

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION TO COMPEL RESPONSES TO SIXTH SET OF DISCOVERY AND
REQUEST FOR EXPEDITED RULING ON MOTION TO COMPEL
AND
MOTION FOR *IN-CAMERA* HEARING
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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June 29, 2021

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FirstEnergy reportedly paid \$60 million toward the passage of tainted House Bill 6, the billion-dollar bailout bill (now repealed) for its two, uneconomic nuclear plants. The Office of the Ohio Consumers' Counsel ("OCC") has sought information about FirstEnergy's H.B. 6 activities for eight months, including how much FirstEnergy may have charged its customers for H.B. 6 activities.

At nearly every turn, the FirstEnergy Utilities have blocked or delayed our investigatory discovery efforts. The FirstEnergy Utilities are even seeking to deny two million consumers their voice (OCC) in this case by claiming that OCC lacks authority for investigating key issues in this investigatory case. In essence, this investigation related to tainted House Bill 6 will be a charade unless the Public Utilities Commission of Ohio ("PUCO") enforces its rules and Ohio law for a fair case process.

That brings us to our latest Motion to Compel seeking answers to OCC's Sixth Set of Discovery and a related Motion for an *In-Camera* hearing (in response to privilege claims). While the FirstEnergy Utilities did provide some substantive responses to the discovery

(consisting of 12 interrogatories, eight requests for admission, and 16 requests for production of documents), they objected and provided no responses to other important, relevant discovery. And in some instances, the FirstEnergy Utilities asserted attorney client privilege/work product doctrine as a reason to not produce responsive discovery. Subsequent communications with the FirstEnergy Utilities confirmed they were not willing to negotiate but would stand by their objections and their privilege claims.

OCC seeks this information to determine how FirstEnergy's \$60 million scheme impacted the FirstEnergy Utilities and their customers. OCC files this Motion to Compel as part of investigating whether the FirstEnergy Utilities charged customers for H.B. 6 activities.

Under Ohio Administrative Code ("O.A.C.") 4901-1-12 and 4901-1-23,¹ 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 6-3, 6-4 (d), (e), 6-7 and 6-10 and Request for Production of Documents 6-3 through 6-6 and 6-8, in OCC's Sixth Set of Discovery. (See Attachment 1 – FirstEnergy Utilities' Responses to OCC's Sixth Set of Discovery). OCC requests an expedited ruling on this motion to compel.

In addition, OCC moves the PUCO for an *in-camera* hearing to resolve issues pertaining to discovery the FirstEnergy Utilities are withholding on the basis of attorney-client privilege and/or work product. (The FirstEnergy Utilities have identified, through a discovery log, fourteen (14) documents that are being withheld). (See Attachment 2 – FirstEnergy Utilities' Discovery Log). An *in-camera* hearing is necessary to allow the Attorney Examiner to ascertain whether the responsive documents are truly subject to a privilege such that they should not be

¹ See O.A.C. 4901-1-12 and 4901-1-23.

turned over to OCC in discovery. OCC does not seek an expedited ruling on this Motion for In-Camera Hearing.

The attached affidavit describes the efforts OCC has been engaged in since April 28, 2021 to resolve differences between it and the FirstEnergy Utilities, consistent with O.A.C. 4901-1-23(C)(3). The FirstEnergy Utilities and OCC were unable to reach a mutually satisfactory resolution to their many, continued differences.

OCC also requests an expedited ruling on its Motion to Compel (but not on the Motion for In-Camera Hearing), consistent with O.A.C. 4901-1-12(C). An expedited ruling could potentially allow resolution of the discovery conflict more quickly, given the upcoming 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. The FirstEnergy Utilities did not oppose OCC’s intervention. As allowed under Ohio law and the PUCO rules, OCC has served multiple sets of discovery on the FirstEnergy Utilities.

OCC served its Sixth Set of Discovery on Mar. 24, 2021. In response to two separate requests, OCC agreed to allow the FirstEnergy utilities ten extra days (until April 23) to respond to OCC’s Sixth Set of Discovery. On April 22, 2021, at the end of the day, the FirstEnergy Utilities requested another week to respond to OCC’s 6th set. The next day, before the start of business OCC communicated that it could not agree to more delay in responding to its Sixth Set of Discovery, given the PUCO’s April 22 Entry scheduling comments for May 21.

On April 23, after the close of business² OCC received partial responses³ to its sixth set. Specifically, the FirstEnergy Utilities objected to responding to non-confidential information about FERC’s audit of FirstEnergy Service Company transactions and allocations to the

² The discovery requests were submitted by email and received at 7:28 pm. on Apr. 23, 2021.

³ In response to RPD 9,10,11, and 12, the utilities indicated that they “will produce any non-privileged documents responsive” to those requests. They eventually sent responses to those requests, but not until May 12, 2021.

FirstEnergy Utilities (INT 6-003). The FirstEnergy Utilities objected to providing information about the rationale for allocating Generation Now and Hardworking Ohioans payments to the FirstEnergy Utilities and would not identify who had knowledge of the booking of the costs (INT 6-004 (d), (e)). The FirstEnergy utilities were unwilling to respond to inquiry about whether they had advised the PUCO or its Staff of the allocation of Generation Now payments to the FirstEnergy utilities. (INT 6-007).

The FirstEnergy Utilities refused to conduct an e-mail search (from May 1, 2020 to present) for copies of communications sent or received by key FirstEnergy employees (Fanelli, Mikkelsen, Art Richards, Chuck Jones) containing terms related to HB 6. (RPD 6-3 through 6-6). The FirstEnergy Utilities refused to provide documents that they provided to FERC associated with the financial audit of FirstEnergy Corp. and the Service Company related to transactions with the utilities. (RPD 06-008). And the FirstEnergy Utilities asserted privilege with respect to certain responsive documents and complied with OCC's request to produce a corresponding discovery log. (Attachment 2).

This information is directly within the scope of this proceeding which the PUCO opened to review the FirstEnergy Utilities' "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 FirstEnergy Utilities' objections to OCC's First and Second Sets of Discovery.

To this day, the FirstEnergy Utilities are unwilling to concede that 2017 payments by FirstEnergy Service Company to Generation Now are H.B.6 activities. Their standard answer, 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.* The FirstEnergy Utilities espouse 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 Speaker⁴ and even though FirstEnergy Service Company 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.⁵

In sum, OCC and the FirstEnergy Utilities are unable again to reach agreement on the scope of discovery for nine of the questions in OCC's Sixth Set of Discovery. And although the FirstEnergy Utilities produced a privilege log as rationale for not producing certain responsive discovery, the privilege log on its face, raises questions that are best addressed in an *in-camera* review.

The lack of responses to discovery will materially impact OCC's ability to file informed comments. OCC has exhausted all reasonable means of resolving any differences, leading to the filing of this Motion to Compel.

⁴ *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).

⁵ *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).

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.⁶ Copies of the discovery requests and the responses are to be attached.⁷ 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 now and is unable to obtain the response without the PUCO compelling such a result.

⁶ O.A.C. 4901-1-23(C)(1).

⁷ O.A.C. 4901-1-23(C)(2).

II. ARGUMENT

A. As required by rule, the information OCC seeks is reasonably calculated to lead to the discovery of admissible evidence in our case for Ohio consumers.

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 proceeding.⁸ 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.⁹ OCC is entitled to timely and complete responses to its discovery inquiries.

This case emanates from the PUCO Order to "*review the political and charitable spending* by the FirstEnergy Utilities in support of Am. Sub. H.B.6 and the subsequent referendum effort."¹⁰ Consistent with the PUCO's direction that the proceeding concerns a

⁸ *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.

⁹ *OCC v. PUC*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213.

¹⁰ *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).

review of *spending* by the FirstEnergy Utilities on H.B. 6 activities, OCC served its Sixth Set of Discovery on March 24, 2021.

In its Sixth 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.

- INT-6-3 asked the FirstEnergy utilities to identify employees who have met, interviewed, or communicated with FERC Staff that is conducting the financial audit of FirstEnergy Corp. and its affiliates pertaining to service company transactions with affiliates.
- INT 6-4 (d) and (e) asked the FirstEnergy Utilities for the rationale for booking Generation Now and Hardworking Ohioans 2017 and 2018 payments to Account 923 and capital accounts and asked who had knowledge of the booking
- INT-6-7 sought information on communications between it and the PUCO and PUCO Staff related to allocation of the 2017 Generation Now payments to the FirstEnergy Utilities.
- RFP-6-3 through 6-6 asked the utilities to conduct an email search (using HB 6 terms) for communications received or sent by four key FirstEnergy employees (from May 1, 2020 to present) who appear to have knowledge concerning the allocation to the utilities of payments made to Generation Now and Hardworking Ohioans
- RFP-6-8 seeks information that FirstEnergy provided to FERC associated with FERC's financial audit of FirstEnergy (including Corp., FirstEnergy Service Company, and the Ohio utilities) related to, among other things, service company

accounting, record keeping and FERC Form 60 reporting and accounting and reporting for franchised public utilities and their transactions with associated companies (*See* Attachment 2).

OCC's discovery is reasonably calculated to lead to the discovery of admissible evidence. It is focused on and consistent with the subject matter of this proceeding: a review of "the *political and charitable spending* by the FirstEnergy Utilities in support of Am. Sub. H.B. 6 and the subsequent referendum effort."

Part of that review should extend to what OCC has uncovered so far with its discovery: that political and charitable spending (payments made in 2017 and 2018 to Generation Now and Hardworking Ohioans) was inappropriately allocated by the FirstEnergy Service Company to the FirstEnergy Utilities in above-the-line accounts (chargeable to utility customers). And at the time the allocations were made, customers were being charged riders that may have collected the misallocated political and charitable costs. So, questions concerning the ins and outs of FirstEnergy Service Company allocations to the FirstEnergy Utilities are at the heart of this investigation.

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.¹¹ In this regard, the FirstEnergy Utilities claim that OCC's discovery "does not concern, nor is it reasonably calculated to lead to information concerning, whether the costs of any political or charitable spending in support of Am. H.B. 6*** were included, directly or indirectly, in any rates or charges paid by the Companies' ratepayers in Ohio." (Objecting to OCC INT 6-3, 6-7; RPD 6-3 through 6-6, 6-8).

