

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**MOTION FOR SUPPLEMENTAL AUDIT  
AND  
MOTION TO EXTEND DEADLINES FOR  
COMMENTS, REPLY COMMENTS AND HEARING-RELATED MATTERS  
AND  
REQUEST FOR EXPEDITED RULING  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL  
AND  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

---

Bruce Weston (0016973)  
Ohio Consumers' Counsel

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

**Office of the Ohio Consumers' Counsel**  
65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone: (614) 466-9567 (Willis)  
Telephone: (614) 466-9585 (Finnigan)  
[Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)  
[John.finnigan@occ.ohio.gov](mailto:John.finnigan@occ.ohio.gov)  
(willing to accept service by e-mail)

November 5, 2021

Dane Stinson (0019101)  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215  
Telephone: (614) 227-2300  
Facsimile: (614) 227-2390  
Email: [dstinson@bricker.com](mailto:dstinson@bricker.com)

Glenn S. Krassen (0007610)  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL  
31360 Solon Road, Suite 33 Solon, Ohio 44139  
Telephone: (440) 249-7831  
Facsimile: (440) 248-1986  
E-mail: [gkrassen@nopec.org](mailto:gkrassen@nopec.org)

*Attorneys for Northeast Ohio Public Energy Council*

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**MOTION FOR SUPPLEMENTAL AUDIT  
AND  
MOTION TO EXTEND DEADLINES FOR  
COMMENTS, REPLY COMMENTS AND HEARING-RELATED MATTERS  
AND  
REQUEST FOR EXPEDITED RULING  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL  
AND  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

---

The Office of the Ohio Consumers' Counsel ("OCC") and the Northeast Ohio Public Energy Council ("NOPEC") (collectively, "Consumer Parties") move for a supplemental audit. The supplemental audit is needed to investigate at least two matters. One matter is the FirstEnergy Advisors' shocking new revelation this week (1.5 years after the fact) of a March 2020 FirstEnergy text message. The text message seemingly reflects a corporate separation violation (if not other types of violations) between senior officials involved with the FirstEnergy Ohio utilities and their affiliate FirstEnergy Advisors. It also seemingly reflects an improper *ex parte* communication between a FirstEnergy official and former PUCO Chair Randazzo.

The following is an excerpt from the text messages attached to FirstEnergy Advisors'

filing this week.<sup>1</sup> The subject is FirstEnergy Advisors’ pending application for an “energy license:”

Dennis Chack [President Ohio Utilities and Manager of FirstEnergy Advisors]: Any luck on talking with Sam on energy license we just received request for additional comments

Charles Jones [CEO/President Ohio Utilities and Director, FE Ohio EDUs]: He will get it done for us but cannot just jettison all process. Says the combination of overruling Staff and other Commissioners on decoupling, getting rid of SEET and burning the DMR final report has a lot of talk going on in the halls of PUCO about does he work there or for us? He’ll move it as fast as he can. Better come up with a short term work around.

Dennis Chack: Ok thanks for discussing with him. \*\*\*

(See Attachment B)

The newly filed text messages are attached. They seem to confirm that there may have been violations of the PUCO’s corporate separation rules and Ohio law by FirstEnergy. The auditor has not been given the opportunity to investigate these disturbing communications and activities between utility and FirstEnergy Advisors’ personnel and their seeming violation of the corporate separation rules. A thorough investigation into these communications and activities is required for accountability under law and rule.

A second matter to be addressed in the supplemental audit is reflected in a November 13, 2020 email from a PUCO staffer. The staffer answered “no” to potential bidders (for the audit project in this case) who inquired if the audit would involve examining the source of funds for HB6 political and charitable spending or conducting tests to determine if consumers provided

---

<sup>1</sup> *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Motion to Withdraw Certification Application, Exhibit A (Nov. 2, 2021).

HB6 funding. This response was made despite the PUCO's expanding the audit to cover the time frame that House Bill 6 activities were being undertaken by FirstEnergy. The auditor's report acknowledges that (per the PUCO Staff's instructions) they did not evaluate any information covered by the PUCO's other H.B. 6-related investigations:

It should be recognized that during the course of this audit, several other reviews of FirstEnergy were underway. The findings in this audit are based solely on the information and documents produced by FirstEnergy for Daymark via data requests and interviews associated with this audit. While information or documents produced in response to other audits or investigations may be relevant to evaluating whether FirstEnergy's conduct in a particular situation was a violation of the laws and rules governing corporate separation, they were not evaluated as part of this audit.<sup>2</sup>

Additionally, we move for an extension on the comment deadlines and evidentiary hearing until a reasonable time after the supplemental audit is completed and filed. And we request an expedited ruling, given the upcoming deadlines.

