

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.)

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April 28, 2021

**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)
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**MOTION TO COMPEL RESPONSES TO
THIRD SET OF DISCOVERY
AND REQUEST FOR EXPEDITED RULING
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

FirstEnergy apparently gave the former House Speaker \$60 million to pass H.B. 6, the \$1.5 billion bailout bill for its two, uneconomic nuclear plants. Over the past seven months, the Office of the Ohio Consumers' Counsel ("OCC") has been attempting to obtain information from FirstEnergy about its H.B. 6 activities and the extent to which it may have spent customer funds to get tainted H.B. 6 passed – information that the FirstEnergy Utilities have refused to provide at nearly every turn.

That brings us to our latest Motion to Compel seeking answers to eight discovery requests in OCC's Third Set of Discovery. (Attachment 1). The Companies objected to six of these seven requests and provided non-responsive information (which OCC already has public access to) to the other two requests (RFP 3-4 and 3-5). So much for FirstEnergy's new approach to "fostering trust and transparency at all levels."¹

¹ FirstEnergy Press Release, "FirstEnergy names Hyun Park Senior Vice President & Chief Legal Officer" (Jan. 5, 2021).

OCC needs this information to determine how FirstEnergy's \$60 million scheme impacted the FirstEnergy Utilities and their customers. OCC files this Motion to Compel to find out how much the Utilities spent on political and charitable activities and how much was passed along to customers.

Under Ohio Administrative Code ("O.A.C.") 4901-1-12 and 4901-1-23,² 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 Interrogatories 3-7, 3- 22-23 and 3-25 and Request for Production of Documents 3-4, 3-5,3-6 and 3-7, in OCC's Third Set of Discovery. (Attachment 1).

Consistent with the Attorney Examiner's previous discovery rulings, OCC agrees to narrow the time frame for these discovery requests to January 1, 2017 through December 31, 2019. And for Interrogatory 7, OCC is willing to forego asking the source of the expenditures. OCC conveyed all this to the Companies' Counsel on March 31, 2021, but to no avail. (Attachment 2).

The attached Affidavit describes the efforts OCC has been engaged in since March 31, 2021 to resolve differences between it and the FirstEnergy Utilities, consistent with O.A.C. 4901-1-23(C)(3). The Utilities and OCC have once again failed to reach a mutually satisfactory solution to their many, continued differences.

The Utilities want to string out their responses to OCC's discovery responses until May 7, 2021 and have not agreed to provide complete answers to these eight requests.

² See O.A.C. 4901-1-12 and 4901-1-23.

That means OCC will probably find itself before the PUCO again to ask it to compel the FirstEnergy Utilities to provide answers. Enough is enough.

OCC files this Motion to Compel, with the supporting reasons set forth in the attached Memorandum in Support. OCC also requests an expedited ruling on its Motion to Compel, consistent with O.A.C. 4901-1-12(C). This would allow resolution of the discovery conflict more quickly, given the upcoming May 21, 2021 deadline for comments. OCC is unable to certify that no party objects to the issuance of an expedited ruling.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

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

OCC served its Third Set of Discovery on January 15, 2021. The eight requests OCC seeks to compel in the Third Set of Discovery pertain to the political and charitable spending that the Utilities engaged in during January 1, 2017 to December 31, 2019.

This information is directly within the scope of this proceeding which the PUCO opened to review FirstEnergy’s “political and charitable spending” in support of H.B. 6. And OCC’s discovery is consistent with the numerous Attorney Examiner rulings including rulings allowing OCC to ask about political and charitable contributions that were made any FirstEnergy entity and charged back to the utilities. *See* Deposition of Santino Fanelli at 262 (Mar. 10, 2021).

Even after the Attorney Examiner’s rulings, the FirstEnergy Utilities are still trying to limit the PUCO’s review to a much narrower scope that shields it from answering, allows them to dictate what they respond to and fails to protect customers. A

perfect example of this is that the FirstEnergy Utilities won't abide by OCC's definition of H.B. 6 activities—a definition that the Attorney Examiner accepted in granting OCC's Motion to Compel, largely overruling the Utilities' objections to OCC's First and Second Sets of Discovery.

To this day, the Companies are unwilling to concede that 2017 payments by FirstEnergy Service Company to Generation Now are H.B.6 activities. Their standard line, as pronounced repeatedly at Mr. Fanelli's deposition, is that “no conclusion has been reached on that.” Fanelli Deposition at 207. And when pressed for further explanation as to who must reach that conclusion, they invoke privilege! *Id.* FirstEnergy espouses this untenable position even though the criminal complaint describes Generation Now as the vehicle “Company A” used to pay bribes to Ohio's Former House Speaker³ and even though it admitted (in civil litigation) making payments to Generation Now on the same dates and in the same amounts that “Company A” is alleged to have done.⁴

In sum, OCC and FirstEnergy Utilities are once again unable again to reach agreement on the scope of discovery for the eight questions in OCC's Third Set of Discovery. Under the Utilities' approach, OCC should wait till May 7, 2021, and then if OCC has issues with the revised responses, OCC can file a Motion to Compel (after negotiating further with the Utilities). This schedule works well for FirstEnergy because it would effectively preclude any follow-up on the discovery and would likely embroil

³ *United States of America v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes and Generation Now*, Case No. 1:20-MJ-00526 (S.D. Ohio).

⁴ *Smith v. FirstEnergy Corp., et al.*, Case No. 2:20-cv-03755 Answer of Defendants FirstEnergy Corp., et al. at ¶¶34, 52(m), 64, and 69 (S.D. Ohio) (Mar. 10, 2021).

OCC in further negotiations over objections. This would then likely prevent OCC from effectively using the information in comments.

This never-ending cycle suits the utilities well, but OCC is left with the short end of the stick. The lack of responses to basic discovery aimed at the heart of the investigation will materially impact OCC's ability to file informed comments by May 21, 2021. 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."⁵ 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 resources*; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings."⁶ The rules are also intended to "minimize commission intervention in the discovery process."⁷ 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

⁵ *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 23 (Mar. 17, 1987).

⁶ *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76. (emphasis added).

⁷ O.A.C. 4901-1-16(A).

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 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."⁸ This proceeding was commenced when the PUCO opened the docket to "*review the political and charitable spending* by FirstEnergy in support of H.B.6 and the subsequent referendum effort."⁹

The PUCO has also adopted rules that specifically define the scope of discovery. O.A.C. 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

⁸ O.A.C. 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.").

⁹ *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).

proceeding.¹⁰ This scope of discovery also applies 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 O.A.C. 4901-1-20.

OCC's right to discovery is assured by law, rule and Supreme Court of Ohio ("Court") precedent.¹¹ 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.

In O.A.C. 4901-1-23, the PUCO provided the procedure for parties to obtain the enforcement of these discovery rights, guaranteed by law and rule. O.A.C. 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. O.A.C. 4901-1-23(C) details the technical requirements for a motion to compel, all of which OCC meets 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.¹² Copies of the discovery requests and the responses are to be attached.¹³ Finally, O.A.C. 4901-1-23(C) also requires the party seeking discovery

¹⁰ *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.

¹¹ *OCC v. PUC*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213.

¹² O.A.C. 4901-1-23(C)(1).

¹³ O.A.C. 4901-1-23(C)(2).

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 O.A.C. 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 now and is unable to obtain the response without the PUCO compelling such a result.

