

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PREHEARING CONFERENCE

before Mr. Gregory Price, Ms. Megan Addison, and  
Ms. Jacky St. John, Attorney Examiners, at the Public  
Utilities Commission of Ohio, via Webex, called at  
2:00 p.m. on Wednesday, June 30, 2021.

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APPEARANCES:

FirstEnergy Service Company  
By Mr. Brian Knipe  
76 South Main Street  
Akron, Ohio 44308

Jones Day  
By Mr. Ryan A. Doringo  
901 Lakeside Avenue East  
Cleveland, Ohio 44114

On behalf of the Ohio Edison Company, The  
Cleveland Electric Illuminating Company,  
and The Toledo Edison Company.

Bruce J. Weston, Ohio Consumers' Counsel  
By Ms. Maureen R. Willis,  
Senior Counsel  
and Mr. John Finnigan,  
Assistant Consumers' Counsel  
65 East State Street, Suite 200  
Columbus, Ohio 43215

On behalf of the Residential Customers of  
the Ohio Edison Company, The Cleveland  
Electric Illuminating Company, and The  
Toledo Edison Company.

Interstate Gas Supply, Inc.  
By Ms. Bethany Allen  
and Mr. Evan F. Betterton  
6100 Emerald Parkway  
Dublin, Ohio 43016

On behalf of the Interstate Gas Supply,  
Inc.

Kegler, Brown, Hill & Ritter Co., LPA  
By Mr. Robert Dove  
65 East State Street, Suite 1800  
Columbus, Ohio 43215

On behalf of the Natural Resources  
Defense Council and Ohio Partners for  
Affordable Energy.

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APPEARANCES: (Continued)

The Ohio Environmental Council  
By Mr. Trent Dougherty,  
Ms. Miranda R. Leppla,  
and Mr. Chris Tavenor  
1145 Chesapeake Avenue, Suite I  
Columbus, Ohio 43212

On behalf of The Ohio Environmental  
Council.

Carpenter Lipps & Leland LLP  
By Ms. Kimberly W. Bojko  
and Mr. Thomas V. Donadio  
280 North High Street  
280 Plaza Suite 1300  
Columbus, Ohio 43215

On behalf of the Ohio Manufacturers'  
Association Energy Group.

McNees, Wallace & Nurick LLC  
By Ms. Rebekah Glover  
and Mr. Matthew R. Pritchard  
21 East State Street, 17th Floor  
Columbus, Ohio 43215

On behalf of the Industrial Energy Users  
of Ohio.

Environmental Law & Policy Center  
By Ms. Caroline Cox  
21 West Broad Street, Suite 800  
Columbus, Ohio 43215

On behalf of the Environmental Law &  
Policy Center.

Boehm, Kurtz & Lowry  
By Mr. Michael Kurtz,  
and Ms. Jody Kyler Cohn  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

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APPEARANCES: (Continued)

Bricker & Eckler, LLP  
By Mr. Dylan Borchers,  
Mr. Devin Parram,  
and Ms. Rachael Mains  
100 South Third Street  
Columbus, Ohio 43215-4291

On behalf of the Ohio Hospital  
Association.

Dave Yost, Ohio Attorney General  
Mr. John Jones, Section Chief  
By Mr. Thomas Lindgren  
and Mr. Werner L. Margard, III,  
Assistant Attorneys General  
Public Utilities Section  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

Mr. Thomas R. Hays  
8355 Island Lane  
Maineville, Ohio 45039

On behalf of the Northwest Aggregation  
Coalition.

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Wednesday Afternoon Session,  
June 30, 2021.

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EXAMINER ST. JOHN: The Public Utilities Commission of Ohio calls for a prehearing conference at this time and place Case No. 20-1502-EL-UNC being in the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

My name is Jacky St. John, and with me are Gregory Price and Megan Addison. And we are the Attorney Examiners assigned to preside over this prehearing conference.

Let's begin by taking appearances starting with the Companies.

MR. KNIPE: Good afternoon, your Honors. Appearing on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, I am Brian Knipe, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308. Also appearing with me on behalf of the Companies from the Jones Day law firm is Ryan Doringo, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114.

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EXAMINER ST. JOHN: Thank you.

Ohio Manufacturers' Association Energy  
Group.

MS. BOJKO: Thank you, your Honor. On  
behalf of the Ohio Manufacturers' Association Energy  
Group, Kimberly W. Bojko and Thomas Donadio with the  
law firm Carpenter Lipps & Leland.

EXAMINER ST. JOHN: Thank you.

Ohio Consumers' Counsel.

MR. FINNIGAN: Good afternoon, your  
Honor. John Finnigan and Maureen Willis for the  
Office of the Ohio Consumers' Counsel.

EXAMINER ST. JOHN: Thank you.

Mr. Robert Dove.

