

**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.)

**JOINT MOTION TO INDEFINITELY STAY THE COMMENT SCHEDULE OR, IN THE
ALTERNATIVE, TO EXTEND THE COMMENT SCHEDULE FOR 120 DAYS
AND
REQUEST FOR EXPEDITED RULING
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

This week will be the one-year anniversary of the announcement, by the U.S. Attorney's Office, of the House Bill 6 scandal that reportedly involves one or more FirstEnergy entities, which leads us to some background for this case and a review of a related facet of the tainted legislative process.

On May 13, 2021, the PUCO Attorney Examiner issued an Entry in this proceeding, ruling that the number of discovery requests and the number of outstanding discovery requests "demonstrate the need to extend the time for the filing of comments and reply comments."¹ The Attorney Examiner also gave Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy") an additional 30 days to respond to the Office of the Ohio Consumers' Counsel's ("OCC") outstanding discovery requests. And the Attorney Examiner ordered a 60-day suspension of discovery information

¹ *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company*, Case No. 20-1502-EL-UNC, Entry at ¶24 (May 13, 2021).

requests (until July 12, 2021). The Attorney Examiner further indicated that to the extent feasible, he expected to rule on all outstanding motions filed during the 60-day period. The new deadlines for comments and reply comments were set at July 20, 2021 and August 3, 2021, respectively.

During the 60-day period staying discovery, OCC and the Ohio Manufacturers' Association Energy Group (OMAEG) resolved some discovery issues and attempted to resolve other discovery issues with the FirstEnergy. However, for the most part, OCC's efforts once again proved fruitless. Thus, on June 29, 2021, two weeks prior to the end of the sixty-day stay on discovery, OCC filed additional motions to compel FirstEnergy's responses to OCC's 5th, 6th, and 7th set of discovery. OCC's motions are pending rulings by the PUCO. OCC is also in the process of trying to resolve discovery disputes related to OCC's 8th set of discovery.

Over the past seven months the parties have been attempting to obtain information from FirstEnergy about its House Bill 6 activities and the extent to which it may have spent customer-funded money to get that legislation passed. But FirstEnergy's tactics of delay have continued despite rulings from the PUCO that largely granted OCC's motions to compel.

In addition to OMAEG's own discovery requests, which have been subject to dispute, OMAEG formally requested that FirstEnergy provide OMAEG copies of FirstEnergy's discovery responses to the other parties. In light of that request, OMAEG has made efforts to avoid duplication of OCC's discovery requests and has acted with the expectation that FirstEnergy would provide substantive responses to OCC, when appropriate. However, that expectation has not always been met and, therefore, OMAEG has also not received the discovery responses that it anticipated.

FirstEnergy’s so-called “responses” to the various sets of discovery, including OCC’s 5th, 6th, 7th and 8th sets of discovery that are still subject to dispute, are deficient and have impeded OCC and OMAEG’s ability to file comments. Moreover, the PUCO’s two-month suspension of discovery is an additional basis for extending the comment period. The pending discovery disputes have prevented the parties from receiving the information that they need to file adequately informed comments by the July 20, 2021 deadline. Furthermore, the PUCO recently restricted parties’ access to certain information about FirstEnergy’s political and charitable spending in support of H.B. 6 “unless OCC can produce a letter from the U.S. Attorney indicating they can have these emails.”² It is not clear such a letter could even be obtained.

Accordingly, OCC and OMAEG move, under O.A.C. 4901-1-13, for an indefinite stay of the comment period. OCC and OMAEG desire a fair process for the residential consumer interests and business interests.

The current schedule for filing comments and reply comments does not provide such fair process. An indefinite stay is necessary to complete parties’ review and adequately and completely draft comments for the PUCO’s consideration.

To that end, the parties request a stay of the comments with a status report filed after 90 days. The status update could then become a basis for the PUCO to set the comment period. Also, an *indefinite* stay is needed for serving justice (rather than a specific deadline), as a specific deadline will just be informational to FirstEnergy for how much delay they need to interpose.

As an alternative to staying the comment deadlines, OCC and OMAEG move to extend the deadlines for 120 days, respectively. As explained further in the attached memorandum in support, OCC and OMAEG’s request is consistent with prior PUCO rulings that extended the

² See Tr. at 27 (June 30, 2021).

deadlines for filing comments due to the existence of numerous outstanding discovery requests. Given that there are still numerous discovery requests outstanding, a further extension of the comment deadlines is warranted for that reason and the other reasons we state.

