Nos. 4, 5, 7, 8, 9, 12, 13, 14, 19, 20, and Requests for Admissions 5, 6, 16, and 18. These discovery requests and FirstEnergy Utilities’ non-responses are attached as OCC Attachment 1.

OCC also requests that the PUCO compel FirstEnergy Utilities to fully respond to OCC’s Second Set of Discovery, specifically OCC Interrogatories 2-001 through 2-009; and Request for Production 2-001.

The OCC has detailed in the attached affidavit⁴ the efforts which it undertook to resolve differences between it and FirstEnergy Utilities, consistent with Rule 4901-1-

³ See Ohio Admin. Code 4901-1-12 and 4901-1-23.

⁴ OCC Attachment 3.

23(C)(3). At this moment, FirstEnergy Utilities and OCC have failed to reach a mutually satisfactory solution to their differences.

OCC files this Motion to Compel, with the reasons supporting this motion set forth in the attached Memorandum in Support. OCC also requests an expedited ruling on its motion to compel, consistent with Ohio Adm. Code 4901-1-12(C). This is intended to allow resolution of the discovery conflict prior to OCC filing comments and reply comments in this proceeding. OCC is unable to certify that no party objects to the issuance of an expedited ruling.

Respectfully submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
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Edison Company, The Cleveland Electric)	
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On September 21, 2020, OCC intervened in this proceeding. FirstEnergy Utilities did not oppose OCC's intervention. As allowed under Ohio law and the PUCO rules, OCC served two sets of discovery on FirstEnergy Utilities.

In the First Set of OCC discovery OCC sought information on a number of issues including whether FirstEnergy spent money collected from customers on HB 6 activities (OCC Int. 2 (a-f), 5(a-g), 11, 12, 13, 14; RFA 5, 6; RFP 4, 5-7). OCC also sought information reported on 2018 FERC Form 1s by the FirstEnergy Utilities related to expenses that appeared to be lobbying expenses incurred during 2017 (the beginning of the alleged HB 6 activities). (OCC Int. 19-21).

OCC also asked for records associated with the various ongoing proceedings that are investigating the HB 6 activities involving FirstEnergy Corp. (RPD 9, 10, 12, 13, 14). Included in the investigations that OCC is seeking documents from is the FirstEnergy Board internal investigation, which led to the recent firing of three FirstEnergy executives, Charles Jones, CEO, Mike Dowling, Senior V.P. External Affairs. and Dennis

Chack, Senior V.P. Product Development, Marketing and Branding.⁵ And OCC asked for information about the structure of the External Affairs organization that would be involved in lobbying efforts. (RPD 19, 20). Additionally, OCC sought information about whether FirstEnergy had used the distribution modernization rider charges collected from customers for HB 6 activities. (RFA 16,18).

OCC's discovery was focused on FirstEnergy's political and charitable spending, consistent with the words chosen by the PUCO when it opened this case to review "the political and charitable spending" by FirstEnergy in support of HB 6. As noted in the PUCO Entry, the PUCO has jurisdiction to conduct this review of the political and charitable spending of FirstEnergy in support of HB 6.

In the Second set of OCC discovery, the focus was on whether FirstEnergy *used* any of the funds collected from consumers on H.B 6 activities. OCC's discovery sought information on use of funds collected from consumers in the various charges, rates, and riders that Mr. Fanelli referred to in his affidavit, attached to FirstEnergy Utilities' Response to the PUCO show cause order.

On October 19, 2020, FirstEnergy Utilities served their response to OCC's First Set of discovery. (Attachment 1). FirstEnergy Utilities' responses to OCC's discovery were nearly identical at every turn. They objected to OCC's discovery as not being reasonably calculated to lead to the discovery of relevant and admissible evidence, based on their reading of the show cause order. Additionally, they alleged that "expenditures

⁵ Mackinnon, J., Akron Beacon Journal, "FirstEnergy fires CEO Chuck Jones after 2 plead guilty in Householder bribery scheme" (Oct. 29, 2020). <https://www.beaconjournal.com/story/news/2020/10/29/householder-scandal-firstenergy-fires-ceo-chuck-joes-plead-guilty-bribery-scheme/6078931002/>

made by the Companies are outside OCC's jurisdiction and thus, unlawful for OCC to investigate." And FirstEnergy Utilities complained that OCC's discovery is "overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense."⁶

On October 20, 2020, FirstEnergy Utilities provided a response to OCC's Second Set of discovery. (Attachment 2). Again, although a bit more information was provided in this set, the Utilities failed to answer most of the questions. Their objections were largely consistent with those they posed in response to OCC's First Set of Discovery. FirstEnergy Utilities objected on grounds that the information sought is "irrelevant to the subject matter involved in the proceeding;" and "not reasonably calculated to lead to the discovery of relevant or admissible evidence." In this regard, FirstEnergy Utilities explained that OCC's discovery "involves the Companies possible expenditures" instead of whether the costs of any political or charitable spending in support to HB 6 were included in rates or charges paid by customers. FirstEnergy Utilities also objected that OCC's discovery was "overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense." (There was no objection, however, that OCC lacked jurisdiction in this matter, as previously asserted in response to OCC's First Set of discovery).

Predictably, the FirstEnergy Utilities seek to limit the PUCO's review to a much smaller scope that shields it from answering and fails to protect customers. FirstEnergy Utilities believe the scope of the proceeding should be whether FirstEnergy Utilities charged customers in rates for political and charitable spending on H.B. 6. While this is

⁶ Attachment 1 at 5.

important to know, as explained in OCC’s interlocutory appeal, that more limited review and the reliance on self-reporting by FirstEnergy are inadequate to protect the Utilities’ two million customers.⁷ Even if there is not a designated rate component for political and charitable spending, that does not mean that they did not use customer charges (supposed to be used for providing electric service) for political and charitable contributions that funded the illegal activities alleged by federal prosecutors.

On or around October 15, 2020, OCC spoke with the FirstEnergy Utilities’ Counsel concerning the deposition of Mr. Fanelli. During that discussion it became clear that there is a fundamental disagreement between OCC and FirstEnergy Utilities about the scope of this proceeding. On November 3, 2020, OCC contacted FirstEnergy Utilities Counsel specifically about the discovery responses OCC received to its First and Second Set of Discovery. OCC and FirstEnergy Utilities Counsel spoke about the scope of discovery. OCC and FirstEnergy Utilities were unable again to reach agreement on the scope of discovery. There being an impasse, OCC has exhausted all reasonable means of resolving any differences, leading to the filing of this motion to compel.

II. PARTIES’ RIGHT TO DISCOVERY

According to the PUCO “the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side’s industry or efforts.”⁸ The PUCO’s rules on discovery “*do not create an additional field of combat to delay trials or to appropriate the Commission’s time and*

⁷ *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, Interlocutory Appeal, Request for Certification, and Application for Review and Memorandum in Support (Sept. 21, 2020).

⁸ *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 23 (Mar. 17, 1987).

resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings.”⁹ The rules are also intended to “minimize commission intervention in the discovery process.”¹⁰ These rules are intended to facilitate full and reasonable discovery, consistent with the statutory discovery rights parties are afforded under R.C. 4903.082.

R.C. 4903.082 states that “[a]ll parties and intervenors shall be granted ample rights of discovery.” *See OCC v. PUC*, 111 Ohio St.3d 300, 2006-Ohio-5789. The discovery statute was effective in 1983 as part of a more comprehensive regulatory reform. R.C. 4903.082 was intended to protect discovery rights for parties in PUCO cases. Yet all these years later, FirstEnergy is impeding OCC’s discovery efforts. The PUCO should not allow FirstEnergy’s obstructionist tactics being used to deny OCC the ample discovery rights allowed under Ohio law and PUCO rules. OCC, as a party in this proceeding, is entitled to timely and complete responses to its discovery inquiries. Additionally, R.C. 4903.082 directs the PUCO to ensure that parties are allowed “full and reasonable discovery” under its rules.

Under its rules, the PUCO has established that “discovery may begin immediately after a proceeding is commenced.”¹¹ This proceeding was commenced when the PUCO

⁹ *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76. (emphasis added).

¹⁰ Ohio Admin. Code 4901-1-16(A).

¹¹ Ohio Admin. Code 4901-1-17 (A). *Accord*, Ohio Civ. R. 33 (A) (interrogatories may be served by any party without leave on the plaintiff “after commencement of the action.”).

opened the docket to “*review the political and charitable spending by FirstEnergy in support of H.B.6 and the subsequent referendum effort.*”¹²

The PUCO has also adopted rules that specifically define the scope of discovery. Ohio Adm. Code 4901-1-16(B) provides:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

The PUCO’s rule is similar to Ohio Civ. R. 26 (B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.¹³

This scope of discovery is applicable to requests for production. Requests for production may elicit documents within the possession, custody, or control, of the party upon whom the discovery is served, under Ohio Adm. Code 4901-1-20.