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 to “*review the political and charitable spending* by FirstEnergy in support of H.B.6 and the subsequent referendum effort.”¹⁴ Consistent with the PUCO’s direction that the proceeding concerns a review of *spending* by FirstEnergy on H.B. 6 activities, OCC served its Third Set of Discovery on January 15, 2021.

In its Third Set of Discovery, and in particular the discovery requests OCC is seeking to compel, OCC sought information and records that are fundamental to understanding if customers were charged, or their funds were used for political and charitable spending related to H.B. 6.

¹⁴ *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).

- INT-3-7 asked whether FirstEnergy Utilities (or those acting on the Utilities' behalf) engaged in political and charitable spending related to HB 6 activities and specifically sought the date, amount and accounts for all expenditures;
- INT-3-22 inquired as to the identity of persons responsible for directing each of the Ohio utilities political and charitable spending during the H.B. 6 period;
- INT-3-23 asked for the identity of person(s) employed by the utilities (outside consultants and lobbyists) providing services related to political and charitable spending during the relevant time frame;
- INT-3-25 inquired into the process for approving political and charitable spending by the FirstEnergy Utilities;
- RFP-3-4 asked for invoices detailing the goods and services supplied by FirstEnergy Service Company to the Utilities pertaining to specific transactions during the relevant time frame that were billed as "External Affairs and Communications" "Local Affairs and Economic Development" and "State Affairs."
- RFP-3-5 asked for detailed current organization charts of all three Operating companies.
- RFP-3-6 referred back to INT 3-22,3-23, and 3-24 and asked for documents generated or reviewed by persons identified in INT-3-22 and 3-23 pertaining to political and charitable spending undertaken during the relevant time frame.
- RFP-3-7 sought email communications from person(s) identified in INT-3-22 and 3-23, which contained specific relevant terms.

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.”

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.¹⁵ FirstEnergy argues that the information and documents sought by OCC are not reasonably calculated to lead to the discovery of relevant or admissible evidence.¹⁶ The Utilities claim that OCC’s discovery “does not relate to whether the costs of any H.B.6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies’ ratepayers in Ohio.”

The FirstEnergy Utilities have thus re-defined the subject matter of this proceeding, restricting it to rate impacts and not utility spending.¹⁷ But the Attorney Examiner has already ruled that OCC is allowed to ask about political and charitable contributions that were made by FirstEnergy Service Company (or any FirstEnergy entity) that have been charged back to the utilities. Fanelli Deposition Tr. at 262. Consistent with the Attorney Examiner’s earlier ruling, the FirstEnergy Utilities’ objections on relevance should be overruled.

¹⁵ *State ex rel. Fisher v. Rose Chevrolet, Inc.*, (C.A. 1992), 82 Ohio App.3d 520, 523.

¹⁶ Attachment 1.

¹⁷ Entry at ¶5.

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.

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 (R.C. 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.¹⁸

The PUCO should overrule these objections once again, as it did in the pre-hearing conference it held on March 25, 2021. At that time, the FirstEnergy Utilities had raised the same objections and the Attorney Examiner required them to produce information in spite of these objections. The PUCO should remain consistent with its ruling. The Companies' objections should be overruled.

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

OCC's interrogatories and requests for production seek information related to FirstEnergy's H.B. 6 spending: OCC's interrogatories seek to find out what was the

¹⁸ See, e.g., FirstEnergy Utilities' Motion for Protective Order, Memorandum in Support at 6 (Oct. 16, 2020).

spending (with accounts and amounts), who directed the spending, who provided outside lobbying efforts, and what was the process for approving the expenditures. The documents requests asked for specific invoices issued by FirstEnergy Services that may have contained charges for political and charitable spending, detailed organizations charts to help OCC understand the structure of the companies, with reporting relationships and cost centers, and copies of emails from individuals involved in directing the Utilities' political and charitable activities.

The FirstEnergy Utilities' objection that it is overbroad and unduly burdensome to respond to each of OCC's eight discovery requests should be overruled. 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 law¹⁹ 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.²⁰

Here FirstEnergy has failed to show how the interrogatories and requests for production of information are unduly burdensome. Because the burden falls upon the party resisting discovery to clarify and explain its objections and to provide support²¹ and FirstEnergy Utilities have failed to do so, the PUCO should overrule this objection.

¹⁹ 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."

²⁰ *Trabon Engineering Corp. v. Eaton Manufacturing Co.*, (N.D. Ohio 1964), 37 F.R.D. 51, 54.

²¹ *Gulf Oil Corp. v. Schlesinger*, (E.D.Pa. 1979), 465 F.Supp. 913, 916-917.

E. While some of OCC's requests may overlap earlier discovery, the problem is that the utilities provided deficient responses to that discovery making it necessary for OCC to re-ask questions.

The Companies allege that several of the eight discovery requests associated with this Motion to Compel are duplicative of earlier discovery. *See* Companies' objections to OCC INT-3-7, 3-23, and 3-25. We will concede that there is some overlap. But the overlap was necessitated by deficient responses the first time around and deficient responses even in the supplemental responses ordered by the PUCO.

For instance, INT-3-7 seeks specifics of political and charitable spending by FirstEnergy Utilities (or on behalf of FirstEnergy Utilities), including the dates, amounts, entity, and accounts the charges have been booked to. And while the Companies point to supplemental responses to OCC INT-1-5, 1-11, RPD-1-5 and INT-2-9, a review of the supplemental responses show how deficient they were and how they do not answer INT-3-7 -- only providing general information: In OCC INT-1-5 the Companies' supplemental response was that:

Portions of certain payments to Generation Now and Hardworking Ohioans were allocated to the Companies in 2017 and 2018 respectively but there has been no determination that those payments were in support of H.B.6.²²

The supplemental responses do not define "portions" or "certain payments" or when in 2017 and 2018 the unspecified payments were made. There are no accounts numbers provided. And what was the specific allocation to each utility? All information requested, ordered to be provided, but not provided. Deficient.

²² Attachment 2.

Similarly, the Companies claim that OCC INT-3-23 is duplicative of OCC INT-1-5. While there may be overlapping information requested, OCC INT-3-23 is directed to outside consultants and lobbying asking the Companies to identify persons employed in such capacity. There is nothing about the Companies' supplemental response to OCC INT-1-5 (provided above) that provides any responsive information requested in OCC INT-3-23. Again deficient.

And finally, the Companies claim that OCC INT-3-25 is duplicative of INT-1-5. And while the interrogatories may overlap, the supplemental response provided after OCC's Motion to Compel was granted, fails to even come close to discussing the process for approving political and charitable spending. Again, OCC is expected to accept the deficient supplemental response to OCC INT-1-5 as satisfying OCC INT-3-25. OCC is not willing to do so.

What has become evident over these months of dealing with the FirstEnergy Utilities is that they are masters at the game of obstruct and delay. When they don't want to provide answers, they simply redefine the discovery requests consistent with their view of the world (for instance in defining H.B. 6 activities). And then they provide only general information forcing follow-up discovery (with its added 21-day delay) and motion after motion to compel. For instance, in response to OCC's Request for Production of Document 3-4, the Companies produced documents from FERC filings (which OCC already has access to) instead of the *invoices* OCC requested (which OCC does not have access to). And in response to OCC RPD-3-5, the information provided falls way short of what OCC was seeking.