¹¹ *State ex rel. Fisher v. Rose Chevrolet, Inc.*, (C.A. 1992), 82 Ohio App.3d 520, 523.

The FirstEnergy Utilities have thus re-defined the subject matter of this proceeding, restricting it to rate impacts and not utility spending.¹² 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. These interrogatories and requests for production of documents are about political and charitable contributions made by FirstEnergy's service company charged to the FirstEnergy Utilities. Consistent with the Attorney Examiner's earlier ruling, the FirstEnergy Utilities' objections on relevance should be overruled.

**B. The FirstEnergy Utilities seek to deny consumers their voice (OCC).
But the FirstEnergy Utilities failed to show that OCC's discovery is
outside its jurisdiction (OCC INT-06-003; RPD-06-008).**

In tainted House Bill 6, Ohioans lost as FirstEnergy reportedly used money – and lots of it to push for costly power plant subsidies. OCC now wants to investigate the FirstEnergy Utilities at the PUCO to make sure customers did not pay for \$60 million of alleged legislative bribes. In response the FirstEnergy Utilities are claiming that OCC cannot be the voice for consumers on various issues in this case. (The FirstEnergy Utilities using tactics of delay for responding to discovery.)

From the same playbook, FirstEnergy Solutions earlier tried to convince a Federal Judge to eliminate Ohio's consumer advocate, OCC, from the FirstEnergy Solutions bankruptcy case.

¹² Entry at ¶5.

FirstEnergy lost its request to the Federal Judge, for eliminating OCC's consumer advocacy.¹³

The FirstEnergy Utilities should lose their anti-consumer request here.

In two of the responses to OCC's discovery (OCC INT 6-003; RPD 6-008), the FirstEnergy Utilities claim that "OCC has no jurisdiction to investigate the business practices of FirstEnergy Corp or other affiliates of the Companies." The FirstEnergy Utilities have claimed here and in other pleadings 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.¹⁴

This strained reading of two of OCC's enabling statutes fails to consider that OCC's "powers and duties" are more broadly defined under a preceding and controlling enabling statute, R.C. 4911.02(B)(2). There OCC's authority is described as "[w]ithout limitation because of enumeration." The PUCO has conceded that this phrase in OCC's enabling statute "conveys the intent of the legislators that the provisions of Section 4911.02 should be construed as broadly as possible." *In the Matter of the Complaint of the Office of Consumers' Counsel on Behalf of the Residents of Copley Village Condominium Association v. Ohio Edison Company*, Case No. 89-1032-EL-CSS, Entry at ¶11 (Oct. 6, 1989).

¹³ In the bankruptcy case, FirstEnergy Solutions sought to reject its contract to buy power from the Ohio Valley Electric Corporation ("OVEC"). OCC objected on the ground that it could harm consumers. *In re FirstEnergy Solutions Corp.*, Case No. 18-50757 (Bankr. N.D. Ohio), Ohio Consumers' Counsel's Objection for Protecting Consumers from FirstEnergy Solutions' Motion to Reject the Ohio Valley Electric Corporation Contract [Dkt. No. 44] (May 31, 2018). FirstEnergy Solutions challenged OCC's standing to raise this objection, and the bankruptcy court allowed OCC to participate in the case and resolved the case on other grounds without ruling on FirstEnergy's objection. *Id.*, Order (I) Authorizing the Debtors to Reject a Certain Multi-Party Intercompany Power Purchase Agreement with the Ohio Valley Electric Corporation and (II) Granting Certain Related Relief [Dkt. No. 1118] (Aug. 9, 2018).

¹⁴ See, e.g., FirstEnergy Utilities' Motion for Protective Order, Memorandum in Support at 6 (Oct. 16, 2020).

And the PUCO has correctly determined that when a statute includes a listing, preceded by words such as “including” or “without limitation” the list that follows does not create an exhaustive list.¹⁵ When that rule of statutory interpretation is applied to OCC’s general statutory grant of authority under R.C. 4911.02, FirstEnergy’s argument fails once again. OCC’s general statutory authority under R.C. 4911.02 is described as “without limitation because of enumeration” so the conditions that follow ((a) through (d)) must be construed as examples of matters that OCC may participate in, not limits on matters that OCC can participate in. For this very reason, the PUCO has in several cases rejected parties’ attempts to limit OCC’s participation in PUCO hearings, using the same arguments the FirstEnergy Utilities now offer.¹⁶

OCC’s intervention and participation in this proceeding is also permitted under other provisions of Ohio law (and PUCO rules).¹⁷ Under R.C. 4911.02, OCC “shall have the rights and powers of any party and interest appearing before the public utilities commission.” R.C. 4903.221 allows any person who may be adversely affected by a public utilities commission proceeding to intervene provided certain conditions are met.

OCC filed its motion to intervene explaining how it met these conditions. In fact, OCC is one of few parties in this proceeding whose intervention has not been opposed by the FirstEnergy Utilities. The FirstEnergy Utilities’ failure to object to OCC’s intervention should be considered a late-filed memorandum contra OCC’s intervention, which should be denied as untimely filed (and filed without leave of the PUCO).

¹⁵ *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Assess a System Improvement Charge*, Case No. 18-337-WW-SIC, Entry at ¶33 (Feb. 6, 2019).

¹⁶ *In the Matter of the Commission Investigation Into the Operations and Services of Ohio Utilities Company*, Case No. 92-550-WS-COI, Entry (June 2, 1992). *See also*, *In the Matter of the Complaint of the Office of the Consumers’ Counsel on Behalf of the Residents of Copley Village Condominium Association I and Copley Village Condominium Association v. Ohio Edison Company*, Case No. 89-1031-EL-CSS, Entry (Oct. 6, 1989).

¹⁷ *See* Ohio Admin. Code 4901-1-11.

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

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 raised the same objections and the Attorney Examiner required them to produce information despite these objections. The PUCO should remain consistent with its ruling. The FirstEnergy Utilities’ objections should be overruled.

C. R.C. 4901.16 does not protect information provided by the FirstEnergy utilities to the Staff during its investigation (OCC INT-06-007).

OCC asked whether and when the FirstEnergy Utilities advised the PUCO or the PUCO Staff about the allocation to the FirstEnergy Utilities (and potentially utility customers) of 2017 payments to Generation Now:

INT-006-007. Was the PUCO and/or the PUCO Staff advised that there was an allocation to the FirstEnergy Ohio Utilities related to 2017 payments made by FirstEnergy Service Company to Generation Now? If so, please identify:

- a. When the communication was made;

- b. The method of communication;
- c. The persons involved in the communication (both FirstEnergy and the PUCO);
- d. Identify any documents provided to Staff in connection with the communication; and
- e. The response to the communication.

The FirstEnergy Utilities objected and did not answer this discovery request. They objected in part because INT 6-007 “seeks confidential information protected from disclosure to third parties under Ohio R.C. 4901.16.” This objection should be overruled for numerous reasons.

First, the information sought—details about the communications -- do not divulge the substance of the information acquired. R.C. 4901.16 prohibits an employee or agent of the PUCO divulging “any information acquired by him.” It simply does not create any prohibition on the PUCO Staff divulging the circumstances under which information was acquired (which is what OCC INT 6-7 seeks). The FirstEnergy Utilities’ broad read of the statute ignores the focus of the statute on “information acquired” by an employee or agent of the PUCO.

Most importantly, though, the FirstEnergy Utilities mistakenly assert that the statute applies to preclude the utilities themselves from divulging information. It does not. The FirstEnergy Utilities’ interpretation would require the PUCO to read words into the statute.

R.C. 4901.16, in pertinent part, reads:

Except in his report to the public utilities commission or when called on to testify *** *no employee or agent* ***shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent.

R.C. 4901.16 (emphasis added). R.C. 4901.16 applies only to the PUCO Staff.

The PUCO has confirmed that these words do not mean that those who provide information to the Staff are under similar nondisclosure obligations. R.C. 4901.16 only prevents premature disclosure of information by the staff of the commission.¹⁸ “Nothing in that section prevents the company from providing information to parties in a case.”¹⁹ The statute sets forth the obligations of a public entity –the PUCO and its Staff. Nothing more.

The FirstEnergy Utilities are not the PUCO Staff. They are not bound by the nondisclosure requirements of R.C. 4901.16. These nondisclosure requirements apply strictly and singularly to the PUCO Staff.²⁰ There will be no violation of R.C. 4901.16 if OCC’s motion to compel is granted. Disclosure is not being sought from the Staff. Disclosure is being sought from the FirstEnergy utilities.

Contrary to the FirstEnergy Utilities’ assertions otherwise, Ohio law simply does not impose similar nondisclosure obligations on a public utility operating in Ohio. There is no mutuality or symmetry that attaches to the statute owing to the difference between the obligations of a public entity (like the PUCO) and private entities such as the FirstEnergy Utilities. Had the Ohio General Assembly intended utilities to be bound by the nondisclosure requirements of R.C. 4901.16, it would have written the statute accordingly. It did not.

¹⁸ *In the Matter of the Application of Columbus Southern Power Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service*, Case No. 91-418-EL-AIR, Entry at ¶5 (Aug. 23, 1991).

¹⁹ *Id.*

²⁰ *But see*, R.C. 4911.16, which gives OCC access to all documents in the possession of the PUCO “at any time.” Under this provision, OCC has the authority to review the documents even after the PUCO has received them.

Where the language of the statute is clear, the statute must be applied, not interpreted.²¹ The PUCO, which is a “creature of statute,” may not legislate in its own right.²² Yet this is what the FirstEnergy Utilities would have the PUCO do.

The FirstEnergy Utilities should not be able to hide behind a statute which does not apply to them to avoid discovery. That would be contrary to R.C. 4903.082 which guarantees that all parties “shall be granted ample rights of discovery.” And it would be inconsistent with the PUCO discovery rules which “encourage prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings.”²³

Finally, even if the statute did apply to the utilities (it does not) OCC and the FirstEnergy Utilities have a protective agreement in place for this proceeding that allows confidential information to be shared with OCC. The protective agreement achieves an appropriate balance of safeguarding the FirstEnergy Utilities’ protected information and providing them with sufficient recourse for breach, while facilitating full and complete discovery for OCC.