MR. DOVE: Good afternoon, your Honor.  
On behalf of Ohio Partners for Affordable Energy and  
Natural Resources Defense Council, this is Robert  
Dove with the law firm of Kegler, Brown, Hill &  
Ritter, 65 East State Street, Suite 1800, Columbus,  
Ohio 43212 -- 3215. Excuse me.

EXAMINER ST. JOHN: Thank you.

Ohio Environmental Council.

MR. TAVENOR: Thank you, your Honor.  
Chris Tavenor on behalf of the Ohio Environmental  
Council. Also entering an appearance on behalf of

Randy Leppla and Trent Dougherty, 1145 Chesapeake Avenue, Suite I, Columbus, Ohio 43212.

EXAMINER ST. JOHN: Thank you.

Environmental Law & Policy Center.

MS. COX: Thank you, your Honor.

Caroline Cox on behalf of the Environmental Law & Policy Center, 21 West Broad Street, Suite 800, 43215.

EXAMINER ST. JOHN: Thank you.

The Ohio Hospital Association.

MR. McMURRAY: Good afternoon, your Honor. On behalf of Ohio Hospital Association, Devin Parram from the law firm of Bricker & Eckler, also making an appearance on behalf of Dylan Borchers and Rachael Mains, 100 South Third Street -- South Third Street, Columbus, Ohio 43215.

EXAMINER ST. JOHN: Thank you.

Interstate Gas Supply, Inc.

MR. BETTERTON: Good afternoon, your Honors. On behalf of Interstate Gas Supply, Inc., are myself, Evan Betterton, and Bethany Allen. IGS is located at 6100 Emerald Parkway, Dublin, Ohio 43016.

EXAMINER ST. JOHN: Thank you.

Industrial Energy Users - Ohio.

MS. GLOVER: Thank you, your Honor. On behalf of the Industrial Energy Users of Ohio, Rebekah Glover and Matthew Pritchard from the law firm McNees, Wallace & Nurick, 21 East State Street, 17th Floor, Columbus, Ohio 43215.

EXAMINER ST. JOHN: Thank you.  
Northwest Aggregation Coalition.

MR. HAYS: Yes, good afternoon, your Honor. Thomas Hays, 8355 Island Lane, Maineville, Ohio 45039. Thank you.

EXAMINER ST. JOHN: Thank you.  
Ohio Energy Group.

MR. KURTZ: Afternoon, your Honors. Mike Kurtz and Jody Kyler Cohn for OEG. Sorry for the mixup this morning. That's probably the only FirstEnergy case where we are not a party so. But we were watching it.

EXAMINER ST. JOHN: My apologies for earlier this morning. That was my bad. It's easy to get these FirstEnergy cases mixed up.

MR. KURTZ: Thank you.

EXAMINER ST. JOHN: Thank you. Next, I have Citizens Utility Board of Ohio.

All right. I am not hearing anyone in response to that so next let's move on to Staff.



1 MR. LINDGREN: Thank you, your Honor. On  
2 behalf of the Commission Staff, Ohio Attorney General  
3 Dave Yost by Thomas Lindgren and Werner Margard,  
4 Assistant Attorneys General, 30 East Broad Street,  
5 26th Floor, Columbus, Ohio 43215.

6 EXAMINER ST. JOHN: Thank you.

7 And at this point I will go ahead and  
8 turn it over to Examiner Price, and we can start  
9 discussing the pending motions.

10 EXAMINER PRICE: Thank you.

11 This afternoon we will be dealing with  
12 the FirstEnergy political and charitable case. As I  
13 had requested this morning, if I begin to get  
14 confused and start talking corporate separation,  
15 please feel free to correct me. We have two motions  
16 to compel from Ohio Consumers' Counsel, and we have  
17 read the pleadings filed by both parties, so we won't  
18 be asking for initial statements.

19 Let's begin with the Third Set of  
20 Discovery.

21 MR. DORINGO: Your Honor, I apologize to  
22 interrupt. I did have one administrative matter I  
23 wanted to raise. Either -- we can do it whenever you  
24 want, either now or after we are done talking about  
25 the motions. Just let me know.

1 EXAMINER PRICE: Let's begin with this  
2 one. Go ahead and bring it up.

3 MR. DORINGO: Thank you. And it relates  
4 to the motions to compel filed by the OCC yesterday.  
5 And the OCC filed two motions on three sets of  
6 discovery on an expedited basis which, unfortunately  
7 as the time works out, makes the response due on  
8 July 6, the day after the observance of Independence  
9 Day. The Companies intend to file a motion today for  
10 an extension, short extension, to the 9th of July,  
11 you know, next Friday to respond to those motions.

12 I reached out to Ms. Willis and  
13 Mr. Finnigan earlier -- earlier today. I understand  
14 OCC intends to oppose that extension, but I just want  
15 to, since we are all convened, flag it for you all  
16 that we will be filing that shortly.