The Utilities should heed the wise words of the Commission: 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 resources*; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings."²³ The rules are also intended to "minimize commission intervention in the discovery process."²⁴

The PUCO should put a stop to these combative tactics which have no place before the PUCO. OCC's Motion to Compel should be granted.

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

As detailed in the attached Affidavit, OCC undertook efforts to resolve this discovery dispute. OCC and FirstEnergy participated in a prehearing conference in this case on March 25, 2021 relating to OCC's Motion to Compel on OCC's First and Second Sets of Discovery. In largely granting OCC's Motion to Compel, the Attorney Examiner provided guidance on the scope of discovery – guidance that seems to have gone unheeded by the Companies. That ruling should have resolved a lot and should have meant that the Companies would have submitted sufficient, revised responses to OCC, consistent with announced scope of discovery.

OCC initiated contact with the Companies early on (March 31st), expecting that the discovery disputes related to later sets of discovery, including OCC's Third Set, were resolved under the Attorney Examiner's rulings.²⁵ OCC notified the Companies that it was limiting its requests for revised responses to OCC's Third Set of Discovery to eight

²³ *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76. (emphasis added).

²⁴ O.A.C. 4901-1-16(A).

²⁵ Attachment 2.

requests including INT-3-7, 3-22-23, and 3-25, along with RFP-3-4 through 3-7. (see Attachment 1).

FirstEnergy requested a conference call to discuss the matter further. The conference call occurred on April 12, 2021. At that time, FirstEnergy agreed to provide some of the information requested, but the parties were unable to reach agreement on the remaining items. OCC agreed to give FirstEnergy until April 23, 2021 to provide the revised responses to the eight discovery requests in OCC's Third Set.

On the day before the Companies were supposed to provide revised requests to OCC's Third (and Fourth) Sets of Discovery, the Companies contacted OCC. FirstEnergy requested an extension of time until May 7, 2021 to respond to OCC's Third and Fourth Sets of Discovery. OCC indicated that it would have to further consider whether it would agree to give the Utilities more time to submit supplemental responses to the limited requests in OCC's Third (and Fourth) Sets of Discovery.

However, on April 22, 2021, the PUCO issued a procedural schedule requiring parties to file initial comments by May 21, 2021. Early the next day (April 23, 2021), before the start of business, OCC informed the Companies that it was not willing to agree to any further extension of time because it needs the information to prepare its comments.

OCC has exhausted all other reasonable means to resolve differences between it and FirstEnergy Utilities.

IV. CONCLUSION

The Attorney Examiner in a series of rulings has provided guidance to the parties on the appropriate scope of discovery. That guidance should have signaled the Companies that OCC's discovery has largely been on target, and appropriate for the

proceeding. The Utilities, however, seem to want to ignore those rulings and continue their obstruction and delay tactics.

Now, with comments due in less than a month, it is all the more imperative that the Utilities comply with the ruling and comply in a timely matter. The obstruction and delay should stop.

The PUCO should once again, 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 H.B. 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 near term.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Compel Third Set was served on the persons stated below via electronic transmission, this 28th day of April, 2021.

/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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**AFFIDAVIT OF JOHN FINNIGAN IN SUPPORT OF
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BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I, John Finnigan, attorney for the Office of 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. OCC served its Third Set of Discovery on January 15, 2021.
2. On February 17, 2021, FirstEnergy Utilities served their objections (with few substantive responses) to OCC's Third Set of Discovery. (Attachment 1).
3. OCC and FirstEnergy participated in a prehearing conference on March 25, 2021 relating to two earlier sets of OCC's discovery, OCC's First and Second Sets of Discovery. The Attorney Examiner largely granted OCC's Motion to Compel and in doing so, provided guidance on the scope of discovery. This provided parties with direction and resolved numerous disputed discovery issues.

4. Shortly after the pre-hearing conference, on March 31, 2021, OCC sent a letter to FirstEnergy seeking to resolve the discovery disputes over OCC's Third Set of Discovery. OCC agreed to limit its requests to Interrogatories Nos. 3-7, 3-22, 3-23, and 3-25, along with Requests for Production 3-4 through 3-7. (Attachment 2)
5. FirstEnergy requested a conference call to discuss the matter further. This occurred on April 12, 2021. During the call, FirstEnergy agreed to provide some of the information requested, but indicated it could not agree to provide revised responses on other matters in OCC's Third Set of Discovery. OCC agreed to allow the Utilities more time to issue revised responses (until April 23, 2021).
6. A day before the revised responses were due, the Utilities' Attorney contacted OCC. FirstEnergy requested another extension of time (until May 7, 2021) to respond to OCC's Third Set of Discovery. During that phone call further efforts were made to try to resolve the definitional issue presented with respect to "H.B. 6 activities."
7. OCC indicated it would get back to the Utilities on whether it could agree to an extension of time for providing revised responses to OCC's Third Set of discovery.
8. On April 22, 2021, the PUCO issued a procedural schedule requiring the parties to file initial comments by May 21, 2021. Before the start of business the next day, OCC notified the Utilities' Counsel that, given the procedural schedule, it would not agree to any further extensions of time to respond to these and any future discovery requests.

9. OCC and FirstEnergy Utilities are unable again to reach agreement on the eight requests from OCC's Third Set of Discovery. OCC has exhausted all reasonable means of resolving any differences, leading to the filing of this Motion to Compel.

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.

/s/ John Finnigan
John Finnigan, Affiant

Subscribed, sworn and witnessed by me in a videoconference using Microsoft Teams this 28th day of April 2021.



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

Debra Jo Bingham
Notary Public

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)	

**RESPONSES AND OBJECTIONS OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO
EDISON COMPANY TO THE THIRD SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Pursuant to Rules 4901-1-16 through 4901-1-22 of the Ohio Administrative Code and in accordance with Ohio Rules of Civil Procedure 26, 33, and 34, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) submit their responses and objections to the Office of Ohio Consumers’ Counsel’s (“OCC”) Third Set of Interrogatories and Requests for Production (collectively, “Discovery Requests”).

GENERAL OBJECTIONS

The Companies incorporate the following objections into each response below, as if fully restated therein:

1. The Companies object to OCC’s attempt to provide definitions and “instructions for answering” that are broader than, or inconsistent with, the rules of the Ohio Administrative Code or the Ohio Rules of Civil Procedure. The Companies will respond in accordance with their obligations under those rules.
2. The Companies object to the definition of “Documents” and “Documentation” to the extent it seeks to impose obligations on the Companies that are broader than, or inconsistent with, those imposed by the rules of the Ohio Administrative Code and the Ohio Rules of Civil

Procedure. The Companies construe the term “documents” to be synonymous in meaning and equal in scope to the usage of the term “documents” in Rule 34(A) of the Ohio Rules of Civil Procedure.

3. The Companies object to the definition of “Communication(s)” as overbroad, unduly burdensome, and vague and ambiguous, and the Companies further object to the extent that the definition seeks to impose obligations on the Companies that are broader than, or inconsistent with, those imposed by the rules of the Ohio Administrative Code and the Ohio Rules of Civil Procedure. For example, OCC defines “Communication(s)” to include the transmission of information by “oral” or “otherwise perceptible means” and therefore unreasonably purports to require the Companies to describe in detail communications that are not contained in any document. Further, the definition states that a request “seeking the identity of a communication . . . 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” and therefore unreasonably purports to place an undue burden on the Companies to identify any documents or communications having any “nexus” or containing any “explicit or implicit” reference to the subject matter of a communication.
4. The Companies object to the definition of “You,” “Your,” or “Yourself” as overbroad, unduly burdensome, vague, and ambiguous because it unreasonably purports to require the Companies to provide information on behalf of any “present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer” and is unlimited as to time. The Companies construe the terms “You,” “Your,” and “Yourself” to refer only to the Companies.

