

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**INTERLOCUTORY APPEAL:  
REQUEST FOR CERTIFICATION TO COMMISSIONERS  
AND APPLICATION FOR REVIEW  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

The Public Utilities Commission of Ohio (“PUCO” or “Commission”) should certify this interlocutory appeal of the December 10, 2020 Entry (which erred by failing to grant OCC’s motion to compel discovery based on a ground that FirstEnergy did not raise), under Ohio Adm. Code 4901-1-15(B). OCC has for months been attempting to obtain information from FirstEnergy about its House Bill 6 activities and the extent to which it may have spent customer funds to get that legislation passed. OCC has good reason for seeking this information – information that FirstEnergy has refused to provide at every turn. In a recent report from S&P Global, the rating agency said, “We believe these violations at the highest level of the company are demonstrative of insufficient internal controls and a cultural weakness. We view the severity of these violations as significantly outside of industry norms and, in our view, they represent a material deficiency in the company's governance.”<sup>1</sup>

Upon certification, the PUCO should exercise its authority under Ohio Adm. Code 4901-1-15(E) to reverse the Entry because it presents a new or novel question of interpretation, law, or

---

<sup>1</sup> See “S&P downgrades FirstEnergy following \$1.95B draw on revolving credit facility” (Nov. 25, 2020), *available at* <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/s-p-downgrades-firstenergy-following-1-95b-draw-on-revolving-credit-facility-61442506>.

policy, and represents a departure from past precedent. An immediate determination by the Commission is needed to prevent the likelihood of undue prejudice to OCC and the residential consumers that it represents. The ruling is unjust, unfair, and abuse of discretion – and in error. And the ruling denied OCC its rights to discovery under R.C. 4903.082.

Respectfully submitted,

Bruce Weston (#0016973)  
Ohio Consumers' Counsel

/s/ Maureen R. Willis

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, 7<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone [Willis]: (614) 466-9567  
Telephone [Obrien]: (614) 466-9531  
[Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)  
[Angela.obrien@occ.ohio.gov](mailto:Angela.obrien@occ.ohio.gov)  
(Willing to accept service by e-mail)

Michael D. Dortch (0043897)  
Justin M. Dortch (00900048)  
KRAVITZ, BROWN, & DORTCH, LLC  
65 East State Street, Suite 200  
Columbus, Ohio 43215  
Phone (614) 464-2000  
Fax: (614) 464-2002  
E-mail: [mdortch@kravitzllc.com](mailto:mdortch@kravitzllc.com)  
[jdortch@kravitzllc.com](mailto:jdortch@kravitzllc.com)

Attorneys for the Ohio Consumers' Counsel

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. )

## I. BACKGROUND

The PUCO opened this proceeding on September 15, 2020, “to review the political and charitable spending by the FirstEnergy Utilities in support of Am. Sub. H.B.6 and the subsequent referendum effort.”<sup>2</sup> OCC intervened on September 21, 2020. As allowed under Ohio law and the PUCO rules, OCC served two sets of discovery on Ohio Edison Co., the Cleveland Electric Illuminating Co., and the Toledo Edison Co. (collectively, “FirstEnergy”).

OCC's first set of discovery requests were issued on September 28, 2020 and included requests regarding: (1) how FirstEnergy spent money collected from customers House Bill 6 activities; (2) information reported on First Energy's 2018 FERC Form 1 filings related to expenses that appeared to be lobbying expenses incurred during 2017 (the beginning of the

1

alleged House Bill 6 activities); (3) records associated with the various ongoing proceedings that are investigating the HB 6 activities involving FirstEnergy Corp. (“FE Corp.”); (4) information about the structure of the external affairs organization that would be involved in lobbying efforts; and (5) FirstEnergy’s use of the money collected from customers under the distribution modernization rider charges (“DMR”) as part of its HB 6 activities.<sup>3</sup>

OCC’s second set of discovery requests were issued on October 2, 2020 and focused on whether FirstEnergy used any of the funds collected from consumers on House Bill 6 activities.<sup>4</sup>

Finally, on October 9, 2020, OCC filed a notice to take the deposition of FirstEnergy representative Santino Fanelli, a FirstEnergy executive who signed the filed affidavit attached to FirstEnergy’s response to the show cause order of the PUCO.