In support, we note that within two months of these disturbing text messages, the PUCO did (in the parlance of fired CEO Jones) "get it done" for FirstEnergy. It approved FirstEnergy Advisors' application over the objections of OCC and NOPEC (and in an unfair process that the Ohio Supreme Court then invalidated).<sup>3</sup>

These recently released texts come on the heels of NOPEC and OCC's successful appeal of the PUCO's decision. (FirstEnergy Advisors did not disclose the text messages to the Ohio Supreme Court.) On October 27, 2021, Ohio Supreme Court reversed the PUCO's decision

---

<sup>2</sup> *Id.*, Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio at 1-14 (Sept. 13, 2021).

<sup>3</sup> *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Finding and Order (Apr. 22, 2020)

granting FirstEnergy Advisors' application to provide power broker and aggregation service in Ohio. *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630. That case was remanded to the PUCO with the Court directing, *inter alia*, the PUCO to determine whether FirstEnergy Advisors is fit and capable of complying with corporate separation requirements. *Id.* at ¶¶33-39.

This week the PUCO vacated its order and closed the case,<sup>4</sup> about seven or so business hours after FirstEnergy Advisors filed a motion withdrawing its application and without allowing OCC and NOPEC to file a response. FirstEnergy offered virtually no explanation of the text messages it filed, merely speaking of seeking a “fresh start” free from “any appearance of impropriety that may be associated with recently released text messages.”<sup>5</sup>

The mere withdrawal of FirstEnergy Advisors' application, without addressing corporate separation violations that may have been committed, does not in the least bit complete the claimed “fresh start” (that is especially needed for protection of Ohio consumers). Given the convergence of these events, the PUCO must do more to remove the “black cloud over the PUCO based upon the HB6 scandal.”<sup>6</sup>

A real start should be requiring a supplemental audit of FirstEnergy to investigate head on the potential violations associated with FirstEnergy Advisors' behind-the-scenes communications, activities and related matters. And as part of the supplemental audit, the auditor should address any FirstEnergy activities involving tainted House Bill 6 that relate to

---

<sup>4</sup> *Id.*, Order on Remand (Nov 3, 2021).

<sup>5</sup> *Id.*, Motion to Withdraw the Certification Application at 6 (Nov. 2, 2021).

<sup>6</sup> Pelzer, J., New PUCO Chair Jenifer French: more transparency needed to lift the ‘black cloud’ of HB6 scandal, *Cleveland.com* (May 18, 2021).

corporate separation, consistent with the PUCO’s directive to the auditor to examine the time period associated with HB6.<sup>7</sup> But, as recounted above, a PUCO staffer advised bidders not to examine the source of funds for HB6 political and charitable spending or conduct tests to determine if H 6 funding was funded by consumers.

Along with granting OCC and NOPEC’s motion for a supplemental audit, “good cause” exists (under O.A.C. 4901-1-13(A) for the PUCO to extend the comment deadlines and hearing-related deadlines established in this case, setting them after the supplemental audit is completed. Comments are currently due on November 8, 2021, and reply comments are due on November 22, 2021.<sup>8</sup>

Further, the PUCO should grant these motions on an expedited basis. O.A.C. 4901-1-12 allows for an expedited ruling. Recent precedent for quick rulings includes the motion that FirstEnergy Advisors filed this week in its certificate case. The PUCO granted it the next day – without FirstEnergy Advisors even requesting an expedited ruling.

Because the auditor has not had the opportunity to investigate the recently disclosed communications seemingly between regulated and non-regulated senior officials and the effect of the House Bill 6 scandal on corporate separations, the audit should be supplemented.

The Consumer Parties’ motions should be granted per O.A.C. 4901-1-12 and 13, as further explained in the attached memorandum in support.

---

<sup>7</sup> *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, Entry at ¶1, 17 (Nov. 4, 2020).

<sup>8</sup> *Id.*, Entry at ¶24 (Oct. 12, 2021).

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

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

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone: (614) 466-9567 (Willis)  
Telephone: (614) 466-9585 (Finnigan)  
[Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)  
[John.finnigan@occ.ohio.gov](mailto:John.finnigan@occ.ohio.gov)  
(willing to accept service by e-mail)

/s/ Dane Stinson  
Dane Stinson (0019101)  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215  
Telephone: (614) 227-2300  
Facsimile: (614) 227-2390  
Email: [dstinson@bricker.com](mailto:dstinson@bricker.com)

Glenn S. Krassen  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL  
31360 Solon Road, Suite 33 Solon, Ohio 44139  
Telephone: (440) 249-7831  
Facsimile: (440) 248-1986  
E-mail: [gkrassen@nopec.org](mailto:gkrassen@nopec.org)

*Attorneys for Northeast Ohio Public Energy Council*



## **TABLE OF CONTENTS**

	<b>PAGE</b>
I. INTRODUCTION .....	1
A. A supplemental audit should be conducted to explore corporate separation violations associated with recently released texts and emails related to FirstEnergy Advisors’ energy license application. ....	4
B. In the supplemental audit, the auditor should address FirstEnergy’s HB6 activities, for consumer protection.....	6
C. Good cause exists under O.A.C. 4901-1-13(A) for the PUCO to extend the comment deadlines (and hearing-related deadlines) to allow for parties to respond to the supplemental audit that OCC and NOPEC request.....	9
D. The PUCO should issue an expedited ruling on the Consumer Parties joint motion. ....	10
II. CONCLUSION.....	10

