

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)
Illuminating Company, and the Toledo)
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**MOTION TO COMPEL RESPONSES TO
FOURTH 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 our Fourth Set of Discovery, consisting of twenty interrogatories and six requests for production. Not a single answer was provided to OCC. Only objections. So much for FirstEnergy's new approach to "fostering trust and transparency at all levels."¹

OCC needs this information to determine how the tainted H.B. 6 scheme may have impacted the FirstEnergy Utilities and the rates their customers paid. OCC files this

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

Motion to Compel to find out how FirstEnergy paid for H.B. 6 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’s Fourth Set of Discovery (Attachment 1).

Based on rulings by the PUCO’s Attorney Examiner, OCC requests that the PUCO compel FirstEnergy Utilities to fully respond to Interrogatories Nos. 4-2, 4-4 through 4-18, and 4-20 and Requests for Production of Documents 4-1 and 4-2. At this time, OCC is not seeking to compel other information it requested in its Fourth Set of Discovery. Consistent with the Attorney Examiners previous discovery rulings, OCC agrees to narrow the time frame for its compelled discovery requests to January 1, 2017 through December 31, 2019. The Interrogatories and Requests for Production, along with FirstEnergy’s responses, are at Attachment 1.

The affidavit at Attachment 2 describes the efforts OCC has been engaged in since April 1, 2021 to resolve differences between it and FirstEnergy, consistent with O.A.C. 4901-1-23(C)(3). FirstEnergy and OCC have failed to reach a mutually satisfactory solution to their differences.

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

² See O.A.C. 4901-1-12 and 4901-1-23.

discovery conflict more quickly, given the upcoming deadline for comments (May 21, 2021). 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 Fourth Set of Discovery on February 3, 2021. This seeks information on whether FirstEnergy paid money to any of the persons or entities identified in the criminal complaint³ and, if so, whether any of these costs were allocated to the FirstEnergy Utilities.

OCC’s discovery focused on FirstEnergy’s political and charitable spending, consistent with the PUCO’s words when it opened this case to review FirstEnergy’s “political and charitable spending” in support of H.B. 6. As noted in the Entry, the PUCO has jurisdiction to conduct this investigation. And OCC’s discovery is consistent with the numerous Attorney Examiner rulings including the Attorney Examiner’s rulings finding

³ *United States v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes, and Generation Now*, Case No. 1:20-MJ-00526 (I.S. Dist. S.D.) at ¶17 (July 17, 2020).

that it fair for OCC to ask about political and charitable contributions that were made by FirstEnergy Service Company or any FirstEnergy entity and charged back to the utilities. See Deposition of Santino Fanelli at 262 (Mar. 10, 2021).

On February 23, 2021, FirstEnergy Utilities served their response to OCC's Fourth Set of Discovery. (Attachment 1). FirstEnergy Utilities' responses were nearly identical at every turn. They objected to the discovery as not reasonably calculated to lead to the discovery of relevant and admissible evidence, based on their reading of the show cause order. Additionally, they alleged that "expenditures made by the Companies are outside OCC's jurisdiction and thus, unlawful for OCC to investigate." The FirstEnergy Utilities objected that they could not be required to disclose information about these payments because it would violate their First Amendment rights. And FirstEnergy Utilities complained that OCC's discovery is "overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense."⁴ FirstEnergy did not answer any of OCC's interrogatories and did not produce any of the documents that OCC had requested.

Predictably, the FirstEnergy Utilities seek to limit the PUCO's review to a much narrower scope that shields it from answering and fails to protect customers. FirstEnergy Utilities apparently believe that this investigation is useless because its present rates are based on a test year covering 2007-2008 and therefore could not possibly include expenditures that occurred during the time period covered by the criminal complaint.

OCC and FirstEnergy participated in a prehearing conference on March 25, 2021 relating to OCC's Motion to Compel on OCC's First and Second Sets of Discovery. The

⁴ Attachment 1 at 5.

