

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Review of the
Political and Charitable Spending by
Ohio Edison Company, The Cleveland
Electric Illuminating Company, and The
Toledo Edison Company.**

)
)
)
)
)
)

Case No. 20-1502-EL-UNC

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S REVISED
MOTION FOR AN INDEPENDENT AUDITOR AND MOTION FOR THE PUCO TO
APPOINT AN INDEPENDENT COMMITTEE**

TABLE OF CONTENTS

I.	INTRODUCTION	- 1 -
II.	ARGUMENT	- 2 -
A.	The Companies Do Not Oppose A Reasonable Audit.....	- 2 -
B.	OCC Has Not Shown That An “External Audit” Managed By An “Independent Review Committee” Is Necessary.....	- 4 -
C.	OCC’s Request For An Investigation Of The Companies’ Response To The Show Cause Directive Is Duplicative And Unwarranted.	- 6 -
III.	CONCLUSION.....	- 10 -

I. INTRODUCTION

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) do not object to the Office of the Ohio Consumers’ Counsel’s (“OCC”) request for an audit of political and charitable spending by, or on behalf of, the Companies related to H.B. 6, should the Commission find that such a review is appropriate. Audits following well-established processes conducted by capable, impartial auditors have proven effective in the Commission’s three other investigative proceedings.

But the Companies do respectfully oppose other aspects of OCC’s Motion.¹ OCC, for instance, largely disregards the boundaries of the Commission’s statutory authority, ostensibly proposing an investigation and audit of unlimited scope for all “FirstEnergy Entities.” And in demanding that an independent “audit committee” be created to manage the work, OCC unreasonably questions the Commission’s and Staff’s ability to manage an effective and independent audit process and fails to show that the extraordinary step of creating an external supervisor is warranted. Moreover, this proceeding is far from the “self-policing” exercise OCC describes. The Companies’ response to the Commission’s show cause directive has already been subject to rigorous review and, when necessary, supplementation.

For these reasons and as further explained below, the Companies do not oppose the use of an audit in these proceedings, but the remainder of OCC’s Motion should be denied. The Commission’s review of the circumstances surrounding H.B. 6, and their impacts on the

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, Revised Motion for an Independent Auditor to Investigate and Audit the Political and Charitable Activity of FirstEnergy Entities Related to Tainted House Bill 6 and Motion for the PUCO to Appoint a Committee Independent of the PUCO to Hire and Oversee the Independent Investigation and Audit by the Office of the Ohio Consumers’ Counsel (“Motion” or “Mot.”) and Memorandum in Support (“Memorandum” or “Mem.”), (Oct. 27, 2021).

Companies' ratepayers, must be done consistent with the Commission's powers and with due regard for the Commission's efforts to date.

II. ARGUMENT

A. The Companies Do Not Oppose A Reasonable Audit.

The Companies certainly agree that the Commission's audit process is an effective and efficient tool. Thus, should the Commission deem it appropriate, the Companies do not oppose an audit of political and charitable spending by, or on behalf of, the Companies related to H.B. 6, in lieu of the show cause procedure initiated by the Commission in this proceeding.² Audits follow well-established processes, and the Commission frequently relies upon experienced, capable auditors to gather and evaluate information within a defined scope. Audits work—as evidenced by the Commission's three other investigative proceedings employing the audit process with efficiency. The Companies therefore support the institution of an audit here, following the Commission's tried and true process.

The Companies do, however, respectfully oppose an unlimited audit of political and charitable spending by "FirstEnergy Entities."³ Any audit must relate to clearly defined entities and have a clearly defined scope. But nowhere in its Motion does OCC identify which entities it seeks to audit—referring to "FirstEnergy," "FirstEnergy Corp.," or "FirstEnergy Utilities" throughout.⁴ Nor does OCC define the universe of transactions to be reviewed—offering instead shifting views of what the scope of the proposed audit would be. *See, e.g.*, Mot. at 1 ("to investigate FirstEnergy's political and charitable spending related to tainted House Bill 6"); Mem. at 2 (an

² *See 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 (9/15/20), at ¶ 5.

³ *See, e.g.*, Mot. at 1-5; Mem. at 5.

⁴ *See, e.g.*, Mot. at 1-2, 4-5; Mem. at 4, 5, 8, 12, 14.

“auditor should be hired as part of obtaining the facts – and the truth”); Mem. at 4 (the audit “should include investigation of FirstEnergy’s response to the PUCO”); Mem. at 5 (“to investigate and audit for consumer protection in this case”); Mem. at 5 (“to investigate and audit issues affecting utility consumers relating to the political and so-called charitable activity of FirstEnergy entities related to tainted H.B. 6”); Mem. at 12 (the audit should cover whether the Companies “made a full and accurate disclosure of all political and charitable spending that may have been charged to FirstEnergy’s utility customers”). As the Companies have previously explained, OCC’s calls for an open-ended and unfocused review would lead to an unwarranted and unwieldy audit that imposes an undue burden on the Commission’s and the auditor’s resources.⁵

Beyond this, OCC’s demand for an audit of all political and charitable spending by every FirstEnergy “entity” would require the Commission to exceed its statutory authority. As the Companies have explained in this proceeding, the Ohio Supreme Court has made clear that the Commission’s jurisdiction under Chapter 4905 of the Ohio Revised Code is limited to overseeing a public utility when it “act[s] as a public utility.”⁶ And R.C. 4905.05 defines the Commission’s jurisdiction as extending primarily to public utilities operating in Ohio as defined in R.C. 4905.03. An audit of OCC’s proposed scope would encompass numerous entities that are not regulated by the Commission and would be untethered to “the costs associated with the provision of electric utility service by any public utility” in this state.⁷

⁵ *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of First Energy*, Case No. 20-1629-EL-RDR, Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (Oct. 14, 2021), at 4.

⁶ *In re Complaint of Direct Energy Bus., L.L.C. v. Duke Energy Ohio, Inc.*, 161 Ohio St. 3d 271, 2020-Ohio-4429, 162 N.E.3d 764, ¶ 25.

⁷ R.C. 4905.05. In arguing for a Commission investigation and audit of all FirstEnergy entities, OCC mischaracterizes the Deferred Prosecution Agreement between FirstEnergy Corp. and the U.S. Attorney’s Office for the Southern District of Ohio. Citing section 5(A)(6) of the DPA, OCC argues that “FirstEnergy” would be in violation of the DPA if it does not disclose to OCC or the Commission all “information, testimony, documents, records or other tangible

A wholesale investigation of political and charitable spending by the Commission, without limitation, is also foreclosed by *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.*, 2008-Ohio-3917, ¶ 12, 119 Ohio St. 3d 301, 304, 893 N.E.2d 824, 828. *Allstate* explains that the Commission has exclusive jurisdiction when (1) the “PUCO’s administrative expertise [is] required to resolve the issue in dispute” and (2) the “act complained of constitute[s] a practice normally authorized by the utility.” *Id.* Here, to the extent OCC seeks an external investigation and audit of “FirstEnergy’s” political and charitable spending that is unrelated to rates or charges paid by Ohio customers, its Motion should be rejected. Such an investigation would fall outside the Commission’s regulatory expertise and calls for review of matters unrelated to utility service. Instead, should the Commission employ an audit process in this proceeding, the audit should examine political and charitable spending by, or on behalf of, the Companies related to H.B. 6.