5. The Companies object to the definition of “Identify,” or “the identity of”, or “identified” as overbroad, unduly burdensome, vague, and ambiguous. For example, this definition unreasonably purports to obligate the Companies to provide information outside of their personal knowledge, to identify all persons “in the presence” of parties to communications, and to describe an “act” and the persons in the presence of the “actor.”
6. The Companies object to the definition of “FirstEnergy Service Co.” as vague and ambiguous in its use of the phrase “controlled by the Board of Directors of FirstEnergy Corp.”
7. The Companies object to the definition of “Political and Charitable Spending” as overbroad, unduly burdensome, vague, and ambiguous. The Companies further object to this definition to the extent it purports to state a legal conclusion regarding the scope of the Commission’s jurisdiction.
8. The Companies object to the definition of “House Bill 6 activities” as overbroad, unduly burdensome, vague, and ambiguous. The “Criminal Complaint” to which this definition refers does not contain any allegations of any conduct by the Companies or any allegations that the Companies engaged in any so-called “activities” in connection with House Bill 6.
9. The Companies object to the instruction “to produce responsive materials and information” in the possession of persons “purporting to act on [the Companies’] behalf” because this instruction on its face calls for the production of materials that are not within the Companies’ possession, custody, or control.
10. The Companies object to the instruction in numbered paragraph 8 of the “Instructions for Answering” as overbroad, unduly burdensome, vague, and ambiguous. For example, this

instruction unreasonably purports to require the Companies to search for and produce “information and tangible materials” over a 13-year period of time.

11. The Companies object to the “instructions” for invoking privilege to the extent they seek to impose requirements on the Companies that are broader than, or inconsistent with, those imposed by the Ohio Administrative Code or by the Ohio Rules of Civil Procedure. Should the Companies withhold any document on the basis of any applicable privilege, immunity, or protection, the Companies will provide the information required by Ohio Rule of Civil Procedure 26(B)(8)(a).
12. The Companies object to OCC’s “instructions” in numbered paragraphs 11 and 12 of the “Instructions for Answering” because they unreasonably purport to require the Companies to treat interrogatories as requests for production of documents or requests for production of documents as interrogatories under certain circumstances. The Companies will treat interrogatories as interrogatories and requests for production of documents as requests for production of documents.
13. The Companies object to OCC’s “instruction” in numbered paragraph 13 of the “Instructions for Answering” as vague and ambiguous because this instruction appears to have been copied and pasted from OCC’s requests in another proceeding. The Companies have filed no “Application” in this case.
14. The Companies object to each request to the extent that it seeks production of information that is confidential business, commercial, financial, or proprietary information belonging to the Companies or third parties.
15. The Companies object to OCC’s Discovery Requests to the extent any Request is duplicative of a previous request to which OCC has sought to compel a response in its

pending Motion to Compel. Case No. 20-1502, OCC Motion to Compel (Nov. 6, 2020). In this Third Set of Discovery Requests, OCC repackages some of its earlier requests even though the Commission has not yet ruled on the scope and propriety of those earlier requests.

16. The Companies object to OCC's Discovery Requests to the extent they seek information or documents protected from disclosure by the First Amendment. The Supreme Court has recognized that the forced disclosure of political associations raises First Amendment concerns, because the "[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association." *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958). Compelled disclosure of campaign-related communications in civil discovery can deter activities protected under the First Amendment "by chilling participation and by muting the internal exchange of ideas." *Perry v. Schwarzenegger*, 591 F.3d 1147, 1163 (9th Cir. 2010). Thus, courts "have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Id.* at 1160 (citing *AFL-CIO v. FEC*, 333 F.3d 168, 175 (D.C. Cir. 2003)); see also *Black Panther Party v. Smith*, 661 F.2d 1243, 1268 (D.C. Cir. 1981), *vacated on other grounds*, 458 U.S. 1118 (1982).

RESPONSES AND OBJECTIONS TO INTERROGATORIES

INT-03-01: Please provide a copy of all information provided to the PUCO related to the FirstEnergy Ohio utilities participation in the regulated money pool during the period of November 1, 2016 through October 31, 2020.

RESPONSE:

The Companies object to this Request as vague and ambiguous because it is styled as an interrogatory yet it seeks the production of documents. To the extent this Request functions as an interrogatory, the Companies object to this Request as unduly burdensome, vague, and ambiguous because it would call for a narrative response of listing all information provided to the PUCO relating to the Companies' participation in the regulated money pool. The Companies also object to this Request to the extent it seeks confidential, proprietary, and/or trade secret information. The Companies further object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. The information sought is not related to, or reasonably calculated to lead to information related to, whether the costs of any political or charitable spending in support of Am. H.B. 6—either supporting enactment of the bill or opposing the subsequent referendum effort (hereinafter, “H.B. 6 Spending”)—were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio.

INT-03-02: Please identify the monthly Regulated Utility Money Pool balances in 2017 through 2020, by month., and by the regulated entity providing the revenue.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs

of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio.

INT-03-03: Please identify the FirstEnergy Ohio Utilities annual dividends (by utility, date) paid to FirstEnergy Corp. in 2019 and 2020, along with the source of revenue from which the dividend was paid.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. The Companies further object to this Request because it is overbroad, unduly burdensome, vague, and ambiguous to the extent it purports to require the Companies to identify "the source of revenue from which the dividend was paid."

INT-03-04: Please identify the average annual dividends paid to FirstEnergy Corp. by FirstEnergy regulated utility subsidiaries (including non-Ohio regulated utilities) (by utility, date) for 2018-2019 and 2019-2020.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. The Companies further object to this Request because dividends

paid to FirstEnergy Corp. by non-Ohio regulated utilities are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate.

INT-03-05: Please explain how the FirstEnergy Ohio utilities (Companies) track DMR revenues.

RESPONSE:

The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a "review of Rider DMR, as contemplated by ESP IV," including "an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV." *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30, 2020) ("Rider DMR Proceeding"). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding.

INT-03-06: Please identify all revenue contributed to the regulated utility money pool by the FirstEnergy Ohio Utilities (by each utility) beginning 11/1/16 through 10/31/2020.

RESPONSE:

The Companies object to this Request as overbroad, unduly burdensome, vague, and ambiguous because it unreasonably purports to require the Companies to “identify all revenue” contributed to the regulated money pool over a four-year period. The Companies further object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence.

INT-03-07: Please identify (date, amount, entity, account) all FirstEnergy Ohio Utility expenditures (including expenditures made by FirstEnergy affiliates by or on behalf of the FirstEnergy Ohio Utilities) for political and charitable spending during the timeframe of November 1, 2016 through Oct. 31, 2020 related to HB 6 activities. Please identify the source of the revenue for the expenditures and indicate whether the revenues came from the regulated money pool.