17 EXAMINER PRICE: You know, let's take  
18 this up at the end but I will say my inclination is  
19 let's deal with this while we're here instead of -- I  
20 mean, either you are going to have 7 days to respond  
21 or you are going to have 10 days to respond.

22 I don't want to get -- waste time if we  
23 can address the motions officially here but let's do  
24 this at the end. And we will take up the current  
25 motions to compel, and then we will decide the

1 expedited treatment on the other ones.

2 MR. DORINGO: Thank you. I appreciate  
3 that.

4 EXAMINER PRICE: Okay. Let's turn  
5 again -- once again to set 3. Mr. Finnigan, the  
6 Companies represent that they have supplemented a  
7 number of discovery dis -- discovery issues,  
8 particularly Interrogatories 3-7 -- we will start  
9 with 3-7 and several other ones. Is your motion to  
10 compel on 3-7 still in play, or are you satisfied  
11 with the supplemented responses?

12 MR. FINNIGAN: Your Honor, we are  
13 satisfied with their supplemental response so that  
14 item is no longer in play. And if I may kind of  
15 expedite matters a little bit, the Company  
16 supplemented their responses to both our third and  
17 fourth set after we filed our motion to compel  
18 discovery. And so we no longer have any items that  
19 are at issue with the Fourth Set of Discovery. Those  
20 have all been resolved by the Companies' supplemental  
21 responses so that's no longer on the table.

22 On the third set we just have four items  
23 that remain at issue and those are one interrogatory,  
24 3-22B, and then three Requests for Production, 4, 6,  
25 and 7. And that's all we have remaining for your

1 decision with the Third Set of Interrog -- of  
2 Discovery Requests.

3 EXAMINER PRICE: Thank you. That's very  
4 helpful. Then let's take up the first one you  
5 mentioned, Interrogatory 3-22B. And you can go  
6 first.

7 MR. FINNIGAN: Yes, your Honor. Thank  
8 you. This was one that the Companies supplemented  
9 and we were asking for who was responsible for  
10 directing the utilities' political and charitable  
11 spending during the relevant period.

12 In the Companies' supplemental response  
13 they identified Mr. Michael Dowling as that person.  
14 And then in subpart B we asked for the reporting  
15 relationships of the persons who reported to him and  
16 then also who he reported to. So that's the  
17 information we're missing in subpart B, those  
18 subordinates and superiors to Mr. Dowling.

19 EXAMINER PRICE: Companies, I am not sure  
20 who is speaking for the Companies today, if it's  
21 Mr. Doringo again, would you care to respond?

22 MR. DORINGO: Yes, thank you. We gave  
23 Mr. Gladman the day off. He earned it.

24 We -- so Mr. -- I want to clarify. What  
25 we said, and I know, your Honor, that our

1 supplemental response is not before you right now,  
2 but just to clarify, we responded in this  
3 supplemental response that the political and  
4 charitable spending of the companies was managed by  
5 the external affairs group generally which was headed  
6 up by -- by Michael Dowling during the period in  
7 question. And if what OCC is seeking is sort of an  
8 org chart of that group during this period of time,  
9 I -- you know, I think we can do that.

10 MR. FINNIGAN: Yeah. That would be  
11 great, Ryan, if you could produce that and we do have  
12 an org chart for this period from another case. I  
13 believe it's the corporate separation case but that's  
14 just a snapshot in time of, you know, whatever --  
15 whenever that was prepared. So we are really looking  
16 for who those persons were during the entire period  
17 covered by this case. So, in other words, if there  
18 were any changes to the org chart during the period,  
19 that's something we would like to know.

20 EXAMINER PRICE: Mr. Doringo.

21 MR. DORINGO: I understand. I think -- I  
22 think that is possible.

23 EXAMINER PRICE: Great. That being the  
24 case we will go ahead and grant the motion to compel.  
25 If there is any issues that come up, please feel free

1 to contact the Examiners, but we will assume we can  
2 check this one off the list.

3 MR. FINNIGAN: Thank you, your Honor.  
4 The next one is now we are into the Requests for  
5 Production of Documents and this is Request No. 4.  
6 And to give you the background on this, we asked in  
7 interrogatories for categories of services that  
8 FirstEnergy Service Company provides to the utilities  
9 and the Company provided that information in their  
10 supplemental responses and they identified simply the  
11 FERC Uniform System of Accounts accounting categories  
12 that are provided. And that's fine.

13 And what we asked for in Request No. 4  
14 were invoices for certain categories of service and  
15 those are external affairs and communications, local  
16 affairs, economic development, and state affairs.  
17 And we did not receive any documents for those.