D. The FirstEnergy’s Utilities’ objection that information related to the FERC audit is protected against disclosure under federal law is without merit (OCC INT 06-003; RPD-06-008).

On February 6, 2019, FERC advised FirstEnergy Corp. that it was initiating a financial audit of FirstEnergy Corp., including its affiliates (FirstEnergy Service Company and its utilities). *See* Attachment 3. The scope of the financial audit is set forth in the FERC letter. In its financial audit, FERC will evaluate, among other things, the service companies’ accounting,

²¹ "There is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend or improve the provisions of the statute to meet a situation not provided for." *State ex rel. Foster v. Evatt* (1944), 144 Ohio St. 65, 29 O.O. 4, 56 N.E.2d 265, paragraph eight of the syllabus.; *R.W. Sidley, Inc. v. Limbach* (1993), 66 Ohio St.3d 256, 257, 611 N.E.2d 815, 817; *Vought Indus. v. Tracy*, 72 Ohio St.3d 261, 265-266.

²² *Consumers’ Counsel v. Pub. Util. Comm.*, (1981), 67 Ohio St.2d 153, 166.

²³ O.A.C. 4901-1-16(A).

record keeping and FERC Form 60 reporting (annual reporting of centralized service companies). And the FERC audit will cover accounting and reporting requirements for franchised public utilities for their transactions with associated companies (like FirstEnergy Service Company). The audit will cover January 1, 2015 to the present. *Id.*

There is no question, even given what little OCC discovery has been answered, that there is a real issue pertaining to the expenses FirstEnergy Service Company was allocating to the franchised public utilities in Ohio (and elsewhere). We know that FirstEnergy Service Company charged the FirstEnergy Ohio utilities for political and charitable activities in 2017 and 2018, including payments to Generation Now and Hardworking Ohioans.²⁴ We don't know if that is the extent of the political and charitable spending that was allocated to the Ohio FirstEnergy Utilities by FirstEnergy Service Company (or any other FirstEnergy affiliate). We intend to discover that information.

Transactions between FirstEnergy Service Company and the franchised utilities are germane to the PUCO's investigation here (and its investigation in the corporate separation proceeding). Allocation of expenditures by FirstEnergy Service Company to the Ohio FirstEnergy Utilities will be audited by FERC and that audit includes the period related to H.B. 6 activities (Jan. 1, 2017 to Dec. 31, 2019). Because of the connection between the FERC audit and the PUCO's investigation, OCC asked for the names of FirstEnergy employees interacting with the FERC Audit team. (OCC Int 06-003). And OCC also asked for copies of documents that were produced in response to FERC Audit Staff requests, along with documents provided to FERC Staff associated with site visits and notes, transcripts or other documents pertaining to interviews with the FERC Staff. In these requests OCC did not seek ask for documents from the

²⁴ Deposition of Santino Fanelli at 129-137 (Mar. 9, 2021).

FERC staff. Rather OCC's requests were related to documents produced by the FirstEnergy entities.

One of the objections raised by the FirstEnergy utilities was that "the information requested is confidential, non-public, and protected from disclosure under the Federal Power Act, including 16 U.S.C. §825, 42 U.S.C. §16452(d), and FERC's regulations, including 18 C.F.R. Part 388." Attachment 1 at 27. These objections should be overruled because the statutes cited by the FirstEnergy Utilities do not support their claim that they (and not members, officers or employees of FERC) are barred from disclosing documents produced in response to a FERC audit.

Here is a look at the statutes that the FirstEnergy Utilities rely upon for their claims that utilities are bound by law not to disclose any information related to FERC's financial audit.

16 U.S.C. 825(b), in pertinent part reads:

*No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts*** except insofar as he may be directed by the Commission or by a court. (Emphasis added).*

And 42 U.S.C. 16452, in pertinent part reads:

No member, officer, or employee of the Commission shall divulge any fact or information which may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction. (Emphasis added).

These provisions apply to the FERC Staff, not the FirstEnergy utilities. They only prevent disclosure of information by the staff of FERC. Nothing in these laws prevent the

FirstEnergy utilities from providing information to parties.²⁵ These statutes set forth the obligations of a public entity—the FERC and its Staff. Nothing more.

The FirstEnergy Utilities are not the FERC Staff. They are not bound by the non-disclosure requirements of Federal Power Act. The non-disclosure requirements apply to the FERC Staff. There will be no violation of these Federal Power Act provisions if OCC’s motion to compel is granted. Disclosure is not being sought from the FERC Staff. Disclosure is being sought from the FirstEnergy utilities.

Contrary to the FirstEnergy Utilities’ assertions otherwise, these federal laws simply do not impose similar non-disclosure obligations on a public utility. There is no mutuality or symmetry that attaches to the statutes owing to the differences between the obligations of a public entity (like FERC) and private entities such as the FirstEnergy Utilities.

Additionally, the information sought under OCC INT 06-003 –details about who talked to the FERC Staff—even if protected from disclosure (it’s not) does not divulge “any fact or information” known by an employee of FERC as a result of an audit. It merely provides information about who are FirstEnergy employees who have knowledge of the FERC audit matters. This information may prove useful to OCC in its further discovery efforts. It is reasonably calculated to lead to the discovery of admissible evidence.

Finally, even if the statute did apply to the FirstEnergy Utilities (it does not) OCC and the FirstEnergy Utilities have a protective agreement in place for this proceeding that allows confidential information to be shared with OCC. The protective agreement achieves an

²⁵ OCC researched this topic and was unable to find related case law that establishes the non-disclosure requirements of 16 U.S.C. 825 and 42 U.S.C. 16452 as applicable to public utilities. OCC conveyed this to the FirstEnergy Utilities during its discussion of this issue at the meet and confer on the 6th set of discovery. OCC invited the Utilities to provide authority to support their contention that the non-disclosure requirements of these laws apply to the utilities. They were unable and or unwilling to do so.

appropriate balance of safeguarding the FirstEnergy Utilities' protected information and providing them with sufficient recourse for breach, while facilitating full and complete discovery and development of the record.

E. OCC's four requests to run search terms for communications between key FirstEnergy employees for a limited period of time is not improper, unreasonable, or contrary to discovery limits (RPD 6-003 through 6-006).

The FirstEnergy Utilities objected to and did not answer OCC's discovery requests that asked them for email records of four FirstEnergy employees for a limited time period (May 2020 to present). (OCC RFD 06-003 through 06-006). OCC's requests were further limited to emails containing limited search terms (eleven). The FirstEnergy Utilities objected on numerous grounds, including that the requests were "entirely improper," and "ignores the limits on discovery imposed by the Commission's rules and the Ohio Rules of Civil Procedure." (See Attachment 1 at 22-26). These objections should be overruled.

There are no limits in the PUCO rules that would preclude discovery of electronically stored information (such as emails). Nor is it improper to seek the production of "documents" and "things" under PUCO Rule 4901-1-20. To the contrary, the PUCO rules allow for OCC to seek documents, including emails from FirstEnergy, so long as they are made "subject to the scope of discovery" (as defined under O.A.C. 4901-1-16). That means that parties may obtain discovery "of any matter, not privileged, which is relevant to the subject matter of the proceeding."²⁶

And Ohio Rules of Civil Procedure explicitly allow such requests. For example, under Ohio's Civil Practice Rule 34, any party may request electronically stored documents. And while

²⁶ *Id.* at O.A.C. 4901-1-16(B).

there may be limits on such discovery where the information is not reasonably accessible because of undue burden or cost, the party responding to discovery must provide proof of this.²⁷ Notably, the objection may be overcome if the requesting party shows good cause. *Id.* Here, the FirstEnergy Utilities failed to sustain their burden of showing undue burden or cost would ensue if they were required to respond to OCC's limited requests. And there is good cause to require the FirstEnergy Utilities to produce the information because otherwise there is no way to obtain it. The FirstEnergy Utilities' objections should be overruled.

F. FirstEnergy should not be permitted to hide information by claiming it is not within the FirstEnergy Utilities' possession and control (INT 6-4 (d), (e)).

The FirstEnergy Service Company charged the FirstEnergy utilities for payments made to Generation Now and Hardworking Ohioans.²⁸ The charges were booked to the FirstEnergy utilities in an above the line account (Account 923), meaning that the utilities' customers could be charged for those payments. The charges were only reversed in 2019. Because these payments are believed to be HB 6 related (regardless of the FirstEnergy Utilities' contentions otherwise), OCC asked discovery seeking to discover details behind the charges.

Specifically, OCC INT- 006-004((d) seeks to find out what was the rationale for booking political and charitable spending to an above the line account (Account 923) and capitalizing a portion of the costs. OCC INT-006-004(e) asks who had knowledge of the booking of these costs and when was the knowledge acquired.

The FirstEnergy Utilities objected on the grounds that this information is not in their possession, custody, or control. This objection should be overruled, and the FirstEnergy Utilities

²⁷ See Ohio Civil Prac. Rule 26(B)(5).

²⁸ OCC INT-006-04.

should be ordered to produce the information. There are many reasons why the PUCO should rule this way.

The PUCO's jurisdiction extends not only to the FirstEnergy Utilities but also to the "records and accounts of any companies which are part of an electric utility holding company system."²⁹ The PUCO has jurisdiction over the records of FirstEnergy Corp. and all its affiliates that "in any way affect or relate to the costs associated with the provision of electric utility service."³⁰ This statute means that even if the records are in the custody and control of FirstEnergy Corp. or FirstEnergy Service Company, the PUCO can reach those holding company system records. Other provisions of the Revised Code, Chapter 49, also permit the PUCO to examine books, accounts, or other records kept by an electric utility or their affiliate as it relates to the utility business requiring corporate separation.³¹ These provisions reflect that, for consumer protection, regulators should not permit utilities to use their corporate structures (such as in creating service companies) to avoid providing information needed for their regulation.