OCC’s right to discovery is assured by law, rule and Supreme Court of Ohio (“Court”) precedent.¹⁴ OCC is entitled to timely and complete responses to its discovery inquiries. OCC seeks responses to its discovery requests and is unable to obtain the responses without the PUCO compelling FirstEnergy Utilities to respond.

¹² *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison, the Cleveland Electric Illuminating Company and the Toledo Edison Company*, Case No. 20-1502-EL-UNC, Entry at ¶5 (Sept. 15, 2020).

¹³ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O’Neill* (1996), 75 Ohio St.3d 1479.

¹⁴ *OCC v. PUC*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213.

In Ohio Adm. Code 4901-1-23, the PUCO provided the procedure for parties to obtain the enforcement of these discovery rights, guaranteed by law and rule. Ohio Adm. Code 4901-1-23(A) and (B) provide a means for the PUCO to compel a party to answer discovery when the party has failed to do so, including when answers are evasive or incomplete. Ohio Adm. Code 4901-1-23(C) details the technical requirements for a motion to compel, all of which are met by OCC in this pleading.

The motion to compel is to be accompanied by a memorandum in support setting forth the basis of the motion and authorities relied upon; a brief explanation of how the information sought is relevant; and responses to objections raised by the party from whom the discovery is sought.¹⁵ Copies of the discovery requests and the responses are to be attached.¹⁶ Finally, Ohio Adm. Code 4901-1-23(C) also requires the party seeking discovery to file an affidavit explaining how it has exhausted all other reasonable means of resolving the differences with the party from whom the discovery is sought.

OCC has detailed in the attached affidavit, consistent with Ohio Adm. Code 4901-1-23(C)(3), the efforts that it undertook to resolve differences between it and FirstEnergy Utilities. At this point without PUCO intervention there is no resolution of this discovery dispute. OCC seeks responses to its discovery from FirstEnergy Utilities and is unable to obtain the response without the PUCO compelling such a result.

¹⁵ Ohio Admin. Code 4901-1-23(C)(1).

¹⁶ Ohio Admin. Code 4901-1-23(C)(2).

III. ARGUMENT

A. The information OCC seeks is reasonably calculated to lead to the discovery of admissible evidence.

This case emanates from the PUCO Order that set up to a “*review the political and charitable spending* by FirstEnergy in support of H.B.6 and the subsequent referendum effort.”¹⁷ Consistent with the PUCO’s determination that the subject matter of the proceeding concerns a review of *spending* by FirstEnergy on HB 6 activities, OCC served its First Set of Discovery on September 21, 2020. OCC served its Second Set of Discovery on October 2, 2020.

In its First Set of Discovery, OCC sought information, records and admissions related to whether FirstEnergy Utilities *spent* money collected from customers on HB 6 activities (OCC Int. 2 (a-f), 5(a-g), 11, 12, 13, 14; RFA 5, 7; RFP 5, 6;). This discovery is reasonably calculated to lead to the discovery of admissible evidence that is focused on and consistent with the subject matter of this proceeding: a review of “the *political and charitable spending* by FirstEnergy in support of HB 6 and the subsequent referendum effort.”

OCC also sought information reported on 2018 FERC Form 1s by the FirstEnergy Utilities related to expense/accounts (*spending*) that appeared to be connected to lobbying efforts during 2017 (Int 19-21). 2017 is the beginning of the three-year period in which the alleged \$60 million “in secret payments” were made by Company A “in exchange for the billion-dollar bailout” of Company A-1’s two nuclear

¹⁷ *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison, the Cleveland Electric Illuminating Company and the Toledo Edison Company*, Case No. 20-1502-EL-UNC, Entry at ¶5 (Sept. 15, 2020). (emphasis added).

units.¹⁸ The “secret payments” began in March of 2017, following former Ohio House Speaker’s January 2017 trip on Company A’s private jet.¹⁹ This information is reasonably calculated to lead to the discovery of admissible evidence on FirstEnergy Utilities spending on HB 6 activities as well.

OCC asked for documents about the structure of FirstEnergy’s External Affairs organization that apparently would be in charge of political and charitable spending (lobbying) efforts for activities including HB 6 activities. (RPD 19, 20). This information is reasonably calculated to lead to the discovery of admissible evidence on the subject matter of this proceeding: a review of FirstEnergy’s *spending* on HB 6 activities. The information sought will help connect the dots to people working for FirstEnergy that would have been involved with or aware of the HB 6 activities. That will enable OCC to further discover other information and may form the basis for identifying potential deponents with specific knowledge of HB 6 spending by FirstEnergy.

OCC also asked for documents associated with the various proceedings that are ongoing with respect to HB 6 activities involving FirstEnergy Corp. (RPD 9, 1012,13,14,), including documents related to the internal investigation conducted by independent members of FirstEnergy Corp.’s Board.²⁰ These document requests are

¹⁸ *United States v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes, and Generation Now*, Case No. 1:20-MJ-00526 (I.S. Dist. S.D.) at ¶17 (July 17, 2020).

¹⁹ *Id.* at ¶13.

²⁰ The internal investigation led to the recent firing of three FirstEnergy executives, Charles Jones, CEO, Mike Dowling, Senior V.P. External Affairs, and Dennis Check, Senior V.P. Product Development, Marketing and Branding. Mackinnon, J., Akron Beacon Journal, “FirstEnergy fires CEO Chuck Jones after 2 plead guilty in Householder bribery scheme” (Oct. 29, 2020).

<https://www.beaconjournal.com/story/news/2020/10/29/householder-scandal-firstenergy-fires-ceo-chuck-joes-plead-guilty-bribery-scheme/6078931002/>

reasonably calculated to lead to the discovery of admissible evidence related to the subject matter of this proceeding: FirstEnergy's spending on HB 6. They will assist OCC and the PUCO in its review of FirstEnergy's HB 6 *spending* because the documents obtained from those proceedings and investigations are related to FirstEnergy's *spending* on HB 6. Those proceedings are being undertaken by various third parties with significant resources—resources beyond OCC and beyond what the PUCO can harness.

Additionally, OCC sought admissions on whether FirstEnergy Utilities had used any of the distribution modernization rider charges collected from customers on HB 6 activities. (RFA 16,18). This information is reasonably calculated to lead to the discovery of admissible evidence on FirstEnergy's spending on HB 6, the subject matter of this proceeding. The distribution and modernization rider charges were collected from customers during the same three-year period when the \$60 million of secret payments were being made from Company A to the Householder Enterprise. It may be that the distribution modernization funds collected from monopoly customers were spent on HB 6 activities, which would have benefitted FirstEnergy Solutions (the nuclear plant owner at the time). That would potentially violate Ohio law (4928.17, 4928.02(H)) and PUCO Order (precluding DMR funds from benefitting FirstEnergy's affiliates). The information is reasonably calculated to lead to the discovery of admissible evidence.

OCC's Second Set of discovery focused on whether FirstEnergy used the money collected from customers for purposes of HB 6 activities. The discovery sought information on whether funds collected from customers through various riders, rates, and charges that Mr. Fanelli mentioned in his affidavit were used in the HB 6 efforts. This information is related to a review of FirstEnergy's spending and consistent with the

PUCO's scope of review, set forth in its Entry. It is reasonably calculated to lead to the discovery of admissible evidence.

B. FirstEnergy has failed to show that information sought is not reasonably calculated to lead to the discovery of admissible evidence.

The party opposing the discovery request has the burden to establish that the requested information would not reasonably lead to the discovery of admissible evidence.²¹ In this regard, FirstEnergy argues that the information, documents, and admissions sought by OCC are not reasonably calculated to lead to the discovery of relevant or admissible evidence.²² The Utilities claim that OCC's discovery involves "the Companies' possible *expenditures* instead of whether the costs of any H.B.6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers."²³

FirstEnergy has thus, redefined the subject matter of this proceeding, restricting it to rate impacts and not utility expenditures. This mirrors the PUCO's directive to "show cause, by September 30, 2020, demonstrating that the costs of any political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, were not included, directly or indirectly, in any rates or charges paid by ratepayers in this state."²⁴

But there are sufficient reasons for the PUCO to reject FirstEnergy's approach. First, as mentioned it is not consistent with the broader subject matter of this proceeding,

²¹ *State ex rel. Fisher v. Rose Chevrolet, Inc.*, (C.A. 1992), 82 Ohio App.3d 520, 523.

²² Attachment 2, response to OCC INT-2-002.

²³ *Id.*

²⁴ Entry at ¶5.

which the PUCO defined as a review of FirstEnergy's *spending*. The PUCO's focus on FirstEnergy's *spending* (not just what might have been included in customers' charges) is evident when read within the context of the PUCO's Entry opening the docket.