On October 15, 2020, OCC and counsel for FirstEnergy discussed discovery related matters. During that conversation it became clear that there would be issues with the discovery process in general because the parties fundamentally disagreed on the scope of this proceeding.<sup>5</sup> In that conversation FirstEnergy Counsel (Mr. Lang) and OCC discussed OCC’s Notice of Deposition for Mr. Fanelli, and FirstEnergy explained its opposition to the deposition.

On October 16, 2020, FirstEnergy Utilities filed a Motion for Protective Order asking that the deposition of Mr. Fanelli not be taken. Consistent with the PUCO rules requiring parties to exhaust efforts for resolving differences before seeking a protective order, Mr. Lang included

---

<sup>3</sup> See Interrogatories, Requests for Admissions, and Requests for Production of Documents Propounded upon FirstEnergy Utilities by the Office of the Ohio Consumers’ Counsel, First Set attached as Exhibit 1 (“Exhibit 1”) to OCC’s Motion to Compel Responses to Discovery (“Motion to Compel”) filed on November 6, 2020 in Case No. 20-1502-EL-UNC.

<sup>4</sup> See Interrogatories, Requests for Admissions, and Requests for Production of Documents Propounded upon FirstEnergy Utilities by the Office of the Ohio Consumers’ Counsel, Second Set attached as Exhibit 2 (“Exhibit 2”) to OCC’s Motion to Compel.

<sup>5</sup> See Affidavit of Maureen R. Willis in Support of Motion to Compel Responses to Discovery attached as Exhibit 3 (“Exhibit 3”) to OCC’s Motion to Compel at ¶1.

an affidavit describing the efforts he undertook to resolve differences with OCC before seeking the protective order. Mr. Lang's affidavit references that single conversation on October 15, 2020, where he "conferred with OCC's counsel regarding both the lack of need and the overbreadth of the Notice." Mr. Lang concluded with the statement "We agreed that the Companies and OCC have a fundamental disagreement on the scope of this proceeding that could not be resolved."<sup>6</sup>

FirstEnergy then served its responses to OCC's first set of discovery requests on October 19, 2020. FirstEnergy's responses were nearly identical at every turn. Specifically, FirstEnergy's responses were general, repetitive objections claiming that all items requested were outside the scope of this proceeding. Then, on the next day, FirstEnergy served its responses to OCC's second set of discovery requests. These responses were largely consistent with their response to the first set of discovery—namely, that FirstEnergy would not be responding to OCC's discovery requests.

On November 3, 2020, OCC again contacted FirstEnergy's counsel to discuss discovery related issues. Like the October 15, 2020 discussion, the conversation centered around the scope of this proceeding. The parties could not agree on the scope of the proceeding. There was no ambiguity in FirstEnergy's position during these discussions—it did not believe that OCC's discovery requests were within the scope of the proceeding, and it would not be providing any further responses. Mr. Lang's response was not unexpected. OCC was well aware of the Utility's position from its prior discussion (Oct. 15, 2020) and from its review of FirstEnergy's Motion for protective order (including Mr. Lang's affidavit). That being the case, OCC informed

---

<sup>6</sup> Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company's Motion for Protective Order, Affidavit of Counsel, Exhibit B (Oct. 16, 2020).

FirstEnergy that it would be filing a motion to compel seeking the PUCO's assistance in resolving the scope of discovery.<sup>7</sup>

On November 6, 2020, after engaging in good faith efforts to reasonably resolve the discovery dispute, OCC filed its motion to compel. FirstEnergy Utilities filed its Memorandum Contra to OCC's Motion to Compel on November 17, 2020 ("Memo Contra"). In its motion, OCC notified the PUCO of the fact that there was a fundamental disagreement between OCC and FirstEnergy on the scope of the proceeding. (OCC's affidavit was remarkably similar to Mr. Lang's affidavit describing the efforts undertaken to resolve the discovery dispute.) Notably FirstEnergy Utilities did not argue that OCC had failed to take reasonable and genuine efforts to resolve the discovery dispute. The issue was simply not raised, nor could it have been reasonably raised, by FirstEnergy.