In addition to the PUCO's statutory jurisdiction over these records, the guidance under the Ohio Rules of Civil Procedure indicates that the FirstEnergy Utilities' objection is without merit. Ohio Civ. Pro. Rule 34 permits litigants to discover certain items "in the responding party's possession, custody, or control." A litigant "may obtain discovery from a subsidiary of a party from whom discovery is sought if the party from whom discovery is sought has control of the subsidiary." 36 Ohio Jur.3d Discovery and Depositions § 10, citing *Owens-Corning Fiberglas Corp. v. Allstate Ins. Company*, 74 Ohio Misc.2d 174, 660 N.E.2d 765 (C.P. 1993).

²⁹ R.C. 4905.05.

³⁰ *Id.*

³¹ R.C. 4928.18.

This means that courts may require parent corporation litigants to provide in discovery information of subsidiaries they control and vice versa.

In *Sedgwick v. Kawasaki Cycleworks, Inc.*, 24 Ohio App.3d 109, 111, 493 N.E.2d 308, 311 (10th Dist.1985), the court addressed the “control” factor, noting that a subsidiary can be required to provide this type of discovery if nominally separate corporate entities “are in fact a single unit.” *Id.* To determine whether related corporations are a single unit, a court must find “(1) control of one by another; (2) that one was the mere conduit of the business of the other; and (3) the recognition of their separate existence would sanction a fraud, permit oppression and injustice.” *Id.*

OCC’s discovery request meets this “single unit” standard. Chuck Jones was the chief executive officer of each individual FirstEnergy company, including the utilities. Additionally, as can be seen by the internal investigation being run by the FirstEnergy Corp. Board of Directors, decisions about the utilities are being made at the top, (i.e. reform of political spending, corporate governance) with the FirstEnergy Utilities merely falling in line. The FirstEnergy Utilities are also highly dependent on the services provided by FirstEnergy Service Company. Contributing to the single unit concept is the fact that the FirstEnergy utilities are considered business segments of the holding company, FirstEnergy Corp., and do not have their own separate shareholders.

FirstEnergy Corp. and its affiliates (FirstEnergy Service Company and FirstEnergy Solutions) used the FirstEnergy Utilities as a conduit to advance the H.B. 6 scheme. FirstEnergy Service Company, acting at the behest of its executives Michael Dowling and Joel Bailey,

allocated political payments to Generation Now and Hardworking Ohioans in 2017 and 2018 to the FirstEnergy Utilities.³² This allowed the H.B.6 activities to be funded.

As described in *Sedgwick*, it could perpetuate an “injustice” (or even worse) if OCC and state regulators are denied access to information based on the notion that FirstEnergy Corp. and FirstEnergy Service Co. are separate business units, unrelated to the FirstEnergy Utilities. The information OCC seeks is important for determining if and to what extent there was a misallocation of H.B. 6-related costs to the FirstEnergy Utilities (and consumers) and what they knew about it and did about it, if so. And it would be contrary to the transparency that is needed in the wake of one of the biggest scandals in Ohio history.

Courts outside of Ohio have similarly assessed the underlying business relationship between parent and subsidiary to determine whether a subsidiary may be required to provide its parent’s documents in discovery. In *Dri-Steem Corp. v. NEP, Inc.*, 2014 WL 12776884 at *2, the United States District Court for the District of Oregon, Medford Division, summarized the approach that courts have taken nationwide, noting that there are certain circumstances under which a subsidiary may be required to turn over information in the possession of the parent:

Where the relationship is such that the subsidiary can secure documents of the parent to meet its own business needs, courts have not permitted the subsidiary to deny control for purposes of discovery by an opposing party. See e.g., *First National City Bank v. Internal Revenue Service*, 271 F.2d 616, 618 (2d Cir. 1959) (where there is access to the documents when the need arises in the ordinary course of business, there is sufficient control when the need arises because of governmental requirements); *Cooper Industries v. British Aerospace Corporation*, 102 F.R.D. 918, 919 (S.D.N.Y. 1984) (where wholly-owned defendant subsidiary was the marketer and servicer of parent's aircraft in the United States, it was found “inconceivable” that subsidiary could not obtain aircraft manuals and related documents); *Compagnie Francaise D'Assurance Pour le Commerce Exterieur v. Phillips Petroleum*

³² See the FirstEnergy Utilities’ Response to OCC INT-006-004.

Company, 105 F.R.D. 16, 35 (S.D.N.Y. 1984) (agent organization should be required to produce documents held by its principals). District courts in this circuit have found that a wholly-owned subsidiary has access and control over documents in the possession of its parent corporation when it markets the products of the parent company, when the two companies share databases dealing with a variety of documents and records, and when the subsidiary is able to obtain high-level documents from the parent company when it requests them. See *Choice-Intersil Microsystems, Inc. v. Agere Sys., Inc.*, 224 F.R.D. 471, 473 (N.D. Cal. 2004).

Following these standards, the PUCO should require the FirstEnergy Utilities to turn over information being held by the FirstEnergy affiliates. We presume that the Utilities can secure documents from their affiliates when the need arises in the ordinary course of business. And it is presumed that the FirstEnergy Utilities share databases dealing with a variety of documents and records with FirstEnergy Service Company and with FirstEnergy Corp. We also presume that when the FirstEnergy Utilities request documents from the parent company or the service company, the documents are produced. FirstEnergy Utilities have not made any claims to the contrary.

The PUCO should overrule the FirstEnergy Utilities' objections. The PUCO should allow OCC to obtain the limited information sought under OCC INT 06-004(d) and (e). As demonstrated above, the FirstEnergy Utilities should be required to provide information that FirstEnergy Corp. and other affiliates possess. That is because OCC has demonstrated that parent and subsidiary operated as one, rather than as separate entities, based on Chuck Jones' role as chief executive officer of each individual company.

Another example of FirstEnergy entities operating as single, not separate entities concerns the recent separation of another FirstEnergy executive, Eileen Mikkelsen. She presumably worked for FirstEnergy Service Company, yet she was fired for:

... her inaction regarding the amendment in 2015 of a previously disclosed purported consulting agreement with an entity associated with an individual who in 2019 was appointed to a full-time role as an Ohio government official directly involved in regulating FirstEnergy's Ohio electric utility subsidiaries, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, including with respect to distribution rates.³³

In other words, a FirstEnergy Service company employee was fired for inaction regarding a contract that benefitted an individual who was appointed to regulate other FirstEnergy affiliates -- the FirstEnergy Utilities. This further demonstrates the intertwined nature of the FirstEnergy affiliates operations, making claims of FirstEnergy affiliate records not being in the custody or control of the First Energy Utilities difficult to believe and unsustainable.

G. The FirstEnergy Utilities have failed to show how OCC's discovery implicates the attorney-client privilege or work product privilege (RPD 6-003 through 6-006); Other claims of privilege should be examined in camera.

An additional objection the FirstEnergy Utilities make in response to OCC's RPD 06-003 through 06-006 is that the requests call for production of documents protected from disclosure by the attorney-client privilege or attorney work product. *See* Attachment 1 at 23-26. For these discovery responses, the FirstEnergy Utilities did not even attempt to make a document by document showing of privilege. The FirstEnergy Utilities have offered blanket privilege objections making it impossible for OCC (or the Attorney Examiner) to evaluate their claims.

"Privileges are to be construed narrowly because they impede the search for truth and contravene the principle that the public has a right to everyone's evidence."³⁴ The party claiming application of the privilege or work product bears the burden of proving each element of the

³³ FirstEnergy Corp. 8-K (May 27, 2021).

³⁴ *State v. Perez*, 124 Ohio St.3d 122, 2009 Ohio 6179, 920 N.E.2d 104, ¶121, *see also Trammel v. United States*, 445 U.S. 40, 50, 100 S.Ct. 906, 63 L.Ed.2d 186 (1980).

claim.³⁵ Blanket assertions of privilege are insufficient to meet that burden.³⁶ Instead the party must demonstrate the privilege or work product exists for each document it withholds, which is generally done by preparing a privilege log.³⁷ Accordingly, the FirstEnergy Utilities' claims based on attorney-client and work product privileges for RPD 06-003 through 06-006 should be overruled because they failed to meet their burden of proving the existence of privilege.

On May 12, 2021, the FirstEnergy Utilities produced their long overdue privilege log showing that documents were withheld in response to other OCC discovery, including OCC INT 1-19, 1-21; RPD 1-4; RPD 6-10; RPD 6-11, RPD 6-12; and RPD 6-14. *See* Attachment 2. (They did not include in the privilege log any entries related to discovery responses RPD 06-003 through 06-006). As discussed in more detail below, OCC seeks an *in-camera* hearing to resolve the FirstEnergy Utilities' claims of attorney-client and work product privilege.

H. FirstEnergy has failed to show how OCC's requests are overbroad or unduly burdensome. (INT 6-004(e)).

OCC's interrogatories and requests for production seek information related to accounting and allocations of political and charitable spending to the FirstEnergy Ohio Utilities.

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. The FirstEnergy Utilities must do more than simply repeat the familiar

³⁵ *Williams v. Duke Energy Corp.*, No. 1:08 cv-00046, 2014 U.S. Dist. LEXIS 109835, *14 (S.D. Ohio Aug. 8, 2014).

³⁶ *Hitachi Medical Sys. Am. Inc. v. Branch*, No. 5:09 cv 1575, 2010 U.S. Dist. LEXIS 100597, *7 (N.D. Ohio Sept. 24, 2010).

³⁷ *United States v. Exxon Corp.*, 87 F.R.D. 624, 637 (D.D.C. 1980).

litany that the discovery is burdensome. Federal case law³⁸ 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.³⁹

Here the FirstEnergy Utilities have 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 support⁴⁰ and FirstEnergy Utilities have failed to do so, the PUCO should overrule this objection.

The FirstEnergy 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."⁴¹ The rules are also intended to "minimize commission intervention in the discovery process."⁴²

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.

³⁸ 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."

³⁹ *Trabon Engineering Corp. v. Eaton Manufacturing Co.*, (N.D. Ohio 1964), 37 F.R.D. 51, 54.

⁴⁰ *Gulf Oil Corp. v. Schlesinger*, (E.D.Pa. 1979), 465 F.Supp. 913, 916-917.