In paragraphs 2 and 3 of the Entry, preceding the PUCO's determination that a proceeding should be opened, the PUCO acknowledges its statutory jurisdiction extends way beyond rate issues. Citing to R.C. 4905.06, the PUCO notes its general supervisory authority over all public utilities within its jurisdiction and its ability to examine those public utilities and keep informed as to numerous matters, including "their general condition, capitalization, and franchises, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to adequacy or accommodation afforded by their service, the safety and security of the public and their employees, and their compliance with all laws, order of the commission, franchises, and charter requirements." The PUCO also cites to R.C. 4905.05, stating that its jurisdiction, supervision, powers and duties extend, among other things, "to persons or companies owning or leasing, or operating such public utilities;" and to "the records and accounts of the business thereof done within the state."

These statutes, which the PUCO cited in its Entry, make clear that the PUCO's jurisdiction extends beyond checking utility rates to determine if they include illegal expenses. One would wonder why the PUCO would go to the length of quoting these statutes if it just wanted to conduct the limited rate review that FirstEnergy urges.

Additionally, the mere fact that FirstEnergy claims it has no rate or rider that collects the distinct political and charitable charges from customers for political and charitable spending is beside the point. Even if there is not a designated rate component

for political and charitable spending, that does not mean that FirstEnergy did not use customer charges (supposed to be used for providing electric service to customers) for political and charitable contributions that funded the illegal activities alleged by federal prosecutors. FirstEnergy should be held accountable to OCC, the PUCO, and ultimately their customers if they **spent** money collected from customers on illegal activities (and not on providing utility service to customers). If it did so that would be unjust and unreasonable.

The limited review under the show cause order and the reliance on self-reporting by FirstEnergy Utilities is inadequate for consumer protection. The OCC has, by interlocutory appeal, requested that the PUCO, among other things, broaden the show cause order to require FirstEnergy, including owners and affiliates, to demonstrate that they did not violate any utility regulations, laws, rules, or orders regarding activities that were undertaken with respect to HB 6.²⁵ The PUCO should rule that the show cause order should be broadened to allow parties to discover matters related to the Utilities' spending, not just whether there were specific charges in rates for these activities.

The PUCO has jurisdiction, on behalf of FirstEnergy's consumers, to review FirstEnergy's HB 6 spending as it acknowledged in its Entry when it opened a review of First Energy's spending. To conclude (as does FirstEnergy)²⁶ that the PUCO has no jurisdiction over illegal use of customers funds collected for the provision of utility service but not used for that purpose is contrary to public integrity and public policy and Ohio law. *See, e.g., In the Matter of the Complaint of the Manchester Group v.*

²⁵ OCC Interlocutory Appeal (Sept. 21, 2020).

²⁶ *See, e.g.,* Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company's Motion for Protective Order, Memorandum in Support at 6 (Oct. 16, 2020).

Columbia, Case No. 08-360-GA-CSS, Entry, (June 3, 2009) (finding that the PUCO had jurisdiction over a complaint against Columbia alleging unfair practices related to an unregulated service offering (warranty service) by the utility).

The PUCO should find that its broad authority to review FirstEnergy's *spending* provides OCC broader discovery rights than those drawn from the show cause order. It should do so and compel FirstEnergy to respond to OCC's discovery that is the subject of this motion to compel.

C. FirstEnergy has failed to prove that the discovery is outside of OCC's jurisdiction and thus unlawful for OCC to investigate.

In many of the responses to OCC's discovery, FirstEnergy claims that the "expenditures made by the Utilities are outside OCC's jurisdiction and thus, unlawful for OCC to investigate." Per statements that FirstEnergy has made in other pleadings, FirstEnergy claims that OCC has no authority to represent residential customers in this case, because OCC statutes (4911.14, 4911.15) limit OCC to a case that he or another party brings before the PUCO; where an application is made by a utility; or when a complaint has been filed.²⁷

This strained reading of two of OCC's enabling statutes fails to consider that OCC's "powers and duties" are more broadly defined under a preceding and controlling enabling statute, R.C. 4911.02(B)(2). There OCC's authority is described as "[w]ithout limitation because of enumeration." The PUCO has conceded that this phrase in OCC's enabling statute "conveys the intent of the legislators that the provisions of Section 4911.02 should be construed as broadly as possible." *In the Matter of the Complaint of*

²⁷ See, e.g., FirstEnergy Utilities' Motion for Protective Order, Memorandum in Support at 6 (Oct. 16, 2020).

the Office of Consumers' Counsel on Behalf of the Residents of Copley Village

Condominium Association v. Ohio Edison Company, Case No. 89-1032-EL-CSS, Entry at ¶11 (Oct. 6, 1989).

And the PUCO has correctly determined that when a statute includes a listing, preceded by words such as “including” or “without limitation” the list that follows does not create an exhaustive list.²⁸ When that rule of statutory interpretation is applied to OCC’s general statutory grant of authority under R.C. 4911.02, FirstEnergy’s argument fails once again. OCC’s general statutory authority under R.C. 4911.02 is described as “without limitation because of enumeration” so the conditions that follow ((a) through (d)) must be construed as examples of matters that OCC may participate in, not limits on matters that OCC can participate in. For this very reason, the PUCO has in several cases rejected parties’ attempts to limit OCC’s participation in PUCO hearings, using the same arguments FirstEnergy now offers.²⁹

Additionally, under the general grant of statutory authority to OCC, there is also a more specific grant of authority allowing OCC to represent residential customers in this proceeding: R.C. 4911.02(B)(2)(b). There, the Ohio General Assembly gave OCC the power to “take appropriate action with respect to residential customer complaints concerning quality of service, service charges, and the operation of the public utilities commission.” Here, where the PUCO is operating in a manner that does not serve the

²⁸ *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Assess a System Improvement Charge*, Case No. 18-337-WW-SIC, Entry at ¶33 (Feb. 6, 2019).

²⁹ *In the Matter of the Commission Investigation Into the Operations and Services of Ohio Utilities Company*, Case No. 92-550-WS-COI, Entry (June 2, 1992). See also, *In the Matter of the Complaint of the Office of the Consumers' Counsel on Behalf of the Residents of Copley Village Condominium Association I and Copley Village Condominium Association v. Ohio Edison Company*, Case No. 89-1031-EL-CSS, Entry (Oct. 6, 1989).

public's interest (by failing to take the action urged in OCC's motions (subject to OCC's interlocutory appeal)), OCC has discrete authority to act.

OCC's intervention and participation in this proceeding is also permitted under other provisions of Ohio law (and PUCO rules).³⁰ Under R.C. 4911.02, OCC "shall have the rights and powers of any party and interest appearing before the public utilities commission." R.C. 4903.221 allows any person who may be adversely affected by a public utilities commission proceeding to intervene provided certain conditions are met. OCC filed its motion to intervene explaining how it met these conditions. In fact, OCC is one of few parties in this proceeding whose intervention has not been opposed by FirstEnergy. FirstEnergy's failure to object to OCC's intervention should be considered a late-filed memorandum contra OCC's intervention, which should be denied as untimely filed (and filed without leave of the PUCO).

Moreover, this proceeding was initiated to allow a PUCO "review" of FirstEnergy's HB 6 spending. The review is akin to a PUCO investigation. OCC has been permitted to intervene in numerous cases where the PUCO has initiated a review or investigation of utilities' activities. *See, e.g., In the Matter of the Commission Investigation of the Suburban Fuel Gas Inc., Relating to the Establishment of Rates*, Case No. 90-1285-GA-COI, Entry (Sept. 5, 1991); *In the Matter of the Commission's Investigation of Services Provided by Columbia Gas of Ohio, Inc.*, Case No. 89-1586-GA-COI, Entry (Apr. 5, 1990); and *In the Matter of the Investigation into the Management Practices and Policies of GTE North Inc.*, Case No. 85-1969-TP-COI, Entry (Oct. 28, 1988).

³⁰ See Ohio Admin. Code 4901-1-11.

D. First Energy has failed to show how OCC's requests are overly broad and or unduly burdensome.

OCC's requests for production seek documents related to FirstEnergy's HB 6 spending. As explained earlier, its requests do not go beyond the scope of this proceeding which the PUCO set as a review of "*the political and charitable spending*" of FirstEnergy on HB 6 activities.

FirstEnergy Utilities' objection that it is overly burdensome to respond to OCC's discovery has never been adequately explained to OCC. Such statements appear to be conclusory at best. FirstEnergy Utilities must do more than simply repeat the familiar litany that the discovery is burdensome. Federal case law³¹ has held that, when a party objects to an interrogatory based on oppressiveness or undue burden, that party must show specifically how, despite the broad and liberal construction afforded discovery rules, each interrogatory is overly broad, burdensome, or oppressive.³² In objecting, the party must submit affidavits or offer evidence revealing the nature of the burden.³³ General objections without specific support may result in waiver of the objection.³⁴

Here FirstEnergy has failed to show how the requests for production of information are unduly burdensome. Because the burden falls upon the party resisting

³¹ Although federal case law is not binding upon the PUCO with regard to interpreting the Ohio Civil Rules of Practice (upon which the PUCO discovery rules are based), it is instructive where, as here, Ohio's rule is similar to the federal rules. Ohio Adm. Code 4901-1-24 allows a protective order to limit discovery to protect against "undue burden and expense." C.R. 26(c) similarly allows a protective order to limit discovery "to protect against undue burden and expense." *Cf. In the Matter of the Investigation into Perry Nuclear Power Station*, Case No. 85-521-EL-COI, Entry at 14-15 (Mar. 17, 1987), where the Commission opined that a motion for protective order on discovery must be "specific and detailed as to the reasons why providing the responses to matters***will be unduly burdensome."