18 EXAMINER PRICE: Mr. Doringo.

19 MR. DORINGO: Yes, thank you, your Honor.  
20 So in -- this Request 4 refers actually to  
21 Interrogatory 21 which OCC withdrew before filing its  
22 motion. So just -- so I understand it is not at  
23 issue here, but just to give context where we are,  
24 that interrogatory asked for the iden -- the  
25 identification of all goods and services provided by

1 the Service Company to the Companies -- to the Ohio  
2 Companies for a period of time in the same form it  
3 was given in the Sage audit report filed in the case  
4 we were talking about this morning a couple years  
5 back. So when I get -- I'm sorry. Go ahead.

6 EXAMINER PRICE: That's fine.

7 MR. DORINGO: And so when we get to this  
8 Request for Production 4, what they are looking --  
9 what OCC, I understand, is looking for is an invoice  
10 supporting all goods and services provided by --  
11 provided by the Service Company internally to the  
12 Companies for the two-year period of time that is  
13 relevant to this case.

14 And it is our position that this is not  
15 out -- not within the scope of this case. We are not  
16 talking about external political and charitable  
17 contributions. We are talking about services  
18 provided by the external affairs department or other  
19 similar departments to not only the -- I guess to the  
20 Companies without regard to any subject matter.

21 And, you know, as you can imagine, that's  
22 a lot of invoices, I would imagine, services over  
23 this two-year period. And we don't think it's  
24 relevant to the scope of this case.

25 MR. FINNIGAN: Your Honor -- I'm sorry.

1 I didn't mean to interrupt if...

2 EXAMINER PRICE: Are you finished,  
3 Mr. Doringo?

4 MR. DORINGO: Yes, I am. Thank you.

5 EXAMINER PRICE: Please proceed,  
6 Mr. Finnigan.

7 MR. FINNIGAN: Your Honor, perhaps we  
8 could simplify this and narrow the scope of our  
9 request to make it easier for the Company to respond,  
10 but we noted in the records for JLEC that there are a  
11 number of outside lobbyists who are registered to  
12 lobby for FirstEnergy. They list as their client  
13 FirstEnergy, not FirstEnergy Corp. or Service Company  
14 or utility.

15 And so what we are most interested in is  
16 getting invoices from those entities that are listed  
17 at JLEC during the relevant period. And one reason  
18 is we would like to read what the invoices say  
19 because in many cases invoices can provide detailed  
20 summaries of activities that were undertaken on  
21 behalf of the client. So, for example, they might  
22 describe advocacy in support of House Bill 6.

23 And then once we have those invoices, you  
24 know, we would then like to explore to what extent  
25 any costs for these outside lobbyists were charged to



1 the utilities. As we understand your prior rulings  
2 in this case, your Honor, we did have a discussion in  
3 one of our earlier prehearing conferences about  
4 political and charitable spending costs for employees  
5 of FirstEnergy, and we understood that that's not at  
6 issue in this case, that that's more a subject for  
7 the corporate separation case.

8 But what we did understand from your  
9 ruling is that the outside services like these for  
10 the political consultants and lobbyists are at issue  
11 in the case. That's really the remaining issue to be  
12 explored in this investigation and really this is how  
13 we -- this is the only avenue available for us to  
14 investigate what was the political spending for  
15 outside services by examining these invoices and then  
16 finding out to what extent the invoices related to  
17 House Bill 6 work and then from there to what extent  
18 were those invoices charged to the utilities.

19 EXAMINER PRICE: Mr. Doringo, last word.

20 MR. DORINGO: Yes, your Honor, thank you.  
21 So that's a lot different than what this request  
22 asked for initially and I think we don't get past the  
23 problem that -- I think -- and I might be wrong, but  
24 I think what I am hearing is OCC would like us to  
25 produce all invoices for any -- any FirstEnergy

1 retained lobbyists. And when I say FirstEnergy, I am  
2 talking about any lobbyists retained by any  
3 FirstEnergy entity regardless of whether that -- that  
4 lobbyist or consultant provided services to the  
5 Companies which I do think remains overbroad and  
6 outside the scope of relevance.

7 EXAMINER PRICE: I'm not sure -- I'm not  
8 sure that's what I heard Mr. Finnigan indicate. I  
9 thought he was saying that they only wanted the  
10 invoices that were charged to the three utilities  
11 from outside contractors who are registered as  
12 lobbyists under JLEC; is that right, Mr. Finnigan?

13 MR. FINNIGAN: Well, what I asked for was  
14 all of the invoices for the consultants who are  
15 lobby -- who are lobbyists at JLEC for FirstEnergy  
16 because they don't specify whether it's FirstEnergy  
17 the utilities or Service Company or Corp. So what we  
18 would like to see were the -- are the invoices  
19 themselves.

20 EXAMINER PRICE: Okay. Well, then what  
21 we will do is we will grant in part and deny in part  
22 the motion to compel. We will grant the motion to  
23 compel. It will be limited to outside contractors  
24 registered as JLEC lobbyists for the Companies -- or  
25 for the FirstEnergy Corp. and its affiliates and any

1 invoices that have been charged back to the Companies  
2 by FirstEnergy Service Corporation. Charged back to  
3 the three utilities to be clear, not.