Attorney Examiner granted OCC's motions to compel in large part, overruling FirstEnergy Utilities' objections on OCC's discovery definitions of "House Bill 6 activities" and "political and charitable spending." Prehearing Tr. at 10-13 (Apr. 4, 2021). The Attorney Examiner also provided further guidance on the scope of the case, allowing the parties to narrow disputed discovery issues.

With these rulings in mind, on April 1, 2021, OCC contacted the FirstEnergy Utilities, to explore whether the Companies would now answer instead of object to OCC's discovery. In the spirit of the Attorney Examiner's ruling, OCC offered to not seek answers to certain discovery in OCC's Fourth Set and also offered to narrow the time frame for certain of OCC's requests. Specifically OCC advised that it was only requesting answers to Interrogatories Nos. 4-2, 4-4 through 4-18, and 4-20 and Requests for Production of Documents 4-1 and 4-2. *See* Attachment 3.

The FirstEnergy Utilities 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 the parties did not agree on the remaining items. The FirstEnergy Utilities' Counsel offered to consult with his client and then get back to OCC on those items still in dispute. OCC agreed to give FirstEnergy until April 23, 2021 to provide the information they had agreed to.

One day before the Companies' revised responses to OCC's Fourth Set of Discovery was to be produced to OCC, FirstEnergy contacted OCC (April 22, 2021) seeking more time (until May 7, 2021) to provide revised responses to OCC's Fourth Set of Discovery. OCC also spoke to the Companies about working out the discovery disputes on the Fourth Set. OCC advised that it would consider the Companies' request

to extend the response date for OCC's Fourth Set of Discovery. Later that day, however, the PUCO issued a procedural schedule requiring the parties to file initial comments by May 21, 2021. On April 23, 2021, OCC notified FirstEnergy that, given the comment schedule, it would not agree to any further extensions of time to respond to these discovery requests.

In sum, OCC and FirstEnergy Utilities are once again unable again to reach agreement on the scope of discovery, leading to OCC being left with no substantive answers to its Fourth Set of Discovery. The lack of responses to OCC's Fourth Set of Discovery 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

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 Ohio Admin. Code 4901-1-16(A).

to facilitate full and reasonable discovery, consistent with the statutory discovery rights parties are afforded under R.C. 4903.082.

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

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

⁸ Ohio Admin. Code 4901-1-17 (A). *Accord*, Ohio Civ. R. 33 (A) (interrogatories may be served by any party without leave on the plaintiff “after commencement of the action.”).

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).

sought would be inadmissible at the hearing, if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

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

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.

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 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 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 Fourth Set of Discovery on February 3, 2021.

¹² O.A.C. 4901-1-23(C)(1).

¹³ O.A.C. 4901-1-23(C)(2).

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).

In its Fourth Set of Discovery, OCC sought information and records related to whether FirstEnergy Utilities spent money by paying any of the persons or entities identified in the criminal complaint and, if so, whether any of these costs were allocated to the FirstEnergy Utilities. 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, documents, and admissions 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 involves “the Companies’ possible *expenditures* instead of whether the costs of any H.B.6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies’ ratepayers.”¹⁷

FirstEnergy has thus re-defined the subject matter of this proceeding, restricting it to rate impacts and not utility spending. Yet OCC’s discovery requests mirror the PUCO’s directive to “show cause, by September 30, 2020, demonstrating that the costs of any political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, were not included, directly or indirectly, in any rates or charges paid

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

¹⁶ Attachment 1, response to OCC INT-4-001.

¹⁷ *Id.*

by ratepayers in this state.”¹⁸ And 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.

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.¹⁹

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

¹⁸ Entry at ¶5.

¹⁹ See, e.g., FirstEnergy Utilities’ Motion for Protective Order, Memorandum in Support at 6 (Oct. 16, 2020).

information in spite of these objections. The PUCO should remain consistent with its prior ruling, overruling the Companies' objections.