³² *Trabon Engineering Corp. v. Eaton Manufacturing Co.*, (N.D. Ohio 1964), 37 F.R.D. 51, 54.

³³ *Rosenberg v. Johns-Manville*, (M.D.Pa 1980), 85 RR.D. 292, 297.

³⁴ *Id.*, citing *In re Folding Carton Anti-Trust Litigation*, (N.D. HI. 1978), 83 F.R.D. 251, 264.

discovery to clarify and explain its objections and to provide support³⁵ and FirstEnergy Utilities have failed to do so, the PUCO should overrule this objection.

E. OCC undertook reasonable efforts to resolve the discovery dispute.

As detailed in the attached affidavit, OCC undertook efforts to resolve this discovery dispute. On or around October 15, 2020, OCC Counsel spoke with FirstEnergy Utilities' Counsel with respect to the Notice of Deposition for Mr. Fanelli. During that discussion the scope of the proceeding was discussed. OCC and FirstEnergy Utilities Counsel view the scope of this proceeding differently and concluded that there was an agreement to disagree on this matter. Subsequently, on November 3, 2020, before the filing of this motion to compel, OCC contacted FirstEnergy Utilities' Counsel with respect to responses OCC had received to the written discovery served in its First and Second Set of Discovery. Once again, there was no resolution of matters reached in that discussion primarily because of the disagreement on the scope of this proceeding. OCC advised FirstEnergy's Counsel that it would be following up with a motion to compel. OCC has exhausted all other reasonable means to resolve differences between it and FirstEnergy Utilities.

IV. CONCLUSION

FirstEnergy has failed to bear the burden of providing that OCC's discovery will not lead to the discovery of admissible evidence. Nor has FirstEnergy provided anything but conclusory statements as to the "burden" that will be imposed on it to answer OCC's discovery.

³⁵ *Gulf Oil Corp. v Schlesinger*, (E.D.Pa. 1979), 465 F.Supp. 913, 916-917.

As such, it is appropriate and fitting that the PUCO, consistent with its rules and Ohio law, grant OCC's Motion to Compel. Granting OCC's motion to compel will further the interests of consumers by assisting OCC and other parties in preparing comments and reply comments in this proceeding. It will also better inform the PUCO's review of the political and charitable spending of FirstEnergy related to HB 6 in this case, by providing it with a complete record upon which to base its decision. OCC's Motion to Compel should be granted and FirstEnergy should be ordered to respond to OCC's discovery in the very near term.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis

Maureen R. Willis, Senior Counsel
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Attorneys for the Ohio Consumers' Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Compel was served on the persons stated below via electronic transmission, this 6th day of November 2020.

/s/ Maureen R. Willis
Maureen R. Willis
Senior Regulatory 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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THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the)
Political and Charitable Spending by Ohio) Case No. 20-1502-EL-UNC
Edison Company, The Cleveland Electric)
Illuminating Company, and the Toledo)
Edison Company.)

**INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED UPON FIRSTENERGY UTILITIES
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

FIRST SET
(DATED SEPTEMBER 28, 2020)

The Office of the Ohio Consumers' Counsel, in the above-captioned proceedings before the Public Utilities Commission of Ohio, submits the following Interrogatories, Requests for Admissions and Requests for Production of Documents under sections 4901-1-19, 4901-1-20, 4901-1-22 of the Ohio Administrative Code for response from Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy Utilities" or the "Utilities") within 20 days or any shorter period of time subsequently established by PUCO Entry or Order. An electronic, non-pdf (*e.g.* Microsoft Excel) response should be provided to the Office of the Ohio Consumers' Counsel at the following addresses:

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Counsel of Record (# 0020847)
Angela D. O'Brien (#0097579)
Assistant Consumers' Counsel
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(Willing to accept service by e-mail)

Because of the coronavirus pandemic, OCC employees are continuing to work from home for the foreseeable future. If FirstEnergy Utilities intend to send any discovery responses by mail (USPS, FedEx, UPS, courier, etc.) as opposed to email, OCC asks that FirstEnergy Utilities to contact OCC's counsel in advance of mailing to potentially arrange for delivery to a different mailing address.

Additionally, FirstEnergy Utilities must follow the instructions provided herein in responding to the inquiries. Definitions are provided below that are used in the Office of the Ohio Consumers' Counsel's discovery.

DEFINITIONS

As used herein, the following definitions apply:

1. "Document" or "Documentation," when used herein, is used in its customary broad sense and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control, regardless of where located, including any kind of printed, recorded, written, graphic, or photographic matter

and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring

to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced, but drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, electronic, or otherwise perceptible means, including, but not limited to, telephone conversations, emails, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The "substance" of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. "And" and "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "You," "Your," and "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.

7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders and vice versa. Words expressing the past tense shall be deemed to express the present tense and vice versa.
8. "Person" includes any firm, corporation, partnership, joint venture, association, committee, board, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. "Identify," "the identity of," and "identified" mean as follows:
 - A. When used in reference to an individual, to state his full name, his present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (*e.g.*, corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (*e.g.*, letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, (i) to state the type of communication (*e.g.*, letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto; and (ii) in the case of a conversation, to state the substance, place, and approximate time thereof and identity of other persons in the presence of each party thereto;

- E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.
 - F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (*e.g.*, a room number, file cabinet, and/or file designation).
- 10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
 - 11. The term "*e.g.*" connotes illustration by example, not limitation.
 - 12. "FirstEnergy Utilities," and the "Companies" mean, collectively, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company. Each of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company may individually be referred to as a "Company" or "Utility."
 - 13. "FirstEnergy Service Co.." means the company that provides services to FirstEnergy Utilities and is an affiliate of FirstEnergy Utilities and is controlled by the Board of Directors of FirstEnergy Corp.
 - 14. "Political and Charitable Spending" means any expenditures (whether expensed or capitalized) to support the enactment or repeal of legislation, including but not limited to: lobbying expenses, payments to legislators, campaign contributions, attendance at fund-raising events, payments made to political action committees, or other organizations (including 501(C)(3) and (C)(4) organizations), payments to political parties, payments to

persons or organizations submitting testimony on regulatory or legislative matters, contributions to organizations affiliated with sponsors of legislation, contributions to persons and organizations submitting communications to government officials on legislation or regulatory proposals, and - contributions to low-income advocates or representatives of low income customers.

15. “Proceeding” means the above-captioned proceeding, Case No. 20-1502-EL-UNC.
16. “Criminal Complaint” means the criminal complaint and supporting affidavits filed in *United States of America v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes, and Generation Now*, Case No. 1:20-MJ-00526 (U.S. Dist. S.D.) (July 17, 2020).
17. “Generation Now” means the 501(C)(4) corporation identified in the Criminal Complaint.
18. “House Bill 6 activities” include but are not limited to those described in the Criminal Complaint that were undertaken to pass House Bill 6 and defeat the referendum effort.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged that is in your possession or control or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization is requested to produce responsive materials and information within its physical control or custody, as well as materials and information physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (*e.g.*, models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;

- B. Other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files;
 - D. Such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; *e.g.*, data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2008 through and including the date of your response.
9. Responses must be complete when made and must be supplemented with subsequently-acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (*i.e.*, provide a privilege log). Respondent to the discovery must (a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, (b) identify all persons to whom the information has already been revealed, and (c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

11. To the extent that any interrogatory requests the production of documents, such interrogatory shall be treated as a request for the production of documents, and such documents shall be produced as if the interrogatory were designated a request for the production of documents.
12. To the extent that any request the production of documents seeks an interrogatory response (in addition to, or in place of, a request for a document), such request for the production of a documents shall be treated as an interrogatory, and such request shall be responded to as if it were designated an interrogatory.
13. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Application.

INTERROGATORIES

* In accordance with Ohio Administrative Code 4901-1-16(D)(5), OCC requests that all responses be supplemented with subsequently-acquired information at the time such information is available.

Please see and respond to these discovery requests consistent with the OCC definitions of various discovery terms, including definitions of “communications” “House Bill 6 activities” “political and charitable spending” “Commission”, etc. Thank you.

INT-01-001. Please identify each person that FirstEnergy Utilities expect to call as a witness at any hearing conducted in this proceeding.