4 MR. FINNIGAN: Your Honor, does your  
5 ruling also encompass any allocations of costs? So,  
6 in other words, if those invoices were allocated  
7 across a number of entities which include the  
8 utilities, would that also be within the scope of  
9 your ruling?

10 EXAMINER PRICE: Yes, it is.

11 MR. FINNIGAN: Okay. Thank you.

12 EXAMINER PRICE: Okay. Let's move on to  
13 RPD 3-6.

14 MR. FINNIGAN: Okay. Your Honor, again,  
15 this is one that was impacted by the supplemental  
16 responses and it builds on interrogatories. So we  
17 are asking for in RPD No. 6 the documents that were  
18 identified in Interrogatory No. 24. And then  
19 Interrog -- Interrogatory 24 asks for -- asks the  
20 Company to identify documents that were generated by  
21 or prepared by or reviewed by certain persons  
22 pertaining to political and charitable spending.

23 So the interrogatories said identify the  
24 documents, and then the requests for production of  
25 documents said produce the documents that you

1 identified in your answer to the interrogatory.  
 2 Well, in the -- in the Companies' supplemental  
 3 response, they identified Mr. Michael Dowling as the  
 4 person at FirstEnergy who was responsible for  
 5 directing the utilities' political and charitable  
 6 spending.

7 So this request for production of  
 8 documents then would apply to Mr. Dowling and what we  
 9 are asking for then is laid out in Interrogatory 3-24  
 10 the documents generated by Mr. Dowling or that he  
 11 reviewed pertaining to the utilities' political and  
 12 charitable spending because he's the one they  
 13 identified as being responsible for directing that.

14 EXAMINER PRICE: Mr. Doringo.

15 MR. DORINGO: Yes, thank you. Your  
 16 Honor, again, this is actually -- we have not  
 17 responded to Interrogatory 24 because OCC withdrew  
 18 that one as well in a letter to us dated March 31,  
 19 2021. So there's that.

20 And then going back to what I was just  
 21 talking about, yes, Mr. Dowling did lead the external  
 22 affairs group during this period of time but what we  
 23 said was the political and charitable spending of the  
 24 Ohio Companies was directed, you know, by the  
 25 external affairs group, not Mr. Dowling making, you

1 know -- he wasn't directing certainly every decision  
2 there. He had people working for him so.

3 What this request results in is a request  
4 for all documents generated or reviewed by anybody in  
5 the external affairs group for a two-year period of  
6 time without regard to -- and the way it's phrased is  
7 to -- it's pertaining to the political and charitable  
8 spending undertaken during this period of time that's  
9 relevant here, and it's not even limited to the  
10 Companies.

11 So again, we -- in our view this is --  
12 it's a very broad request that encompasses many  
13 people for a long period of time that is not tailored  
14 to issues that are relevant to this case, narrowly  
15 tailored to issues relevant in this case.

16 EXAMINER PRICE: I guess I am hearing  
17 Mr. Finnigan say they could accept only documents  
18 related to Mr. Dowling which would not be a broad  
19 group of people. It would only be one individual.  
20 Can you -- and I also understand the problem with  
21 review. Mr. Dowling is not there anymore. That's my  
22 understanding. So it's not going to be plausible for  
23 you to ask him what he reviewed. But certainly you  
24 can produce documents that were generated by  
25 Mr. Dowling that are related to political and

1 charitable campaign spending by the three utilities,  
2 correct?

3 MR. DORINGO: So, yes, we would have  
4 access to his files, and I think if we are limiting  
5 it to campaign spending by the utilities, that's more  
6 narrow, of course. But I -- I still think it is a  
7 pretty vague request. I mean, Mr. Dowling's job, of  
8 course, is related in large part to those sorts of  
9 issues so documents generated by him relating to  
10 political spending could encompass conceivably many  
11 thousands of e-mails and other types of documents.

12 EXAMINER PRICE: Well, why don't you make  
13 the attempt and see how many documents this results.  
14 And I want to make a clarification. We are about to  
15 review -- obviously there is stray documents he may  
16 have reviewed you have no record of but if there is a  
17 document like an e-mail he is on the received line,  
18 we can assume that he reviewed that document. So if  
19 you can simply take a shot at producing this. And if  
20 once you've made an effort you believe that the  
21 number is too burdensome, it's in the thousands, then  
22 we can talk, but I do think we ought to at least make  
23 an effort to produce something for the Consumers'  
24 Counsel on this.

25 MR. FINNIGAN: Thank you, your Honor. I

1 just wanted to clarify. In our discussion we used a  
 2 couple of different terms, political spending,  
 3 campaign spending, charitable spending. Just wanted  
 4 to make clear, when the Company responds, that the  
 5 way the request is written is it's written in terms  
 6 of political and charitable spending, not campaign  
 7 spending. So we didn't want to limit ourselves to  
 8 just, you know, documents relating to somebody  
 9 running for office. We wanted to include things like  
 10 communications with outside political consultants.