⁴¹ *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76. (Emphasis added).

⁴² O.A.C. 4901-1-16(A).

I. The PUCO should grant an *in-camera* hearing to resolve the FirstEnergy Utilities' claims of attorney-client and work product privilege.

As discussed above, OCC moves for an *in-camera* hearing to resolve the FirstEnergy Utilities' claims of attorney-client and work product privilege log asserted in the privilege log attached as OCC Attachment 2. OCC does not seek an expedited hearing on this motion.

The privilege log (which OCC requested for each set of discovery it served), though appreciated, leads to more questions about what documents are being withheld from discovery. For instance, there are e-mails from non-attorneys to other non-attorneys that are being withheld (Document Nos. 5, 6) based on attorney-client/ work product. And there are emails between non-attorneys, copied to an attorney that are being withheld. Because of these issues, OCC seeks an *in-camera* review of the discovery documents listed on the privilege log at a pre-hearing conference, consistent with Ohio practice.⁴³

An *in-camera* hearing will allow both OCC and the FirstEnergy Utilities to present their respective positions on the documents responsive to OCC discovery, but that the FirstEnergy seek to withhold from OCC. An *in-camera* review is needed to evaluate the validity of the FirstEnergy privilege claims. The PUCO uses these *in camera* reviews to balance the parties' competing interests.⁴⁴

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

As detailed in the attached Affidavit, OCC undertook efforts to resolve this discovery dispute. Those efforts included conversations and emails over the past month. Based on those

⁴³ See, e.g., *Peyko v. Frederick* (1986), 25 Ohio St.3d 164, 167; *In the Matter of the Application of Ohio Edison, . The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Entry at ¶18 (Jan. 27, 2011) (recognizing that an *in-camera* inspection of documents is appropriate).

⁴⁴ *Id.*

interactions, it has now become clear that we have exhausted all other reasonable means of resolving our differences. PUCO intervention is needed.

III. 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 FirstEnergy Utilities that OCC's discovery has largely been on target, and appropriate for the proceeding. The FirstEnergy Utilities, however, simply overlook those rulings and continue their obstruction and delay tactics.

Now, with comments due soon, it is imperative that the FirstEnergy 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 the FirstEnergy Utilities 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 the FirstEnergy Utilities should be ordered to respond to OCC's 6th set of discovery in the near term.

And to resolve issues in discovery that allegedly involve attorney-client privilege and/or attorney work product, OCC respectfully requests that the PUCO grant OCC's motion for an *in-camera* review of the responsive documents identified as privileged under the FirstEnergy privilege log.

Respectfully submitted,

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/s/ Maureen R. Willis

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Compel was served on the persons stated below via electronic transmission, this 29th day of June 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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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**AFFIDAVIT OF JOHN FINNIGAN IN SUPPORT OF MOTION TO COMPEL
RESPONSES TO SIXTH 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 Sixth Set of Discovery on Mar. 24, 2021. In response to two separate requests, OCC agreed to allow the FirstEnergy utilities ten extra days (until April 23) to respond to OCC's Sixth Set of Discovery.
2. On April 22, 2021, at the end of the day, the FirstEnergy Utilities requested another week to respond to OCC's sixth set. The next day, before the start of business OCC communicated that it could not agree to more delay in responding to its Sixth Set of Discovery, given the PUCO's April 22 Entry scheduling comments for May 21.

3. On April 23, after the close of business⁴⁵ OCC received partial responses⁴⁶ to its sixth set.
4. On April 28, OCC sent an email to the FirstEnergy Utilities Counsel pointing out issues with the responses the FirstEnergy Utilities had made to OCC discovery and requested a meet and confer for the following week.
5. On May 5, 2021, OCC communicated its discovery issues related to the Sixth Set of discovery to the FirstEnergy Utilities Counsel. And later that day a meet and confer was held to discuss responses to OCC discovery, including the sixth set of discovery.
6. On May 6, 2021, the FirstEnergy Utilities conveyed that they “have decided to stand on their objections to OCC’ sixth set of discovery.
7. OCC and FirstEnergy Utilities are unable again to reach agreement. OCC has exhausted all reasonable means of resolving any differences, leading to the filing of this Motion to Compel.

⁴⁵ The discovery requests were submitted by email and received at 7:28 pm. on Apr. 23, 2021.

⁴⁶ In response to RPD 9,10,11, and 12, the FirstEnergy utilities indicated that they “will produce any non-privileged documents responsive” to those requests. They eventually sent responses to those requests, but not until May 12, 2021.

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 29th day of June 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.)	

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S RESPONSES AND
OBJECTIONS TO THE SIXTH SET OF INTERROGATORIES, REQUESTS FOR
ADMISSIONS, 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”), hereby submit these Objections and Responses to the Sixth Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents (collectively, the “Discovery Requests”) served by the Office of the Ohio Consumers’ Counsel.

GENERAL OBJECTIONS

As used herein, the following definitions apply:

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” 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,” and “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 from OCC Sets 1 and 2 that either (1) OCC did not seek to compel an answer on in its November 10 Motion to Compel, or (2) was denied by the Attorney Examiner in his March 25 ruling on OCC's November 10 Motion to Compel.
16. The Companies object to OCC's Discovery Requests to the extent they seek information or documents protected from disclosure by the attorney-client privilege, attorney work product doctrine, or any other applicable doctrine.
17. A statement that documents will be produced is not intended to suggest that responsive documents exist within the Companies' possession, custody, or control; nor is it intended to suggest that the Companies will search every electronic and paper file within their possession, custody, or control, because that exercise would be unduly burdensome and prohibitively expensive and is not required under the rules. A statement that documents will be produced means that the Companies will search for documents in those places where the Companies reasonably anticipate they may be located and, if located and not subject to any privilege, the Companies will make them available for inspection and copying at a mutually agreeable time and place.
18. The Companies submit the following responses and objections in accordance with the Attorney Examiner's March 25 ruling on the Office of the Ohio Consumers' Counsel's Motion to Compel. *See generally* Case No. 20-1502, Transcript ("March 25 Tr.") (March

- 25, 2021). Therefore, the Companies submit these responses and objections 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.
19. 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-06-001. Please identify Art Richards and specify his position, which entity he works for, who he directly reports to and who directly reports to him.

RESPONSE: Art Richards is the Director of General Accounting. He is an employee of FirstEnergy Service Company. See also the Companies' response to OCC INT-06-002.

INT-06-002. Referring to Mr. Fanelli's deposition at page 111, please identify all employees (by name, position, with direct reports indicated) that comprise the "accounting group."

RESPONSE: Please see OCC INT-06-002 Attachment 1 for a current organizational chart for the Accounting organization at FirstEnergy.

INT-06-003. With respect to the financial audit of FirstEnergy Corp. including its service companies and other associated companies, undertaken by FERC, Division of Audits and Accounting, Office of Enforcement, Docket No. FA 19-1-000, please identify:

- a. The employees that have met with the FERC Staff either in person or via a virtual meeting;
- b. The employees interviewed by FERC Staff; and
- c. The employees that have communicated with the FERC Staff.

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 does not concern, nor is it

reasonably calculated to lead to information concerning, 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 also object to this Request because OCC has no jurisdiction to investigate the business practices of FirstEnergy Corp. or other affiliates of the Companies. The Companies further object on the ground that the information requested is confidential, non-public, and protected from disclosure under the Federal Power Act, including 16 U.S.C § 825, 42 U.S.C § 16452(d), and FERC’s regulations, including 18 C.F.R. Part 388. Consistent with these statutes and regulations, FERC makes clear that its Audit process “is subject to the confidentiality provisions of [section 301 of the Federal Power Act]” and that “[d]ocuments and information that the Commission staff obtains during an audit, as well as all working papers developed, will be placed in nonpublic files.” *See* “Audit Authority – Electric Audit Authority” description at <https://www.ferc.gov/enforcement-legal/enforcement/audits>.

INT-06-004. Regarding the payments by FirstEnergy Service Company to Generation Now and Hardworking Ohioans, please identify:

- a. Who originally decided to book part of these costs to Account 923 and to capitalize the remaining portion of these costs?
- b. Who authorized the booking of part of these costs to Account 923 and to capitalize the remaining portion of these costs?
- c. Who directed the booking of part of these costs to Account 923 and to capitalize the remaining portion of these costs?

- d. What was the rationale for booking part of these costs to Account 923 and to capitalize the remaining portion of these costs?
- e. Who had knowledge of the booking of part of these costs to Account 923 and to capitalize the remaining portion of these costs and when was that knowledge acquired?

RESPONSE: The Companies object to this Request as overbroad, vague, and ambiguous because the Request refers generally to any “payments by FirstEnergy Service Company to Generation Now and Hardworking Ohioans.” The Companies interpret this Request to refer to the 2017 payments to Generation Now and the 2018 payment to Hardworking Ohioans referenced in Mr. Fanelli’s deposition testimony. Case No. 20-1502-EL-UNC, Dep. Tr., at 131:4-5, 2061-5 (March 9-10, 2021). Subject to the clarification above and without waiving any of their objections, the Companies further state as follows:

In response to subparts (a), (b), and (c), the Companies state that the 2017 payments to Generation Now were approved by Michael J. Dowling, former Senior Vice President of External Affairs, and the 2018 payment to Hardworking Ohioans was approved by Joel D. Bailey, former Vice President of State & Local Governmental Affairs & Economic Development. The External Affairs department originally coded these payments to cost collectors that were recorded as an operating expense at FirstEnergy Service Company. Based on the cost collectors charged, a portion of these costs were ultimately recognized as operating expense and cost of electric plant at the Companies. Upon subsequent review of these payments, a determination was made that the costs should have been recorded to FERC Account 426.4 “Expenditures for certain civic, political and related activities.” In September 2020, the amounts were credited from operating expense and cost of electric plant at the Companies and debited to nonoperating expense.

The Companies object to subpart (d) on the grounds that this Request calls for information outside of the Companies' possession and control. The Companies further object to the term "rationale" as vague and ambiguous.

The Companies further object to subpart (e) on the grounds that this subpart is overbroad, unduly burdensome, vague, and ambiguous because it calls for information outside of the Companies' possession and control and impossible for the Companies to ascertain.