B. OCC Has Not Shown That An “External Audit” Managed By An “Independent Review Committee” Is Necessary.

While the Companies do not oppose a Commission audit consistent with the Commission’s directive in this matter, OCC’s requested appointment of an independent committee to manage that audit is unnecessary. The Commission has initiated four investigations in its deliberate process to address the circumstances surrounding H.B. 6. Three of those proceedings—the corporate separation audit, the Distribution Modernization Rider audit, and the Delivery Capital Recovery Rider audit—involved the appointment of experienced, capable auditors through a competitive bidding process. And in each instance, the selected auditor has engaged in a rigorous

evidence provided to the government.” Mot. at 5. But OCC misreads the provision. That section of the DPA constitutes FirstEnergy Corp.’s consent to disclosures by the U.S. Attorney’s Office for the Southern District of Ohio (defined as the “government” in the DPA) to other governmental authorities as the office deems appropriate in its sole discretion.

review. Moreover, where new information has suggested that additional investigation was needed, the Commission has expanded the scope of its investigative proceedings.⁸ OCC has offered no reasonable grounds to impugn the Commission’s, Staff’s, or the appointed auditors’ independence or impartiality in these proceedings. OCC has not shown that an “external audit” or institution of an “independent review committee” is warranted here.

Additionally, to the extent OCC suggests that an independent committee should investigate FirstEnergy Corp.’s and all of its subsidiaries’ political and charitable spending, the authorities on which OCC rests its claims are inapposite: none sanction the creation of an independent committee to audit an entity that is not a public utility regarding that non-utility entity’s conduct. *See In Re Cleveland Elec. Illuminating Co.*, 99 P.U.R.4th 407, No. 88-170-EL-AIR, 1989 WL 418554, at *63 (Ohio P.U.C. Jan. 31, 1989) (concerning the audit of the utilities, not the utilities’ parent corporation, and *stipulating* to an independent committee); *In Re Gen. Tel. Co. of Ohio*, Nos. 84-1026-TP-AIR et al., 0085 WL 1271153, at *1 (Ohio P.U.C. July 23, 1985) (“General Telephone & Electronics Corp . . . is engaged in the business of furnishing communications services . . . and is, therefore, a telephone company and a public utility within the definitions set forth in §§4905.03(A)(2) and 4905.02, Revised Code. As such, the applicant is subject to the jurisdiction of this commission under §§4905.04, 4905.05, and 4905.06, Revised Code.”); *In the Matter of the Investigation into the Gas Purchasing Practices and Policies of Columbia Gas of Ohio*, Case No. 83-135-GA-COI, Opinion and Order at 16 (Oct. 8, 1985) (ordering the management review of the

⁸ *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of FirstEnergy*, Case No. 20-1629-EL-RDR, Attorney Examiner Entry ordering that Blue Ridge expand the scope of the audit in this case to determine if the costs of the naming rights for FirstEnergy Stadium have been recovered from ratepayers by the Companies and that unless otherwise ordered by the Commission, a supplemental audit report be filed in this docket no later than November 19, 2021 (Sept. 29, 2021), at ¶ 1; *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of FirstEnergy*, Case No. 20-1629-EL-RDR, Entry directing Blue Ridge Consulting Services, Inc. to expand the scope of the 2020 annual audit of FirstEnergy’s delivery capital recovery rider costs to include payments made to a number of vendors, recently disclosed by FirstEnergy Corp. (Mar. 10, 2021), at ¶ 1.

utility performed pursuant to R.C. 4905.302 and O.A.C. 4901:1-14-07, which are applicable only to gas companies and merely noting Columbia Gas was “overly influenced” by its parent without ordering an independent review committee). Simply put, there is no legal support for the Commission to establish a committee to conduct a wholesale review of FirstEnergy Corp.’s conduct. For these reasons, OCC’s Motion for an independent review committee to manage any audit should be denied.

C. OCC’s Request For An Investigation Of The Companies’ Response To The Show Cause Directive Is Duplicative And Unwarranted.

In support of its broad request to independently investigate “FirstEnergy’s response to the PUCO,”⁹ OCC argues that the Companies are “self-policing” and demands that an “external auditor should include in its investigation whether the Companies’ Affidavit “made a full and accurate disclosure of all political and charitable spending that may have been charged to FirstEnergy’s utility customers.”¹⁰ To begin, OCC misstates the Commission’s show cause directive, which directed the Companies to show cause, “demonstrating that the costs of any political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, were not included, directly or indirectly, in any rates or charges paid by ratepayers in this state.”¹¹ The Companies were not ordered to disclose “all political and charitable spending.”

Second, OCC’s “self-policing” argument is belied by the history of this case. The Commission issued its show cause directive on September 15, 2020, to which the Companies responded, as ordered, two weeks later on September 30. Since then, OCC and other intervening parties have had an opportunity to take voluminous written discovery on the Companies in the

⁹ Mem. at 4.

¹⁰ Mem. at 12.

¹¹ Case No. 20-1502-EL-UNC, Entry (Sept. 15, 2020), at ¶ 5.

Commission’s investigative proceedings and a two-day deposition in March of the Companies’ affiant in this proceeding. The Companies have responded to thousands of discovery requests, from OCC and other parties as well as from the auditors. Indeed, OCC alone has served well over 500 written discovery requests on the Companies in this case. The Companies, and recently their parent FirstEnergy Corp., have produced copious amounts of information. In connection with the resolution of a subpoena to FirstEnergy Corp., OCC and other parties have received more than 50,000 pages of documents produced by FirstEnergy Corp. to other regulators, with thousands more to be produced in the coming days and weeks. In short, the implication of OCC’s “self-policing” accusation—that it is has somehow been deprived of information—is without merit.

Third, OCC misrepresents the review underpinning the Affidavit supporting the Companies’ response. In the fifteen days between the Commission’s directive and that response, the Companies conducted a thorough review of the processes for accounting for political or charitable spending and an investigation into whether such spending impacted rates. That review also assessed whether spending related to entities publicly tied to the Department of Justice’s criminal investigation, namely Generation Now and Hardworking Ohioans, had any rate impact. At deposition, the Companies’ affiant summarized his work this way:

The approach for the affidavit was conceptual and to review the Companies’ calculations of their rates, riders, and charges compared to the accounts in which the costs of political and charitable spending are to be recorded. [I] [c]oncluded based on that conceptual review there shouldn’t be [any] costs of political or charitable spending that [are] impacting customer rates. In the course of my review, I was made aware of these [Generation Now and Hardworking Ohioans] payments that we were discussing yesterday that required further review. Upon further review [I] determined there was no conclusion reached that I was aware of that those costs were in support of House Bill 6 or that they had any impact on customer rates. And so the review of those payments did not impact the conclusions in my affidavit.¹²

¹² Ex. B, Deposition of Santino Fanelli (Mar. 9, 2021) (“Ex. B”), at 205:15–207:6.