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

FirstEnergy Utilities' objection that it is overly burdensome to respond to OCC's discovery has never been adequately explained to OCC. Such statements appear to be conclusory at best. FirstEnergy Utilities must do more than simply repeat the familiar litany that the discovery is burdensome. Federal case law²⁰ 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.²¹

Here FirstEnergy has failed to show how the 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 support²² and FirstEnergy Utilities have failed to do so, the PUCO should overrule this objection.

²⁰ 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."

²¹ *Trabon Engineering Corp. v. Eaton Manufacturing Co.*, (N.D. Ohio 1964), 37 F.R.D. 51, 54.

²² *Gulf Oil Corp. v. Schlesinger*, (E.D.Pa. 1979), 465 F.Supp. 913, 916-917.

E. 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 revised responses to OCC, consistent with announced scope of discovery. OCC initiated contact with the Companies early on (April 1), expecting that the discovery disputes related to later sets of discovery, including OCC's Fourth Set, were resolved under the Attorney Examiner's ruling. OCC notified the Companies that it was limiting its requests for revised responses to OCC's Fourth Set of Discovery to Interrogatories Nos. 4-2, 4-4 through 4-18, and 4-20 and Requests for Production of Documents 4-1 and 4-2.

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 information.

On the day before the Companies were supposed to provide revised requests to OCC's Fourth Set of Discovery, the Companies contacted OCC. FirstEnergy requested an extension of time until May 7, 2021 to respond to OCC's Fourth Set of Discovery.

OCC indicated that it would have to further consider its request to delay responding to OCC's Fourth Set 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) OCC informed the Companies that it was not willing to agree to further extension of time on all discovery, present and future, in this proceeding.

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 now.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ Maureen R. Willis

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Compel Fourth 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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Company, The Cleveland Electric)
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 FOURTH 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”) Fourth 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 Fourth 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-4-01. For each expenditure recorded in Account 426.4 (Expenditures for certain civic, political and related activities) by any of the FirstEnergy Ohio Utilities during November 1, 2016 through October 31, 2020 related to H.B. 6 activities, please identify:

- a. The date of the expenditure
- b. The amount of the expenditure
- c. The payee
- d. The name of the person who authorized the expenditure
- e. The purpose of the expenditure
- f. An explanation of how the expenditure related to H.B. 6 activities

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. 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. Indeed, costs recorded by the Companies in FERC Account 426.4 are not used to calculate the Companies’ rates or charges. The Companies further object to the use of the term “H.B. 6 activities” for the reasons explained in their General Objections. 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. Additionally, the Companies object to this Request as duplicative of OCC INT-01-011 and INT-01-013, which are currently at issue in OCC’s pending motion to compel.

INT-4-02. For each expenditure recorded in Account 426.4 (Expenditures for certain civic, political and related activities) by FirstEnergy Service Company during November 1, 2016 through October 31, 2020 related to H.B. 6 activities, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the expenditure;
- b. The amount of the expenditure;
- c. The payee;
- d. The name of the person who authorized the expenditure;
- e. The purpose of the expenditure;
- f. An explanation of how the expenditure related to H.B. 6 activities; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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 use of the term "H.B. 6 activities" for the reasons explained in their General Objections. The Companies also object to this Request because expenditures made by the Companies' affiliates are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate.

INT-4-03. For each payment or donation for charitable, social or community welfare purposes recorded in Account 426.1 (Donations) by any of the FirstEnergy Ohio Utilities during November 1, 2016 through October 31, 2020 related to H.B. 6 activities, please identify:

- a. The date of the expenditure;
- b. The amount of the expenditure;
- c. The payee;
- d. The name of the person who authorized the expenditure;
- e. The purpose of the expenditure; and
- f. An explanation of how the expenditure related to H.B. 6 activities.