RESPONSE:

The Companies object to this Request as overbroad, unduly burdensome, vague, and ambiguous to the extent it (i) purports to require the Companies to identify “expenditures made by FirstEnergy affiliates” “on behalf of” the Companies and (ii) purports to require the Companies to “identify the source of the revenue” for expenditures. The Companies also object to the term “HB 6 activities” for the reasons stated in the General Objections. The Companies further object to this request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible

evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. The Companies further object to this Request because expenditures made by the Companies or their affiliates are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. Additionally, the Companies object to this Request as duplicative of OCC INT-01-005, INT-01-011, RFA-01-006, RPD-01-005, and INT-02-009, which are currently at issue in OCC's pending motion to compel.

- INT-03-08:** Please identify and explain the approval process necessary for a dividend payment to be made by the Ohio regulated utilities to FirstEnergy Corp., including
- a. the employees of the Ohio Utilities who must approve the dividend payment;
 - b. documents associated with the approval process;
 - c. meetings required for the approval of a dividend;
 - d. specific metrics considered as rationale for the dividend; and
 - e. employees of FirstEnergy entities that have input into the dividend process.

RESPONSE:

The Companies object to this Request and its subparts as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio.

INT-03-09: Please identify how Rider DMR has affected the capital structures of the FirstEnergy Ohio Utilities and FirstEnergy Corp.

RESPONSE:

The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a "review of Rider DMR, as contemplated by ESP IV," including "an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV." *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30, 2020). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding.

INT-03-010: Please identify how Rider DMR has provided credit support for the FirstEnergy Ohio Utilities and FirstEnergy Corp.

RESPONSE:

The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery

of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a "review of Rider DMR, as contemplated by ESP IV," including "an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV." *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30, 2020) ("Rider DMR Proceeding"). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding.

INT-03-011: Please identify and explain how Rider DMR revenue helps the FirstEnergy Ohio Utilities and FirstEnergy Corp. maintain investment grade ratings.

RESPONSE:

The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a "review of Rider DMR, as contemplated by ESP IV," including "an examination of the time period leading up to the passage

of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV.” *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30, 2020). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding.

INT-03-012: During the entire period that the DMR rider was in effect and collecting funds from customers, were all DMR funds collected from customers placed in the regulated utility money pool?

RESPONSE:

The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies’ ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a “review of Rider DMR, as contemplated by ESP IV,” including “an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV.” *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30,

2020). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding. Additionally, the Companies object to this Request as duplicative of OCC RFA-01-012.

INT-03-013: When the PUCO ordered a refund/credit to the FirstEnergy Ohio Utilities' customers for funds collected under the DMR rider, was revenue taken out of the regulated utility money pool to cover the credit/refunds?

RESPONSE:

The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a "review of Rider DMR, as contemplated by ESP IV," including "an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV." *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30, 2020). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding.

INT-03-014: Did other non-Ohio regulated utilities have borrowing access to the regulated utility money pool during the time period that the DMR funds were placed into the pool? If so, for the period that the DMR funds were placed in the utility regulated money pool, please identify which FirstEnergy entities borrowed from the pool, by entity, amount, date, purpose, and identify the documents that would show the borrowings.

RESPONSE:

The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a "review of Rider DMR, as contemplated by ESP IV," including "an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV." *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30, 2020). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding.

The Companies further object because this Request seeks information that is outside of OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to this

Request as overbroad, unduly burdensome, vague, and ambiguous because it unreasonably purports to require the Companies to “identify” all instances in which any “FirstEnergy entities borrowed from the pool” during the period Rider DMR was in effect. Additionally, the Companies object to this Request as duplicative of OCC RFA-01-019.

INT-03-015: Do you agree with Oxford's conclusion (Mid Term Audit Report at 17) that “[t]he benefits of Rider DMR may be temporary unless FirstEnergy improves its financial position (e.g. pays down debt) before the Rider term expires”? If not, why not?

RESPONSE:

The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies’ ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a “review of Rider DMR, as contemplated by ESP IV,” including “an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV.” *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30, 2020). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding.

INT-03-016: Did the FirstEnergy Ohio Utilities or any FirstEnergy entity pay down debt before the DMR expired? If so identify the debt that was paid down. If other actions were taken to improve FirstEnergy's financial position before the Rider term expired, please identify the actions.

RESPONSE:

The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a "review of Rider DMR, as contemplated by ESP IV," including "an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV." *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30, 2020). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding.

The Companies further object to this Request as overbroad, unduly, burdensome, vague, and ambiguous because it unreasonably purports to require the Companies to provide information concerning whether "any FirstEnergy entity pa[id] down debt before the DMR expired," to

“identify the debt that was paid down,” and to “identify” any “other actions” “taken to improve FirstEnergy’s financial position before the Rider term expired.” The Companies also object to this Request because OCC has no jurisdiction to investigate the business practices of FirstEnergy Corp. or other affiliates of the Companies.

INT-03-017: Please explain the difference between internal funds and external funds as it relates to the regulated money pool.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies’ ratepayers in Ohio. The Companies further object to this Request as vague and ambiguous in its use of the terms “internal funds” and “external funds.” This Request is so lacking in reasonable particularity that the Companies can only speculate as to the information sought.

INT-03-018: Please update the credit metrics (showing FirstEnergy forecasted credit metrics with Rider DMR and without rider DMR, according to Moody's metrics and S&P metrics) shown on page 22 of the Oxford Mid-Term Report to include actual credit metrics achieved through 2020 and the most recent forecasted credit metrics for future periods.

RESPONSE:

The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery

of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a "review of Rider DMR, as contemplated by ESP IV," including "an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV." *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30, 2020). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding.

INT-03-019: Please identify the current credit ratings from S&P and Moody's for FirstEnergy and its Ohio utilities.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. The Companies further object to the term "FirstEnergy" as vague and ambiguous.

INT-03-020: Please identify for credit ratings in effect from April 2019 through present, upgrades, downgrades, reviews by credit rating agencies, along with the date of the action.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. The Companies further object to this Request as overbroad, unduly burdensome, vague, and ambiguous. The Request nowhere identifies any relevant entity or credit ratings agency and is therefore so lacking in reasonable particularity that the Companies can only speculate as to the information sought.

INT-03-021: Please identify all goods and services provided by FirstEnergy Service Company to the FirstEnergy Ohio Utilities for the period 11/1/16 to 10/31/2020, identifying the information by category/department, Ohio utility, \$ allocated, in the form as provided in the Sage Final Report for Compliance in Case No. 17-974-EL-UNC, at page 105.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. The Companies further object to this Request as overbroad,

unduly burdensome, vague, and ambiguous because it seeks a description of literally “all goods and services” provided by FirstEnergy Service Company to the Companies over a four-year period.

Subject to and without waiving any of their objections, the Companies direct OCC to OCC-Set-3-RPD-004 Attachment 1 and OCC-Set-3-RPD-004 Attachment 2.

INT-03-022: Please identify person(s) at the FirstEnergy Ohio utility level that was responsible for directing each of the Ohio utilities political and charitable spending during the time period of November 1, 2016 through October 31, 2020). Please include:

- a. the name, position, department of the person(s)
- b. the reporting relationships of the person(s)(superiors and subordinates)
- c. a job description of the position held by the person(s)
- d. If there is no person(s) responsible for directing the political and charitable spending at the FirstEnergy utility companies, please provide the information requested in (a-c) for person(s) within the FirstEnergy organization (including FirstEnergy Corp., FirstEnergy Service Co.) who is responsible for directing the FirstEnergy Utilities political and charitable spending.