RESPONSE:

INT-01-002. Please identify all payments made by FirstEnergy Utilities to Generation Now.

For each payment, identify:

- a. The date the payment was made;
- b. The amount of the payment(s);
- c. The name and position of the person(s) that authorized the payment;
- d. The person the individual(s) identified in (c) directly reports to;
- e. All persons, committees, departments, boards that approved each of the payments;
- f. All persons within FirstEnergy Utilities that had knowledge of each payment;
- g. Identify the account(s) including any FERC sub-account(s) with description(s) of account(s) sub-account(s) the payment(s) were booked to; and

- h. Whether any of these payments were included, either directly or indirectly, in rates or charges paid by Ohio electric utility customers. And if so, how was that payment charged to Ohio electric utility customers?

RESPONSE:

INT-01-003. Please identify all payments made by FirstEnergy Service Co. to Generation Now.

For each payment, identify:

- a. The date(s) the payment(s) was/were made;
- b. The amount of the payment(s);
- c. The name and position of the person(s) that authorized the payment(s);
- d. The person(s) the individual(s) identified in (c) directly reports to;
- e. All persons, committees, departments, boards that approved each of the payments;
- f. All persons within FirstEnergy Service Co. that had knowledge of each payment;
- g. Identify the account(s) including any FERC sub-account(s) with description(s) of account(s) or sub-account(s) the payment(s) were booked to;
- h. Whether those payments (or portions thereof) were charged to FirstEnergy 7Utilities either directly or indirectly;
- i. Whether those payments (or portions thereof) were allocated to FirstEnergy Utilities; and

- j. Whether those payments (expensed or capitalized) were included either directly or indirectly in rates or charges paid by Ohio electric utility consumers.

RESPONSE:

INT-01-004. Please identify all political and charitable spending¹ by or on behalf of FirstEnergy Utilities since January 1, 2017. For each instance of political and charitable spending, please identify:

- a. The date of the political or charitable spending;
- b. The payor and payee;
- c. The name and position of the person who authorized the spending;
- d. The amount of money spent;
- e. The person(s) the individual identified in (c) directly reports to;
- f. All persons within FirstEnergy Utilities that had knowledge of each political and charitable spending;
- g. The FERC sub-account(s) with sub-account(s) description(s) the political/charitable spending was charged to;
- h. All persons, committees, departments, boards that approved each of the instances of political and charitable spending; and

¹ See definition of political and charitable spending.

- i. Whether this spending was reflected in expenses or capitalized and charged either directly or indirectly in the rates and charges paid by Ohio electric utility consumers.

RESPONSE:

INT-01-005. Please identify all political and charitable spending by or behalf of FirstEnergy Utilities, regarding House Bill 6 activities. For each act of political and charitable spending, please identify:

- a. The payee and payor;
- b. The date the spending occurred;
- c. The account(s) and sub accounts the political/charitable spending was charged to;
- d. The name and position of the person(s) who authorized the spending;
- e. The amount of money paid per instance of spending;
- f. The person(s) the individual(s) identified in (d) directly reports to;
- g. All persons within FirstEnergy Utilities that had knowledge of each instance of political and charitable spending identified above; and
- h. Whether the spending was reflected in expenses or capitalized and charged either directly or indirectly in the rates and charges paid by Ohio electric utility consumers.

RESPONSE:

INT-01-006. Please identify all political and charitable spending by or on behalf of the FirstEnergy Foundation since January 1, 2017 associated with regulatory and legislative activities that affect the FirstEnergy Utilities. For each instance of political and charitable spending, please identify:

- a. The date the spending occurred;
- b. The payor and the payee and whether the payee was involved with a communication to a government official of a position on a regulatory or legislative matter that affected FirstEnergy Utilities;
- c. The organization the payee was associated with;
- d. Whether the payee was affiliated with a government official or a sponsor of legislation affecting FirstEnergy Utilities;
- e. The name and position of the person(s) who authorized the spending;
- f. The amount of money paid;
- g. The person(s) the individual(s) identified in (c) directly reports to;
- h. All persons within FirstEnergy Utilities that had knowledge of each instance of political and charitable spending;
- i. The sub-account(s) including description(s) of the political/charitable spending was charged to;
- j. All persons, committees, departments, boards that approved each of the instances of spending;
- k. Whether these expenses or capitalized amounts were charged either directly or indirectly in the rates and charges paid by Ohio electric utility consumers; and

1. Contributions made to FirstEnergy Foundation by each of the FirstEnergy Utilities since January 1, 2017, identified on a yearly basis.

RESPONSE:

INT-01-007. Please identify all charitable contributions made by or on behalf of FirstEnergy Utilities since January 1, 2017. Please segregate the contributions by year, by month, by FERC sub-account(s) with sub-account(s) description(s) by utility, and recipient, including but not limited to contributions made to persons, organizations, charitable foundations and grantees. For each charitable contribution, please identify:

- a. The date the contribution was made;
- b. The payor and payee and whether the payee was involved with a communication to a government official of a position on a regulatory or legislative matter that affected FirstEnergy Utilities;
- c. The organization the payee was associated with;
- d. Whether the payee was affiliated with a government official or a sponsor of legislation affecting FirstEnergy Utilities;
- e. The name and position of the person(s) who authorized the contribution;
- f. The amount of the contribution;
- g. The person(s) the individual(s) identified in (e) directly reports to;
- h. All persons within FirstEnergy Utilities that had knowledge of each charitable contribution;

- i. The FERC sub-account(s) and sub-account(s) description(s) the charitable contribution(s) was charged to;
- j. All persons, committees, departments, boards that approved each of the charitable contributions; and
- k. Whether these charitable contributions were charged to expenses or capitalized either directly or indirectly in the rates and charges paid by Ohio electric utility consumers.

RESPONSE:

INT-01-008. Please identify “Company A” as referred to in the Criminal Complaint.

RESPONSE:

INT-01-009. Please identify “Company A-1” as referred to in the Criminal Complaint.

RESPONSE:

INT-01-010. Please identify “Company A Service Co.” as referred to in the Criminal Complaint.

RESPONSE:

INT-01-011. For the period January 1, 2017 through present, please identify the actual monthly amounts by FERC sub-account with sub-account descriptions attributed to House Bill 6 activities and every political action organization which FirstEnergy Utilities made contributions to related to House Bill 6 activities, broken down by date of payment, payee, political action organization and each specific contribution to that political action organization.

RESPONSE:

INT-01-012. Please identify all travel and entertainment expenses incurred by or on behalf of FirstEnergy Utilities, related to House Bill 6 activities. Please identify these expenses by FERC sub-account(s) with sub-account(s) descriptions and amounts, and describe the person involved, job title, and reason/explanation for the expense. Were these expenses or capitalized amounts charged either directly or indirectly in the rates and charges paid by Ohio electric utility customers?

RESPONSE:

INT-01-013. For the period January 1, 2017 through present, please identify for FirstEnergy Utilities, the actual monthly amounts by year booked to FERC sub-account(s) with sub-account(s) description(s) attributed to contributions and payments related to House Bill 6 activities to:

- a. Any 501(c)3 non-profit religious, charitable, or educational organization;
- b. Any 501(c)4 social welfare group that can engage in advocacy and lobbying activities; and
- c. Any 527 organization.

Please identify and describe each organization (by type a-c), and include a description of each contribution, identifying each specific amount attributed to that organization, the date of the payment and the payor.

RESPONSE:

INT-01-014. Please identify all expense and capital accounts and cost code elements with cost code element descriptions associated with providing electric service to FirstEnergy Utilities' customers in Ohio that contain expenses or capitalized items pertaining to:

- a. Charitable contributions;
- b. Lobbying expenses;
- c. Charitable and political spending;
- d. Governmental affairs;
- e. State affairs support;
- f. Economic development support; and
- g. FirstEnergy Foundation

RESPONSE:

INT-01-015. Please identify whether, for the period of January 1, 2017, through present, FirstEnergy Utilities were charged (or are being charged) for political and charitable spending undertaken by or on behalf FirstEnergy Solutions (or its successor Energy Harbor), including but not limited to charges from FirstEnergy Solutions/Energy Harbor for POLR and default services. If so, please identify the

amount(s), by month, by FERC sub-account(s) with sub-account(s) description(s), by cost code element(s), the charges are found in, and identify the mechanism for collecting these charges from FirstEnergy Utilities' Ohio electric customers.

RESPONSE:

INT-01-016. Please identify whether, for the period of January 1, 2017, through present, FirstEnergy Utilities were charged (or are being charged) for political and charitable spending undertaken by or on behalf FirstEnergy Corp. If so, please identify the amount(s), by month, by sub-account(s) or FERC sub-account(s) with account(s) or FERC sub-account(s) description(s), the charges are found in, and identify the mechanism for collecting these charges from FirstEnergy Utilities' Ohio electric customers.