The PUCO's Attorney Examiner issued the December Entry on December 10, 2020 and *sua sponte* (without any claim by FirstEnergy) ruled that "a single conversation aimed at resolving the discovery dispute" does not meet the prerequisite good faith effort needed prior to filing a motion to compel. That Entry is the subject of this interlocutory appeal. (See Attachment 1).

## **II. STANDARD OF REVIEW**

Under Ohio Adm. Code 4901-1-15(B), a party may take an interlocutory appeal to the PUCO Commissioners if the appeal is certified by the Examiners under Ohio Adm. Code 4901-1-15(B). The standard applicable to certifying such an appeal is "that the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to

---

<sup>7</sup> *Id.* at ¶2.

prevent the likelihood of undue prejudice ... to one or more of the parties, should the commission ultimately reverse the ruling in question.”<sup>8</sup> Once an appeal has been certified under Ohio Adm. Code 4901-1-15(B), the PUCO may affirm, reverse, or modify the ruling or dismiss the appeal.<sup>9</sup>

### **III. REQUEST FOR CERTIFICATION**

#### **A. The appeal presents new and novel questions of law and policy and departs from past precedent.**

At issue is the PUCO’s December 10, 2020 Entry. There, instead of granting OCC’s motion to compel (as it should have), the Attorney Examiner—*sua sponte and without FirstEnergy raising the claim*—found that OCC failed to make the “good faith effort needed prior to the filing of a motion to compel” and that OCC’s motion to compel “prematurely requests the Commission’s intervention in this discovery dispute.”<sup>10</sup> That ruling is unjust, unfair, an abuse of discretion – and in error. And the ruling denied OCC its rights to discovery under R.C. 4903.082.

This raises a new and novel question of law and policy: whether an Attorney Examiner can find that parties have not made a good faith effort to resolve their discovery dispute when the parties themselves have agreed that they are at an impasse. In support of the ruling, the Entry cites just one case, *In re Ohio Edison Co., the Cleveland Electric Illuminating Co., and the Toledo Edison Co.*, Case No. 11-5201-EL-RDR, Entry (Oct. 11, 2012). But that case was materially different.

---

<sup>8</sup> Ohio Adm. Code 4901-1-15(B).

<sup>9</sup> Ohio Adm. Code 4901-1-15(E).

<sup>10</sup> Entry ¶ 12.

In that case, OCC sought a prehearing conference to address discovery disputes. FirstEnergy opposed OCC's request based, among other things, on the grounds that OCC's request was premature and that OCC failed to make sufficient efforts to resolve the discovery dispute before asking for the PUCO to get involved.<sup>11</sup> The PUCO agreed with FirstEnergy that OCC did not adequately attempt to resolve the discovery dispute with FirstEnergy before filing its request for a prehearing conference.<sup>12</sup>

That is not what happened in the current case. In the current case, OCC and FirstEnergy discussed OCC's discovery at length (and on two occasions, not one), and it was clear based on both of those conversations that neither side would budge. This is not a quibble over specific language in a discovery request, or a set of interrogatories that could be modified or narrowed to achieve a compromise. There is a fundamental difference of opinion about the scope of the entire case, affecting the core of virtually all of OCC's discovery requests. OCC used reasonable and genuine efforts discussing the scope of the proceeding (at length) with the FirstEnergy Utilities Counsel.

