BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37.	**)**	**Case No. 17-974-EL-UNC**
In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo.	**)**	**Case No. 20-1629-EL-RDR**

FIRSTENERGY CORP. AND FIRSTENERGY SERVICE COMPANY'S REPLY IN SUPPORT OF MOTION TO QUASH THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S SUBPOENAS

TABLE OF CONTENTS

Page

I. Introduction

The Office of the Ohio Consumers' Counsel ("OCC") attempts to rewrite its subpoenas in its Memorandum Contra to obscure the fact that the requests are outside the scope of its authority and seek irrelevant privileged material to which it is not entitled. OCC's subpoenas flout the limits on discovery enumerated by civil and administrative rules and reinforced by Ohio case law and the Public Utilities Commission of Ohio (the "Commission") precedent. Moreover, OCC's subpoenas are not only flawed, but they are also in part moot. For much of its Memorandum Contra, OCC ignores the fact that the parties in the proceedings—Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "the Companies")—have already produced some of the documents OCC claims it needs. For the reasons presented here and those in FirstEnergy Corp. and FirstEnergy Service Company's opening Memorandum in Support, OCC's subpoenas should be quashed.

II. The Subpoenas Are Beyond the Commission's Jurisdiction and OCC's Authority.

The Commission does not have the expansive jurisdiction to regulate or supervise FirstEnergy Corp. or FirstEnergy Service Company that OCC claims.[1] OCC points to R.C. 4905.05's language regarding the Commission's limited jurisdiction over "companies owning, leasing or operating such public utilities" but that language cannot be divorced from the ***scope*** of that limited jurisdiction, which is to regulate the business of supplying or transmitting services—neither of which FirstEnergy Corp. or FirstEnergy Service Company does.[2] The Commission has authority to examine whether costs associated with the provision of electric utility service were

[1] *See* R.C. 4905.05.

[2] *In re Complaint of Direct Energy Bus., L.L.C. v. Duke Energy Ohio, Inc.*, 161 Ohio St. 3d 271, 273 (2020) ("And if Duke Energy did not act as a public utility under the facts of this case, then the PUCO has no jurisdiction to hold Duke Energy liable for failing to furnish adequate service.").

affected by the actions of FirstEnergy Corp. and FirstEnergy Service Company. But this does not give the Commission unfettered authority to regulate these entities.[3] Accordingly, the Supreme Court of Ohio has made clear that the Commission's jurisdiction is restricted to overseeing a ***public utility*** only when it "act[s] as a ***public utility***."[4] Here, OCC ignores those well-settled limitations and incorrectly asserts that the Commission has jurisdiction to investigate all aspects of the Companies' affiliates' business operations.

Similarly, OCC does not have authority to enforce the subpoenas issued here. While OCC may subpoena a non-utility, the subpoena must be "reasonably calculated to lead to discovery of admissible evidence" on the issues within the Commission's authority to regulate.[5] Here, OCC invites the Commission to enforce subpoenas to FirstEnergy Corp. and FirstEnergy Service Company requesting documents unrelated to the FirstEnergy utilities' provision of retail electric service. In doing so, OCC suggests that because the Deferred Prosecution Agreement requires FirstEnergy Corp. to cooperate with the United States Attorneys' Office, FirstEnergy Corp. and FirstEnergy Service Company must also produce the documents requested by OCC. This argument contradicts the plain language of the Deferred Prosecution Agreement, ignores the limits

[3] *See Elyria Tel. Co. v. Pub. Util. Comm.*, 158 Ohio St. 441, 447-448, 110 N.E.2d 59 (1953) (utility "is subject to extensive control and regulation" but "is still an independent corporation and possesses the right to regulate its own affairs and manage its own business"); *id.* at 448 (the Commission's "powers do not include the right to manage utilities or dictate their policies"); *West Ohio Gas Co. v. Pub. Util. Comm.*, 128 Ohio St. 301, 381 (1934) ("It is a matter of common sense, as well as law, that the members of the Public Utilities Commission of Ohio cannot substitute themselves as managers of the gas company or dictate its policies"); *City of Cleveland v. Pub. Util. Comm.*, 102 Ohio St. 341, 131 N.E. 714 (1921), syllabus para. 2 (a public utility "has the right to control its own affairs and manage its own business, so long as it does not injuriously affect the public or exceed its charter powers.").