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**MEMORANDUM IN SUPPORT**

---

**I. INTRODUCTION**

In this case, the PUCO is supposed to be investigating whether the FirstEnergy Utilities or any of its affiliates violated Ohio's corporate separation law in relation to FirstEnergy Advisors' certification or because of H.B. 6 activities. Certainly, investigation of H. B. 6 activities is what OCC sought in its original motion requesting the audit.<sup>9</sup> After all, that was the PUCO's justification for conducting an additional corporate separation audit –“to include examination of the time leading up to the passage of Am. Sub. H.B. 6 and the subsequent referendum.”<sup>10</sup> But we now know that the PUCO Staff limited the audit to such a degree that it did not include a review of whether FirstEnergy's H.B.6 activities violated Ohio corporate

---

<sup>9</sup> *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company*, Case Nos. 17-2474, *et al.*, Motion For a PUCO Investigation and Management Audit of FirstEnergy, Its Corporate Governance and Its Activities Regarding House Bill 6 (Sept. 8, 2020).

<sup>10</sup> *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, Entry at ¶1 (Nov. 4, 2020).

separation law.<sup>11</sup> The Auditor confirmed this when he acknowledged not evaluating FirstEnergy's HB6 conduct as part of his audit.<sup>12</sup>

In addition, the PUCO intended the auditor to investigate whether the FirstEnergy EDUs' relationship with FirstEnergy Advisors violated the corporate separation rules, as evidenced by its taking notice of the record from FirstEnergy Advisors' certification case in this proceeding. But we just learned, in text messages disclosed by FirstEnergy Advisors this week,<sup>13</sup> communications between senior officials apparently involved with the FirstEnergy utilities' and FirstEnergy Advisors. Also, there seems to be an improper *ex parte* communication between a FirstEnergy official and former PUCO Chair Randazzo. The communications related to FirstEnergy Advisors' pending application for an "energy license:"

Dennis Chack [Pres FE Ohio Utilities and Manager of FirstEnergy Advisors]: Any luck on talking with Sam on energy license we just received request for additional comments

---

<sup>11</sup> See Attachment A. In response to an OCC public records request to the PUCO, OCC received documents indicating that the scope of the corporate separation audit was not to include an investigation into whether H.B. 6 costs were charged to customers of the FirstEnergy Utilities. See attached communications exchanged between Staff (Doris McCarter) and potential accounting firms asking about the scope of the proposed corporate separation audit. In response to several inquiries on this matter, Ms. McCarter explained that this is a "standard corporate separation audit" and with no testing to determine whether the source of funds of political and charitable spending for H.B. 6 was from rates or charges paid by Ohio customers.

<sup>12</sup> *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, Compliance Audit at 1 (Sept. 13, 2021).

<sup>13</sup> *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Motion to Withdraw Certification Application, Exhibit A (Nov. 2, 2021).

Charles Jones [CEO/Pres. FE Utilities; Director FE Ohio Utilities]:  
He will get it done for us but cannot just jettison all process. Says  
the combination of overruling Staff and other Commissioners on  
decoupling, getting rid of SEET and burning the DMR final report  
has a lot of talk going on in the halls of PUCO about does he work  
there or for us? He'll move it as fast as he can. Better come up  
with a short term work around.

Dennis Chack: Ok thanks for discussing with him. \*\*\*<sup>14</sup>

Within two months of these text messages, the PUCO approved FirstEnergy Advisors' application over the objections of OCC and NOPEC.<sup>15</sup>

These events apparently occurred in the midst of what federal prosecutors have described as likely the largest bribery and money-laundering scheme that had “ever been perpetrated against the people of the state of Ohio.”<sup>16</sup> Under a deferred prosecution agreement, filed on July 22, 2021, FirstEnergy Corp. has been charged with (and admitted to the underlying facts of) honest services wire fraud in defrauding the public. The criminal charge relates to bribery or kickbacks to public officials, for making \$60 million in dark money payments associated with the scandalous bill.<sup>17</sup> HB6 was tailor-made for FirstEnergy Corp., with a billion-dollar nuclear bailout and the consumer rip-off of the “recession-proofing” (decoupling) charge – not to mention the FirstEnergy Utilities' profits enhancement slipped into the 2019 budget bill (H.B. 166) at consumer expense. Thankfully, there was a partial legislative repeal of the tainted H.B. 6 subsidy charges to consumers and the profits amendment.

---

<sup>14</sup> Attachment B.

<sup>15</sup> *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Finding and Order (Apr. 22, 2020)

<sup>16</sup> J. Carr Smyth and J. Seewer “Ohio Speaker, 4 others arrested in \$60M bribery case” AP News (July 21, 2020).

<sup>17</sup> *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement at 16 (July 22, 2021).