INT-06-005. Please identify (name, position, and FirstEnergy entity) who authorized and/or approved the following payments by FirstEnergy Service Company that a portion thereof were subsequently allocated to the First Energy Ohio Utilities:

- a. \$250,000 to Generation Now on 3/16/2017;
- b. \$250,000 to Generation Now on 5/14/2017;
- c. \$250,000 to Generation now on 5/17//2017; and
- d. \$250,000 to Generation Now on 8/10/2017.

RESPONSE: The Companies object to this Request and its subparts because they seek 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 does not concern, nor is it reasonably calculated to lead to information concerning, 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.

Subject to and without waiving the foregoing objections, the Companies state that Michael J. Dowling, former Senior Vice President of External Affairs, approved the payments referenced

in subparts (a), (c), and (d) of this Request. The Companies further state that they are not aware of any payment to Generation Now on May 14, 2017, as referenced in subpart (b) of this Request.

INT-06-006. Please identify for the \$200,000 in payments/ contributions to Hardworking Ohioans in 2017 that were subsequently allocated to the First Energy Ohio Utilities:

- a. The date and amounts of each payment made during 2017;
- b. The entity that made the payments;
- c. The person/persons who authorized and/or approved the payments (name, position, and entity);
- d. The method of payment;
- e. The purpose of the payment;
- f. The FirstEnergy entity that directed the payment; and
- g. Whether Hardworking Ohioans subsequently transferred the money to another entity, and if so, what entity.

RESPONSE: The Companies object to this Request and its subparts because they seek 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 does not concern, nor is it reasonably calculated to lead to information concerning, 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 subpart (g) of this Request because it calls for information outside of the Companies' knowledge, possession, custody, or control.

Subject to and without waiving the foregoing objections, the Companies state that they are not aware of “\$200,000 in payments/ contributions to Hardworking Ohioans in 2017 that were subsequently allocated to the [Companies].”

INT-06-007. Was the PUCO and/or the PUCO Staff advised that there was an allocation to the FirstEnergy Ohio Utilities related to 2017 payments made by FirstEnergy Service Company to Generation Now? If so, please identify:

- a. When the communication was made;
- b. The method of communication;
- c. The persons involved in the communication (both FirstEnergy and the PUCO;
- d. Identify any documents provided to Staff in connection with the communication; and
- e. The response to the communication.

RESPONSE: The Companies object to this Request and its subparts because they seek 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 does not concern, nor is it reasonably calculated to lead to information concerning, 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 seeks confidential information protected from disclosure to third parties under Ohio R.C. 4901.16.

INT-06-008. Referring to Mr. Fanelli's deposition, Tr. 138, please identify all riders that residential customers pay that were updated periodically during 2017-2020, through filings with the PUCO that include

- a. Costs associated with FERC Account 923, administrative and general expense for outside services; or
- b. Capital accounts.

RESPONSE: The Companies object to this Request and its subparts to the extent they seek 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.

Subject to and without waiving the foregoing objections, see the following responses:

- a. The Companies further object as the phrase "costs associated with FERC Account 923" is vague and ambiguous. Subject to and without waiving the foregoing objections, the Companies do not have any riders that are designed to recover all costs in FERC Account 923, or to recover costs because they are included in FERC Account 923. The Companies' riders are calculated based on underlying cost elements and/or other cost collectors, and not based on FERC Account, though some riders may include costs that are ultimately reported in FERC Account 923, including Rider DSE, Rider AMI, and Rider PIR.
- b. Rider AMI and Rider DCR.

INT-06-009. Referring to Mr. Fanelli's deposition Tr. 140 and 141, please identify what years were included in his review of Rider DSE and describe the review process for Rider DSE.

RESPONSE: The Companies object to this Request to the extent it seeks information not relevant or reasonably calculated to lead to the discovery of relevant information. The Companies further object to this Request to the extent seeks information beyond the time period of this proceeding, January 1, 2017 to December 31, 2019. *See* Case No. 20-1502-EL-UNC, Hearing Tr., at 10:5-13 (March 25, 2021).

Subject to and without waiving the foregoing objections, the referenced review was not specific to a particular time period. The review examined the cost collectors for the costs of payments to Generation Now by FirstEnergy Service Company, a portion of which were allocated to the Companies. All costs included in Rider DSE are recorded to specific cost collectors associated with the Companies' energy efficiency and peak demand reduction activities. Costs allocated to the Companies from FirstEnergy Service Company for payments to Generation Now in 2017 were not charged to these specific cost collectors.

INT-06-010. What documents did Mr. Fanelli review that led him to the conclude that Generation Now costs were not being picked up in the Rider DSE calculation?

RESPONSE: The Companies object to this request to the extent it seeks information that is protected from disclosure by the attorney client privilege or attorney work product doctrines.

Subject to and without waiving the foregoing objections, see the Companies' response to OCC INT-06-009. In addition, a breakdown of Rider DSE2 costs by vendor through August 2020 was also reviewed.

INT-06-011. Did the FirstEnergy Ohio Utilities review Rider DSE to determine if costs collected from customers were associated with payments to:

- a. Any account where Jeffrey Longstreth was a signatory including an account associated with JPL & Associates or an account named Constant Content? If the answer is affirmative, did the Utilities conclude that such costs were included in Rider DSE?
- b. Payments (either directly or indirectly) to any Federal or State Political Action Committee (PAC) account? If the answer is affirmative, did the Utilities conclude that such costs were included in Rider DSE?
- c. Payments (either directly or indirectly) to a public relations firm? If the answer is affirmative, did the Utilities conclude that such costs were included in Rider DSE?
- d. With payments (either directly or indirectly) to an account named Coalition? If the answer is affirmative, did the Utilities conclude that such costs were included in Rider DSE?

RESPONSE: The Companies object to this Request to the extent it seeks information duplicative of information provided during the deposition of Mr. Fanelli on March 9 and 10, 2021. Further, the Companies object to this Request to the extent it seeks information that is protected from disclosure by the attorney client privilege or attorney work product doctrines.

Subject to and without waiving the foregoing objections, the Companies reviewed the calculations of their rates, riders, and charges, and the process for accounting for political and charitable spending. To the extent there were payments to any entities identified in question subparts a through d that were charged to the Companies and recorded as political and charitable spending under the Companies' normal accounting process, those costs would have been implicitly factored into the analysis. Such costs, if any, would not have been included in Rider DSE. There

was not a separate review conducted specific to each individual entity referenced in question subparts a through d.

INT-06-012. The criminal complaint U.S. v. Larry Householder alleges that February 16, 2017 an entity described as “Company A” wired \$5 million to an entity described as “Energy Pass-Through.” Were any costs allocated to the FirstEnergy Ohio Utilities relating to a wire transfer of \$5 million by FirstEnergy Corporation or any subsidiary on February 16, 2017? If so, please provide:

- a. The name of the payee;
- b. The purpose of the payment;
- c. Who authorized the payment;
- d. Who decided to allocate a portion of the costs to the FirstEnergy Ohio Utilities; and
- e. The amount allocated to the FirstEnergy Ohio Utilities.

RESPONSE: The Companies object to this Request and its subparts because they seek 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 does not concern, nor is it reasonably calculated to lead to information concerning, 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. Instead, this Request seeks information related to the Criminal Complaint, which is not relevant to this proceeding. *See* Case No. 20-1502-EL-UNC, Dep. Tr., at

254:11-255:6 (March 10, 2021); Case No. 20-1502-EL-UNC, Hearing Tr., at 23:4-11 (March 25, 2021).

Subject to and without waiving the foregoing objections, there are no costs allocated to the Companies “relating to a wire transfer of \$5 million by FirstEnergy Corp[.] or any subsidiary on February 16, 2017.”

RESPONSES AND OBJECTIONS TO REQUESTS FOR ADMISSIONS

RFA-06-001: Please admit or deny that a payment or contribution was made by FirstEnergy Service Company on 3/16/2017 of \$250,000 to Generation Now and that a portion thereof was part of the approximately \$300,000 allocated to the FirstEnergy Ohio Utilities.

ADMIT/DENY: The Companies admit that on March 16, 2017 FirstEnergy Service Company made a payment of \$250,000 to Generation Now and that a portion of that payment was subsequently allocated to the Companies.

RFA-06-002: Please admit or deny that a payment or contribution was made by FirstEnergy Service Company on 5/17//2017 of \$250,000 to Generation Now and that a portion thereof was part of the approximately \$300,000 allocated to the FirstEnergy Ohio Utilities.

ADMIT/DENY: The Companies admit that on May 17, 2017 FirstEnergy Service Company made a payment of \$250,000 to Generation Now and that a portion of that payment was subsequently allocated to the Companies.

RFA-06-003: Please admit or deny that a payment or contribution was made by FirstEnergy Service Company on 5/14/2017 of \$250,000 to Generation Now and that a portion thereof was part of the approximately \$300,000 allocated to the FirstEnergy Ohio Utilities.

ADMIT/DENY: Denied.

RFA-06-004: Please admit or deny that a payment or contribution was made by FirstEnergy Service Company on 8/10/2017 of \$250,000 to Generation Now and that a portion thereof was part of the approximately \$300,000 allocated to the FirstEnergy Ohio Utilities.

ADMIT/DENY: The Companies admit that on August 10, 2017 FirstEnergy Service Company made a payment of \$250,000 to Generation Now and that a portion of that payment was subsequently allocated to the Companies.

RFA-06-005: Please admit or deny that a payment or contribution was made by FirstEnergy Service Company on 12/8/2017 of \$250,000 to Generation Now and that a portion thereof was part of the approximately \$300,000 allocated to the FirstEnergy Ohio Utilities.

ADMIT/DENY: The Companies admit that on December 8, 2017 FirstEnergy Service Company made a payment of \$250,000 to Generation Now and that a portion of that payment was subsequently allocated to the Companies.

RFA-06-006: Please admit or deny that there were payments or contributions made by FirstEnergy Service Company during 2017 to Hardworking Ohioans and that a portion thereof was part of the approximately \$200,000 allocated to the FirstEnergy Ohio Utilities.