[4] *Duke Energy Ohio, Inc.*, 161 Ohio St. 3d at 276 (emphasis added).

[5] *See* Ohio Adm. Code 4901-1-16(B); Ohio Adm. Code 4901-1-25(D) ("A subpoena may require a person, other than a member of the commission staff, to attend and give testimony at a deposition, and to produce designated books, papers, documents, or other tangible things within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code."); *see also* Case No. 20-1502-EL-UNC, Hr'g Tr., 18:20-19:10, 23:14-18 (June 30, 2021) (limiting production to information about the Companies).

on the Commissions' authority, and runs afoul of the requirement that discovery be limited to non-privileged information that is "***relevant*** to the subject matter of the proceeding."[6] OCC's subpoenas seek information far beyond these boundaries.

III. The Subpoenas Seek Information Not Relevant to Either the Corporate Separation Proceeding or the DCR Audit Proceeding.

OCC's subpoenas are impermissibly expansive and seek irrelevant information.[7] The subpoenas demand: (i) "All documents related to the internal investigation by a committee of independent members of the FirstEnergy Corp. Board of Directors, including but not limited to, its reported decisions to terminate certain executives for violations of FirstEnergy policies and its code of conduct associated with the 'purported consulting agreement,'" (ii) "[A]ll documents related to FirstEnergy's belief that 'payments under [a] consulting agreement may have been for purposes other than those represented within the consulting agreement;'" and (iii) "All documents related to FirstEnergy's identification of certain transactions" disclosed in FirstEnergy's form 10-K dated February 18, 2021."[8]

OCC does not even attempt to tailor its subpoenas to seek documents relevant to the proceedings. Indeed, OCC concedes in its Memorandum Contra that its sweeping subpoenas amount to a fishing exercise by stating that the documents "***may*** be connected to issues that are

---

[6] *See* Ohio Adm. Code 4901-1-16(B) (emphasis added).

[7] OCC's reference to the merger agreement between Ohio Edison and Centerior Energy Corporation is misleading. That agreement does not entitle the Commission or OCC to *any* requested document. *See In the Matter of the Commission's Review of the Merger of Ohio Edison Company and Centerior Electric Corporation*, Case No. 96-1322-EL-MER, Comments of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company at 2 (Feb. 18, 1997). Rather, the agreement provides that the Companies will make available "relevant" books, records, employees and officers in proceedings over which the Commission has jurisdiction. *Id.* These obligations are consistent with the civil and administrative rules of discovery and are not disputed by FirstEnergy.

[8] Case Nos. 17-974-EL-UNC and 20-1629-EL-RDR, Subpoena Duces Tecum Issued to FirstEnergy Service Company (June 25, 2021); Case Nos. 17-974-EL-UNC and 20-1629-EL-RDR, Subpoena Duces Tecum Issued to FirstEnergy Corp. (June 25, 2021).

live in the corporate separations proceeding."[9] OCC has no real idea whether its requests are relevant (they are not), and its general arguments fail to meet its discovery burdens.

OCC's specific arguments fare no better. First, OCC argues that FirstEnergy Corp. has policies that relate to corporate separation rules, that FirstEnergy Corp.'s executives were terminated for violations of the company's policies, and, *ergo,* the executives were terminated for violations of corporate separation rules.[10] This conclusion ignores the fact that FirstEnergy's policies and internal code of conduct govern much broader actions (all rules governing employee conduct) rather than just corporate separation which is set out in the "code of conduct" that the Commission is charged with enforcing under O.A.C. 4901:1-37-04(D).[11] OCC further argues that the timing of the termination of Charles Jones and the expansion of the corporate separation audit to include examination of the time period leading up to the passage of Am. Sub. H.B. 6 shows that the termination is related to corporate separation.[12] OCC confuses temporal correlation with causation, and OCC offers no evidence to demonstrate that the two are related.[13] Regardless, OCC did not ask for documents related to corporate separation or the cost allocation manual—instead, it asked for ***all*** documents related to the internal investigation. Courts routinely decline to enforce fishing expedition subpoenas, such as this, and the Commission should do so here.[14]

---

[9] OCC Mem. Contra at 9 (emphasis added).

[10] OCC Mem. Contra at 8-9.