The PUCO recently established a procedural schedule calling for initial comments on the corporate separation audit report due November 8, 2021 and reply comments due November 24, 2021.<sup>18</sup> Testimony is scheduled for January 2022, and the evidentiary hearing is to begin on February 10, 2022. OCC and NOPEC are moving for the comments and reply comment deadlines to be reset, until after the supplemental audit requested in this joint motion. Accordingly, the PUCO should pause the evidentiary hearing and the filing of testimony, if it grants this joint motion.

**A. A supplemental audit should be conducted to explore corporate separation violations associated with recently released texts and emails related to FirstEnergy Advisors' energy license application.**

In the aftermath of what has been described as the largest bribery scandal in the history of Ohio, the text messages that FirstEnergy Advisors disclosed this week cast doubt on the completeness of the PUCO's audit in this case. The text messages<sup>19</sup> seemingly suggest improper communication between senior officials of the FirstEnergy utilities and their affiliate, FirstEnergy Advisors. It also seems that there are *ex parte* communications between FirstEnergy Corp. and the former PUCO Chair related to FirstEnergy Advisors' pending application for an energy license:

Dennis Chack [Pres. FE Ohio Utilities; Manager of FirstEnergy Advisors]: Any luck on talking with Sam on energy license we just received request for additional comments

Charles Jones [CEO, Pres. FE Utilities]: He will get it done for us but cannot just jettison all process. Says the combination of overruling Staff and other Commissioners on decoupling, getting rid of SEET and burning the DMR final report has a lot of talk going on in the halls of PUCO about does he work there or for us?

---

<sup>18</sup> *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, Entry at ¶24 (Oct. 12, 2021).

<sup>19</sup> *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Motion to Withdraw Certification Application, Exhibit A (Nov. 2, 2021).

He'll move it as fast as he can. Better come up with a short term work around.

Dennis Chack: Ok thanks for discussing with him. \*\*\*

(See Attachment B)

Within two months of these text messages, the PUCO approved FirstEnergy Advisors' application over the objections of OCC and NOPEC (and in an unfair process that the Ohio Supreme Court then invalidated).<sup>20</sup>

These recently released texts come on the heels of NOPEC and OCC's successful appeal of the PUCO's decision. On October 27, 2021, Ohio Supreme Court reversed the PUCO's decision granting FirstEnergy Advisors' application to provide power broker and aggregation service in Ohio. *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630. That case was remanded to the PUCO with the Court directing, *inter alia*, the PUCO to determine whether FirstEnergy Advisors is fit and capable of complying with corporate separation requirements. *Id.* at ¶¶33-39.

Recently, the PUCO vacated its order and closed the case,<sup>21</sup> about seven business hours after FirstEnergy Advisors filed a motion to withdraw its application (and without giving OCC and NOPEC an opportunity to respond to FirstEnergy Advisors). FirstEnergy claimed there should be a "fresh start" free from "any appearance of impropriety that may be associated with

---

<sup>20</sup> *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Finding and Order (Apr. 22, 2020).

<sup>21</sup> *Id.*, Order on Remand (Nov 3, 2021).

recently released text messages.”<sup>22</sup> FirstEnergy offered virtually no explanation of the text messages it disclosed.

But the mere withdrawal of FirstEnergy Advisors’ application, without addressing corporate separation violations that may have been committed, does not in the least bit complete the “fresh start” that is needed for protection of Ohio consumers. It merely sweeps the seeming improprieties under the rug. Given the convergence of these events, now more than ever, the PUCO needs to get out from under the “black cloud over the PUCO based upon the HB6 scandal.”<sup>23</sup> The auditor, and ultimately the PUCO, must consider how to hold FirstEnergy and others accountable for their conduct. these

FirstEnergy Advisors used the word “transparency” about a half-dozen times in its motion this week. Real transparency and a real “fresh start” require a supplemental audit of FirstEnergy to investigate the seeming corporate separation violations associated with FirstEnergy Advisors’ behind-the-scenes activities.

Fortunately for Ohioans, the great majority of energy competitors do not have a powerful utility-related monolith like FirstEnergy involved in potential influence of regulatory outcomes that affect consumers. Unfortunately, in this situation, the PUCO’s audit appears to have not investigated all that needs investigating for consumer protection from FirstEnergy. The audit should be supplemented.

**B. In the supplemental audit, the auditor should address FirstEnergy’s HB6 activities, for consumer protection.**

In the supplemental audit OCC and NOPEC are requesting, the auditor should investigate

---

<sup>22</sup> *Id.*, Motion to Withdraw the Certification Application at 6 (Nov. 2, 2021).