OCC and OMAEG further request that the Commission grant their motion on an expedited basis consistent with Ohio Adm. Code 4901-1-12(C). Neither OCC nor OMAEG can certify that no party objects to the issuance of an expedited ruling on this joint motion, without the filing of a memorandum.

Good cause exists for granting this motion as further explained in the attached memorandum.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis
Maureen R. Willis, Senior Counsel
Counsel of Record (# 0020847)
John Finnigan (#0018689)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Willis]: (614) 466-9567
Telephone [Finnigan]: (614) 466-9585
Maureen.willis@occ.ohio.gov
John.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

Thomas V. Donadio (0100027)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

Bojko@carpenterlipps.com

Donadio@carpenterlipps.com

(willing to accept service by email)

*Counsel for the Ohio Manufacturers' Association
Energy Group*

**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.)

MEMORANDUM IN SUPPORT

I. INTRODUCTION

After the announcement, by the U.S. Attorney’s Office, of the House Bill 6 scandal that reportedly involves one or more FirstEnergy entities and OCC’s motions were filed on September 8, 2020, “to review the political and charitable spending by FirstEnergy in support of Am. Sub. H.B.6 and the subsequent referendum effort,”³ the PUCO opened this proceeding on September 15, 2020. Over the past nine months, as allowed under Ohio law and the PUCO rules, OCC, OMAEG, and others have sought answers from FirstEnergy through written discovery and a deposition.

After discovery disputes arose and discovery went unanswered, the Attorney Examiner’s May 13, 2021 Entry extended the comment and reply comment deadlines until June 20, 2021, and August 3, 2021, respectively. However, the Entry also precluded OCC (and other parties) from serving any further discovery for 60 days and extended the deadline for FirstEnergy to respond to parties’ outstanding discovery by 30 days. The Entry indicated that “to the extent

³ See Entry at ¶5 (Sept. 15, 2020).

feasible, the attorney examiners will rule on all outstanding motions to compel during this 60-day period, including any filed during the 60-day period.”⁴

Consistent with the May 13, 2021 Entry,⁵ on June 29, 2021, two weeks before the 60-day stay period ended, OCC filed motions to compel related to its 5th, 6th, and 7th set of discovery. OCC’s recent motions to compel are pending. OCC also anticipates that there may be need for another motion to compel related to the FirstEnergy responses to OCC’s 8th set of discovery.

II. THE PUCO SHOULD INDEFINITELY STAY THE DEADLINE FOR FILING COMMENTS AND REPLY COMMENTS IN THIS CASE. ALTERNATIVELY, THE PUCO SHOULD EXTEND THE COMMENT PERIOD DEADLINES FOR 120 DAYS.

Good cause exists under O.A.C. 4901-1-13 to grant an indefinite stay for the parties’ filing of comments and reply comments. FirstEnergy has delayed providing the parties with complete and sufficient responses requested in discovery. OCC has pending motions to compel related to OCC’s 5th, 6th and 7th sets of discovery. There is the obfuscation of FirstEnergy Service Company Director of Rates and Regulatory Affairs Santino Fanelli who revealed during the deposition (that FirstEnergy tried to prevent OCC from ever taking) that his review of records (described in his filed affidavit) was merely “conceptual.” Furthermore, OCC is likely to file additional motions to compel FirstEnergy’s responses to OCC’s discovery (8th set) soon. Additionally, as explained previously, the PUCO restricted parties’ access to certain information about FirstEnergy’s political and charitable spending in support of H.B. 6 “unless OCC can produce a letter from the U.S. Attorney indicating they can have these emails.”⁶

⁴ Entry at ¶24 (May 13, 2021).

⁵ *Id.*

⁶ *See* Tr. at 27 (June 30, 2021).

Accordingly, under O.A.C. 4901-1-13 there is good cause to extend the comment filing deadlines for reasons that we have described including the need to resolve outstanding discovery disputes, obtain rulings on outstanding motions to compel, and obtain required documentation from the U.S. Attorney (if that is even feasible). All of these items need to be completed prior to receiving responses to the outstanding discovery requests. After the discovery responses and information is obtained from FirstEnergy, additional time will be needed to adequately prepare comments. Consumers seek a fair and adequate process “to review the political and charitable spending by [FirstEnergy] in support of Am. Sub. H.B.6 and the subsequent referendum effort.”⁷