RESPONSE:

The Companies object to this Request and its subparts as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies’ ratepayers in Ohio. Additionally, the Companies object to this

Request as duplicative of OCC INT-01-005, which is currently at issue in OCC's pending motion to compel.

INT-03-023: Please identify any person(s) employed by or on behalf of the FirstEnergy Utilities (i.e. outside consultants, lobbyists) who provided services related to political and charitable spending during the time period of November 1, 2016 through October 31, 2020.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Additionally, the Companies object to this Request as duplicative of OCC INT-01-005, which is currently at issue in OCC's pending motion to compel.

INT-03-024: For each individual identified in response to the two preceding interrogatories, please identify documents generated, or reviewed by such persons pertaining to the political and charitable spending undertaken during the time period of November 1, 2016 through October 31, 2020.

RESPONSE:

The Companies object to this Request as overbroad, unduly burdensome, vague, and ambiguous in its request to "identify" all "documents generated" or "reviewed" "pertaining to political and charitable spending" over a four-year period by a set of individuals. The Companies further object to this request as not relevant or reasonably calculated to lead to the discovery of

relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. The Companies also object to this Request to the extent it seeks the production of information protected from disclosure by the attorney client privilege or attorney work product doctrines.

INT-03-025: For the time period November 1, 2016 through October 31, 2020, please identify the process for approving political and charitable spending by or on behalf of the FirstEnergy Utilities, identifying the persons involved, and person(s)/committees or entity with ultimate approval.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Additionally, the Companies object to this Request as duplicative of OCC INT-01-005, which is currently at issue in OCC's pending motion to compel.

**RESPONSES AND OBJECTIONS TO
REQUESTS FOR PRODUCTION OF DOCUMENTS**

RPD-03-01 Please provide a copy of the most current Utility Money Pool agreement, and any prior version or amendments to the Utility Money Pool Agreement.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Additionally, the Companies object to this Request as duplicative of OCC RPD-01-015.

RPD-03-02 Please provide a copy of all information provided to the PUCO related to the FirstEnergy Ohio utilities participation in the regulated money pool during the period of November 1, 2016 through October 31, 2020.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Additionally, the Companies object to this Request as duplicative of OCC RPD-01-016.

RPD-03-03 Please provide a complete unredacted copy of the Oxford Advisor's Mid-term Audit Report.

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Rather, this Request seeks information related to the subject matter of a separate proceeding. The Commission has ordered in a separate case a "review of Rider DMR, as contemplated by ESP IV," including "an examination of the time period leading up to the passage of H.B. 6 and the subsequent referendum, in order to ensure funds collected from ratepayers through Rider DMR were only used for the purposes established in ESP IV." *In the Matter of the Review of Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, No. 17-2474-EL-RDR, Entry (Dec. 30, 2020). The Companies make no concession that this Request would be proper in the Rider DMR Proceeding and reserve all rights to further object on any applicable grounds to this Request in that proceeding. The Companies further object to the extent this Request calls for the production of confidential, proprietary, and/or trade secret information.

RPD-03-04 Referring to the OCC Int-3-021, for the "External Affairs and Communications" "Local Affairs and Economic Development" and "State Affairs" Category/Department, please provide all invoices detailing the goods and service provided.

RESPONSE:

Please see the Companies' objections and response to OCC INT-3-021, which the Companies incorporate here by reference. The Companies direct OCC to OCC-Set-3-RPD-004 Attachment 1 and OCC-Set 3-RPD-004 Attachment 2.

RPD-03-05 Please provide detailed current organization charts of the three Ohio operating companies showing all positions, the reporting relationships (superior and subordinates), the title of the position department or unit name, the cost center, and the current incumbent (or indicate that the position is vacant).

RESPONSE:

The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. Additionally, the Companies object to this Request as duplicative of OCC RPD-01-20, which is currently at issue in OCC's pending motion to compel.

Subject to and without waiving any of their objections, please see OCC-Set-3-RPD-005 Attachment 1.

RPD-03-06 Please provide a copy of all documents asked to be identified in OCC INT-3-024.

RESPONSE:

Please see the Companies' objections and response to OCC INT-3-024, which the Companies incorporate here by reference.

RPD-03-07 For persons asked to be identified in OCC INT-3-022 and 3-023, for the time period Nov. 1, 2016 through October 31, 2020, please provide a copy of all email communications received or sent containing any one of the following terms: "H.B. 6," "nuclear," "Davis-Besse," "Perry," "OVEC," "decoupling," "Householder,"

“Speaker,” “Generation Now,” “referendum,” “PUCO “Randazzo” “legislation,” “501.”

RESPONSE:

The Companies object to this Request as overbroad, unduly burdensome, vague, ambiguous, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence. OCC’s Request is entirely improper; it unreasonably demands that the Companies process a set of search terms against an unidentified universe of custodians for a four-year period of time and then produce *all* emails containing any of those terms regardless of whether they relate to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies’ ratepayers in Ohio. The Request ignores the limits on discovery imposed by the Commission’s rules and the Ohio Rules of Civil Procedure. The Companies further object to the extent this Request calls for the production of documents protected from disclosure by the attorney-client privilege or attorney work product doctrines.

Dated: February 17, 2021

Respectfully submitted,

/s/ Ryan A. Doringo

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On behalf of the Companies

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on counsel for all parties by email on
February 17, 2021:

/s/ Margaret M. Dengler
Attorney for the Companies

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Office of the Ohio Consumers' Counsel

March 31, 2021

Michael R. Gladman
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VIA E-MAIL

Re: Discovery Matters, OCC Third Set, Case No. 20-1502-EL-UNC

Michael:

I am writing in the hope of resolving our differences regarding OCC's Third Set of Discovery.

Attorney Examiner Price's recent rulings better defined the scope of the case and, in the spirit of those rulings, we want to narrow the scope of our requests. Accordingly, we will not seek answers in this case for the following items from our Third Set of Discovery: Interrogatories 1-6, 8-21 and 24, and Requests for Production of Documents 1-3 and 6.

This leaves us with the following discovery requests which we would like you to reconsider responding to: INT 7, 22-23 and 25, and Requests for Production of Documents 4-7. Consistent with Examiner Price's ruling, we can agree to narrow the time frame for these discovery requests to January 1, 2017 through December 31, 2019. And for Interrogatory 7, we are willing to forego seeking the source of the expenditures.

We hope you will reconsider your discovery responses given the rulings by Attorney Examiner Price at the pre-hearing conference. As always, if you would like to discuss these matters further, we are open to having that discussion in the near term. We anticipate getting resolution of these matters by April 7. And if we cannot reach resolution, we plan on filing a motion to compel on or before April 9.

Our aim is to obtain the information we need, while being mindful of the need to do so within the spirit of the Commission's discovery rules and consistent with Examiner Price's rulings.

Thank you for your consideration in this matter.

Sincerely,

/s/ Maureen R. Willis

Maureen R. Willis
Senior Counsel
Assistant Consumers' Counsel

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)	

**SUPPLEMENTAL RESPONSES OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO
EDISON COMPANY TO THE FIRST SET OF INTERROGATORIES, REQUESTS
FOR ADMISSION, AND REQUESTS FOR PRODUCTION OF DOCUMENTS BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Pursuant to Rules 4901-1-16 through 4901-1-22 of the Ohio Administrative Code and in accordance with Ohio Rules of Civil Procedure 26, 33, and 34, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the "Companies"), pursuant to O.A.C. 4901-1-19, -20 and -22, hereby submit these Supplemental Responses to the First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents (collectively, the "Requests") served by the Office of the Ohio Consumers' Counsel.