OCC makes much of the statement that the Companies' review was "conceptual."¹³ But the "conceptual" issue referred to is this: the costs of political or charitable spending—whether related to H.B. 6 or otherwise—should not impact customer rates given how the Companies' base rates, riders, and other charges are calculated. That is a fact that OCC does not and cannot dispute. Further, when the Commission issued its directive in September 2020, the allegations of DOJ's complaint remained under investigation by the federal government and by FirstEnergy Corp. in its own internal investigation. Given the information then available to them, the Companies could not opine upon the purpose of the payments made by FirstEnergy Corp.—that is, whether a given payment was in support of H.B. 6. So, by necessity, the Companies turned to a conceptual review that examined how the Companies accounted for political and charitable spending costs, regardless of the purpose of the payments.

Moreover, contrary to OCC's false accusation that the Companies conducted no independent review or analysis,¹⁴ the Companies' conducted a thorough review to arrive at the conclusion that political and charitable spending costs should not be included in rates paid by their customers. OCC heard lengthy testimony over the course of two days about the detailed process in which the Companies engaged. The Companies reviewed a breakdown of political and charitable spending costs incurred by the Companies, as well as a breakdown of the accounts that were used to calculate the Companies' rider mechanisms.¹⁵ In addition to this review of costs allocated to FERC accounts 426.1 and 426.4, the Companies also reviewed accounting information concerning payments to Generation Now and Hardworking Ohioans, where portions of those

¹³ See Mem. at 5, 6.

¹⁴ See Mem. at 5.

¹⁵ Ex. A, Deposition of Santino Fanelli (Mar. 10, 2021) ("Ex. A"), at 124:3-16.

payments were allocated to the Companies.¹⁶ The Companies affiant also inquired as to whether the Companies incurred any other costs for political and charitable spending allocated by FirstEnergy Service Company.¹⁷ The review supporting the Companies' Affidavit was not limited to any particular period of time.¹⁸ And the Companies revisited and confirmed the Affidavit's conclusions upon learning of improperly classified or misallocated transactions publicly disclosed by FirstEnergy Corp. in February 2021.¹⁹

In the course of this work, the Companies investigated the potential rate impact of certain political and charitable spending on their rates and riders. For example, when asked about the capitalized portions of Generation Now costs allocated to the Companies, the Companies' affiant explained he reviewed whether those costs had any impact on, among other riders, Rider DMR, Rider DSE, Rider DCR, and Rider AMI and concluded that they did not.²⁰

The Companies' response to the show cause directive was, in sum, the product of a detailed process. Some of the conclusions reached by the Companies in that review—namely that the costs incurred by the Companies related to Generation Now and Hardworking Ohioans did not impact customers' rates—have since been confirmed by an independent audit in another proceeding.²¹ Further, the effort has been ongoing. When the Companies learned through the DPA in July 2021 that a \$4.3 million payment by FirstEnergy Corp. to Sustainability Funding Alliance in part constituted political spending in support of H.B. 6, they promptly moved to supplement their

¹⁶ *Id.* at 131:14–132:7, 150:4–151:8; 164:12–165:7; 166:6–18.

¹⁷ *Id.* at 166:6–18.

¹⁸ Ex. B at 205:15–206:5.

¹⁹ Ex. A at 171:19–172:7.

²⁰ Ex. B 211:24–215:13 (discussing Rider DMR, Rider DSE, and Rider DCR), 218:24–219:15 (discussing Rider AMI).

²¹ See Case No. 20-1629-EL-RDR, Rider DCR Expanded Scope Audit Report (Aug. 3, 2021) (“Expanded Scope Audit Report”), at 18-23, 27, 29.

response to the show cause entry to disclose the impact of this payment on pole attachment rates.²² The Companies' calculations of the impact of that payment on pole attachment rates have also been independently reviewed by an auditor.²³

As it stands, OCC had and took advantage of a more than ample opportunity to take discovery on the Companies' response, including a two-day deposition. The Companies' review and conclusions have been explained to OCC at length, and the Companies have acted promptly to review and, if necessary, supplement their conclusions as new information has come to light. OCC's request for an independent investigation into the Companies' response should be rejected.

III. CONCLUSION

The Companies do not object to a Commission audit of political and charitable spending by, or on behalf of, the Companies related to H.B. 6, should the Commission deem such an audit necessary. But for the reasons explained above, the Commission should deny OCC's Motion for an expansive, external audit of the political and charitable spending by "FirstEnergy Entities" and an "investigation" into the Companies' response to the show cause directive.

²² Case No. 20-1502-EL-UNC, Companies' Motion For Leave To File a Supplemental Response To the September 15, 2020 Show Cause Entry (Aug. 6, 2021).

²³ Expanded Scope Audit Report at 28-29.

Dated: November 12, 2021

Respectfully submitted,

/s/ Ryan A. Doringo

Michael R. Gladman (0059797)
Margaret M. Dengler (0097819)
Jones Day
325 John H. McConnell Blvd
Suite 600
Columbus, Ohio 43215
Tel: (614) 469-3939
Fax: (614) 461-4198
mrgladman@jonesday.com
mdengler@jonesday.com

Ryan A. Doringo (0091144)
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Tel: (216) 586-3939
Fax: (216) 579-0212
radoringo@jonesday.com

On behalf of the Companies

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 November 12, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Shalini B. Goyal

Attorney for the Companies

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

DEPOSITION

of Santino L. Fanelli, taken before me, Karen Sue
Gibson, a Notary Public in and for the State of Ohio,
via Microsoft Teams, on Tuesday, March 9, 2021, at
10:04 a.m.

- - -

VOLUME I

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481

- - -

1 APPEARANCES:

2 FirstEnergy Service Company
3 By Mr. Brian Knipe
4 and Ms. Erika Ostrowski
5 76 South Main Street
6 Akron, Ohio 44308

7 Jones Day
8 By Mr. Michael R. Gladman
9 and Ms. Molly M. Dengler
10 325 John H. McConnell Boulevard, Suite 600
11 Columbus, Ohio 43215

12 Jones Day
13 By Mr. Ryan A. Doringo
14 901 Lakeside Avenue East
15 Cleveland, Ohio 44114

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

19 Bruce J. Weston, Ohio Consumers' Counsel
20 By Ms. Maureen R. Willis,
21 Senior Counsel
22 and Mr. John Finnigan,
23 Assistant Consumers' Counsel
24 65 East State Street, Suite 200
25 Columbus, Ohio 43215

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

Interstate Gas Supply, Inc.
By Ms. Bethany Allen,
6100 Emerald Parkway
Dublin, Ohio 43016

On behalf of the Interstate Gas Supply,
Inc.