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. Indeed, costs recorded by the Companies in FERC Account 426.1 are not used to calculate the Companies' rates or charges. The Companies further object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections. 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. Additionally, the Companies object to this Request as duplicative of OCC INT-01-011 and INT-01-013, which are currently at issue in OCC's pending motion to compel.

INT-4-04. For each payment or donation for charitable, social or community welfare purposes recorded in Account 426.1 (Donations) by FirstEnergy Service Company during November 1, 2016 through October 31, 2020 related to H.B. 6 activities where any

portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the expenditure;
- b. The amount of the expenditure;
- c. The payee;
- d. The name of the person who authorized the expenditure;
- e. The purpose of the expenditure;
- f. An explanation of how the expenditure related to H.B. 6 activities; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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 use of the term "H.B. 6 activities" for the reasons explained in their General Objections. The Companies also object to this Request because expenditures made by the Companies' affiliates are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate.

INT-4-05. For all payments by FirstEnergy Corp. or any subsidiary to the former Ohio House Speaker during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;

- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections.

INT-4-06. For all payments by FirstEnergy Corp. or any subsidiary to Jeffrey Longstreth, during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;

- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections.

INT-4-07. For all payments by FirstEnergy Corp. or any subsidiary to Neil Clark during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and

- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections.

INT-4-08. For all payments by FirstEnergy Corp. or any subsidiary to Matthew Borges during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections.

INT-4-09. For all payments by FirstEnergy Corp. or any subsidiary to Juan Cespedes, during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections.

INT-4-10. For all payments by FirstEnergy Corp. or any subsidiary to Generation Now during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting

from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections. Additionally, the Companies object to this Request as duplicative of OCC INT-01-002, which is currently at issue in OCC's pending motion to compel.

INT-4-11. For all payments by FirstEnergy Corp. or any subsidiary to Grant Street Consultants during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because

political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections.

INT-4-12. For all payments by FirstEnergy Corp. or any subsidiary to 17 Consulting Group during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The

Companies also object to the use of the term “H.B. 6 activities” for the reasons explained in their General Objections.

INT-4-13. For all payments by FirstEnergy Corp. or any subsidiary to JPL & Associates LLC during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the First Energy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC’s jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term “H.B. 6 activities” for the reasons explained in their General Objections.

INT-4-14. For all payments by FirstEnergy Corp. or any subsidiary to Oxley Group, LLC during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections.

INT-4-15. For all payments by FirstEnergy Corp. or any subsidiary to Conservative Leadership Alliance during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections.

INT-4-16. For all payments by FirstEnergy Corp. or any subsidiary to the entity identified in the criminal complaint *U.S. v. Larry Householder, et al.* as "Energy Pass-Through"

during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections. The Companies further object because this Request unreasonably purports to require the Companies to speculate about allegations made and terms used by the government in the referenced criminal case which concern information outside the scope of the Companies' personal knowledge.

INT-4-17. For all payments by FirstEnergy Corp. or any subsidiary to the entity identified in the criminal complaint *U.S. v. Larry Householder, et al.* as “Dark Money Group 1”, during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC’s jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term “H.B. 6 activities” for the reasons explained in their General Objections. The Companies further object because this Request unreasonably purports to require the Companies to speculate about allegations made and terms used by the government in

the referenced criminal case which concern information outside the scope of the Companies' personal knowledge.

INT-4-18. For all payments by FirstEnergy Corp. or any subsidiary to the entity identified in the criminal complaint *U.S. v. Larry Householder, et al.* as "Front Company" during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please identify:

- a. The date of the payment;
- b. The amount of the payment;
- c. The name of the person who authorized the payment;
- d. The purpose of the payment;
- e. An explanation of how the payment related to H.B. 6 activities;
- f. The account to which the payment was charged; and
- g. The amount assigned, allocated or distributed to any of the FirstEnergy 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. Indeed, the Companies have no mechanism for collecting from their customers any costs of political contributions. The Companies further object because political spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to the use of the term "H.B. 6 activities" for the reasons explained in their

General Objections. The Companies further object because this Request unreasonably purports to require the Companies to speculate about allegations made and terms used by the government in the referenced criminal case which concern information outside the scope of the Companies' personal knowledge.