ADMIT/DENY: Denied.

RFA-06-007: Please admit or deny that there were payments or contributions made by FirstEnergy Corp. during 2017 to Hardworking Ohioans and that a portion thereof was part of the approximately \$200,000 allocated to the FirstEnergy Ohio Utilities.

ADMIT/DENY: Denied.

RFA-06-008: Please admit or deny that there were payments or contributions made by FirstEnergy Service Company during 2017 to Hardworking Ohioans at the direction of FirstEnergy Solutions and that a portion thereof was part of the approximately \$200,000 allocated to the FirstEnergy Ohio Utilities.

ADMIT/DENY: 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 does not concern, nor is it reasonably calculated to lead to information concerning, 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.

Subject to and without waiving the foregoing objections, denied.

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

RPD-06-001: For each discovery request in this set of discovery, where the FirstEnergy Ohio Utilities are asserting privilege, please produce a privilege log.

RESPONSE: To the extent that the Companies withhold privileged documents from production in response to a Request to which the Companies have otherwise agreed to produce documents, the Companies will produce a privilege log.

RPD-06-002: Please provide a copy of internal prep documents associated with the investor relations call of February 16, 2021 that pertain to the discussion of misallocation of costs. (See deposition of Mr. Fanelli, Tr. 32)

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 does not concern, nor is it reasonably calculated to lead to information concerning, 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 information sought is not within the scope of this proceeding. *See* Case No. 20-1502-EL-UNC, Deposition Tr., at 250:9-251:18 (March 25, 2021). Further, the Companies object to this Request to the extent it seeks information that is protected from disclosure by the attorney client privilege or attorney work product doctrines.

RPD-06-003: Provide copies of all communications (including electronic) sent or received by Mr. Fanelli from May 1, 2020 through present containing any of the following terms:

- a. Generation Now;
- b. Hardworking Ohioans;

- c. Account 923;
- d. Account 426.1;
- e. Account 426.4;
- f. Political or charitable spending or contributions;
- g. Misallocate, misallocation, allocate or allocation;
- h. Reverse or reversal;
- i. Adjust or adjustments;
- j. reclassify or reclassified; and
- k. 501(c).

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 and then produce all communications 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.

RPD-06-004: Provide copies of all communications (including electronic) sent or received by Ms.

Mikkelsen from May 1, 2020 through present containing the following terms:

- a. Generation Now;

- b. Hardworking Ohioans;
- c. Account 923;
- d. Account 426.1;
- e. Account 426.4;
- f. Political or charitable spending or contributions;
- g. Misallocate, misallocation, allocate or allocation;
- h. Reverse or reversal;
- i. Adjust or adjustments; and
- j. reclassify or reclassified.

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 and then produce all communications 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.

RPD-06-005: Provide copies of all communications (including electronic) sent or received by Mr.

Art Richards from May 1, 2020 through present containing the following terms:

- a. Generation Now;

- b. Hardworking Ohioans;
- c. Account 923;
- d. Account 426.1;
- e. Account 426.4;
- f. Political or charitable spending or contributions;
- g. Misallocate, misallocation, allocate or allocation;
- h. Reverse or reversal;
- i. Adjust or adjustments; and
- j. reclassify or reclassified.

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 and then produce all communications 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.

RPD-06-006: Provide copies of all communications (including electronic) sent or received by Mr.

Chuck Jones from January 1, 2017 through present containing the following terms:

- a. Generation Now;

- b. Hardworking Ohioans;
- c. Account 923;
- d. Account 426.1;
- e. Account 426.4;
- f. Political or charitable spending or contributions;
- g. Misallocate, misallocation, allocate or allocation;
- h. Reverse or reversal;
- i. Adjust or adjustments; and
- j. reclassify or reclassified.

RESPONSE: The Companies object to this Request and its subparts because they seek 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 does not concern, nor is it reasonably calculated to lead to information concerning, 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. *See* Case No. 20-1502-EL-UNC, Dep. Tr., at 254:11-255:6 (March 10, 2021); Case No. 20-1502-EL-UNC, Hearing Tr., at 23:4-11 (March 25, 2021). The Companies further object to this Request because it seeks information outside the Companies' possession, custody, or control, and because this Request seeks information outside of OCC's and the Commission's jurisdiction to investigate. The Companies also object to this Request as overbroad, unduly burdensome, vague, and ambiguous. OCC's Request is entirely improper; it unreasonably demands that the Companies process a set of search terms and then produce all communications 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.

RPD-06-007: Referring to Mr. Fanelli's deposition at pages 167-169, please provide all documents supplied to the PUCO staff pertaining to vendors and services that were classified into the wrong accounts or for which there was inadequate documentation, as described during the FirstEnergy fourth quarter earnings call by Mr. Pappas.

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 does not concern, nor is it reasonably calculated to lead to information concerning, 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 information sought is not within the scope of this proceeding. *See* Case No. 20-1502-EL-UNC, Deposition Tr., at 250:9-251:18 (March 25, 2021). Further, the Companies object to this Request because it seeks confidential information protected from disclosure to third parties under Ohio R.C. 4909.16.

RPD-06-008: Referring to the financial audit of FirstEnergy Corp. including its service companies and other associated companies, undertaken by FERC, Division of Audits and Accounting, Office of Enforcement, Docket No. FA 19-1-000, please provide the following documents:

- a. Responses to formal or informal data requests from FERC;

- b. Documents provided to FERC Staff associated with site visits; and
- c. Transcripts, notes, recordings or other documents pertaining to interviews with the FERC Staff.

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 does not concern, nor is it reasonably calculated to lead to information concerning, 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 because OCC has no jurisdiction to investigate the business practices of FirstEnergy Corp. or other affiliates of the Companies. The Companies further object on the ground that the information requested is confidential, non-public, and protected from disclosure under the Federal Power Act, including 16 U.S.C § 825, 42 U.S.C § 16452(d), and FERC's regulations, including 18 C.F.R. Part 388. Consistent with these statutes and regulations, FERC makes clear that its Audit process "is subject to the confidentiality provisions of [section 301 of the Federal Power Act]" and that "[d]ocuments and information that the Commission staff obtains during an audit, as well as all working papers developed, will be placed in nonpublic files." See "Audit Authority – Electric Audit Authority" description at <https://www.ferc.gov/enforcement-legal/enforcement/audits>.

RPD-06-009: Referring to the deposition of Mr. Fanelli at page 276, please provide a copy of all communications (including electronic communications) from Art Richards to Mr. Fanelli with respect to the misallocation involving Generation Now payments and Hardworking Ohioans payments.

RESPONSE: The Companies object to this Request to the extent it seeks information protected from disclosure by the attorney client privilege or attorney work product doctrines.

Subject to and without waiving any of the foregoing objections, the Companies will produce any non-privileged documents responsive to this Request.

RPD-06-010: Please provide a copy of accounting entries where Generation Now payments and Hardworking American payments were:

- a. Initially recorded to Account 923 as Administrative and General Expenses and to capital accounts;
- b. Allocated to the FirstEnergy Utilities; and
- c. Reversed or reallocated after the misallocation was discovered.

RESPONSE: The Companies object to this Request to the extent it seeks information duplicative OCC RPD-06-009. The Companies further object to this Request as overbroad, vague, and ambiguous because the Request refers generally to “Generation Now payments and Hardworking American payments.” The Companies interpret this Request to refer to the 2017 payments to Generation Now and the 2018 payment to Hardworking Ohioans referenced in Mr. Fanelli’s deposition testimony. Case No. 20-1502-EL-UNC, Dep. Tr., at 131:4-5, 2061-5 (March 9-10, 2021).

Subject to the clarification above and without waiving the foregoing objections, the Companies will produce any non-privileged documents responsive to this Request.

RPD-06-011: Please provide a copy of the documents that were received by Mr. Fanelli from Mr. Richards in September 2020 pertaining to the accounting process for political and charitable spending including:

- a. The details behind political and charitable spending by FirstEnergy entities including the FirstEnergy Utilities and FirstEnergy Service Co. on behalf of the FirstEnergy Utilities (Tr. at 121);
- b. Accounting details behind the calculation of the Companies' various rider mechanisms. (Tr. at 124);
- c. The breakdown of political and charitable spending costs incurred by operating company (Tr. at 124); and
- d. The breakdown of all the accounts used to calculate the companies' rider mechanisms (Tr. 124).

RESPONSE: The Companies object to this Request as vague and ambiguous in its use of the phrase "pertaining to." Further, the Companies object to this Request to the extent it seeks information that is protected from disclosure by the attorney client privilege or attorney work product doctrines.

Subject to and without waiving the foregoing objections, the Companies will produce any non-privileged documents responsive to this Request.

RPD-06-012: Please provide a copy of all documents that were reviewed by Mr. Fanelli in preparing his affidavit.

RESPONSE: The Companies object to this Request to the extent it seeks information that is protected from disclosure by the attorney client privilege or attorney work product doctrines.

Subject to and without waiving the foregoing objections, the Companies will produce in response to this Request any non-privileged documents responsive to this Request.

RPD-06-013: Referring to the Companies' response to OCC INT 06-007, please provide copies of all communications by or on behalf of the Companies pertaining to the allocation of 2017 payments and /or contributions by FirstEnergy Service Company to the FirstEnergy Ohio Utilities.

RESPONSE: The Companies direct OCC to their response and objections to OCC INT 06-007, which they incorporate by reference herein.

RPD-06-014: Referring to the Companies' response to OCC INT 06-10, please provide copies of all documents and all communications by or on behalf of the Companies pertaining to the Utilities' review of the FirstEnergy Ohio Utilities' riders to determine whether they contained any costs relating to Generation Now or Hardworking Ohioans.

RESPONSE: The Companies object to this Request as vague and ambiguous in its use of the phrase "all communications by or on behalf of the Companies" because it is ambiguous as to the author or custodian of the document or communication. Further, the Companies object to this

request to the extent it seeks information that is protected from disclosure by the attorney client privilege or attorney work product doctrines.

Subject to and without waiving the foregoing objections, see the Companies' response to OCC RPD-06-012.