[11] *See Martin v. The Budd Co.*, 128 Ohio App. 3d 115, 119 (9th Dist. 1998) (reversing the trial court's denial of Goodyear's motion to quash in light of its nonparty status and because "discovery proceedings may not be used to conduct a mere fishing expedition for incriminating evidence"); *see also AQ Asset Mgmt. LLC v. Levine*, 138 A.D.3d 635, 636 (N. Y. App. Div 2016) (affirming trial court's decision to quash a notice for a deposition based on improper "hypothetical speculation[] calculated to justify a fishing expedition").

[12] OCC Mem. Contra at 8-9.

[13] *See Martin*, 128 Ohio App. 3d at 119.

[14] *See e.g.*, *Hanick v. Ferrara,* 2020-Ohio-5019, ¶¶ 51-68, 161 N.E.3d 1 (7th Dist. 2020) (affirming the trial court's decision to quash the subpoena directed at a non-party in part because it was overbroad and irrelevant); *Byrd v. Lindsay Corp.*, 9th Dist. Summit No. 29491, 2020 WL 4342786, at *4 (July 29, 2020) (affirming the decision to quash a

Similarly, OCC's request for "[a]ll documents related to FirstEnergy's identification of certain transactions" disclosed in its form 10-K dated February 18, 2021 is impermissibly overbroad. The 10-K states "in connection with the internal investigation, FirstEnergy recently identified certain transactions, which, in some instances, extended back ten years or more, including vendor services, that were either improperly classified, misallocated to certain of the Utilities and Transmission Companies, or lacked proper supporting documentation."[15] OCC claims in its Memorandum Contra, that it is entitled to know how the misallocation happened, what was the effect, was the allocation manual being followed, and whether the allocation manual sufficient to prevent a repeat of what occurred.[16] Yet, that was not OCC's request. Instead, OCC demanded ***all*** documents related to the disclosed transactions. OCC now improperly attempts to rewrite its subpoenas in its briefing to cure the defects.

IV. OCC Largely Ignores Arguments Regarding the Burden Imposed By the Subpoenas and Tries To Address Them as if They Relate To Privilege.

Under Rule 4901-1-25, of the Ohio Administrative Code ("O.A.C."), the Commission may quash a subpoena "if it is unreasonable or oppressive."[17] Similarly, Ohio Civil Rule 45(C) states that a "court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship." OCC argues that Ohio Civil Rule 45(C) is persuasive, not binding authority. But the decision OCC cites for this proposition concludes that the Commission should nevertheless consider whether subpoenas meet the standards contained in Ohio Civil Rule 45(c)—specially

subpoena on the basis that it was a "mere fishing expedition" levied against a nonparty); *Martin*, 128 Ohio App. 3d at 119.

[15] FirstEnergy Corp., Form 10-K (February 18, 2021).

[16] OCC Mem. Contra at 11.

[17] Ohio Adm. Code 4901-1-25(C).

whether a party has "substantial need" for the information and whether the subpoena imposes an "undue burden."[18] Not only does OCC assert without any citation that "oppressive" poses a higher threshold than "undue burden" but OCC also overlooks the language in O.A.C. Rule 4901-1-25 that bars ***unreasonable*** subpoenas. "Oppressive and unreasonable" presents the same standard as "undue burden."[19] And ***any*** burden imposed by requests for irrelevant documents, such as here, is sufficient to quash the subpoena—a point that OCC concedes.[20]

OCC contends that the subpoenas are not oppressive or burdensome because FirstEnergy has produced certain documents to the United States Attorney's Office and other civil litigants; OCC's requests here, though, are much broader.[21] Specifically, OCC's subpoenas demand that FirstEnergy Corp. and FirstEnergy Service Company produce (in three weeks) ***every single document*** "related to" the Board's internal investigation, which is expansive in scope and has been ongoing for nearly a year. In addition to violating bedrock privilege protections (as set forth below), this request is unduly burdensome and oppressive—particularly when aimed at non-

[18] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Provide for a Standard Service Offer*, Case No. 14-1297-EL-SSO, Entry (July 22, 2015) ("We agree with FirstEnergy that the Commission should consider whether IGS has demonstrated a 'substantial need' for this information (Civ. R. 45)(C)(5)) as well as whether the subpoena subjects Duke to an 'undue burden' (Civ. R. 45(C)(3)(d))").