GENERAL OBJECTIONS

The Companies assert the following general objections (the "General Objections"). The General Objections are incorporated into each response by the Companies in the Specific Objections and Responses (the "Responses") set forth below and, therefore, any failure to repeat the General Objections in any of the Responses shall not be deemed a waiver.

1. The Companies object to OCC's "Instructions for Answering," "Definitions," and to the Requests as improper to the extent they purport to impose obligations beyond those required or permitted by the Ohio Rules of Civil Procedure, the procedural rules of the Commission, or any other applicable law or rule (the "Applicable Laws").

2. Any Response to the Requests is made by the Companies solely for the purpose of this action and without waiving or intending to waive, but, on the contrary, preserving and intending to preserve:
 - a. the right to object, on the grounds of propriety, competency, privilege, relevancy, materiality, confidentiality, authenticity, admissibility or any other proper grounds, to the use of the Responses, documents, or information provided by the Companies as evidence for any purpose, in whole or in part, in any subsequent proceeding, or in any trial in this or any other action;
 - b. the right to object on any grounds, at any time, to other discovery requests involving or relating to the subject of the Requests to which the Companies have responded herein; and
 - c. the right at any time to revise, correct, supplement or clarify these Responses, General Objections, and other objections propounded herein.
3. The Companies object to the Requests as overly broad and unduly burdensome to the extent they are not reasonably limited in time and, in particular, to the extent the Instructions require Requests to include the period from January 1, 2008 through the present.
4. The Companies object to each Request to the extent that it seeks production of information that is confidential business, commercial, financial, or proprietary information belonging to the Companies or third parties.
5. The Companies object to the Requests to the extent the Requests demand that the Companies do anything other than conduct a reasonably diligent search of centralized files and electronic records reasonably likely to contain requested documents. To the extent the Companies agree to produce documents responsive to a Request, the Companies are not

stating, agreeing, or representing that any such documents in fact exist or that, if such documents do exist, they are within the Companies' possession, custody or control. Neither the fact that an objection is interposed nor the fact that no objection is interposed necessarily means that responsive documents or information exist.

6. The General Objections and Specific Objections and Responses set forth herein are based upon information now available to the Companies, and the Companies reserve the right at any time to amend, revise, correct, add to, or clarify any of the General Objections, other objections and/or Responses set forth herein.
7. The Companies submit the following supplemental responses in accordance with the Attorney Examiner's March 25 ruling on OCC's Motion to Compel. *See generally* Case No. 20-1502, Transcript ("March 25 Tr.") (March 25, 2021). Therefore, the Companies submit these supplemental responses with the understanding that the relevant time period is January 1, 2017 to December 31, 2019 and that "political and charitable spending" in this proceeding does not include (a) "labor and shared service employee expenses and capital related to labor and shared employee expenses" or (b) inside lobbyists' time. March 25 Tr., at 10:6-11:5.
8. The Companies object to the definition of "House Bill 6 activities" as overbroad, unduly burdensome, vague, and ambiguous. Further, the "Criminal Complaint" to which this definition refers does not contain any allegations of any conduct by the Companies or any allegations that the Companies engaged in any so-called "activities" in connection with House Bill 6.

SUPPLEMENTAL RESPONSES TO INTERROGATORIES

INT-01-002: Please identify all payments made by FirstEnergy Utilities to Generation Now. For each payment, identify:

- e. The date the payment was made;
- f. The amount of the payment(s);
- g. The name and position of the person(s) that authorized the payment;
- h. The person the individual(s) identified in (c) directly reports to;
- i. All persons, committees, departments, boards that approved each of the payments;
- j. All persons within FirstEnergy Utilities that had knowledge of each payment;
- k. 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

RESPONSE:

The Companies object to this Interrogatory and its sub-parts on the grounds that they seek information irrelevant to the subject matter involved in the proceeding and are not reasonably calculated to lead to the discovery of relevant or admissible evidence because they involve the Companies' possible expenditures instead of whether the costs of any political or charitable spending in support of Am. H.B. 6 – either supporting enactment of the bill or opposing the subsequent referendum effort (hereinafter, “H.B. 6 Spending”), were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. The Companies

further object to this Interrogatory and its sub-parts because expenditures made by the Companies are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this Interrogatory and its sub-parts because they are overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seek to impose an undue expense. The Companies further object to the sub-parts of this Interrogatory because the payment detail requested is not relevant to the subject matter involved in the proceeding and is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The Companies further object to the sub-parts of this Interrogatory to the extent they seek disclosure of opinions, mental impressions, conclusions, or legal theories of the Companies' counsel or other representatives.

1. 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:

The Companies object to this Interrogatory sub-part to the extent it seeks information irrelevant to the question of H.B. 6 Spending and not reasonably calculated to lead to the discovery of relevant or admissible evidence. The Companies further object to this Interrogatory sub-part because expenditures made by the Companies are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this Interrogatory sub-part because it is overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense.

Subject to and without waiving the foregoing objections, the Companies have not included, directly or indirectly, the costs of any H.B. 6 Spending in any rates or charges paid by ratepayers in Ohio.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

Subject to and without waiving the foregoing objections, there are no payments made by the Companies to Generation Now.

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 subaccounts 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

RESPONSE:

The Companies object to this Interrogatory and its sub-parts on the grounds that they seek information irrelevant to the subject matter involved in the proceeding and are not reasonably calculated to lead to the discovery of relevant or admissible evidence because they involve the possible expenditures by the Companies and potentially others 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 in Ohio. The Companies further object to this Interrogatory and its sub-

parts because expenditures made by the Companies and potentially others are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this Interrogatory and its sub-parts because they are overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seek to impose an undue expense. The Companies further object to the sub-parts of this Interrogatory because the payment detail requested is not relevant to the subject matter involved in the proceeding and is not reasonably calculated to lead to the discovery of relevant or admissible evidence. The Companies further object to the sub-parts of this Interrogatory to the extent they seek disclosure of opinions, mental impressions, conclusions, or legal theories of the Companies' counsel or other representatives.

- 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:

The Companies object to this Interrogatory sub-part to the extent it seeks information irrelevant to the question of H.B. 6 Spending and not reasonably calculated to lead to the discovery of relevant or admissible evidence. The Companies further object to this Interrogatory sub-part because expenditures made by the Companies are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this Interrogatory sub-part because it is overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense.

Subject to and without waiving the foregoing objections, the Companies have not included, directly or indirectly, the costs of any H.B. 6 Spending in any rates or charges paid by ratepayers in Ohio.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

Subject to and without waiving the foregoing objections, there are no costs incurred by the Companies, directly or indirectly, for political or charitable spending that have been identified to support House Bill 6. Portions of certain payments to Generation Now and Hardworking Ohioans were allocated to the Companies in 2017 and 2018, respectively, but there has been no determination that those payments were in support of House Bill 6.

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:

The Companies object to this Interrogatory on the grounds that it seeks information irrelevant to the subject matter involved in the proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence because it involves the possible expenditures by the Companies 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 in Ohio. The Companies further object to this Interrogatory because expenditures made by the Companies are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this Interrogatory because it is overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense. The Companies further object to this Interrogatory because the payment detail requested is not relevant to the subject matter involved

in the proceeding and is not reasonably calculated to lead to the discovery of relevant or admissible evidence.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

Subject to and without waiving the foregoing objections, see the Companies' supplemental response to OCC INT-01-005.