RESPONSE:

INT-01-017. Please identify whether, for the period of January 1, 2017, through present, FirstEnergy Utilities were charged (or are being charged) for political and charitable spending undertaken by or on behalf FirstEnergy Service Company. If so, please identify the amount(s), by month, by sub-account(s) or FERC sub-account(s) with sub-account(s) or FERC sub-account(s) description(s), the charges are found in, and identify the mechanism for collecting these charges from FirstEnergy Utilities' Ohio electric customers.

RESPONSE:

INT-01-018. Please identify whether, for the period of January 1, 2017, through present, FirstEnergy Utilities were charged (or are being charged) for political and charitable spending associated with House Bill 6. If so, please identify the source of the charges, the amount(s), by month, by sub-account(s) or FERC sub-account(s) with sub-account(s) or FERC sub-account(s) description(s), the charges are found in, and identify the mechanism for collecting these charges from FirstEnergy Utilities' Ohio electric customers.

RESPONSE:

INT-01-019. Referring to Ohio Edison's 2018 FERC Form 1,

- a. Please describe the "charitable contribution carryforward" that is shown on Schedule Page 261, line 10 as \$15,000,000. Is that amount incorporated into the rates Ohio electric customers paid or will pay for electric service from Ohio Edison?
- b. Please describe the "charitable contribution carryforward" that is shown on Schedule Page 234 with a beginning balance of \$71,177 and an end of year balance of \$3,312,220. Is that amount incorporated into the rates Ohio electric customers paid or will pay for electric service from Ohio Edison?
- c. Please identify if any of the amounts listed in FERC Sub-Account 930.2 "miscellaneous general" on page 335 relate to political and charitable spending? If so, which if any of the line items are incorporated into the

rates Ohio electric customers paid or will pay for electric service from Ohio Edison?

- i. please describe “economic development” shown on line 14 and identify the charges that make up the \$-661,217 amount shown there.
- d. Referring to the “Transactions with Associated (Affiliated Companies)” shown on page 429 and 429.1, please identify if any of the amounts charged or credited relate to political or charitable spending? If so, which if any of the line items are incorporated into the rates Ohio electric customers paid or will pay for electric service from Ohio Edison?
 - i. Please describe the nature of the services provided by FirstEnergy Service Co. to Ohio Edison described as “Provide Local Affairs & Economic Development Support.”
 - ii. Please describe the nature of services FirstEnergy Service Co. provided to Ohio Edison described as “Provide State Affairs Support.”

RESPONSE:

INT-01-020. Referring to Toledo Edison’s 2018 FERC Form 1 and the “Transactions with Associated (Affiliated Companies)” shown on page 429 and 429.1, please identify if any of the amounts charged or credited relate to political or charitable spending. If so, which if any of these amounts related to political or charitable spending are incorporated into the rates Ohio electric customers paid or will pay for electric service from Toledo Edison?

- a. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison and listed as “Provide Environmental Support.”;
- b. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison listed as “Provide Compliance and Regulated Service Support”;
- c. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison listed as “Provide Rates & Regulatory Affairs Support”;
- d. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison listed as “Provide Local Affairs & Economic Development Support”;
- e. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison listed as “Provide State Affairs Support”; and
- f. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison listed as “Provide FE Generation Support”.

RESPONSE:

INT-01-021. Referring to Cleveland Electric Illuminating Company's 2018 FERC Form 1,

- a. Please describe the nature of the item listed on page 450.2 as "Ohio Economic Development.";
- b. Please describe the nature of the "Ohio Economic Development Contribution" listed on line 5-6 of page 269 and explain the debit to the account shown to "Contra Account 242.";
- c. Please identify all items that make up the "Charitable Contribution State & Local RTA" listed on page 450.1;
- d. Referring to page 429.1, "Transaction with Associated (Affiliated) Companies" please describe the nature of the services provided by FirstEnergy Service Co. to CEI that make up the "Non-Power Good or Service" Line items labelled:
 - i. "Provide Rates & Regulatory Affairs Support" \$784,904;
 - ii. "Provide State Affairs Support" \$115,638; and
 - iii. "Provide Local Affairs & Economic Development Support" \$1,479,989.
- e. Please explain what caused the difference between 4th Quarter 2017 "Miscellaneous and General Expenses" (930.2) of \$22,891,423 to the "current year" amount for that item of \$680,078.

RESPONSE:

INT-01-022. Please identify the monthly Regulated Money Pool balances in 2017 through 2020.

RESPONSE:

REQUESTS FOR ADMISSIONS

* In accordance with Ohio Administrative Code 4901-1-16(D)(5), OCC requests that all responses be supplemented with subsequently-acquired information at the time such information is available.

RFA-01-001. Please admit or deny the following. If the response is anything but an unqualified admission, please explain in detail.

FirstEnergy Corp. is the “Company A” identified in the Criminal Complaint.

ADMIT/DENY:

RFA-01-002. Please admit or deny the following. If the response is anything but an unqualified admission, please explain in detail.

FirstEnergy Solutions is the “Company A-1” identified in the Criminal Complaint.

ADMIT/DENY:

RFA-01-003. Please admit or deny the following. If the response is anything but an unqualified admission, please explain in detail.

FirstEnergy Service Co. is the “Company A Service Co.” identified in the Criminal Complaint.

ADMIT/DENY:

RFA-01-004. Please admit or deny the following. If the response is anything but an unqualified admission, please explain in detail.

FirstEnergy Service Co. made money payments to Generation Now.

ADMIT/DENY:

RFA-01-005. Please admit or deny the following. If the response is anything but an unqualified admission, please explain in detail.

FirstEnergy Utilities made money payments to Generation Now.

ADMIT/DENY:

RFA-01-006. Please admit or deny that FirstEnergy Utilities engaged in political and charitable spending to support the enactment of House Bill 6.

ADMIT/DENY:

RFA-01-007. Please admit or deny that FirstEnergy Service Co. engaged in political and charitable spending on behalf of FirstEnergy Utilities to support the enactment of House Bill 6.

ADMIT/DENY:

RFA-01-008. Please admit or deny that FirstEnergy Utilities included in the electric security plan rates and charges to Ohio customers expenses (actual and/or budgeted) associated with political and charitable spending.

ADMIT/DENY:

RFA-01-009. Please admit or deny that FirstEnergy Utilities included in the current distribution rates charged to Ohio customers expenses (actual and/or budgeted) associated with charitable and political spending.

ADMIT/DENY:

RFA-01-010. Please admit or deny that FirstEnergy Utilities included in rider rates charged Ohio customers for the period January 1, 2017 to present, expenses (actual and/or budgeted) associated with charitable and political spending.

ADMIT/DENY:

RFA-01-011. Please admit or deny that the costs of any political and charitable spending in support of House Bill 6 activities were included, either directly or indirectly, in rates or charges paid by FirstEnergy's Utilities' customers.

ADMIT/DENY:

RFA-01-012. Please admit or deny that all funds the FirstEnergy Utilities received from Rider DMR were placed into the Regulated Utility Money Pool.

ADMIT/DENY:

RFA-01-013. Please admit or deny that non-OHIO regulated subsidiaries of FirstEnergy Corp.
have borrowing access to Rider DMR funds through the Regulated Money pool.

ADMIT/DENY:

RFA-01-014. Please admit or deny that FirstEnergy utilities can borrow from the Regulated
Money Pool to fund their expenditures.

ADMIT/DENY:

RFA-01-015. Please admit or deny that from January 1, 2017 forward, funds in the Regulated
Money Pool have been used to pay dividends to FirstEnergy Corp.

ADMIT/DENY:

RFA-01-016. Please admit or deny that FirstEnergy Utilities borrowed from the Regulated
Money Pool to fund House Bill 6 activities.

ADMIT/DENY:

RFA-01-017. Please admit or deny that FirstEnergy Utilities from January 1, 2017 forward,
borrowed from the Regulated Money Pool to fund charitable and political
spending.

ADMIT/DENY:

RFA-01-018. Please admit or deny that no FirstEnergy affiliate borrowed from the Regulated Money Pool to fund House Bill 6 activities.

ADMIT/DENY:

RFA-01-019. Please admit or deny that non-OHIO regulated subsidiaries borrowed money from the Regulated Money Pool from January 1, 2017 forward.

ADMIT/DENY:

REQUESTS FOR PRODUCTION OF DOCUMENTS

* In accordance with Ohio Administrative Code 4901-1-16(D)(5), OCC requests that all responses be supplemented with subsequently-acquired information at the time such information is available.

RPD-01-001. Please provide a copy of all formal and informal requests (e.g., interrogatories, requests for production of documents, data requests) made to the FirstEnergy Utilities by the Commission in this proceeding and the FirstEnergy Utilities' response to those requests.

RPD-01-002. Please provide a copy of all formal and informal requests (e.g., interrogatories, requests for production of documents, data requests) made to the FirstEnergy Utilities by any other party in this proceeding and the FirstEnergy Utilities' responses to those requests.