<sup>23</sup> Pelzer, J., New PUCO Chair Jenifer French: more transparency needed to lift the ‘black cloud’ of HB6 scandal, Cleveland.com (May 18, 2021).

whether FirstEnergy's HB6 activities and related charges were problematic for corporate separation. The PUCO originally opened this case to audit FirstEnergy's compliance with corporate separation law and rules.<sup>24</sup> On Sept. 8, 2020, OCC filed investigatory motions requesting, inter alia, the PUCO to investigate and conduct a management of FirstEnergy, its corporate governance and its activities regarding HB6.<sup>25</sup>

Then on October 29, 2020, FirstEnergy Corp. fired Mr. Jones and two other executives, the same day that two defendants in the *U.S. v. Householder* criminal case entered guilty pleas.<sup>26</sup> FirstEnergy Corp. explained the firings as follows:

During the course of the Company's internal investigation related to the ongoing government investigations, the existence of which was previously disclosed in the Company's Form 10-Q for the period ended June 30, 2020, the Committee determined that each of the terminated executives violated certain Company policies and its code of conduct. Following the Committee's determination regarding these violations of certain Company policies and its code of conduct, the Company is re-evaluating its controls framework, which could include identifying one or more material weaknesses. Further, the internal investigation remains ongoing.<sup>27</sup>

A few days later and after OCC had filed a motion for an audit, the PUCO ordered a new audit in its existing FirstEnergy corporate separation investigation. The PUCO explained that FirstEnergy's firing of its CEO required the PUCO to "take additional action to ensure compliance by the Companies and its affiliates with the corporate separation provision of R.C.

---

<sup>24</sup> *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, Entry at ¶4-5 (May 17, 2017).

<sup>25</sup> *Id.*, Motion For a PUCO Investigation and Management Audit of FirstEnergy, Its Corporate Governance and Its Activities Regarding House Bill 6 (Sept. 8, 2020).

<sup>26</sup> M. Kovac, 2 *Householder associates take plea deals in HB 6 corruption case. Here's what they say*, The Columbus Dispatch (Oct. 29, 2020).

<sup>27</sup> FirstEnergy Corp., Form 8-K (Oct. 30, 2020).



4928.17 and with the Companies' Commission-approved corporate separation plans."<sup>28</sup> So the PUCO's stated purpose for the new audit was to review whether the HB6 matters that led FirstEnergy to fire its CEO also involved any corporate separation violations. The audit would cover "the period between November 1, 2016 and October 31, 2020, which includes examination of the time period leading up to the passage of Am. Sub. H.B. 6 and the subsequent referendum."<sup>29</sup>

On November 4, 2020, the PUCO directed its Staff to issue a Request for Proposal ("RFP") for the new HB6-related corporate separation audit.<sup>30</sup> The PUCO's Order provided for bidders to submit their responses to the RFP by December 2, 2020.<sup>31</sup>

Even though the PUCO opened this new audit to investigate FirstEnergy's HB6-related activities, the PUCO Staff told the auditor *not to investigate* H.B. 6 matters. A PUCO staffer managing the RFP bid process was asked whether this audit would include matters covered by other H.B. 6-related investigations, such as FirstEnergy's political and charitable spending. The PUCO staffer responded "no" and stated that an auditor would only need to perform "a standard corporate separation audit." (The emails between the PUCO staffer and the potential bidders are in Attachment A.)

The auditor's report acknowledges that (per the PUCO Staff's instructions) they did not evaluate any information covered by the PUCO's other HB6-related investigations:

It should be recognized that during the course of this audit, several other reviews of FirstEnergy were underway. The findings in this

---

<sup>28</sup> *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, Entry at ¶17 (Nov. 4, 2020).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at ¶26 (Nov. 4, 2020).

<sup>31</sup> *Id.*

audit are based solely on the information and documents produced by FirstEnergy for Daymark via data requests and interviews associated with this audit. While information or documents produced in response to other audits or investigations may be relevant to evaluating whether FirstEnergy's conduct in a particular situation was a violation of the laws and rules governing corporate separation, they were not evaluated as part of this audit.<sup>32</sup>

As a result, the corporate separation audit does not cover whether FirstEnergy's HB6-related activities involved corporate separation violations. This is contrary to what the PUCO appears to have intended when they expanded the corporate separation audit.

The PUCO should order a supplemental audit to investigate corporate separation violations related to HB6. The investigation should include all personnel of FirstEnergy Corp., First Energy Advisors, and the FirstEnergy Utilities' who are responsible for these matters. This is the only way that any corporate separation violations can be identified and remedied, and that FirstEnergy can be held accountable.

**C. Good cause exists under O.A.C. 4901-1-13(A) for the PUCO to extend the comment deadlines (and hearing-related deadlines) to allow for parties to respond to the supplemental audit that OCC and NOPEC request.**

Along with granting OCC and NOPEC's motion for a supplemental audit, the PUCO should recognize that good cause exists for extending the comment deadlines (and the hearing-related deadlines) established in this case, setting them after the supplemental audit is completed.

Comments are currently due November 8, 2021, and reply comments are due November 22, 2021.<sup>33</sup>

Testimony is scheduled to be filed in January 2022, and the evidentiary hearing is to begin on

---

<sup>32</sup> *Id.*, Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio at 1-14 (Sept. 13, 2021).