11 EXAMINER PRICE: That's fair. That's  
 12 fair.

13 MR. FINNIGAN: Thank you, your Honor.

14 EXAMINER PRICE: With the caveat that  
 15 this is spending by the Companies, not necessarily  
 16 spending by an affiliate or FirstEnergy Corp. The  
 17 documents need to be tied to what is ultimately  
 18 charged back to the Companies.

19 MS. WILLIS: Your Honor, may I just  
 20 make -- and I'm stepping in, perhaps John would have  
 21 covered this, like the other requests, would this  
 22 include allocated spending or spending that was  
 23 allocated to the utilities that was spent by other  
 24 entities?

25 EXAMINER PRICE: Yes, yes. If 20 percent

1 was allocated or 5 percent or 1 percent, then it's  
2 fair game.

3 And then moving on, do we have anything  
4 left, Mr. Finnigan?

5 MR. FINNIGAN: Yes, your Honor, just one  
6 more item left and this was Request for Production  
7 No. 7 and this is very similar in structure to the  
8 last one where the Company identified Mr. Dowling as  
9 the person responsible for decision making on the  
10 utilities' political and charitable spending.

11 So with that supplementation in this  
12 document request, we're asking for the e-mail  
13 communications to or from Mr. Dowling during the  
14 relevant period that includes certain terms. So  
15 these -- a number of these are probably going to be  
16 covered by the prior request for production but there  
17 may be a few more here that -- that are not.

18 So what we're simply seeking are the  
19 e-mails that include any of these terms listed in the  
20 request for production of documents received by or  
21 sent to Mr. Dowling during the relevant period since  
22 he was not the one responsible for making those  
23 decisions on political and charitable spending for  
24 the utilities.

25 EXAMINER PRICE: You'll understand why I



1 find the use of the phrase PUCO to be objectionable,  
2 don't you, Mr. Finnigan?

3 MR. FINNIGAN: Yes, your Honor, and we  
4 are willing to change that to Commission.

5 EXAMINER PRICE: No. I think the  
6 inclusion of things related to the PUCO or the  
7 Commission, however you want to phrase it, is  
8 probably overly broad.

9 MR. FINNIGAN: Your Honor, we will  
10 withdraw that -- that term.

11 EXAMINER PRICE: Thank you.

12 Mr. Doringo.

13 MR. DORINGO: Yes, your Honor. I think  
14 that issue pervades these search terms that they --  
15 OCC has provided. If you run terms like nuclear,  
16 Perry and Davis-Besse, or, you know, legislation of  
17 501 through two years' worth of data, you are going  
18 to get, I can tell you, thousands upon thousands of  
19 hits, the vast majority of which will be false  
20 positives. You know, 501 is the area code for Little  
21 Rock so I guess if there is -- Michael Dowling is  
22 talking to someone in Arkansas, we are going to get  
23 all those e-mails or somebody is working at FENOC and  
24 they have got nuclear in their -- in their subject,  
25 you know, in the signature, we're going to get all of

1 those.

2           So I think -- I do think this is a pretty  
3 problematic request, a very, very burdensome request  
4 that would require a large scale review just for  
5 this. And it's not really tailored to the issues  
6 that -- that the Commission is looking into here,  
7 political and charitable spending costs incurred  
8 directly or indirectly by the Companies.

9           Also, I do think we should bring up this  
10 potentially gets into documents that are not within  
11 the Companies' possession, custody, or control to the  
12 extent Michael Dowling was working on matters for  
13 other corporate entities but not the Companies. So I  
14 hesitate to use the term because it's kind of cliché,  
15 but I do think this is kind of the classic fishing  
16 expedition that is disfavored in the Commission cases  
17 and everywhere else.

18           So I'll leave it at that.

19           EXAMINER PRICE: Well, unfortunately the  
20 research I was able to do to prepare indicated in  
21 these sort of e-discovery search terms courts have  
22 looked favorably upon these sort of requests provided  
23 they are limited in scope to time or -- and/or a  
24 finite number of people.

25           My understanding we are just looking at

1 Mr. Dowling and the search terms are fairly -- are  
2 fairly straightforward. So I would tell you that you  
3 need to move forward with the searches with respect  
4 to Mr. Dowling over the time period and these  
5 particular search terms. I do not want you to  
6 produce these, however, unless OCC can produce a  
7 letter from the U.S. Attorney indicating they can  
8 have these e-mails. These are e-mails that clearly  
9 are related to the criminal complaint and we just  
10 want to stay as far away as possible from the  
11 criminal complaint and tainting evidence or tainting  
12 jury pools or anything like that.