[19] *See* § 2463.1 Quashing or Modifying a Subpoena, 9A Fed. Prac. & Proc. Civ. § 2463.1 (3d ed.) ("The words 'undue burden' in Rule 45(d)(3)(A)(iv) replace the traditional language of 'unreasonable and oppressive,' however, this change in the language for quashing a subpoena is semantic only, and was not intended to change existing law."); *see also id.* ("Whether a subpoena subjects a witness to undue burden within the meaning of Rule 45(d)(3)(A)(iv) usually raises a question of the reasonableness of the subpoena."). Ohio Civ. R. 45 and Fed. R. Civ. Pro. 45 contain identical language regarding undue burden.

[20] OCC Mem. Contra at 14. *See also Lister v. Hyatt Corp.*, No. C18-0961JLR, 2020 WL 419454, at *3 (W.D. Wash. Jan. 24, 2020) (quoting *Compaq Computer Corp. v. Packard Bell Elecs., Inc.*, 163 F.R.D. 329, 335 (N.D. Cal. 1995) ("[I]f the sought-after documents are not relevant nor calculated to lead to the discovery of admissible evidence, then any burden whatsoever imposed would be by definition 'undue.'").

[21] FirstEnergy Corp. and FirstEnergy Service Company do not concede that all documents provided to the United States Attorney or civil litigants are relevant to these proceedings.

parties.[22] OCC cannot show, as it must, any "substantial need" for documents that are irrelevant to the Rider DCR and corporate separation proceedings.[23]

V. OCC Subpoenas Seek Privileged Information.

Privileged material is plainly protected from discovery in Commission proceedings.[24] Yet, OCC indiscriminately seeks "all documents" related to the comprehensive internal investigation led by counsel for FirstEnergy Corp. and its Board, necessarily implicating thousands upon thousands of protected records and communications with counsel. It is hard to fathom a more improper request, and it should be denied.

In its Memoranda Contra, OCC relies on *In re Dominion Purchased Gas Adjustment* in an effort to justify obtaining privileged material related to the internal investigation. But that case involved substantially narrower requests related to the internal investigation of accusations regarding Dominion Energy's interstate cost shifting. There, the Commission required production

---

[22] *See e.g.*, *Hanick v. Ferrara,* 2020-Ohio-5019, ¶¶ 51-68, 161 N.E.3d 1 (7th Dist. 2020) (affirming the trial court's decision to quash the subpoena directed at a non-party in part because it was overbroad and irrelevant); *Byrd v. Lindsay Corp.*, 9th Dist. Summit No. 29491, 2020 WL 4342786, at *4 (July 29, 2020) (affirming the decision to quash a subpoena on the basis that it was a "mere fishing expedition" levied against a nonparty); *Martin v. The Budd Co.*, 128 Ohio App. 3d 115, 119, 713 N.E.2d 1128 (9th Dist. 1998) (reversing the trial court's denial of Goodyear's motion to quash in light of its nonparty status and because "discovery proceedings may not be used to conduct a mere fishing expedition for incriminating evidence").

[23] *In the Matter of the Application of Champaign Wind, LLC, for A Certificate to Construct A Wind-Powered Elec. Generating Facility in Champaign Cty., Ohio.*, No. 12-160-EL-BGN, 2013 WL 2446463, Opinion, Order, and Certificate at *7 (May 28, 2013) (finding there was no "substantial need or undue hardship that would occur absent the subpoenas being enforced to overcome the burden that would be imposed on entities that were not parties in this proceeding.").

[24] *See* Ohio Adm. Code 4901-1-16; *see e.g.*, *Burnham v. Cleveland Clinic*, 151 Ohio St. 3d 356, 363 (2016) ("[e]xposure of the information that is to be protected by attorney-client privilege destroys the confidentiality of possibly highly personal or sensitive information that must be presumed to be unreachable."); *Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.*, 127 Ohio St. 3d 161, 165 (2010) (discussing the necessity of "full and frank communication between attorneys and their clients" safeguarded by privilege); *See also, In the Matter of the Complaint of Cameron Creek Apartments*, No. 08-1091-GA-CSS, 2009 WL 2138514, Entry, at *2 (July 8, 2009) (denying in part motion to compel based on attorney-client privilege and work production protections); *In the Matter of the Complaint of Toledo Premium Yogurt, Inc., DBA Freshens Yogurt*, No. 91-1528-EL-CSS, 1993 WL 13744538, Entry, at *1 (Sept. 22, 1993) (protections afforded by attorney-client privilege and work product doctrine applied to utility's internal investigation).

of "all documents, or e-mails produced to communicate the process[,]" "the results[,]" and "the recommendations made as a result of the internal investigation."[25] Here, by contrast, OCC makes a blanket demand for "all documents related" to the internal investigation.