RPD-01-003. Please provide a copy of all communications made by or on behalf of FirstEnergy Utilities with the Commission regarding this proceeding and the political and charitable spending for House Bill 6 activities undertaken by or on behalf of the FirstEnergy Utilities. This would include, but not be limited to, communications that occurred before the docket was opened on September 15, 2020.

RPD-01-004. Provide any documents that you relied upon or that otherwise support your responses to OCC INT-01-002 through 01-007, and 01-011 through 01-022.

- RPD-01-005. Provide a complete copy of all documents reflecting payments made by or on behalf of FirstEnergy Utilities to any political action committee or organization since January 1, 2017 to date, related to House Bill 6 activities.
- RPD-01-006. Provide a complete copy of all invoices in the custody and control of FirstEnergy Utilities that are associated with Ohio lobbying efforts on matters affecting FirstEnergy Utilities for years 2017 through present.
- RPD-01-007. Provide a copy of employee time and expense reports and invoices documenting expenses that were asked to be identified in OCC Interrogatory 01-012.
- RPD-01-008. Please provide a copy of all records produced by FirstEnergy Utilities and FirstEnergy Service Co. in response to the subpoenas issued by the U.S. Attorney's Office for the Southern District of Ohio (as reported in FirstEnergy's Form 10Q (June 30, 2020)).
- RPD-01-009. Please provide a copy of all documents related to the shareholder lawsuits against FirstEnergy and current and former directors, officers and other employees (as identified in FirstEnergy's Form 10Q at 32 (June 30, 2020)) relating to House Bill 6 activities.
- RPD-01-010. Please provide a copy of all documents related to the internal investigation into the matters raised in the Criminal Complaint that has been undertaken at the direction of the independent members of the FirstEnergy Board of Directors.

- RPD-01-011. Please provide a copy of all documents relating to the internal investigation into the matters raised in the Criminal Complaint that has been undertaken at the direction of the independent members of the FirstEnergy Board of Directors.
- RPD-01-012. Please provide a copy of all documents related to the Securities Exchange Commission investigation into matters related to House Bill 6 activities.
- RPD-01-013. Please provide a copy of all documents related to the Attorney General's lawsuit, filed in the Franklin County Court of Common Pleas related to House Bill 6 activities.
- RPD-01-014. Please provide a copy of the letter dated July 24, 2020 from the Ohio Attorney General notifying FE of its duty to not destroy documents in its custody or control regarding Ohio House Bill 6. (as reported in FirstEnergy's Form 10Q at 32).
- RPD-01-015. Please provide a copy of the regulated money pool agreement between FirstEnergy Corp. and its regulated subsidiaries, including FirstEnergy Utilities.
- RPD-01-016. Please provide copies of reports submitted to the Commission regarding the FirstEnergy Ohio utilities participation in the FirstEnergy Regulated Money Pool for the period of January 1, 2017 through present.
- RPD-01-017. Please provide copies of PUCO documents approving or disapproving FirstEnergy Utilities' participation and lending limits in the FirstEnergy Regulated Money Pool since January 1, 2017.

- RPD-01-018. Please provide for 2017 through 2020, copies of IRS Form 990s related to FirstEnergy Utilities' charitable contributions and the FirstEnergy Foundation.
- RPD-01-019. Please provide a copy of any policy, procedure, job description or other document that states that the Director of State Affairs for Ohio does not represent FirstEnergy Solutions and/or only represents the three FirstEnergy Ohio Utilities.
- RPD-01-020. Please provide the current organization chart for the FirstEnergy "External Affairs" organization" structure, showing all positions, the reporting relationships (superior and subordinates), the titles of the positions, department or unit name, and the person in those positions from January 1, 2017 to date. Please identify as part of this response, persons who provide external affairs services (in whole or part) for the FirstEnergy Ohio utilities.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Interrogatories, Requests for Admissions and Requests for Production of Documents Propounded Upon FirstEnergy Utilities by the Office of the Ohio Consumers' Counsel, First Set, was served upon the persons listed below via electronic transmission this 28th day of September 2020.

/s/ Maureen R. Willis
Maureen R. Willis
Senior Counsel

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Political)
and Charitable Spending by Ohio Edison) Case No. 20-1502-EL-UNC
Company, The Cleveland Electric)
Illuminating Company, and the Toledo)
Edison Company.)

**INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED UPON FIRSTENERGY UTILITIES
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**SECOND SET
(October 2, 2020)**

The Office of the Ohio Consumers' Counsel, in the above-captioned proceedings before the Public Utilities Commission of Ohio, submits the following Interrogatories, Requests for Admissions and Requests for Production of Documents under sections 4901-1-19, 4901-1-20, 4901-1-22 of the Ohio Administrative Code for response from Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy Utilities" or the "Utilities") within 20 days or any shorter period of time subsequently established by PUCO Entry or Order. An electronic, non-pdf (*e.g.* Microsoft Excel) response should be provided to the Office of the Ohio Consumers' Counsel at the following addresses:

Maureen R. Willis, Senior Counsel
Counsel of Record (# 0020847)
Angela D. O'Brien (#0097579)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Willis]: (614) 466-9567
Telephone [Obrien]: (614) 466-9531
Maureen.willis@occ.ohio.gov
Angela.obrien@occ.ohio.gov
(willing to accept service by e-mail)

Because of the coronavirus pandemic, OCC employees are continuing to work from home for the foreseeable future. If FirstEnergy Utilities intend to send any discovery responses by mail (USPS, FedEx, UPS, courier, etc.) as opposed to email, OCC asks that FirstEnergy Utilities to contact OCC's counsel in advance of mailing to potentially arrange for delivery to a different mailing address.

Additionally, FirstEnergy Utilities must follow the instructions provided herein in responding to the inquiries. Definitions are provided below that are used in the Office of the Ohio Consumers' Counsel's discovery.

DEFINITIONS

As used herein, the following definitions apply:

1. "Document" or "Documentation," when used herein, is used in its customary broad sense and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control, regardless of where located, including any kind of printed, recorded, written, graphic, or photographic matter

and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring

to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced, but drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, electronic, or otherwise perceptible means, including, but not limited to, telephone conversations, emails, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The "substance" of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. "And" and "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "You," "Your," and "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.

7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders and vice versa. Words expressing the past tense shall be deemed to express the present tense and vice versa.
8. "Person" includes any firm, corporation, partnership, joint venture, association, committee, board, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. "Identify," "the identity of," and "identified" mean as follows:
 - A. When used in reference to an individual, to state his full name, his present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (*e.g.*, corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (*e.g.*, letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, (i) to state the type of communication (*e.g.*, letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto; and (ii) in the case of a conversation, to state the substance, place, and approximate time thereof and identity of other persons in the presence of each party thereto;

- E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.
 - F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (*e.g.*, a room number, file cabinet, and/or file designation).
- 10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
 - 11. The term "*e.g.*" connotes illustration by example, not limitation.
 - 12. "FirstEnergy Utilities," and the "Companies" mean, collectively, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company. Each of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company may individually be referred to as a "Company" or "Utility."
 - 13. "FirstEnergy Service Co.." means the company that provides services to FirstEnergy Utilities and is an affiliate of FirstEnergy Utilities and is controlled by the Board of Directors of FirstEnergy Corp.
 - 14. "Political and Charitable Spending" means any expenditures (whether expensed or capitalized) to support the enactment or repeal of legislation, including but not limited to: lobbying expenses, payments to legislators, campaign contributions, attendance at fund-raising events, payments made to political action committees, or other organizations (including 501(C)(3) and (C)(4) organizations), payments to political parties, payments to

persons or organizations submitting testimony on regulatory or legislative matters, contributions to organizations affiliated with sponsors of legislation, contributions to persons and organizations submitting communications to government officials on legislation or regulatory proposals, and - contributions to low-income advocates or representatives of low income customers.

15. “Proceeding” means the above-captioned proceeding, Case No. 20-1502-EL-UNC.
16. “Criminal Complaint” means the criminal complaint and supporting affidavits filed in *United States of America v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes, and Generation Now*, Case No. 1:20-MJ-00526 (U.S. Dist. S.D.) (July 17, 2020).
17. “Generation Now” means the 501(C)(4) corporation identified in the Criminal Complaint.
18. “House Bill 6 activities” include but are not limited to those described in the Criminal Complaint that were undertaken to pass House Bill 6 and defeat the referendum effort.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged that is in your possession or control or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization is requested to produce responsive materials and information within its physical control or custody, as well as materials and information physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (*e.g.*, models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;

- B. Other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files;
 - D. Such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; *e.g.*, data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2008 through and including the date of your response.
9. Responses must be complete when made and must be supplemented with subsequently-acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (*i.e.*, provide a privilege log). Respondent to the discovery must (a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, (b) identify all persons to whom the information has already been revealed, and (c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

11. To the extent that any interrogatory requests the production of documents, such interrogatory shall be treated as a request for the production of documents, and such documents shall be produced as if the interrogatory were designated a request for the production of documents.
12. To the extent that any request the production of documents seeks an interrogatory response (in addition to, or in place of, a request for a document), such request for the production of a documents shall be treated as an interrogatory, and such request shall be responded to as if it were designated an interrogatory.
13. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Application.