13 So I understand this is going to be --  
14 take you some time. You need to start, begin working  
15 on it and if you can notify the Bench when you have  
16 the documents pulled together but don't release them  
17 to Consumers' Counsel until we can address this other  
18 question.

19 MR. DORINGO: Thank you, your Honor.  
20 Could -- I'm sorry. Could I ask if -- if we could  
21 have the same sort of burden issue here that we  
22 discussed earlier where if we run these searches and  
23 it's sort of a, you know, massive amount of data, we  
24 understand you can -- we can let you know and figure  
25 out ways to narrow these?

1 EXAMINER PRICE: Yes. Report back and we  
2 will deal with it then. I am confident these are  
3 fairly specific. I will be honest, with respect to  
4 the pending motions to compel, there are a lot more  
5 common words that we can -- we will have a chance to  
6 talk about later like allocate which businesses are  
7 likely to generate thousands and thousands of hits  
8 so, but we will be talking about that at some point  
9 in the future.

10 Mr. Finnigan, anything else on  
11 Interrogatory Set 3 -- or Discovery Set 3?

12 MR. FINNIGAN: No, your Honor, nothing  
13 else on 3 and there is nothing in 4, so I think that  
14 brings matters to a conclusion as far as the two  
15 motions to compel go. But you did say at the onset  
16 of this conference that you wanted to resolve now the  
17 matters pertaining to the motion that the Company is  
18 preparing to file for an extension.

19 EXAMINER PRICE: I did have one more  
20 issue before we get to that. Ms. Willis had provided  
21 the Bench with a notice that discovery commenced in  
22 the civil suit, and I believe that we had paused one  
23 or two discovery responses until discovery commenced  
24 in the civil suit. Has the Company supplemented  
25 those answers at this point?

1 MR. FINNIGAN: No, your Honor.

2 MR. DORINGO: No.

3 EXAMINER PRICE: If you can move forward  
4 with those then.

5 MR. DORINGO: Yeah, your Honor, I'm  
6 sorry. The order was to move forward with providing  
7 discovery provided in the suit referenced in  
8 Ms. Willis's letter?

9 EXAMINER PRICE: Yes.

10 MR. DORINGO: My understanding is -- I  
11 would like to raise a couple of issues on that, if I  
12 could.

13 EXAMINER PRICE: Sure.

14 MR. DORINGO: One, my understanding no  
15 discovery has been provided in those cases yet. My  
16 further understanding is that when it is provided, it  
17 will be provided subject to a protective agreement.  
18 That Companies are not parties to that case and will  
19 not be parties to that protective agreement.

20 In the interest of candor, you know, with  
21 the -- with the Bench as well and the parties, of  
22 course, there are two shareholder lawsuits that are  
23 pending in the Southern District of Ohio, both of  
24 which have -- the stays have been lifted in. There  
25 was the case that Ms. Willis referred to in her

1 letter, the St. Louis case, and there is another case  
2 in Southern District of Ohio In Re: FirstEnergy Board  
3 of Securities litigation where the stay was lifted,  
4 and I just wanted to point out that in that case,  
5 which is Case No. 2:20-CV-0375, the court had ordered  
6 that discovery would include and the discovery that  
7 will be coming sometime later subject to the  
8 protective agreement would include everything that  
9 had been provided to state and federal law  
10 enforcement agencies.

11 So I think this implicates the same issue  
12 that we have with DOJ that we were -- we talked about  
13 with respect to this last request. We continue to  
14 think that the -- that request is overly broad and  
15 outside the scope of this case and not tailored to  
16 this case.

17 EXAMINER PRICE: We can't -- obviously if  
18 discovery has not been issued by -- response has not  
19 been issued by your organization, we can't ask you to  
20 disclose it yet. Two, we are only talking about  
21 information which is in the utilities' files, and  
22 certainly you have got information that may be  
23 subject to this request. And if it is, you should  
24 give this up to the Consumers' Counsel.

25 And, three, we will limit this to

1 documents other than documents provided to the  
2 federal law enforcement agencies, information,  
3 documents in measure of discovery responses provided  
4 to the federal law enforcement agencies. But if you  
5 have something that's in the Companies' files that  
6 are relevant and part of the discovery request, you  
7 should forward it on, supplement it as you can.

8 MR. DORINGO: Understood. And I  
9 appreciate those clarifications. That's very  
10 helpful. Thank you.

11 MR. FINNIGAN: And, your Honor, could I  
12 just ask for some clarification maybe from the  
13 Company? Because we just want to understand better  
14 how their file keeping works. And, you know,  
15 maybe -- maybe we can have a separate conference to  
16 discuss that, but our understanding is that  
17 FirstEnergy Service Company provides all back office  
18 functions for the utilities as well as other  
19 affiliates of FirstEnergy Corp.