Moreover, FirstEnergy Corp.'s form 10-K filed July 22, 2021 provides the very information that was ordered produced in *In re Dominion Purchased Gas Adjustment*. The 10-K plainly lays out the process, results, and recommendations of the Board's internal investigation: (i) certain executives, listed by title or name in the filing, were terminated for failure to comply with policies and code of conduct as well as for failure to ensure communication of relevant information to independent directors, (ii) senior management violated certain policies related to a payment of approximately $4 million made in early 2019 in connection to a purported consulting agreement with an individual who was subsequently appointed as an Ohio government official involved in regulating the Companies, (iii) that the Vice President, Rates and Regulatory Affairs, and Acting Vice President, External Affairs was separated from FirstEnergy related to her inaction regarding an amendment in 2015 of the purported consulting agreement, and (iv) that certain transactions, including vendor service, were either improperly classified, misallocated to certain of the Utilities and Transmission Companies, or lacked proper supporting documentation.[26] The 10-K further discloses that the internal investigation has transitioned to continued cooperation with the government investigations—the results of which are captured in the publicly available Deferred Prosecution Agreement.[27]

---

[25] *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of The East Ohio Gas Company d.b.a. Dominion East Ohio and Related Matters*, Case No. 05-219-GA-GCR, Entry, at 6-7 (July 28, 2006).

[26] FirstEnergy Corp., Form 10-K (July 22, 2021).

[27] *U.S. v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement (S.D. Ohio July 22, 2021).

Requesting literally all documents related to the internal investigation, as OCC does here, reaches far beyond the material addressed in *In re Dominion Purchased Gas Adjustment* and impermissibly seeks the privileged conversations between FirstEnergy Corp. "and its legal counsel as to legal advice given and associates notes, correspondence, and email create in anticipation of litigation for trial."[28]

OCC also ignores the clear burden posed by requiring FirstEnergy to log all of the privileged information requested by the subpoenas.[29] OCC's request would not only require the logging of thousands of communications and work product shared by FirstEnergy but also all of its internal communications and work product. And FirstEnergy is under no obligation to log privileged materials in response to OCC's subpoenas that fall outside the bounds of permissible non-party discovery. [30] OCC's additional demand for *in camera* review of all the material is impractical, onerous, and unnecessary.[31] *In camera* review of privileged materials is rarely permitted,[32] and courts have instructed that it should not be undertaken "when the basis of the request for review is speculation, rather than sufficient, credible evidence."[33]

---

[28] *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of The East Ohio Gas Company d.b.a. Dominion East Ohio and Related Matters*, Case No. 05-219-GA-GCR, Entry, at 7 (July 28, 2006).

[29] *See Towner v. County of Tioga*, Civ. A. No. 3:15-CV-0963 (GLS/DEP), 2018 WL 1089738, *6 (N.D.N.Y. Feb. 27, 2018) ("It is the position of this court that parties should not be required to list on a privilege log, on an ongoing basis, communications between attorney and client once litigation has commenced. Such a requirement would be a cumbersome, unwieldy, and ultimately unnecessary task for defendants' retained counsel, and for that matter plaintiff's attorney….").

[30] *Piatt v. Miller*, 6th Dist. Lucas No. L-09-1202, 2010 WL 1223915, at *4-5 (March 31, 2010).

[31] *See State Farm Fire & Cas. v. Parking Sys. Valet Serv.*, 926 N.Y.S.2d 541, 546 (2011) (declining to grant in camera review where it would be "overly broad and burdensome").

[32] *United States v. Zolin*, 491 U.S. 554, 571-72 (1989) (discussing the "burden *in camera* review places upon the district courts" and establishing the standard for determining whether in camera review is appropriate in the context of the crime-fraud exception to attorney-client privilege).

[33] *State ex rel. Ullmann v. Klein*, 160 Ohio St. 3d 457, 462 (2020) (denying a motion for *in camera* review because the movant provided only speculation, rather than credible evidence, that redacted portions of documents contained discoverable material).