- - -

1 APPEARANCES: (Continued)

2 Kegler, Brown, Hill & Ritter Co., LPA
3 By Mr. Robert Dove
4 65 East State Street, Suite 1800
5 Columbus, Ohio 43215

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

9 The Ohio Environmental Council
10 By Ms. Miranda R. Leppla
11 and Mr. Chris Tavenor
12 1145 Chesapeake Avenue, Suite I
13 Columbus, Ohio 43212

14 On behalf of The Ohio Environmental
15 Council.

16 Carpenter Lipps & Leland LLP
17 By Ms. Kimberly W. Bojko
18 and Mr. Thomas Donadio
19 280 North High Street
20 280 Plaza Suite 1300
21 Columbus, Ohio 43215

22 On behalf of the Ohio Manufacturers'
23 Association Energy Group.

24 McNees, Wallace & Nurick LLC
25 By Ms. Rebekah Glover
26 and Mr. Matthew R. Pritchard
27 21 East State Street, 17th Floor
28 Columbus, Ohio 43215

29 On behalf of the Industrial Energy Users
30 of Ohio.

31 Environmental Law & Policy Center
32 By Mr. Robert Kelter
33 and Ms. Caroline Cox
34 21 West Broad Street, Suite 800
35 Columbus, Ohio 43215

36 On behalf of the Environmental Law &
37 Policy Center.

38 - - -

APPEARANCES: (Continued)

Boehm, Kurtz & Lowry
By Mr. Kurt Boehm
and Mr. Michael Kurtz
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

Dickerson Wright PLLC
By Ms. Madeline Fleisher
150 East Gay Street
Columbus, Ohio 43215

On behalf of the Citizens Utility Board
of Ohio.

Dave Yost, Ohio Attorney General
Mr. John Jones, Section Chief
By Mr. Werner L. Margard, III,
Assistant Attorney General
Public Utilities
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

- - -

ALSO PRESENT:

Ms. Tammy Turkenton.
Ms. Lindsey Molter.
Mr. Mike Haugh.

- - -

INDEX

- - -

SANTINO L. FANELLI

PAGE

Cross-Examination by Ms. Willis

10

Cross-Examination by Mr. Finnigan

108

- - -

DEPOSITION EXHIBIT

IDENTIFIED

1 Notice to Take Deposition
Dated March 1, 2021

12

2 4Q 2020 Investor FactBook

33

3 Form 8-K February 16, 2021

89

- - -

1 I am trying to navigate the waters and allow you to
2 move forward. Let me suggest something, a couple
3 potential questions that sort of get us out of the
4 land where he's being asked perhaps, and I know you
5 are not doing it intentionally, to reveal privileged
6 communications where Mr. Knipe was involved,
7 something like as -- you know, maybe something like
8 this, what documents, what accounting records and
9 documents did you review in connection with preparing
10 your affidavit, and/or something like what was your
11 understanding of the accounting documentation and/or
12 processes related to political and charitable
13 spending as you prepared your affidavit.

14 That way it moves us temporally kind of
15 ahead out of that meeting and I hope avoid the
16 potential waiver issue but allows you to get to the
17 same information.

18 MR. FINNIGAN: Okay. Well, I'm not sure
19 what nuance we're drawing there, Mike, honestly.
20 But -- and I am not sure what the temporal issues
21 might be because he said that these communications
22 occurred during that two-week window between when the
23 Commission issued its show cause order and the
24 Company responded. So that entire time frame would
25 seem to be relevant to the case so I'm just going to

1 stand by my original question. And to simplify I'll
2 just rephrase it.

3 Q. (By Mr. Finnigan) What records did you
4 get from Mr. Richards?

5 MR. GLADMAN: You may answer.

6 A. I received some details behind political
7 and charitable spending costs incurred by the
8 Companies. And I also received some accounting
9 details behind the calculation of the companies'
10 various rider mechanisms.

11 Q. And what details did you receive?

12 A. I received a breakdown of political and
13 charitable spending costs incurred by the operating
14 companies, and I also received a breakdown of all the
15 accounts that are used to calculate the companies'
16 rider mechanisms.

17 Q. Okay. What are all the FERC accounts
18 that would include political or charitable spending
19 for the Ohio utilities?

20 A. My understanding of the FERC Uniform
21 System of Accounts, that political and charitable
22 spending costs are to be recorded in Accounts 426.1
23 and 426.4.

24 Q. Are those the only ones?

25 A. As I understand it, those are the two

1 accounts where those sorts of costs are to be
2 recorded.

3 Q. Those are the only ones you know of?

4 A. Those are the only two accounts under the
5 FERC Uniform System of Accounts for those types of
6 costs as I understand it.

7 Q. Okay. And then what would be an example
8 of the type of costs that would go into those
9 accounts? So if FirstEnergy -- Ohio Edison writes a
10 check to a charity in its service territory, that
11 would go into which account?

12 A. Ohio Edison makes a payment to support a
13 charitable organization?

14 Q. Yes.

15 A. I would expect those costs would be
16 recorded in 426.1 or 426.4.

17 Q. Okay. What's the difference between
18 those two?

19 A. I don't have the account names in front
20 of me. 426.1, as I understand it, is for donations
21 to charitable organizations. 426.4 is related to
22 other political activities.

23 Q. Okay. And those are both below the line
24 accounts that wouldn't appear in the Companies'
25 rates, correct?

1 that there had been no determination that those costs
2 were determined to be political and charitable
3 spending in support of House Bill 6, so they did not
4 impact the conclusions that I was reaching in my
5 affidavit.

6 Q. What was that spending for?

7 A. They were costs allocated to the Ohio
8 companies for political or charitable spending.

9 Q. What kind of political or charitable
10 spending? In other words, what was it spent on?

11 A. My understanding is that the costs were
12 spent on contributions to external entities.

13 Q. What was the amount of those
14 contributions?

15 A. The cost allocated to the Ohio companies
16 for those contributions were approximately \$500,000.

17 Q. Those were contributions to whom?

18 A. They were costs allocated to the Ohio
19 companies for contributions to -- to outside
20 political entities.

21 Q. Give me their names.

22 A. Two entities were Hard Working Ohioans
23 and Generation Now.

24 Q. What was the total amount of the
25 contribution to Generation Now?

1 A. The total amount allocated to the Ohio
2 companies for that payment was approximately
3 \$300,000.

4 Q. What was the date of that contribution?

5 A. 2017.

6 Q. When in 2017?

7 A. I'm sorry, Mr. Finnigan. I didn't hear
8 that last question.

9 Q. I apologize. I was just trying to get
10 the date of that contribution to Generation Now. I
11 think I heard you say it was in 2017. I was trying
12 to get a more precise date.

13 A. I don't recall the precise dates.

14 Q. What records did you see that informed
15 you of this contribution?

16 A. The information I saw was part of the
17 information that I reviewed in preparation for my
18 affidavit with our Accounting group.

19 Q. Is this the information you got from
20 Mr. Richards that we were talking about earlier?

21 A. I learned about it in that information,
22 yes.

23 Q. Were there other sources you had besides
24 Mr. Richards for this information?

25 A. I don't recall any other source for that

1 information.

2 Q. What underlying documentation did you see
3 for that contribution to Generation Now?

4 A. I saw the accounting details how those
5 costs were allocated or a portion of those costs were
6 allocated to the Ohio companies and what account --
7 accounts they were recorded in.

8 Q. Did you see any underlying documentation
9 besides accounting entries, in other words, did you
10 see like a check or a memorandum explaining what the
11 check was for?

12 A. No.

13 Q. Did you ask for it?

14 MR. GLADMAN: Objection, vague.

15 A. Can I please have the question reread?

16 Q. Did you ask for a check or a memorandum
17 or correspondence or any underlying documentation
18 from the Accounting department to support this
19 contribution from Generation Now or to Generation
20 Now?