<sup>33</sup> *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, Entry at ¶24 (Oct. 12, 2021).

February 10, 2022. OCC and NOPEC are asking for the comments and reply comment deadlines to be reset, until after the supplemental audit requested in this joint motion. Accordingly, the PUCO should also pause the evidentiary hearing and the filing of testimony, if it grants this joint motion.

**D. The PUCO should issue an expedited ruling on the Consumer Parties joint motion.**

The PUCO should grant these motions on an expedited basis. O.A.C. 4901-1-12 allows for an expedited ruling. The Consumer Parties cannot certify that no party objects to the issuance of such a ruling, which would allow for an immediate ruling to be issued. Recent precedent for quick rulings includes the motion that FirstEnergy Advisors filed this week in its certificate case. The PUCO granted it the next day – without FirstEnergy Advisors even requesting an expedited ruling.

**II. CONCLUSION**

Granting these motions would further contribute to the development of a full and complete record upon which the PUCO could make its decision. And granting these motions will hopefully bring FirstEnergy consumers and all Ohioans one step closer to the truth.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

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

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone: (614) 466-9567 (Willis)  
Telephone: (614) 466-9585 (Finnigan)  
[Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)  
[John.finnigan@occ.ohio.gov](mailto:John.finnigan@occ.ohio.gov)  
(willing to accept service by e-mail)

/s/ Dane Stinson  
Dane Stinson (0019101)  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215  
Telephone: (614) 227-2300  
Facsimile: (614) 227-2390  
Email: [dstinson@bricker.com](mailto:dstinson@bricker.com)

Glenn S. Krassen  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL  
31360 Solon Road, Suite 33 Solon, Ohio 44139  
Telephone: (440) 249-7831  
Facsimile: (440) 248-1986  
E-mail: [gkrassen@nopec.org](mailto:gkrassen@nopec.org)

*Attorneys for Northeast Ohio Public Energy Council*

## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Request for Extension of Time was served upon the persons listed below by electronic transmission this 5th day of November 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**

[thomas.lindgren@ohioAGO.gov](mailto:thomas.lindgren@ohioAGO.gov)  
[werner.margard@ohioAGO.gov](mailto:werner.margard@ohioAGO.gov)  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
[Mnugent@igsenergy.com](mailto:Mnugent@igsenergy.com)  
[bethany.allen@igs.com](mailto:bethany.allen@igs.com)  
[evan.betterton@igs.com](mailto:evan.betterton@igs.com)  
[gkrassen@bricker.com](mailto:gkrassen@bricker.com)  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  
[fykes@whitt-sturtevant.com](mailto:fykes@whitt-sturtevant.com)  
[mfleisher@dickinsonwright.com](mailto:mfleisher@dickinsonwright.com)  
[mwise@mcdonaldhopkins.com](mailto:mwise@mcdonaldhopkins.com)  
[trhayslaw@gmail.com](mailto:trhayslaw@gmail.com)  
[leslie.kovacik@toledo.oh.gov](mailto:leslie.kovacik@toledo.oh.gov)

[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)  
[mrgladman@jonesday.com](mailto:mrgladman@jonesday.com)  
[mdengler@jonesday.com](mailto:mdengler@jonesday.com)  
[radoringo@jonesday.com](mailto:radoringo@jonesday.com)  
[sgoyal@jonesday.com](mailto:sgoyal@jonesday.com)  
[mwager@taftlaw.com](mailto:mwager@taftlaw.com)  
[iavalon@taftlaw.com](mailto:iavalon@taftlaw.com)  
[mpritchard@mcneeslaw.com](mailto:mpritchard@mcneeslaw.com)  
[tlong@mcneeslaw.com](mailto:tlong@mcneeslaw.com)  
[rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[donadio@carpenterlipps.com](mailto:donadio@carpenterlipps.com)  
[mleppla@theOEC.org](mailto:mleppla@theOEC.org)  
[ctavenor@theOEC.org](mailto:ctavenor@theOEC.org)

Attorney Examiner:

[Gregory.price@puco.ohio.gov](mailto:Gregory.price@puco.ohio.gov)  
[Megan.addison@puco.ohio.gov](mailto:Megan.addison@puco.ohio.gov)  
[Jacqueline.st.john.puco.ohio.gov](mailto:Jacqueline.st.john.puco.ohio.gov)

**From:** [Mccarter, Doris](#)  
**To:** "Marie Fagan"  
**Subject:** RE: RFP RA20-CA-X, questions  
**Date:** Friday, November 13, 2020 4:16:00 PM  
**Attachments:** [image002.png](#)

---

I am so sorry. I forgot. Actually, it has to be for the whole period because we want the entire corporate separation audit and Sage was only a subset of the corporate separation rules, with a heavy focus on Code of Conduct.