OCC incorrectly asserts FirstEnergy waived privilege. Releasing the findings or results of an internal investigation, as FirstEnergy Corp. did with its form 10-K, does not waive attorney-client privilege over the evidence, communications, or internal materials of an investigation, , nor does it waive the protection provided by the work product doctrine.[34]

VI. The Subpoenas are Moot as to Documents Already Produced by the Companies.

Independently, much of what OCC requests has been rendered moot by party discovery and non-party FirstEnergy should not be burdened to reproduce documents that OCC agrees it received from the Companies. It is undisputed that the Companies have already produced (i) "the consulting agreement" and its amendments referenced in paragraph (1) of the subpoenas and (ii) information regarding vendor payments referenced in paragraph (4) of the subpoenas, including the underlying contracts, invoices, and purchase orders and a spreadsheet detailing payment information.[35] If OCC needed these documents in matters where it has not received them, it should request them from the Companies. OCC speculates that receiving the identical documents from FirstEnergy Corp. and FirstEnergy Service Company may have evidentiary value. But there is nothing in the record to suggest that different versions of the documents exist. Nor does OCC explain why producing the ***same*** documents would provide OCC insight on how the records are maintained. Speculation is insufficient to justify superfluous productions. The Commission has recognized that a party has no obligation to respond to discovery requests that are duplicative of

[34] *See In re Dayco Corp. Derivative Sec. Litig.*, 99 F.R.D. 616, 619 (S.D. Ohio 1983) (finding that a press release that "merely released the findings of the report" compiled by a special committee during an internal investigation did not waive attorney-client privilege or work product protections over the report itself); *see also In re Sealed Case*, 676 F.2d 793, 809 (D.C. Cir. 1982) ("And because it looks to the vitality of the adversary system rather than simply seeking to preserve confidentiality, the work product privilege is not automatically waived by any disclosure to a third party.").

[35] As set out in supplemental responses, per a June 16, 2021 meet-and-confer discussion between the Companies' and OCC, the Companies agreed, subject to and without waiving any objections, to produce OCC INT-02-002-Attachments 001-339 – Confidential.

prior discovery or in instances where the requested information has already been provided to the propounding party.[36] OCC ignores *Musarra v. Digital Dish, Inc.* and *Haworth, Inc. v. Herman Miller, Inc.* in which courts expressly declined to burden non-parties with producing documents that were already available to the requesting party.[37] And OCC fails to cite a single instance in which a court has required a non-party to produce documents that are already available. To the extent that OCC's subpoenas are duplicative and moot, and they should be quashed on this basis alone.

VII. Conclusion

For these reasons and those explained in the opening Memorandum in Support, FirstEnergy Corp. and FirstEnergy Service Company respectfully request that the Commission quash OCC's subpoenas.

[36] *See, e.g.*, *In the Matter of the Complaint of Brenda Fitzgerald v. Duke Energy Ohio*, Case No. 10-791-EL-CSS, 2011 Ohio PUC LEXIS 415, Entry at *5-13 (April 4, 2011) (denying in part motion to compel where respondent had already provided responses to several discovery requests at issue and the requests otherwise sought irrelevant information); *In the Matter of the Complaint of Ruth L. Wellman v. Ameritech Ohio*, Case No. 99-768-TP-CSS, 2002 Ohio PUC LEXIS 554, Entry at *2-19 (June 21, 2002) (denying motion to compel where discovery requested was vague, "not imperative in a final determination of [the] matter," overly broad, and because the respondent had already responded to several of the discovery requests at issue).

[37] *Musarra v. Digital Dish, Inc.*, No. CIVA 2:05-CV-545, 2008 WL 4758699, at *4 (S.D. Ohio Oct. 30, 2008) ("…the Court will not impose on this non-party the burden of producing documents presumably available to plaintiffs from a party to this litigation."); *see also Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (upholding refusal to enforce subpoena issued to non-party where same documents were available from party opponent).

Dated: August 10, 2021

Respectfully submitted,

/s/ Corey A. Lee

Corey Lee (0099866)
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Tel: (216) 586-3939
Fax: (216) 579-0212
calee@jonesday.com

On behalf of FirstEnergy Corp. and FirstEnergy Service Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on July 19, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Corey A. Lee
Attorney for FirstEnergy Corp. and FirstEnergy Service Company

Summary: Reply In Support of Motion to Quash Subpoena Duces Tecum electronically filed by Mr. Corey Lee on behalf of FirstEnergy Corp. and FirstEnergy Service Company