INT-4-19. For each of the following individuals during November 1, 2016 through October 31, 2020, where any portion of their incurred expenses (including salaries) were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please provide the information listed below:

- Ty Pine
- Leah Pappas Porner
- Brittany Warner
- Jay O'Bryant
- Joel Bailly
- Joshua Sanders
- Josh Rubin
- Justin Blitz
- Andrew Shaffer
- Charles "Chuck" Jones
- Dennis Check
- Michael Dowling
- Robert Reffner
- Ebony Yeboah-Amankwah

- a. The name of the person's employer;
- b. The dates of the person's employment;
- c. A description of lobbying services each person performed on behalf of the FirstEnergy Ohio Utilities relating to H.B. 6;
- d. A list of the legislators and executive branch officials contacted on behalf of the FirstEnergy Ohio Utilities to discuss H.B. 6 and the date of each contact;
- e. Describe the method used to assign each person's H.B. 6-related lobbying costs to the FirstEnergy Ohio Utilities (i.e., either directly assignable, distributable or allocable); and
- f. For each person who provided lobbying services related to H.B. 6, how much cost for that person's time was assigned, distributed or allocated to the FirstEnergy Ohio Utilities for time spent on H.B. 6-related activities?
- g. To the extent that each person's costs were allocated, what allocation method was used and why was that allocation method selected?

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 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. The Companies further object to this Request as overbroad, unduly burdensome, vague, and ambiguous.

INT-4-20. For each payment to any of the following individuals or entities listed below by FirstEnergy Service Company during November 1, 2016 through October 31, 2020, where any portion of the costs were assigned, allocated or distributed to any of the FirstEnergy Ohio Utilities, please provide the following information:

- Jeffrey Longstreth
 - Neil Clark
 - Matthew Borges
 - Juan Cespedes
 - Generation Now
 - Grant Street Consultants
 - 17 Consulting Group
 - JPL & Associates, LLC
 - Oxley Group, LLC
 - Conservative Leadership Alliance
 - The entity identified in the criminal complaint *U.S. v. Larry Householder, et al.* as “Energy Pass-Through”
 - The entity identified in the criminal complaint *U.S. v. Larry Householder, et al.* as “Dark Money Group 1”
 - the entity identified in the criminal complaint *U.S. v. Larry Householder, et al.* as “Front Company”
- a. Describe the method used to assign the payment to the FirstEnergy Ohio Utilities (i.e., either directly assignable, distributable or allocable);

- b. The amount of each payment that was assigned, distributed or allocated to FirstEnergy Ohio Utilities; and,
- c. To the extent that any payment was allocated, what allocation method was used and why was that allocation method selected?

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 because political or charitable spending is outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies also object to this Request as overbroad, unduly burdensome, vague, and ambiguous. In addition, the Companies refer OCC to their objections and responses to INT-4-06 through INT-4-18, which the Companies incorporate here by reference.

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

RPD-4-01. Provide copies of all documents relating to all expenditures recorded in Account 426.4 (Expenditures for certain civic, political and related activities) for November 1, 2016 through October 31, 2020 related to H.B. 6 activities for the following companies:

- The Cleveland Electric Illuminating Company
- The Toledo Edison Company
- Ohio Edison Company
- FirstEnergy Service Company

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. Indeed, costs recorded by the Companies in FERC Account 426.4 are not used to calculate the Companies' rates or charges. The Companies further object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections. The Companies also 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. The Companies also object to this Request as overbroad, unduly burdensome, vague, and ambiguous because it unreasonably purports to require the Companies to provide copies of "all documents" related to "all expenditures" recorded in FERC Account 426.4 that are related to H.B. 6.