20 So let me propose that we just discuss  
21 that with the Company and if we have any dispute  
22 regarding what documents may or may not be covered by  
23 this request in terms of being in the utilities'  
24 files versus in the Service Company's files, we'll  
25 bring that to your attention if that becomes an

1 issue.

2 EXAMINER PRICE: That would be perfect.

3 Thank you.

4 Okay. Now we are onto the issue of  
5 Mr. Doringo is going to make a moral -- an oral  
6 motion to extend the discovery response time to  
7 July 9.

8 Go ahead, Mr. Doringo.

9 MR. DORINGO: That's right, your Honor.  
10 As we discussed earlier in reference to the motions  
11 filed by OCC yesterday seeking to compel responses to  
12 three sets of discovery, we would ask for a short  
13 extension to the expedited deadline to respond from  
14 July 6 to the 9 to file our response briefs.

15 EXAMINER PRICE: Consumers' Counsel.

16 MR. FINNIGAN: Well, your Honor --

17 MS. WILLIS: Yes, your Honor.

18 MR. FINNIGAN: I'm sorry. Go ahead,  
19 Maureen.

20 MS. WILLIS: I'm sorry. Thanks, your  
21 Honor. We oppose the extension for a number of  
22 reasons. First of all, we have asked for an  
23 expedited ruling, and we don't want to delay that  
24 ruling any longer.

25 Additionally, when you file for an



1 expedited ruling, as your Honor knows, we give up the  
2 right to reply. It would seem unfair that we give up  
3 the right to reply when they have more than the  
4 seven-day period of reply that the rules provide.

5 Secondly, your Honor, these issues on  
6 discovery have been around for quite some time. They  
7 were raised in April. There's been a lot of  
8 discussion with the Company. None of the positions  
9 that OCC has espoused in their motions to compel  
10 should be a surprise. We've gone over and over these  
11 issues with the Company. They refuse to -- you know,  
12 they've stated their position. They refused to  
13 negotiate on them.

14 So these -- you know, they should have  
15 been well aware and ready for these. We've been  
16 telling them they're coming, that we had problems.  
17 And everything that's in these motions to compel  
18 we've had thorough discussions with them on. So I  
19 think it's somewhat disingenuous all of a sudden to  
20 say we need more time to respond to these issues.

21 EXAMINER PRICE: I don't know that it's  
22 disingenuous. You controlled the timing of the  
23 motion to compel. You could have avoided the reply  
24 period ending up in the middle of a three-day weekend  
25 to be honest. You could have filed it earlier and

1 made sure --

2 MS. WILLIS: Absolutely, your Honor.

3 EXAMINER PRICE: -- or filed a week  
4 later.

5 MS. WILLIS: We could have filed it  
6 earlier or later, that's correct.

7 EXAMINER PRICE: I don't -- I really  
8 think that we are a very genial bar and that  
9 reasonable requests for extensions should be granted.  
10 They are not asking to extend this out to 15 days.  
11 They are asking for three days. And we are going to  
12 grant the extension.

13 MS. WILLIS: Your Honor, if I may? Would  
14 we be permitted to reply to their -- to their  
15 response as they are given more time and we have  
16 now -- we've now given up additional time for them to  
17 reply and more fully reply to our motion?

18 EXAMINER PRICE: Only if you agree that  
19 they have all the way to the full 15 days. If you  
20 want to withdraw -- if you want to withdraw the  
21 expedited consideration and give them the full 15  
22 days for the memo contra, you can have your reply  
23 back. But I am not going to give your reply back for  
24 three days, for three extra days.

25 MS. WILLIS: So they have a total of 10

1 days which otherwise they would have 15; is that what  
2 you are saying?

3 EXAMINER PRICE: That's the offer I am  
4 giving you. If you want your reply back, that's  
5 fair.

6 MS. WILLIS: I'll think about that. We  
7 will have to think about that, but at this point,  
8 your Honor, we -- we do oppose giving them more time.

9 EXAMINER PRICE: I appreciate that. We  
10 will grant the extension. If at some point between  
11 now and the 6th Consumers' Counsel wants to withdraw  
12 the expedited consideration, they may. And if they  
13 do, the Companies will get the full 15 days provided  
14 by the rule, and Consumers' Counsel will get their  
15 reply back.

16 Anything else for the Bench?

17 MR. FINNIGAN: No, but thank you very  
18 much for your time and attention in resolving these  
19 matters, your Honor. Thank you.

20 EXAMINER PRICE: Thank you. The Bench  
21 very much appreciates all the cooperation that the  
22 parties had in really narrowing the scope of what we  
23 had to deal with today from the initial pleadings on  
24 the excessive discovery.

25 I don't have anything else in front of

us. We will be adjourned.

(Thereupon, at 2:44 p.m., the hearing was  
adjourned.)

- - -

CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Wednesday, June 30,  
2021, and carefully compared with my original  
stenographic notes.

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-7103)

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