**Notably, in opposing OCC's motion to compel, FirstEnergy with its significant in-house and outside legal resources did *not* argue that OCC failed to exhaust all means of resolving the dispute before filing its motion to compel.<sup>13</sup> This is because, as explained in the affidavit supporting OCC's motion to compel, the parties have a fundamental disagreement about the scope of this entire case. Surely, if what OCC represented in its signed affidavit was not true, FirstEnergy would have been quick to dispel that notion. But**

---

<sup>11</sup> *Id.* at 2-3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *See generally* Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company's Memorandum Contra OCC's Motion to Compel Responses to Discovery (Nov. 17, 2020).



**it did not dispute the impasse, consistent with its own representations (in Mr. Lang’s affidavit) that “the Companies and OCC have a fundamental disagreement on the scope of this proceeding that could not be resolved.”**

Thus, the December 10 Entry presents a new and novel question of law: whether the Attorney Examiner can override the parties’ own determination that they have reached an impasse, thus triggering a right to file a motion to compel. And it departs from past precedent—cited in the Entry itself—where such a ruling is based on an opposing party disputing the good faith efforts taken. While the PUCO has on numerous occasions found that a party’s failure to use (or describe) efforts to resolve a discovery dispute is fatal to a motion to compel, we are not aware of a PUCO ruling of this sort—one that finds a party has not engaged in reasonable and genuine efforts to resolve the dispute where the opposing party has not so complained. . Indeed in this case both OCC and the utilities have submitted similar affidavits describing the efforts taken to resolve the discovery disputes where both have concluded there is no resolution that can be reached without the PUCO’s intervention.

The PUCO should find that this appeal presents new and novel questions of law and policy and departs from past precedent, and it should certify it accordingly.

**B. An immediate determination by the PUCO is needed to prevent the likelihood of undue prejudice to FirstEnergy’s residential customers, who OCC represents.**

For consumer protection, truth and justice, OCC greatly needs – and is entitled to under law and rule – information from FirstEnergy. That information can be key to unraveling what, if any, improper uses of consumer funds resulted FirstEnergy’s House Bill 6 activities and expenditures. For months, FirstEnergy has blocked OCC’s access to that information. The PUCO’s own discovery rules do not provide for this type of obstruction and delay.

It is imperative that OCC's and FirstEnergy's discovery dispute be resolved without further delay.

#### **IV. APPLICATION FOR REVIEW**

The ruling that OCC's motion to compel is not ripe for review because OCC has not made a good faith effort to resolve its dispute with FirstEnergy should be reversed. As the FirstEnergy and OCC pleadings showed, there was at the time nothing more to be achieved by OCC and FirstEnergy continuing to engage in discussions regarding the discovery dispute. OCC unequivocally believes that it is entitled to the information it requested and that it is entitled to responses to the written discovery.

It is no different than OCC's right to depose Mr. Fanelli which OCC and the Utilities have agreed an impasse was reached. And no different than the impasse FirstEnergy relied on when it filed a motion for protective order, after being unable to reach resolution with OCC. FirstEnergy unequivocally believes that it is entitled to refuse to provide any meaningful information whatsoever to OCC and that it has no obligation whatsoever to allow OCC to seek information about how it spent money collected from customers. There could be no clearer example of an impasse than this one, where parties have a fundamental disagreement on the basic scope of the entire case. That is where the Parties found themselves when OCC filed its Motion to Compel. And without PUCO intervention there is no way around that impasse.

##### **A. The Entry deprives OCC of its right to discovery under R.C. 4903.082 and Ohio Supreme Court precedent.**

By failing to grant OCC's motion to compel, even temporarily, the Entry is unlawful. Under R.C. 4903.082, OCC (like all parties and intervenors) "shall be granted ample rights of discovery." Likewise, the PUCO's rules are requirements intended to "aid full and reasonable

discovery by all parties.”<sup>14</sup> Further, the Supreme Court of Ohio has ruled that the PUCO abuses its discretion when it denies OCC discovery that it is entitled to receive.<sup>15</sup>

By failing to swiftly grant OCC’s meritorious motion to compel and instead requiring parties to engage in further negotiations—which both parties themselves have already deemed to have reached an impasse—the Entry has denied OCC its right to ample discovery. The Entry was therefore unlawful. The PUCO should reverse the ruling and grant OCC’s motion to compel. FirstEnergy should be required to respond to all of OCC’s pending discovery requests and to make Mr. Fanelli available for a deposition on a date as soon as reasonably practicable.