**Doris E. McCarter**

Grid Modernization and Retail Markets Division  
Rates and Analysis Department  
Public Utilities Commission of Ohio  
180 East Broad Street, 3<sup>rd</sup> Floor  
Columbus, Ohio 43215  
[Doris.mccarter@puco.ohio.gov](mailto:Doris.mccarter@puco.ohio.gov)

---

**From:** Mccarter, Doris  
**Sent:** Friday, November 13, 2020 4:07 PM  
**To:** Marie Fagan <[marie@londoneconomics.com](mailto:marie@londoneconomics.com)>  
**Subject:** RE: RFP RA20-CA-X, questions

Hello.

The answers to your first and second questions are, "No." This is a standard corporate separation audit.  
The answer to the third question is that you do not need to audit the time period of the Sage audit, just the time period before and after it.

**Doris E. McCarter**

Grid Modernization and Retail Markets Division  
Rates and Analysis Department  
Public Utilities Commission of Ohio  
180 East Broad Street, 3<sup>rd</sup> Floor  
Columbus, Ohio 43215  
[Doris.mccarter@puco.ohio.gov](mailto:Doris.mccarter@puco.ohio.gov)

---

**From:** Marie Fagan <[marie@londoneconomics.com](mailto:marie@londoneconomics.com)>  
**Sent:** Friday, November 13, 2020 2:04 PM  
**To:** Mccarter, Doris <[doris.mccarter@puco.ohio.gov](mailto:doris.mccarter@puco.ohio.gov)>  
**Subject:** RFP RA20-CA-X, questions

Dear Ms. McCarter,  
London Economics is pleased to have the opportunity to bid on RFP RA20-CA-X. Related to that, we have a handful of questions:

- 1) Does the audit requested in RFP RA20-CA-X include the item in paragraph 12 of the Commission's Entry of November 4, 2020 in Case No. 17-974-EL-UNC? In other words, does it include an audit of the Distribution Modernization Rider ("DMR"), to examine whether FirstEnergy improperly used funds collected in the DMR?
- 2) Does the audit requested in RFP RA20-CA-X include the item in paragraph 15 of the Commission's Entry of November 4, 2020 in Case No. 17-974-RL-UNC? In other words, does it include an audit of whether the source of funds for political and charitable spending by the Companies in support of Am. Sub. H.B. 6 was from rates or charges paid by Ohio ratepayers?
- 3) The audit requested in RFP RA20-CA-X will cover the period November 1, 2016 through October 31, 2020; this period encompasses the period (June 28, 2017 through February 28, 2018) which was included in a previous audit of FirstEnergy's compliance with corporate separation rules performed by Sage Management Consultants, LLC and published May 14, 2018 in Case No. 17-0974-EL-UNC ("Sage Report"). Does audit requested in RFP RA20-CA-X include a detailed audit and re-examination of the time period already covered in the Sage Report? Or does the audit requested in RFP RA20-CA-X envision that the consultant will limit its activities with respect to the June 28, 2017- February 28, 2018 time period to reviewing and commenting on the Sage Report, and focus its detailed audit on the time periods before and after the Sage Report time period?

Many thanks,  
Marie Fagan



Marie Fagan, PhD  
Chief Economist  
London Economics International  
717 Atlantic Ave, Suite 1 A | Boston, MA | 02111  
Direct: 1-617-933-7205  
Cell 1-617-599-9308  
[www.londoneconomics.com](http://www.londoneconomics.com)

*London Economics International, LLC ("LEI") is an economic and financial consulting company with two decades of experience advising both private and public entities in energy and infrastructure markets. LEI publishes bi-annual market reviews of all US and Canadian regional power markets available at [www.londoneconomicspress.com](http://www.londoneconomicspress.com).*

**CAUTION:** This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to [csc@ohio.gov](mailto:csc@ohio.gov) or click the Phish Alert Button if available.

**From:** [Mccarter, Doris](#)  
**To:** [Fieldman, Alyson](#)  
**Cc:** [Wiefling, Guler Ann](#); [Molter, Lindsey](#)  
**Subject:** RE: RFP Clarification Questions  
**Date:** Friday, November 20, 2020 9:30:00 AM

---

Hello Everyone,

The Order language was just to give background around various other proceedings occurring at the PUCO. That text refers to another case. The audit that will be the subject of this case is a traditional corporate separation audit.

I need an overall cost (cap) from you. However, I will still need that broken down by specific task areas, hours per tasks, person/cost per hour per task. Such a breakdown informs me as to the level of effort going into the audit, the areas of effort, the competencies engaged in the areas of review and also your understanding of/approach to the audit.

The hearing costs can be delineated as a per hour charge, since it is unknown if a further proceeding will be needed. Please be certain to make it a separate section of your bid.