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:

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

The Companies object to this Interrogatory and its sub-parts on the grounds that they seek information irrelevant to the subject matter involved in the proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence because they involve the possible expenditures by the Companies 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 in Ohio. The Companies further object to this Interrogatory and its sub-parts because expenditures made

by the Companies are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this Interrogatory and its sub-parts because they are overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seek to impose an undue expense. The Companies further object to this Interrogatory and its sub-parts because the accounting detail requested is not relevant to the subject matter involved in the proceeding and is not reasonably calculated to lead to the discovery of relevant or admissible evidence.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

Subject to and without waiving the foregoing objections, see the Companies' supplemental response to OCC INT-01-005.

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;
- g. FirstEnergy Foundation

RESPONSE:

The Companies object to this Interrogatory and its sub-parts on the grounds that they seek information irrelevant to the subject matter involved in the proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence because they are unrelated to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. The Companies further object to this

Interrogatory and its sub-parts because expenditures made by the Companies are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this Interrogatory and its sub-parts because they are overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seek to impose an undue expense by, among other things, not defining how these types of expenses would be associated with providing electric service. The Companies further object to this Interrogatory and its sub-parts because the accounting detail requested is not relevant to the subject matter involved in the proceeding and is not reasonably calculated to lead to the discovery of relevant or admissible evidence.

Subject to and without waiving the foregoing objections, the costs of the Companies' political and charitable spending are recorded in FERC Accounts 426.1 and 426.4, which are not used to calculate the Companies' rates or charges.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

Subject to and without waiving the foregoing objections, see OCC INT-01-14 Attachment 1.

INT-01-19: 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?

RESPONSE:

The Companies object to this Interrogatory and its sub-parts on the grounds that it seeks information irrelevant to the subject matter involved in the proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence because is unrelated to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies’ ratepayers in Ohio. The Companies further object to this Interrogatory because it is overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

Subject to and without waiving the foregoing objections,

- a. The \$15,000,000 included on line 10 of page 261 relates to two items recorded in December 2018 in FERC Account 426.1 that were accrued for but not yet paid: 1) \$10,000,000 is a contribution to FirstEnergy

Foundation; and 2) \$5,000,000 is an economic development contribution commitment. These amounts did not impact retail electric customers' rates.

- b. The referenced amounts are included in the beginning and ending FERC Account 190 totals on page 234. The change in the balance of "charitable contribution carryforward" is primarily due to the deferred tax asset impact of the amounts discussed above in part a. These amounts did not impact retail electric customers' rates.
- c. FERC Account 930.2 is not for political or charitable spending.
 - (i) The (\$661,217) is the write-off of previously accrued but unspent funds.
- d. Included in the amounts on page 429 of OE's 2018 FERC Form 1 is \$64,166 of costs allocated from FirstEnergy Service Company (FESC) to OE for political or charitable spending. These amounts were all reported in FERC Accounts 426.1 and 426.4, and they did not impact retail electric customers' rates.

In addition, a payment of \$500,000 was made in 2018 by FESC to Hardworking Ohioans, and a portion of the payment was allocated to the Companies as follows: CEI = \$62,600; OE = \$84,450; and TE = \$30,050. These amounts were included in the Companies' 2018 FERC Form 1, page 429. The amounts were charged to FERC Account 923 and a portion was capitalized. In September 2020, these amounts were reclassified to FERC Account 426.4. These costs incurred by the Companies did not impact retail electric customers' rates.

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;
- 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:

The Companies object to this Interrogatory and its sub-parts on the grounds that it seeks information irrelevant to the subject matter involved in the proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence because is unrelated to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies’ ratepayers in Ohio. The Companies further object to this Interrogatory because it is overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

Subject to and without waiving the foregoing objections,

- a. This is the deferred tax asset balance included in FERC Account 190 on page 234 related to CEI shareholder funding commitments from Case No. 14-1297-EL-SSO.
- b. The line item “Ohio Economic Development Contribution” on lines 3-4 on page 269 shows the balance of CEI’s shareholder funding commitments from Case No. 14-1297-EL-SSO reflected as a long-term liability at the

beginning and ending of the year. The debit to "Contra Account 242" shows the amount moved from the long-term account to the short-term account.

- c. The line item is included in the balances on line 1 of page 276. This line item is the deferred tax liability related to charitable contributions deducted at the OH municipal jurisdictions, but not deducted at the federal level.
- d. The Companies are not able to locate the referenced amount of \$22,891,423 in CEI's 2018 FERC Form 1. Assuming the question is asking about the difference in FERC Account 930.2 between the 2016 FERC Form 1 and the 2017 FERC Form 1, the primary difference is \$22,240,000 in shareholder funding commitments from Case No. 14-1297-EL-SSO that were accrued for in 2016.

SUPPLEMENTAL RESPONSES TO REQUESTS FOR ADMISSIONS

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:

The Companies object to this Request on the grounds that it seeks information irrelevant to the subject matter involved in the proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence because it involves the possible expenditures by the Companies 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 in Ohio. The Companies further object to this Request because expenditures made by the Companies are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this

Request because it is overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

Subject to and without waiving the foregoing objections: Denied.

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:

The Companies object to this Request on the grounds that it seeks information irrelevant to the subject matter involved in the proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence because it involves the possible expenditures by the Companies 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 in Ohio. The Companies further object to this Request because expenditures made by the Companies are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this Request because it is unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

Subject to and without waiving the foregoing objections: Denied.

**SUPPLEMENTAL RESPONSES TO
REQUESTS FOR PRODUCTION OF DOCUMENTS**

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.

RESPONSE:

The Companies object to this Request to the extent it seeks information that is protected by the attorney client and work product privileges or otherwise seeks disclosure of opinions, mental impressions, conclusions, or legal theories of the Companies' counsel or other representatives. The Companies further object to this Request as vague and ambiguous. The Companies further object to this Request because it is overly broad, unduly burdensome, vague and ambiguous. The Companies incorporate their objections to OCC INT-01-002 through 01-007, and 01-011 through 01-022 into this response.

Subject to and without waiving the foregoing objections, see OCC RPD 01-004 Attachment 1 and the Companies' tariffs.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

See INT-01-014 Attachment 1.

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.

RESPONSE:

The Companies object to this Request on the grounds that it seeks information irrelevant to the subject matter involved in the proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence because it is not related to whether the costs of any

H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio. The Companies further object to this Request because political and charitable spending are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this Request because it is overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense. The Companies further object to this Request to the extent it seeks information that is protected by the attorney client and work product privileges or otherwise seeks disclosure of opinions, mental impressions, conclusions, or legal theories of the Companies' counsel or other representatives.

SUPPLEMENTAL RESPONSE (Dated April 12, 2021):

See supplemental response to OCC INT-01-005.

Dated: April 12, 2021

Respectfully submitted,¹

/s/ Ryan A. Doringo

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On behalf of the Companies

¹ Supplemental answers to interrogatories were prepared by Santino Fanelli.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on counsel for all parties by email on
April 12, 2021:

/s/ Margaret M. Dengler
Attorney for the Companies

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

Summary: Motion Motion to Compel Responses to Third Set of Discovery and Request for Expedited Ruling by Office of the Ohio Consumers' Counsel

electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.