**B. The Attorney Examiner abused her discretion by ruling, sua sponte, that OCC did not make a good faith effort to resolve its discovery dispute with FirstEnergy.**

The Supreme Court of Ohio has defined an abuse of discretion as “conduct that is unreasonable, arbitrary or unconscionable.”<sup>16</sup> The Entry demonstrates an abuse of discretion because it is unreasonable and arbitrary.

OCC certainly understands and appreciates the PUCO’s rules requiring parties to exhaust their efforts before involving the Commission in discovery disputes. OCC endeavors to minimize the extent to which the PUCO must be involved. Whenever OCC has a dispute with a utility over a discovery request, the parties work together to identify the source of the dispute. In some instances, there are mere miscommunications that can be resolved with a simple phone call. In others, OCC agrees to narrow the scope of a request or to modify a request as part of a back and forth with the utility. At times, OCC will agree to withdraw a request in its entirety in an effort to cooperate with the utility.

---

<sup>14</sup> R.C. 4903.082.

<sup>15</sup> See *Ohio Consumers’ Counsel v. PUCO*, 111 Ohio St. 3d 300, 323 (2006).

<sup>16</sup> *State v. Beasley*, 152 Ohio St. 3d 470, 473 (2018).

But there are cases where utilities simply outright refuse to provide responses to OCC's discovery requests and outright refuse to make their representatives available for a deposition. That is what happened here. OCC and FirstEnergy do not agree on the scope of this case. Mr. Lang's affidavit and OCC's affidavit are clear evidence of that fundamental disagreement. That fundamental disagreement permeates all of OCC's requests. This is not about clarifying individual requests or modifying them slightly to accommodate a dispute. There are no further discussions to be had to narrow the gulf between the parties' respective positions.

OCC stated this explicitly in its motion to compel and affidavit in support. And FirstEnergy tacitly admitted this when it declined to argue that OCC failed to exhaust efforts before filing the motion to compel. And the fundamental impasse is further acknowledged by Mr. Lang's affidavit in the Utilities Motion for a Protective Order (which by the way, has not been ruled to be insufficient with respect to efforts to resolve the dispute).

The Attorney Examiner's ruling—effectively dismissing the parties' own beliefs about their discovery efforts and impugning OCC by suggesting lack of good faith (*without a corresponding commentary about FirstEnergy*)—was not based on any evidence or argument brought by either party. In fact it is contrary to the evidence submitted in affidavits by OCC and the Utility. It thus was unreasonable and arbitrary, the definition of an abuse of discretion. On appeal, the Commission should reverse the Entry and grant OCC's motion to compel.

## **V. CONCLUSION**

For the reasons explained above, the PUCO should certify this interlocutory appeal. It should reverse the December 10 Entry and grant OCC's motion to compel in the public interest.

Respectfully submitted,

Bruce Weston (#0016973)  
Ohio Consumers' Counsel

/s/ Maureen R. Willis

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, 7<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone [Willis]: (614) 466-9567  
Telephone [Obrien]: (614) 466-9531  
[Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)  
[Angela.obrien@occ.ohio.gov](mailto:Angela.obrien@occ.ohio.gov)  
(Willing to accept service by e-mail)

Michael D. Dortch (0043897)  
Justin M. Dortch (00900048)  
KRAVITZ, BROWN, & DORTCH, LLC  
65 East State Street, Suite 200  
Columbus, Ohio 43215  
Phone (614) 464-2000  
Fax: (614) 464-2002  
E-mail: [mdortch@kravitzllc.com](mailto:mdortch@kravitzllc.com)  
[jdortch@kravitzllc.com](mailto:jdortch@kravitzllc.com)

Attorneys for the Ohio Consumers' Counsel

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Interlocutory Appeal was provided electronically to the persons listed below this 15th day of December 2020.