21 A. I don't recall asking for that type of
22 information.

23 Q. Why didn't you ask for that?

24 A. I didn't think it was necessary.

25 Q. Well, if you are -- who made the decision

1 to reclassify that to some below the line account?

2 A. I don't recall specifically who made that
3 determination.

4 Q. Is that a determination that you are
5 authorized to make?

6 A. I was involved in reviewing that
7 information. I wouldn't characterize myself as the
8 authority in making that decision.

9 Q. Who was the authority?

10 A. I don't recall specifically who made that
11 determination. It was a collective review.

12 Q. Who else was in that collective group?

13 MR. GLADMAN: Mr. Fanelli, to the extent
14 counsel was involved, please let us know this first.
15 If not, you may answer.

16 MR. FINNIGAN: Well, Mike, again, I am
17 looking for a fact. I don't want --

18 Q. (By Mr. Finnigan) Mr. Fanelli, let me
19 preface my question. If you received any legal
20 advice from one of your attorneys regarding this
21 case, I don't want to ask you about that. However, I
22 am asking about the books and records of the Company.
23 And if the Company changed how it accounted for a
24 certain payment, I do want to know that. That's not
25 privileged.

1 as you know and should still exist.

2 MR. GLADMAN: Objection, foundation. You
3 may answer.

4 A. I'm not responsible for the record
5 retention practices of the Companies. I have no
6 reason to believe that any records have been
7 destroyed.

8 MR. FINNIGAN: That's all the questions I
9 have on that topic. Let's take a short break. It's
10 about 10 after 4:00. Why don't we come back in 15
11 minutes, 25 after.

12 MR. GLADMAN: That sounds good. Thanks,
13 John.

14 (Recess taken.)

15 Q. (By Mr. Finnigan) Good afternoon,
16 Mr. Fanelli. I have a few questions I want to follow
17 up on regarding that Generation Now charge. Who
18 authorized that payment to Generation Now?

19 A. I don't know.

20 Q. Did you check whether there were any
21 other contributions to Generation Now during the
22 period of 2016 to 2020 where costs were allocated to
23 the Ohio utilities?

24 A. I am not aware of any other such costs
25 during that time frame.

1 Q. Did you check for it?

2 A. In the course of preparing for my
3 affidavit, I learned that those were the only ones.

4 Q. Okay. But I -- I'm just asking because
5 there seems to be some discrepancies about the scope
6 of the case. You know, on one hand we've talked
7 about House Bill 6 was introduced in 2019, and on the
8 other hand the criminal complaint starts in 2016. So
9 I'm just trying to find out, you know, what you
10 checked for. I know you are not aware of any other
11 costs involving Generation Now. But did you do an
12 investigation to find out whether any costs
13 reflecting contributions to Generation Now were
14 allocated to the Ohio utilities for the period of
15 2016 to 2020?

16 A. In preparation for my affidavit in
17 consultation with the Accounting group, I was not
18 aware of any other payments other than the ones we've
19 been talking about here.

20 Q. I know you are not aware of them, but did
21 you check?

22 A. I inquired if there were any.

23 Q. For that time period of 2016 to 2020?

24 A. I don't recall my inquiry being limited
25 to a specific time period.

1 Q. So when you asked for any contributions
2 to Generation Now that were allocated to the Ohio
3 utilities.

4 A. My recollection is I learned of these
5 payments in 2017 that predated House Bill 6 as we've
6 discussed. I inquired if there were any other
7 payments like that that got allocated to the Ohio
8 companies, and my understanding was no.

9 Q. Okay. And the person you made that
10 inquiry of was Mr. Richards who we talked about
11 earlier.

12 A. Yes.

13 Q. Was there anyone else you inquired of?

14 A. I recall legal being involved in the
15 discussions. I don't recall a specific inquiry to
16 legal.

17 Q. Anyone else you recall being involved?

18 A. No, not that I recall.

19 Q. This Generation Now cost was allocated
20 from what entity? It was FirstEnergy Service
21 Company?

22 A. Yes.

23 Q. Do you know who authorized the payment to
24 Generation Now?

25 A. No.

1 Q. Now, we talked earlier in your deposition
2 how you sometimes have to review underlying
3 documentation for FERC account entries. Do you
4 sometimes have to involve or review bank records?

5 A. I don't recall an instance where I had to
6 review bank records.

7 Q. Who maintains the Companies' bank
8 records? Would that be the Treasury department?

9 A. The Treasury department is responsible
10 for managing the Companies' bank accounts.

11 Q. Okay. When you review accounting records
12 that support entries in the FERC accounts, do these
13 accounting entries sometimes indicate the bank
14 account number that a transaction was paid from?

15 A. I don't recall.

16 Q. Is it common to refer to a bank account
17 number by the last four digits of the number rather
18 than reciting the entire number in a record?

19 A. I don't know if that's common.

20 Q. Are you familiar with two FirstEnergy
21 bank accounts, one ending in 6496 and the other
22 ending in 4788? Are you familiar with either
23 account?

24 A. No.

25 Q. Okay. Now, I would like to go back to

1 A. It defines the types of costs that are to
2 be recorded in that account.

3 Q. And how does it define political
4 activities as part of that definition?

5 A. I don't have that definition in front of
6 me. I'm sorry.

7 Q. Okay. But in any event you didn't check
8 whether FirstEnergy Service Company hired lobbyists
9 to work on House Bill 6 and whether those costs might
10 have been allocated to the Ohio utilities; is that
11 correct?

12 MR. GLADMAN: Objection.

13 A. Could you please restate the question,
14 Mr. Finnigan?

15 Q. I just wanted to confirm that you didn't
16 check whether FirstEnergy Service Company hired any
17 lobbyists to work on House Bill 6 and then allocated
18 the costs to the Ohio utilities? You didn't check
19 for that.

20 MR. GLADMAN: Same objection.

21 A. I did not conduct a review of lobbyists
22 hired by FirstEnergy Service Company.

23 Q. Okay. And who would be the person to
24 check for that information if someone did want to
25 check that?

1 A. I don't know.

2 Q. Now, you talked about this payment to
3 Generation Now that was allocated to the Ohio
4 utilities. Were there any other contributions to
5 political advocacy groups between 2016 and 2020
6 besides this one to Generation Now the costs of which
7 were allocated to the Ohio utilities?

8 A. If I may clarify one thing, Mr. Finnigan,
9 the Generation Now was more than one payment over the
10 course of 2017. They all occurred in 2017 totaling
11 the amount that we discussed earlier.

12 Q. Okay. Thank you. I want to
13 differentiate those because we've already talked
14 about those. I just wanted to ask did you
15 investigate whether there were any other
16 contributions to political advocacy groups or
17 nonprofits, social welfare organizations that engaged
18 in political advocacy -- well, that's a terrible
19 question. Let me start all over.

20 Aside from the payments to Generation Now
21 that we've discussed, did you check whether there
22 were any other contributions by FirstEnergy Service
23 Company during 2016 to 2020 that went to nonprofit
24 groups and were used for political advocacy and whose
25 costs were allocated to the Ohio utilities?