***Doris E. McCarter***

[Grid Modernization and Retail Markets Division](#)  
[Rates and Analysis Department](#)  
[Public Utilities Commission of Ohio](#)  
[180 East Broad Street, 3<sup>rd</sup> Floor](#)  
[Columbus, Ohio 43215](#)  
[Doris.mccarter@puco.ohio.gov](mailto:Doris.mccarter@puco.ohio.gov)

---

**From:** Fieldman, Alyson <Alyson.Fieldman@marcumllp.com>  
**Sent:** Friday, November 20, 2020 8:36 AM  
**To:** Mccarter, Doris <doris.mccarter@puco.ohio.gov>; Molter, Lindsey <Zee.Molter@puco.ohio.gov>  
**Cc:** Wiefling, Guler Ann <Guler.Wiefling@marcumllp.com>  
**Subject:** RFP Clarification Questions

Good morning, Ms. McCarter and Ms. Molter,

Marcum LLP will be submitting a proposal in response to the RFP that PUCO has issued as it relates to an audit / investigation of First Energy Corp. We understand from the RFP that one of the engagement's purposes will be to review the company's compliance with the Corporate Separation Rules adopted by PUCO.

Paragraph 15 of the order that PUCO issued on 11/4/2020 regarding this RFP, states that PUCO has "opened proceedings to review whether any political and charitable spending by the Companies in support of Am. Sub. H.B. 6 and the subsequent referendum effort was included, directly or indirectly, in any rates or charges paid by ratepayers in this state." The RFP, however, does not explicitly include this as an objective of the work to be undertaken by the selected auditor. Does PUCO wish the selected auditor to conduct tests in order

to determine whether such contributions were directly or indirectly paid by ratepayers?

Separately, the RFP on page 2 states that "the proposed costs shall be considered firm prices for performing the work described in the proposal." Can you please clarify whether PUCO is asking for a fixed price for this engagement or whether it is asking for hourly rates by level of resource with such rates remaining constant for the duration of the engagement?

Thank you for your time and we look forward to your response.

Kind regards,  
Alyson

**Alyson Fieldman**  
Chief Marketing Strategy Officer  
6685 Beta Drive  
Mayfield Village, OH 44143  
P: (440) 459-5969  
C: (352) 642-3884  
[Alyson.Fieldman@marcumllp.com](mailto:Alyson.Fieldman@marcumllp.com)  
[LinkedIn](#)



**DISCLAIMER:**

This communication has been prepared for informational purposes only and is not intended to constitute advertising or solicitation and should not be used or interpreted as tax or professional advice, unless otherwise stated. The content of this communication is limited to the matters specifically addressed herein and is not intended to address other potential tax consequences or the potential application of tax penalties to this or any other matter. Those seeking tax or professional advice should contact a member of our firm. Transmission of this information is not intended to create, and receipt does not constitute, any client-firm relationship. Personal or confidential information should not be sent to Marcum without first communicating directly with a member of our firm about establishing a client relationship.

**CAUTION:** This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to [csc@ohio.gov](mailto:csc@ohio.gov) or click the Phish Alert Button if available.

OCC has redacted the "confidentiality" notice that appears on this document received from the PUCO STAFF (including the Marcum Auditing firm), as the document was not deemed confidential by the sender.



## Short Message Report

Conversations: 1	Participants: 2
Total Messages: 1	Date Range: 3/3/2020

## Outline of Conversations



**NODISPLAY** 1 message on 3/3/2020 • Charles Jones • Dennis Chack

**Messages in chronological order** (times are shown in GMT -04:00)



**NODISPLAY**

DC

**Dennis Chack**

3/3/2020, 11:23 AM

Any luck on talking with Sam on energy license we just received request for additional comments

## Short Message Report

Conversations: 1	Participants: 2
Total Messages: 5	Date Range: 3/4/2020

## Outline of Conversations



**NODISPLAY** 5 messages on 3/4/2020 • Charles Jones • Dennis Chack

**Messages in chronological order** (times are shown in GMT -05:00)**NODISPLAY**

- CJ Charles Jones** 3/4/2020, 2:57 PM  
He will get it done for us but cannot just jettison all process. Says the combination of over ruling Staff and other Commissioners on decoupling, getting rid of SEET and burning the DMR final report has a lot of talk going on in the halls of PUCO about does he work there or for us? He'll move it as fast as he can. Better come up with a short term work around.
- DC Dennis Chack** 3:05 PM  
Ok thanks for discussing with him. How are you feeling
- CJ Charles Jones** 3:09 PM  
[REDACTED]  
[REDACTED] Stopped by Sam's today on my walk. He has friends down and has been busy but he was out doing some yard work. Walking about 3 miles a day right now. A little bored since I cant golf or even get in the pool. But better than sitting in Ohio. Weather has been beautiful last 3 days.
- DC Dennis Chack** 3:14 PM  
It was not the best the days we were there
- CJ Charles Jones** 3:14 PM  
I know. Pretty chilly and windy.

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**11/5/2021 5:21:41 PM**

**in**

**Case No(s). 17-0974-EL-UNC**

Summary: Motion Motion for Supplemental Audit and Motion to Extend Deadlines for Comments, Reply Comments and Hearing-Related Matters and Request for Expedited Ruling by Office of the Ohio Consumers Counsel and Northeast Ohio Public Energy Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.