/s/Maureen R. Willis  
Senior Counsel  
Assistant Consumers' Counsel

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

### **SERVICE LIST**

[werner.margard@ohioattorneygeneral.gov](mailto:werner.margard@ohioattorneygeneral.gov)  
[ccox@elpc.org](mailto:ccox@elpc.org)  
[rkelter@elpc.org](mailto:rkelter@elpc.org)  
[trhayslaw@gmail.com](mailto:trhayslaw@gmail.com)  
[leslie.kovacik@toledo.oh.gov](mailto:leslie.kovacik@toledo.oh.gov)  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[bethany.allen@igs.com](mailto:bethany.allen@igs.com)  
[joe.oliker@igs.com](mailto:joe.oliker@igs.com)  
[michael.nugent@igs.com](mailto:michael.nugent@igs.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)  
[kylerncohn@BKLawfirm.com](mailto:kylerncohn@BKLawfirm.com)

[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)  
[mrgladman@jonesday.com](mailto:mrgladman@jonesday.com)  
[mdengler@jonesday.com](mailto:mdengler@jonesday.com)  
[radoringo@jonesday.com](mailto:radoringo@jonesday.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)  
[dparram@bricker.com](mailto:dparram@bricker.com)  
[jspottswood@bricker.com](mailto:jspottswood@bricker.com)  
[mleppla@theOEC.org](mailto:mleppla@theOEC.org)  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)  
[ctavenor@theOEC.org](mailto:ctavenor@theOEC.org)  
[rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)

Attorney Examiner:

[Gregory.price@puco.ohio.gov](mailto:Gregory.price@puco.ohio.gov)  
[Megan.addison@puco.ohio.gov](mailto:Megan.addison@puco.ohio.gov)  
[Jacqueline.st.john@puco.ohio.gov](mailto:Jacqueline.st.john@puco.ohio.gov)

## THE PUBLIC UTILITIES COMMISSION OF OHIO

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

### ENTRY

Entered in the Journal on December 10, 2020

{¶ 1} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the FirstEnergy Utilities or the Companies) are electric distribution utilities, as defined by R.C. 4928.01(A)(6), and public utilities, as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 2} R.C. 4905.06 states, in relevant part, that the Commission has general supervision over all public utilities within its jurisdiction as defined in R.C. 4905.05, and may examine such public utilities and keep informed as to their general condition, capitalization, and franchises, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, the safety and security of the public and their employees, and their compliance with all laws, orders of the Commission, franchises, and charter requirements.

{¶ 3} R.C. 4905.05 states, in relevant part, that the jurisdiction, supervision, powers, and duties of the Commission extend to every public utility, the plant or property of which lies wholly within this state and when the property of a public utility lies partly within and partly without this state to that part of such plant or property which lies within this state; to the persons or companies owning, leasing, or operating such public utilities; to the records and accounts of the business thereof done within this state; and to the records and accounts of any companies which are part of an electric utility holding company system exempt under section 3(a)(1) or (2) of the "Public Utility Holding Company Act of 1935," 49 Stat. 803, 15 U.S.C. 79c, and the rules and regulations promulgated thereunder, insofar as such records and accounts may in any way affect or relate to the costs associated with the

20-1502-EL-UNC

-2-

provision of electric utility service by any public utility operating in this state and part of such holding company system.

{¶ 4} The Commission opened this proceeding on September 15, 2020, to review the political and charitable spending by the FirstEnergy Utilities in support of Am. Sub. H.B.6 and the subsequent referendum effort. Also on September 15, 2020, the attorney examiner directed the Companies 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. Further, the attorney examiner directed interested parties to file comments regarding the Companies' response by October 29, 2020, and to file reply comments by November 13, 2020.

{¶ 5} The Companies timely filed their response to the show cause order on September 30, 2020. As part of the response, the Companies included an affidavit of Santino L. Fanelli.

{¶ 6} On October 9, 2020, the Ohio Consumers' Counsel (OCC) filed a notice to take deposition and request for production of documents, seeking to depose Mr. Fanelli on October 22, 2020. On October 16, 2020, the Companies filed a motion for protective order to preclude the deposition of Mr. Fanelli.