1 A. Yes. I am aware of other costs allocated
2 from Service Company to the Ohio Operating Companies
3 but have been determined to be political and
4 charitable spending.

5 Q. And what were the groups that received
6 those payments?

7 A. Hard Working Ohioans.

8 Q. Any others besides them and Generation
9 Now?

10 A. Could you please rephrase the question?
11 I want to make sure I understand the context,
12 Mr. Finnigan.

13 Q. Sure. I am just trying to find out
14 whether you or -- did any investigation to find out
15 whether there were any contributions to political
16 advocacy groups besides the two you mentioned that
17 did work on House Bill 6 and whose costs were
18 allocated to the Ohio utilities.

19 A. I am not aware of any costs allocated
20 from Service Company to the Ohio companies for
21 political and charitable spending in support of House
22 Bill 6.

23 Q. But did you check whether there were any
24 contributions to nonprofits, social welfare
25 organizations, or political advocacy groups that

1 worked on House Bill 6 during that 2016-2020 time
2 period?

3 MR. GLADMAN: Objection, vague.

4 A. I'm sorry. I don't understand the
5 question.

6 Q. Sure. You know, you told me about Hard
7 Working Ohioans and Generation Now. I am just asking
8 whether you checked for other contributions to those
9 kinds of groups for political advocacy, the cost of
10 which were allocated to the Ohio utilities.

11 MR. GLADMAN: With the specific qualifier
12 related to House Bill 6, John?

13 MR. FINNIGAN: Yes.

14 MR. GLADMAN: Okay. Thank you.

15 A. I inquired if there were any other costs
16 incurred by the Companies allocated from Service
17 Company for political and charitable spending. Those
18 are the only two groups that I am aware of.

19 Q. Okay. And did you ask that for any
20 certain time period?

21 A. I don't recall the requests being
22 specific to a time period.

23 Q. Was the request in writing?

24 A. I don't recall.

25 Q. Okay. I want to go to the companies'

1 fourth quarter earnings call recently. Did you
2 listen in on that call?

3 A. You are referring to the call held last
4 month, Mr. Finnigan?

5 Q. Yeah, February 18.

6 A. Yes, I listened to that.

7 Q. Okay. Now, during that call Steve Papas
8 who is the Executive Director of the Board made a
9 statement about the internal investigation, and I am
10 going to read you his statement because I have a
11 couple of follow-up questions. And I know you don't
12 have a transcript in front of you, but I just want to
13 lay this out as the foundation and ask if this is
14 substantially correct and -- and whether you recall
15 him making a statement that was substantially to this
16 effect.

17 So if I may read for a moment. Mr. Papas
18 said "The ongoing investigation has not resulted in
19 any new material items not previously disclosed. In
20 the course of the internal investigation, we did
21 identify certain transactions which in some instances
22 extend back 10 years or more including vendor
23 services that were either improperly classified,
24 misallocated to certain utility or transmission
25 companies, or lacked proper supporting

1 them were for outside services.

2 So I am trying to find out whether any of
3 these related to political spending or charitable
4 spending that related to House Bill 6 or the
5 referendum effort because that's the essence of what
6 this case is about.

7 So this is a really relevant area of
8 questioning for me and I have got a number of
9 questions about this that go to his knowledge of what
10 these items are, what the amounts are, who the
11 vendors are, what the services were, when they were
12 performed, how they related to House Bill 6, et
13 cetera, et cetera. So are you not allowing any
14 questioning in those areas, or shall I proceed and
15 ask my questions and you can object and instruct him
16 to answer on each one?

17 MR. GLADMAN: So I hear what you are
18 saying, John. And I don't have a problem. My
19 problem is primarily with identification of the
20 vendors. If you want to ask him whether his
21 conclusions related to the affidavit and the
22 statements he's already made with respect to
23 political and charitable spending by the Companies in
24 support of House Bill 6 that were charged back to
25 rates more generically, I am fine with that, and then

1 we can perhaps defer the question of the identity of
2 the vendors and what the specific services were for a
3 determination as to whether or not that's proper.

4 MR. FINNIGAN: Okay.

5 MR. GLADMAN: How does that sound as an
6 approach?

7 MR. FINNIGAN: I certainly would like to
8 proceed, you know, with that for now. But I don't
9 want to -- I want to reserve the right to ask him who
10 the vendors were and what the services were because
11 those are facts that are related to this case, and we
12 have a right to that information because that's what
13 this whole case is about. So let me just proceed and
14 ask on a question-by-question basis and if you find
15 anything objectionable, you can object and, if need
16 be, instruct him not to answer but let's just one at
17 a time and see where it leads.

18 MR. GLADMAN: That's fine.

19 Q. (By Mr. Finnigan) Now, in the first
20 place, Mr. Fanelli, this statement was made in
21 February, so it was after you prepared your
22 affidavit, wasn't it?

23 A. Yes.

24 Q. Now, when you heard this statement, did
25 it cause you to become concerned that your affidavit

1 might not be correct?

2 A. When I learned of the item that Mr. Papas
3 mentioned in the earnings call, I did revisit as
4 you've continued to do since September the statements
5 in my affidavit and concluded that there was no
6 impact on the conclusions that I filed back in
7 September.

8 Q. Okay. But do you know whether he was
9 referring to any different items that were
10 misallocated aside from the ones that you already
11 knew about?

12 A. To clarify, Mr. Finnigan, you referred to
13 the ones I already knew about, are you referring to
14 the couple entities we've been discussing?

15 Q. Yes.

16 A. Okay. With that clarification, I'm
17 sorry. Could I please have the question again?

18 Q. Well, I'm just asking the question that
19 when you heard Mr. Papas' statement about these
20 misallocated items, did you know whether he was
21 referring to the two that you already were aware of
22 or whether he might be referring to different ones?

23 A. I was aware of the transactions that he
24 was referencing.

25 Q. Okay. What were -- how are you aware of

1 the ones he was referencing?

2 A. I had learned of those findings from the
3 companies' internal investigation.

4 Q. Okay. And did you participate in
5 investigating any of those items?

6 A. I was not involved in the investigation
7 that led to the identification of those items.

8 Q. If you aren't involved in the
9 investigation, how did you learn of the results?

10 A. I learned of the items that were
11 identified through the investigation and was asked to
12 review what impacts, if any, there were on customer
13 rates.

14 Q. Okay. And when did that happen?

15 A. I learned of that in February.

16 Q. February of 2021.

17 A. Yes.

18 Q. And who informed you of this?

19 A. Counsel and management.

20 Q. Okay. Who in management?

21 MR. GLADMAN: Just to clarify, Sonny, is
22 that two separate discussions or one -- one
23 discussion?

24 THE WITNESS: It was one discussion with
25 both.

EXHIBIT B

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

CONTINUED DEPOSITION

of Santino L. Fanelli, taken before me, Karen Sue
Gibson, a Notary Public in and for the State of Ohio,
via Microsoft Teams, on Wednesday, March 10, 2021, at
10:01 a.m.