RPD-06-015: Please provide a copy of all of the supporting documentation for the accounting treatment and cost allocations for the payments to Generation Now and Hardworking Ohioans.

RESPONSE: The Companies object to the phrase "all of the supporting documentation for the accounting treatment and cost allocations" as overbroad, vague, and ambiguous. Further, the Companies object to this Request to the extent it seeks information that is protected from disclosure by the attorney client privilege or attorney work product doctrines. The Companies also object to this Request as overbroad, vague, and ambiguous because the Request refers generally to "payments to Generation Now and Hardworking Ohioans." The Companies interpret this Request to refer to the 2017 payments to Generation Now and the 2018 payment to Hardworking Ohioans referenced in Mr. Fanelli's deposition testimony. Case No. 20-1502-EL-UNC, Dep. Tr., at 131:4-5, 2061-5 (March 9-10, 2021).

Subject to the clarification above and without waiving the foregoing objections, the Companies will produce any non-privileged documents sufficient to show the accounting entries and cost allocations to the Companies for portions of the 2017 payments to Generation Now and the 2018 payment to Hardworking Ohioans that were allocated to the Companies.

RPD-06-016: For the FirstEnergy Ohio Utilities, please provide a copy of all of the supporting documents for the reversal of the cost allocations for the Generation Now and Hardworking Ohioans costs from above-the-line accounts into below-the-line accounts that occurred in September 2020.

RESPONSE: The Companies object to the phrase “supporting documentation” as overbroad, vague, and ambiguous. Further, the Companies object to this Request to the extent it seeks information that is protected from disclosure by the attorney client privilege or attorney work product doctrines. The Companies also object to this Request as overbroad, vague, and ambiguous because the Request refers generally to “the cost allocations for the Generation Now and Hardworking Ohioans costs.” The Companies interpret this Request to refer to the 2017 payments to Generation Now and the 2018 payment to Hardworking Ohioans referenced in Mr. Fanelli’s deposition testimony. Case No. 20-1502-EL-UNC, Dep. Tr., at 131:4-5, 2061-5 (March 9-10, 2021).

Subject to the clarification above and without waiving the foregoing objections, the Companies will produce any non-privileged documents sufficient to show the reclassification of portions of the 2017 payments to Generation Now and the 2018 payment to Hardworking Ohioans that were allocated to the Companies.

Dated: April 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
April 23, 2021:

/s/ Margaret M. Dengler
Attorney for the Companies

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**Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's
Privilege Log
Case No. 20-1502-EL-UNC
Date: May 12, 2021**

No.	Document Type	From	To	CC	BCC	Doc Date(s)	Status	Privilege Base	Description	Discovery Request
1.	Email	Brian Knipe*	Santino Fanelli			12/29/2020	Withhold	Attorney-Client Work Product	Confidential communications from in-house counsel providing legal advice concerning draft responses to discovery requests.	OCC INT-01-019, 021; RPD-01-004
2.	Email	Amy Wright	Santino Fanelli	Brian Knipe* Art Richards Mark Golden		4/12/2021	Withhold	Attorney-Client Work Product	Confidential communications with in-house counsel providing information necessary to provide legal advice concerning draft responses to discovery requests.	OCC INT-01-019, 021; RPD-01-004
3.	Email	Art Richards	Tracy Ashton Santino Fanelli Lindsey Arch Brandon McMillen Brian Knipe*			9/21/2020	Withhold	Attorney-Client Work Product	Confidential communications with in-house counsel providing information needed to provide legal advice concerning Mr. Fanelli's affidavit.	OCC RPD-06-009
4.	Attachment - Excel Spreadsheet					9/21/2020	Withhold	Attorney-Client Work Product	Excel spreadsheet prepared at the direction of in-house counsel to provide legal advice concerning Mr. Fanelli's affidavit.	OCC RPD-06-009
5.	Email	Brandon McMillen	Santino Fanelli			3/5/2021	Withhold	Attorney-Client Work Product	Confidential communications reflecting request from in-house counsel for information needed to provide legal advice concerning analysis of the misallocation of vendor payments.	OCC RPD-06-009
6.	Email	Brandon McMillen	Santino Fanelli			3/8/2021	Withhold	Attorney-Client Work Product	Confidential communications reflecting request from in-house counsel for information needed to provided legal advice concerning analysis of the misallocation of vendor payments.	OCC RPD-06-009
7.	Excel Spreadsheet					9/2020	Withhold	Attorney-Client Work Product	Excel spreadsheet prepared at the direction of in-house counsel to	OCC RPD-06-010

No.	Document Type	From	To	CC	BCC	Doc Date(s)	Status	Privilege Base	Description	Discovery Request
									provide legal advice concerning Mr. Fanelli's affidavit.	
8.	Email	Art Richards	Santino Fanelli	Brian Knipe*		9/29/2020	Withhold	Attorney-Client Work Product	Confidential communications with in-house counsel providing information needed to provide legal advice concerning Mr. Fanelli's affidavit.	OCC RPD-06-11
9.	Attachment - Excel Spreadsheet					9/29/2020	Withhold	Attorney-Client Work Product	Excel spreadsheet prepared at the direction of in-house counsel to provide legal advice concerning Mr. Fanelli's affidavit.	OCC RPD-06-11
10.	Excel Spreadsheet					9/2020	Withhold	Attorney-Client Work Product	Excel spreadsheet prepared at the direction of in-house counsel to provide legal advice concerning analysis of the Companies' political and charitable spending costs.	OCC RPD-06-12
11.	Excel Spreadsheet					9/2020	Withhold	Attorney-Client Work Product	Excel spreadsheet prepared at the direction of in-house counsel to provide legal advice concerning analysis of the Companies' political and charitable spending costs.	OCC RPD-06-12
12.	Excel Spreadsheet					9/2020	Withhold	Attorney-Client Work Product	Excel spreadsheet prepared at the direction of in-house counsel to provide legal advice concerning analysis of the Companies' political and charitable spending costs.	OCC RPD-06-12
13.	Excel Spreadsheet					12/4/2020	Withhold	Attorney-Client Work Product	Excel spreadsheet prepared at the direction of in-house counsel to provide legal advice concerning analysis of the Companies' political and charitable spending costs.	OCC RPD-06-14
14.	Excel Spreadsheet					12/3/2020	Withhold	Attorney-Client Work Product	Excel spreadsheet prepared at the direction of in-house counsel to provide legal advice concerning analysis of the Companies' political and charitable spending costs.	OCC RPD-06-14

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

In Reply Refer To:
Office of Enforcement
Docket No. FA19-1-000
February 6, 2019

Robert R. Mattiuz, Jr. P.E.
Vice President, Compliance and Regulated Services,
and Chief FERC Compliance Officer
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

Dear Mr. Mattiuz:

The Division of Audits and Accounting (DAA) in the Office of Enforcement of the Federal Energy Regulatory Commission (the Commission) is commencing an audit of FirstEnergy Corporation (FirstEnergy), including its service companies and other associated companies in the FirstEnergy holding company system (collectively, the Companies). The audit will evaluate the Companies' compliance with the Commission's: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R. Part 35; (2) service companies accounting, recordkeeping, and FERC Form No. 60 reporting requirements under 18 C.F.R. Parts 366, 367, and 369; (3) accounting and reporting requirements for franchised public utilities for their transactions with associated companies under 18 C.F.R. Parts 101 and 141; and (4) preservation of records requirements for holding companies and service companies under 18 C.F.R. Part 368. The audit will cover the period January 1, 2015 to the present. However, this period may be expanded if necessary, and recommendations for corrective actions may also cover preceding years.

This audit is being conducted pursuant to section 301 of the Federal Power Act (FPA), 16 U.S.C. § 825 (2012), and section 1264(d) of the Energy Policy Act of 2005 (EPAAct), 42 U.S.C. § 16452 (2012), and is subject to the confidentiality provisions of those sections. Documents and information Commission staff obtains during the audit, as well as all working papers developed, will be placed in nonpublic files. Section 301(b) of the FPA and section 1264(d) of the EPAAct require the Companies to furnish, within reasonable timeframes, any information the Commission may request; grant Commission staff free access to their property, accounts, records, and memoranda; and allow Commission staff to keep copies of any accounts, records, and memoranda that pertain to

FirstEnergy Corporation

Docket No. FA19-1-000

the audit. Pursuant to section 301(b), audit staff reserves the right to obtain and examine all accounts, records, and memoranda in years prior to the audit period stated above, as deemed necessary. Section 301(c) of the FPA and sections 1264(a) and (c) of the EPCa allow Commission staff to examine the books, accounts, records, and memoranda of any person who controls, directly or indirectly, the Companies, and of any other company controlled by such person, insofar as they relate to transactions with or the business of the Companies.

Consistent with the requirements of sections 301, 304, and 311 of the FPA, 16 U.S.C. §§ 825, 825c, and 825j (2012); section 1264(a) of the EPCa, 42 U.S.C. 16452 (2012); and 18 C.F.R. Parts 125 and 368, the Companies must preserve and retain, and shall not discard or destroy, any and all existing and future records or communications, including but not limited to, electronic documents, email, instant messages, text messages, and voice recordings relating to this audit.

We will contact you shortly to schedule a conference call between audit staff and FirstEnergy to: (1) explain the audit process; (2) address any questions about the audit you may have; (3) clarify audit staff's understanding of certain information; (4) discuss the initial data request and response schedule; and (5) discuss scheduling for the initial site visit.

If you have any questions about this letter, please contact Subramaniam Narthana, Auditor-in-Charge, at (202) 502-6102. Also, if you would like to discuss the audit with DAA management at any time during the audit, please contact Christopher Handy, Audit Manager, at (202) 502-6496, or Steven Hunt, Acting Director and Chief Accountant, DAA, at (202) 502-6084.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry R. Parkinson", with a long horizontal line extending to the right.

Larry R. Parkinson
Director
Office of Enforcement

This foregoing document was electronically filed with the Public Utilities

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6/29/2021 1:56:34 PM

in

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

Summary: Motion Motion to Compel Responses to Sixth Set of Discovery and Request For Expedited Ruling on Motion to Compel and Motion for In-Camera Hearing by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.