This request is consistent with prior PUCO statements in this case that either contemplated the need to give sufficient time for the parties to draft comments after discovery disputes were resolved and discovery responses and documents were received. And it is consistent with the PUCO extending the deadlines for filing comments due to the existence of numerous outstanding discovery requests. First, in January at the first prehearing conference, the Attorney Examiner stated: “We owe OCC rulings on two interlocutory appeals and those will be made by subsequent entry. That should come out fairly soon. And we indicated earlier that we would set new dates for the comments and replies, but we will not do that until we have issued our ruling on the motions to compel. We don't want the clock to run out on Intervenors while we are dealing with the motion to compel.”⁸

Additionally, in the May 13, 2021 Entry, “the attorney examiner [found] that the number of discovery requests filed by the parties and the number of outstanding discovery requests demonstrate the need to extend the time for the filing of comments and reply comments and the

⁷ See Entry at ¶5 (Sept. 15, 2020).

⁸ Tr. at 12 (Jan. 19, 2021).

need to establish an orderly schedule for the response to outstanding discovery requests.”

Consistent with these prior statements and given that there are still numerous discovery requests outstanding, a further extension of the comment deadlines is warranted.

After the discovery disputes are resolved, the parties can report to the PUCO on the status of obtaining the requested discovery responses and documents, after 90 days. The status update could then become a basis for the PUCO to set the comment period. Also, an *indefinite* stay is needed for serving justice (rather than a specific deadline), as a specific deadline will just be informational to the FirstEnergy for how much delay it needs to interpose. As an alternative, the comment deadlines should be extended for 120 days.

III. AN EXPEDITED RULING IS NEEDED

Ohio Adm. Code 4901-1-12(C) allows parties to request an expedited ruling on motions filed at the PUCO. Inasmuch as the motion seeks an extension of the current comment deadline (which is in one day), OCC and OMAEG respectfully request an expedited ruling on this joint motion. There is good cause for the expedited ruling because of tomorrow’s impending comment deadline. Neither OCC nor OMAEG can certify that no party objects to the issuance of a ruling without the filing of memoranda.

The Attorney Examiners may also issue an expedited ruling without the filing of memoranda where the issuance of such a ruling will not adversely affect a substantial right of any party, under Ohio Adm. Code 4901-1-12(F). The substantial right of any party will not be affected by an expedited ruling here where parties should be aided by having additional time to prepare comments and reply comments.

IV. CONCLUSION

For good cause, the PUCO should indefinitely extend the comment and reply comment deadlines, in the interest of a fair process for consumers of FirstEnergy. Alternatively, the deadlines should be extended for 120 days. The PUCO should issue an expedited ruling on this joint motion.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis

Maureen R. Willis, Senior Counsel
Counsel of Record (# 0020847)
John Finnigan (#0018689)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Willis]: (614) 466-9567
Telephone [Finnigan]: (614) 466-9585
Maureen.willis@occ.ohio.gov
John.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)
Thomas V. Donadio (0100027)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
Bojko@carpenterlipps.com
Donadio@carpenterlipps.com
(willing to accept service by e-mail)

*Counsel for the Ohio Manufacturers' Association
Energy Group*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joint Motion was provided electronically to the persons listed below this 19th day of July 2021.

/s/Maureen R. Willis

Maureen R. Willis

Senior Counsel

Assistant Consumers' Counsel

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

SERVICE LIST

werner.margard@ohioAGO.gov

ccox@elpc.org

rlazer@elpc.org

rkelter@elpc.org

trhayslaw@gmail.com

leslie.kovacik@toledo.oh.gov

bethany.allen@igs.com

evan.betterton@igs.com

joe.oliker@igs.com

michael.nugent@igs.com

mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

jkylercohn@BKLawfirm.com

bknipe@firstenergycorp.com

mrgladman@jonesday.com

mdengler@jonesday.com

radoringo@jonesday.com

dborchers@bricker.com

dparram@bricker.com

mleppla@theOEC.org

tdougherty@theOEC.org

ctavenor@theOEC.org

rdove@keglerbrown.com

mpritchard@mcneeslaw.com

rglover@mcneeslaw.com

mfleisher@dickinsonwright.com

mwise@mcdonaldhopkins.com

Attorney Examiner:

Gregory.price@puco.ohio.gov

Megan.addison@puco.ohio.gov

Jacqueline.st.john@puco.ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/19/2021 1:14:41 PM

in

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

Summary: Motion Joint Motion to Indefinitely Stay The Comment Schedule or, In The Alternative, To Extend the Comment Schedule for 120 days and Request for Expedited Ruling by Office of The Ohio Consumers' Counsel and The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Tracy J Greene on behalf of Willis, Maureen R.