- - -

VOLUME II

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481

- - -

1 APPEARANCES:

2 FirstEnergy Service Company
3 By Mr. Brian Knipe
4 and Ms. Erika Ostrowski
5 76 South Main Street
6 Akron, Ohio 44308

7 Jones Day
8 By Mr. Michael R. Gladman
9 and Ms. Molly M. Dengler
10 325 John H. McConnell Boulevard, Suite 600
11 Columbus, Ohio 43215

12 Jones Day
13 By Mr. Ryan A. Doringo
14 901 Lakeside Avenue East
15 Cleveland, Ohio 44114

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

19 Bruce J. Weston, Ohio Consumers' Counsel
20 By Ms. Maureen R. Willis,
21 Senior Counsel
22 and Mr. John Finnigan,
23 Assistant Consumers' Counsel
24 65 East State Street, Suite 200
25 Columbus, Ohio 43215

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

Interstate Gas Supply, Inc.
By Ms. Bethany Allen,
6100 Emerald Parkway
Dublin, Ohio 43016

On behalf of the Interstate Gas Supply,
Inc.

- - -

1 APPEARANCES: (Continued)

2 Kegler, Brown, Hill & Ritter Co., LPA
3 By Mr. Robert Dove
4 65 East State Street, Suite 1800
5 Columbus, Ohio 43215

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

9 The Ohio Environmental Council
10 By Ms. Miranda R. Leppla
11 and Mr. Chris Tavenor
12 1145 Chesapeake Avenue, Suite I
13 Columbus, Ohio 43212

14 On behalf of The Ohio Environmental
15 Council.

16 Carpenter Lipps & Leland LLP
17 By Ms. Kimberly W. Bojko
18 and Mr. Thomas Donadio
19 280 North High Street
20 280 Plaza Suite 1300
21 Columbus, Ohio 43215

22 On behalf of the Ohio Manufacturers'
23 Association Energy Group.

24 McNees, Wallace & Nurick LLC
25 By Ms. Rebekah Glover
26 and Mr. Matthew R. Pritchard
27 21 East State Street, 17th Floor
28 Columbus, Ohio 43215

29 On behalf of the Industrial Energy Users
30 of Ohio.

31 Environmental Law & Policy Center
32 By Mr. Robert Kelter
33 and Ms. Caroline Cox
34 21 West Broad Street, Suite 800
35 Columbus, Ohio 43215

36 On behalf of the Environmental Law &
37 Policy Center.

38 - - -

1 APPEARANCES: (Continued)

2 Boehm, Kurtz & Lowry
3 By Mr. Kurt Boehm
4 and Mr. Michael Kurtz
5 36 East Seventh Street, Suite 1510
6 Cincinnati, Ohio 45202

7 On behalf of the Ohio Energy Group.

8 Dickerson Wright PLLC
9 By Ms. Madeline Fleisher
10 150 East Gay Street
11 Columbus, Ohio 43215

12 On behalf of the Citizens Utility Board
13 of Ohio.

14 Dave Yost, Ohio Attorney General
15 Mr. John Jones, Section Chief
16 By Mr. Werner L. Margard, III,
17 Assistant Attorney General
18 Public Utilities
19 30 East Broad Street, 16th Floor
20 Columbus, Ohio 43215

21 On behalf of the Staff of the PUCO.

22 - - -

23 ALSO PRESENT:

24 Ms. Tammy Turkenton.
25 Ms. Lindsey Molter.
Mr. Mike Haugh.

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX	
- - -	
SANTINO L. FANELLI	PAGE
Cross-Examination (Continued) by Mr. Finnigan	
Cross-Examination by Ms. Bojko	
- - -	

1 Q. Does your CEO ever have contact with
2 Commissioners?

3 MR. GLADMAN: Objection, foundation.

4 A. I don't know.

5 Q. Does -- does Eileen Mikkelsen ever have
6 contact with Commissioners?

7 MR. GLADMAN: Same objection.

8 A. I don't recall.

9 Q. I want to go back to something we were
10 talking about yesterday and this has to do with that
11 time period between September 15 of last year when
12 the Commission issued the show cause order and
13 September 30 when the Company filed its response.
14 During that period you mentioned that you found out
15 that some costs had been allocated to the Ohio
16 utilities for payments to Generation Now and Hard
17 Working Ohioans. What I am wondering is that after
18 you learned of that, did you notify anybody on
19 Commission Staff?

20 A. Not that I recall.

21 Q. Did anyone at FirstEnergy notify any
22 Commissioners of that?

23 A. I don't know.

24 Q. Okay. So as far as you know, this
25 deposition might be the first time anybody at the

1 Commission is learning of these facts.

2 MR. GLADMAN: Objection, foundation.

3 A. Could you please restate the question,
4 Mr. Finnigan?

5 Q. No, that's okay. I will withdraw it.

6 So now I want to go back to your
7 affidavit when you talk about House Bill 6 costs, and
8 we had some discussion about this yesterday, but I'm
9 not entirely clear, and I would just like to pin that
10 down. When you discussed the concept of House Bill 6
11 costs in your definition -- in your affidavit, did
12 you only include costs that were incurred between the
13 time frame of April 2019 onward?

14 A. No.

15 Q. How far back did you go in evaluating
16 House Bill 6 costs when you were preparing your
17 deposition?

18 MR. GLADMAN: You mean affidavit, John?

19 MR. FINNIGAN: Yes, I'm sorry.

20 Affidavit, thank you.

21 A. My review was not time limited. It was
22 conceptual as we discussed yesterday reviewing how
23 the companies' rates are determined, compare it to
24 how the Company accounts for the costs of political
25 and charitable spending. In the course of my review,

1 as we discussed yesterday, I learned of these
2 instances where costs had been misallocated and later
3 determined to be costs of political and charitable
4 spending and those occurred in 2017 and 2018 so I did
5 take those into consideration in my affidavit.

6 Q. I didn't see where you mentioned those in
7 your affidavit.

8 A. Those are not explicitly mentioned in the
9 affidavit. The approach was --

10 Q. Why not?

11 A. I'm sorry, Mr. Finnigan. I think we were
12 speaking over each other. Was there a question
13 pending, or would you like me to return to finishing
14 my prior answer?

15 Q. Yes. I apologize for interrupting.

16 A. The approach for the affidavit was
17 conceptual and to review the Companies' calculations
18 of their rates, riders, and charges compared to the
19 accounts in which the costs of political and
20 charitable spending are to be recorded. Concluded
21 based on that conceptual review there shouldn't be
22 new costs of political or charitable spending that is
23 impacting customer rates.

24 In the course of my review, I was made
25 aware of these payments that we were discussing

1 yesterday that required further review. Upon further
2 review determined there was no conclusion reached
3 that I was aware of that those costs were in support
4 of House Bill 6 or that they had any impact on
5 customer rates. And so the review of those payments
6 did not impact the conclusions in my affidavit.

7 Q. How did you reach that decision that the
8 Generation Now spending didn't support House Bill 6?

9 MR. GLADMAN: And let me just interject,
10 to the extent this involved discussions with counsel,
11 please indicate so.

12 A. It did involve discussions with counsel.

13 Q. What is your understanding of why the
14 Generation -- Generation Now costs would not have
15 supported House Bill 6?

16 A. My understanding is that there's been no
17 conclusion reached determining that those costs are
18 in support of House Bill 6. I also understand the
19 timing of those costs to precede House Bill 6.