RPD-4-02. Provide copies of all documents relating to all payments or donations for charitable, social or community welfare purposes recorded in Account 426.1 (Donations) for

November 1, 2016 through October 31, 2020 related to H.B. 6 activities for the following companies:

- The Cleveland Electric Illuminating Company
- The Toledo Edison Company
- Ohio Edison Company
- FirstEnergy Service Company

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. Indeed, costs recorded by the Companies in FERC Account 426.1 are not used to calculate the Companies' rates or charges. The Companies further object to the use of the term "H.B. 6 activities" for the reasons explained in their General Objections. The Companies also 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. The Companies also object to this Request as overbroad, unduly burdensome, vague, and ambiguous because it unreasonably purports to require the Companies to provide copies of "all documents" concerning "all expenditures" recorded in FERC Account 426.1 that are "related to" H.B. 6.

RPD-4-03. Provide copies of all documents relating to any costs assigned, distributed or allocated to the FirstEnergy Ohio Utilities relating to Generation Now.

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 also object to this Request as overbroad,

unduly burdensome, vague, and ambiguous because it unreasonably purports to require the Companies to provide copies of “all documents” concerning costs “assigned, distributed, or allocated to the FirstEnergy Ohio Utilities” “related to” Generation Now. 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.

RPD-4-04. Provide copies of all documents relating to any agreement with the Ohio Attorney General relating to the decoupling provision in the FirstEnergy Ohio Utilities’ tariffs.

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 also object to this Request to the extent it seeks documents protected from disclosure by the attorney client privilege or attorney work product doctrines. The Companies object to this Request as overbroad, unduly burdensome, vague, and ambiguous because it unreasonably purports to require the Companies to provide copies of “all documents” related to “any agreement” with the Ohio Attorney General related to the decoupling provision in the Companies’ tariffs.

RPD-4-05. Produce a copy of the utility service agreement between FirstEnergy Service Company and the FirstEnergy 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.

RPD-4-06. Produce a copy of the current FirstEnergy Corporate Allocation Manual and any other versions of the manual that were in effect during November 1, 2016 to 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.

Dated: February 23, 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 23, 2021:

/s/ Margaret M. Dengler
Attorney for the Companies

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**AFFIDAVIT OF JOHN FINNIGAN IN SUPPORT OF
MOTION TO COMPEL RESPONSES TO
FOURTH SET OF DISCOVERY
AND REQUEST FOR EXPEDITED RULING
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 Fourth Set of Discovery on February 3, 2021.
2. On February 23, 2021, FirstEnergy Utilities served their objections (with no substantive responses) to OCC's Fourth 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. OCC sent a letter to FirstEnergy on April 1, 2021 seeking to resolve the discovery disputes over OCC's Fourth Set of Discovery. OCC agreed to limit its requests to Interrogatories Nos. 4-2, 4-4 through 4-18, and 4-20 and Requests for Production of Documents 4-1 and 4-2.
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 Fourth 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 Fourth Set of Discovery.
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 Fourth 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 scope 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



Office of the Ohio Consumers' Counsel

April 1, 2021

Michael R. Gladman
Partner
JONES DAY® - One Firm WorldwideSM
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215

VIA E-MAIL

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

Michael:

I am writing in the hope of resolving our differences regarding OCC's Fourth 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 Fourth Set of Discovery: Interrogatories 4-1, 4-3, 4-19, and Requests for Production of Documents 4-4, 4-5, and 4-6.

This leaves us with the following discovery requests which we would like you to reconsider responding to: INT 4-2, 4-4 through 4-18, and 4-20 and Requests for Production of Documents 4-1, 4-2 and 4-3. 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.

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 9. And if we cannot reach resolution, we plan on filing a motion to compel on or before April 14.

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

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/28/2021 5:16:00 PM

in

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

Summary: Motion Motion to Compel Responses to Fourth 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.