{¶ 7} On October 20, 2020, the attorney examiner issued an Entry noting that, following the filing of any memoranda contra and replies to the motion for protective order pursuant to Ohio Adm.Code 4901-1-12, a prehearing conference would be held, on the record, to hear arguments on and address the issues raised by the motion for protective order. Further, the Entry noted that new dates for comments and reply comments regarding the Companies' response to the show cause order would be established after the ruling on the motion for protective order had been issued.

{¶ 8} Memoranda contra the motion for protective order were filed on November 2,



20-1502-EL-UNC

-3-

2020, by Ohio Manufacturers' Association Energy Group, Ohio Partners for Affordable Energy, OCC, and jointly by Environmental Law & Policy Center, Natural Resources Defense Council, and Ohio Environmental Council. The FirstEnergy Utilities filed a reply on November 9, 2020.

{¶ 9} Accordingly, the parties shall participate in a prehearing conference on January 7, 2021, at 10:00 a.m. EST. As noted by the October 20, 2020 Entry, given the current state of emergency in Ohio, the prehearing conference will be held remotely. Instructions for participation in the prehearing conference shall be emailed to the parties. Anyone interested in observing the prehearing conference as a non-party can access the prehearing using the link <https://bit.ly/20-1502-PHC>, and entering the password PUCO, or by calling 1-408-418-9388, and entering code 179 747 2500.

{¶ 10} As a final matter, OCC filed a motion to compel discovery on November 6, 2020, as revised on November 10, 2020. In its motion, OCC avers the information it is seeking relates to expenditures and efforts made by the FirstEnergy Utilities in support of H.B. 6 and is reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Moreover, OCC alleges that it undertook reasonable efforts to resolve the discovery dispute.

{¶ 11} The Companies filed a memorandum contra OCC's motion to compel on November 17, 2020, primarily arguing that much of the motion requests information that falls outside of the predetermined scope of this proceeding.

{¶ 12} Ohio Adm.Code 4901-1-23(C) states that no motion to compel discovery shall be filed until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party from whom discovery is sought. Further, the Commission's discovery rules are intended to minimize Commission intervention in the discovery process. Ohio Adm.Code 4901-1-16. Upon review of the motion, it appears counsel for OCC filed the motion after having a single conversation aimed at resolving the pending discovery dispute. The attorney examiner finds that this does not meet the

20-1502-EL-UNC

-4-

prerequisite good faith effort needed prior to the filing of a motion to compel and prematurely requests the Commission's intervention in this discovery dispute. *See In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 11-5201-EL-RDR, Entry (Oct. 11, 2012). Thus, the parties are directed to reengage in discussions regarding OCC's discovery requests, and each party should file a letter with the Commission on or before December 30, 2020, demonstrating what good faith efforts were taken to resolve the dispute and informing the attorney examiner whether the parties were able to reach a resolution. As such, the attorney examiner finds that the motion to compel is premature, and the attorney examiner will defer ruling on the motion at this time.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That a prehearing conference be scheduled in accordance with Paragraph 9. It is, further,

{¶ 15} ORDERED, That the parties reengage in discussions to resolve the discovery dispute and file a letter with the Commission by December 30, 2020, as directed in Paragraph 12. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Megan Addison

By: Megan Addison  
Attorney Examiner

SJP/kck

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/10/2020 3:14:19 PM**

**in**

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

Summary: Attorney Examiner Entry scheduling a prehearing conference on 1.7.21 at 10:00 a. m. and ordering the parties reengage in discussions to resolve the discovery dispute and file a letter with the Commission by 12.30.20. electronically filed by Kelli C. King on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/15/2020 5:24:24 PM**

**in**

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

Summary: Request INTERLOCUTORY APPEAL: REQUEST FOR CERTIFICATION TO  
COMMISSIONERS AND APPLICATION FOR REVIEW BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL  
electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.