INTERROGATORIES

* In accordance with Ohio Administrative Code 4901-1-16(D)(5), OCC requests that all responses be supplemented with subsequently acquired information at the time such information is available.

Please see and respond to these discovery requests consistent with the OCC definitions of various discovery terms, including definitions of “communications” “House Bill 6 activities” “political and charitable spending” “Commission”, etc. Thank you.

INT-02-001. In 2007, Charles E. Jones (the current CEO) was the president of FirstEnergy Solution and his salary was not part of the 2007 test year expenses. Does this mean the current base distribution rates of the three EDUs, set in 2007, do not include the millions of compensation dollars earned by Charles E. Jones?

RESPONSE:

INT-02-002. Did the FirstEnergy Utilities (or any FirstEnergy Utilities’ affiliates) use any of the money collected from Ohio electric customers under distribution rates set in the FirstEnergy Utilities’ last base rate case for political and charitable spending? If so, please identify on a yearly basis how much was used for that purpose since the approval of base rates.

RESPONSE:

INT-02-003. Did the FirstEnergy Utilities (or any FirstEnergy Utilities' affiliates) use any of the money collected from Ohioans under FirstEnergy Utilities' "riders or other charges in their approved tariffs" (see affidavit of Santino Fanelli) for political and charitable spending? If so, please identify on a yearly basis how much was used for that purpose, and which riders and charges were the source of the political and charitable spending?

RESPONSE:

INT-02-004. Did the FirstEnergy Utilities (or any FirstEnergy Utilities' affiliates) use any of the money collected from Ohio electric customers under FirstEnergy Utilities' distribution rates set in their last base rate case for House Bill 6 activities? If so, please identify on a yearly basis how much was used for that purpose since the approval of base rates.

RESPONSE:

INT-02-005. Did the FirstEnergy Utilities (or any FirstEnergy Utilities affiliates') use any of the money collected from Ohioans under "riders and charges" (see affidavit of Santino Fanelli) under FirstEnergy Utilities' tariffs for House Bill 6 activities? If so, please identify on a yearly basis how much was used for that purpose, and which riders and charges were the source of the House Bill 6 activities funds?

RESPONSE:

INT-02-006. Did the FirstEnergy Utilities (or any FirstEnergy Utilities' affiliates) use any of the money collected from Ohioans under "riders and charges" (see affidavit of Santino Fanelli) under FirstEnergy Utilities' tariffs for House Bill 6 activities? If so, please identify on a yearly basis how much was used for that purpose, and which riders and charges were the source of the House Bill 6 activities funds?

RESPONSE:

INT-02-007. Did the FirstEnergy Utilities (or any FirstEnergy Utilities' affiliates) use any of the money collected from Ohioans under "riders and charges" (see affidavit of Santino Fanelli) approved in FirstEnergy Utilities latest electric security plan in PUCO Case No. 14-1297-EL-SSO, et al. for House Bill 6 activities? If so, please identify on a yearly basis how much was used for that purpose, and which electric security plan riders and charges were the source of the House Bill 6 activities funds?

RESPONSE:

INT-02-008. Did the FirstEnergy Utilities (or any FirstEnergy Utilities' affiliates) use any of the money collected from Ohioans under FirstEnergy Utilities' "riders and charges" (see affidavit of Santino Fanelli) approved in FirstEnergy's latest electric security plan, in PUCO Case No. 14-1297-EL-SSO, et al, for political and charitable spending? If so, please identify on a yearly basis how much was used for that purpose, and which electric security plan riders and charges were the source of the political and charitable spending?

RESPONSE:

INT-02-009. How do FirstEnergy Utilities fund political and charitable spending? Please identify the specific source of the funding.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

* In accordance with Ohio Administrative Code 4901-1-16(D)(5), OCC requests that all responses be supplemented with subsequently-acquired information at the time such information is available.

RPD-02-001. Referencing 2020 Proxy Statement and Notice of Annual Shareholder Meeting

May 19, 2020, Section 1. Corporate Governance and Board of Directors: Under Section 1 Corporate Governance it states: “Based on feedback from our shareholder engagement and outreach, we expanded our website disclosure to include reports on federal and state level lobbying, as well as, the lobbying portion of certain trade association dues.”

- a. please provide all reports on federal and state level lobbying for the period 2017 through 2020.
- b. please provide all reports on lobbying pertaining to trade association dues for the period 2017 through 2020.

REQUESTS FOR ADMISSIONS

RFA-02-001. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities' affiliates) used any of the money collected from Ohio electric customers under distribution rates set in the FirstEnergy Utilities' last base rate case for political and charitable spending.

ADMIT/DENY:

RFA-02-002. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities affiliates) used any of the money collected from Ohioans under FirstEnergy Utilities' "riders and charges" (see Santino Fanelli affidavit) in their tariffs for political and charitable spending.

ADMIT/DENY:

RFA-02-003. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities affiliates) used any of the money collected from Ohio electric customers under FirstEnergy Utilities' distribution rates set in their last base rate case for House Bill 6 activities.

ADMIT/DENY:

RFA-02-004. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities affiliates) used any of the money collected from Ohioans under “riders and charges” (see affidavit of Santino Fanelli) under FirstEnergy Utilities’ tariffs for House Bill 6 activities.

ADMIT/DENY:

RFA-02-005. Admit or deny that FirstEnergy Utilities (or any of the FirstEnergy Utilities affiliates) used any of the money collected from Ohioans under “riders and charges” (see affidavit of Santino Fanelli) under FirstEnergy Utilities’ tariffs for House Bill 6 activities.

ADMIT/DENY:

RFA-02-006. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities’ affiliates) used any of the money collected from Ohioans under “riders and charges” (see affidavit of Santino Fanelli) approved in FirstEnergy Utilities latest electric security plan (Case No. 14-1297-EL-SSO) for House Bill 6 activities.

ADMIT/DENY:

RFA-02-007. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities affiliates) used any of the money collected from Ohioans under FirstEnergy Utilities' "riders and charges" (see affidavit of Santino Fanelli) approved in FirstEnergy's latest electric security plan (Case No. 1401297-EL-SSO) for political and charitable spending.

ADMIT/DENY:

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Interrogatories, Requests for Admissions and Requests for Production of Documents Propounded Upon FirstEnergy Utilities by the Office of the Ohio Consumers' Counsel, Second Set, was served upon the persons listed below via electronic transmission this 2nd day of October 2020.

/s/ Maureen R. Willis
Maureen R. Willis
Senior Counsel

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)
Political and Charitable Spending by Ohio) Case No. 20-1502-EL-UNC
Edison Company, The Cleveland Electric)
Illuminating Company, and the Toledo)
Edison Company.)

**AFFIDAVIT OF MAUREEN R. WILLIS IN SUPPORT OF MOTION TO COMPEL
RESPONSES TO DISCOVERY**

I, Maureen R. Willis, attorney for the Ohio Consumers' Counsel ("OCC") in the above-captioned case, submit this affidavit in support of OCC's Motion to Compel Responses to Discovery.

1. On or around October 15, 2020, OCC and Counsel for FirstEnergy discussed OCC's Notice to take Deposition of Mr. Fanelli. During that conversation there was a discussion of the scope of the proceeding. It became clear then that OCC and the FirstEnergy Utilities fundamentally disagree on the scope of the proceeding.

2. On November 3, 2020, OCC contacted FirstEnergy's Counsel to discuss the FirstEnergy Utilities' responses to OCC's First and Second Set of Discovery. Our conversation centered upon the scope of the proceeding. Again, like the conversation two weeks earlier (Oct. 15, 2020), OCC and FirstEnergy Utilities could not agree on the scope of the proceeding as it relates to discovery. OCC advised FirstEnergy Utilities' Counsel that it would be filing a motion to compel, responses to OCC's discovery. There have been no further communications with FirstEnergy on this matter.

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and states the following:

I have caused to be prepared the attached written affidavit for OCC in the above referenced docket. This affidavit is true and correct to the best of my knowledge, information and belief.


Maureen R. Willis, Affiant

Subscribed and sworn to before me this 4th day of Nov. 2020.



DEBRA JO BINGHAM
Notary Public
State of Ohio
My Comm. Expires
June 13, 2025


Notary Public

This foregoing document was electronically filed with the Public Utilities

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11/6/2020 3:24:19 PM

in

Case No(s). 20-1502-EL-UNC

Summary: Motion Motion to Compel Responses to Discovery by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.