20 Q. Okay. And when you say there's been no
21 conclusion reached that the Generation Now costs
22 supported House Bill 6, you mean no conclusion
23 reached by whom?

24 A. I think that would again implicate
25 discussions with counsel.

1 Q. Okay. Well, if there's no conclusion
2 reached on whether the Generation Now costs supported
3 House Bill 6, how could you say in your affidavit
4 that there were no costs supporting House Bill 6?

5 MR. GLADMAN: Objection, misstates
6 testimony. You may answer.

7 A. The scope of the affidavit was to look at
8 political and charitable spending costs in support of
9 House Bill 6 that impacted customer rates. I had no
10 information or was not aware of any costs that met
11 all three of those criteria.

12 Q. Okay. But at least as far as these House
13 Bill 6 costs that were -- I'm sorry. Strike that.

14 At least as far as these Generation --
15 Generation Now costs that we're talking about, did
16 they meet the criteria of spending in -- well, I will
17 strike that.

18 Let me move on to something else. When
19 we talk about House Bill 6 costs being allocated to
20 the utilities, did you consider only payments to
21 third parties, or did you consider that allocations
22 might also be included in that definition of spending
23 in furtherance of House Bill 6?

24 A. I considered allocations of political and
25 charitable spending costs to the Ohio Operating

1 Companies as being within the scope of my review.

2 Q. Okay. And why would that not include
3 executive compensation and employees' salaries?

4 A. The Companies' interpretation of costs of
5 political and charitable spending in the entry was
6 payments or contributions to external parties either
7 directly incurred by the Companies or allocated to
8 the Companies.

9 Q. Okay. Now I want to change the subject
10 and go to some of the Companies' riders. So you're
11 in charge of the Rates and Regulatory Affairs. I
12 take it that you're generally familiar with all the
13 different riders that the Company has in its Ohio
14 rates; would that be fair?

15 A. Yes.

16 Q. Okay. Is there a rider NMB in the Ohio
17 utilities' rates, Nancy Mary Ben?

18 A. Yes, there is a rider by that acronym.

19 Q. Does that rider include collection of any
20 costs for capital costs?

21 A. No.

22 Q. Let me ask you to turn your attention to
23 Rider DMR, David Mary Robert. Are you familiar with
24 that one?

25 A. I'm familiar with that rider, yes.

1 Q. Does that rider include any capital
2 accounts?

3 A. Could you please clarify, Mr. Finnigan,
4 when you say include capital accounts what you mean
5 by that?

6 Q. Well, I'll let you tell -- I will let you
7 ask -- I'm sorry. I will let you explain. What
8 types of accounts are included in Rider DMR? Is it
9 only expense accounts or only capital accounts or
10 some of both?

11 A. Rider DMR is no longer in effect. When
12 it was in effect, the rates were based on amounts
13 authorized by the Commission in the ESP IV case.

14 Q. Did those authorized amounts include
15 capital accounts?

16 A. The authorized amounts were dollar
17 amounts.

18 Q. Okay. Were they based on the amount of
19 capital on the Companies' books?

20 A. Can you please clarify what you mean by
21 the amount of capital on the Companies' books,
22 please?

23 Q. How were the dollar amounts determined
24 that were authorized for collection in Rider DMR?

25 A. They were determined based upon an

1 analysis prepared by Staff in the ESP IV case.

2 Q. Okay. And what was included in that
3 analysis?

4 A. I don't recall the specifics around that
5 calculation.

6 Q. Was that rider updated in 2018?

7 A. The prices would have been updated in
8 2018.

9 Q. Was that 2018 update impacted by the fact
10 that the Ohio utilities had Generation Now costs on
11 their books at that time?

12 MR. GLADMAN: Objection, foundation,
13 misstates prior testimony. You may answer.

14 A. Could you please rephrase the question,
15 Mr. Finnigan?

16 Q. Yes. Was the amount of the update of the
17 DMR Rider in 2018 impacted by the fact that the Ohio
18 utilities had Generation Now costs on their books at
19 that time?

20 MR. GLADMAN: Same objection.

21 A. The Rider DMR pricing updates were made
22 consistent with the Commission orders in the ESP IV
23 case.

24 Q. Were the Rider DMR updates in 2018
25 impacted by the fact that the Company had Generation

1 Now costs on their books in 2018? In other words,
2 did that change the amount that the updates would
3 have been as compared to if those costs were not on
4 the Companies' books?

5 MR. GLADMAN: Same objection.

6 A. There was no adjustment in the Rider DMR
7 rate calculation for the costs you identified.

8 Q. Okay. So the fact that Generation Now
9 costs have been capitalized on the Ohio utility books
10 did not impact the amount of the DMR adjustment that
11 included -- that occurred in 2018?

12 MR. GLADMAN: Same objection.

13 A. The Rider DMR updates were made
14 consistent with the terms and conditions of ESP IV.

15 Q. Okay. And when they were done consistent
16 with those terms and conditions, were they impacted
17 in any way by the fact that Generation Now costs were
18 on the books of the utilities?

19 MR. GLADMAN: Same objection.

20 A. No.

21 Q. Okay. Let me ask you to turn your
22 attention to Rider DSE, David Sam Edward. Does that
23 rider include any capital accounts?

24 A. Rider DSE does not include any capital
25 costs.

1 Q. Was that rider updated in 2018?

2 A. There were pricing updates in 2018.

3 Q. Was the fact that there were amounts from
4 Generation Now on the Companies' books in both
5 capital and expense accounts, did that impact the
6 amount of the adjustment to Rider DSE that occurred
7 in 2018?

8 MR. GLADMAN: Objection, foundation.

9 A. Could you please clarify what you mean by
10 impact in this context, Mr. Finnigan?

11 Q. Yes. What I am getting at is that -- is
12 the amount of the adjustment that occurred to Rider
13 DSE in 2018, is that the same amount that would have
14 occurred if no Generation Now costs had been on the
15 Companies' books?

16 A. Yes.

17 Q. Okay. Then please turn your attention to
18 Rider DCR, David Charlie Robert. Are you familiar
19 with that one?

20 A. Yes.

21 Q. That stands for Delivery Capital
22 Recovery, does it not?

23 A. That's right.

24 Q. And so does that include any capital
25 accounts?

1 A. The calculation of the revenue
2 requirement includes capital accounts. The rates are
3 subject to revenue caps authorized in the ESP case.

4 Q. Okay. And how did the fact that there
5 were Generation Now costs on the Companies' books
6 impact the adjustment of Rider DCR that occurred in
7 2018?

8 MR. GLADMAN: Objection, foundation,
9 argumentative. You may answer.

10 A. By adjustment, Mr. Finnigan, are you
11 referring to pricing updates?

12 Q. Yes.

13 A. Thank you for the clarification. Could
14 you please restate the question? I apologize.

15 Q. Sure. You testified earlier that in
16 2018, the Company had Generation Now costs on its
17 books and various expense and capital accounts, and I
18 am just trying to find out how that factored into the
19 update of Rider DCR that occurred in 2018.

20 A. It would not have impacted the Rider DCR
21 aggregate rates across the Companies.

22 Q. Why not?

23 A. Because the rates for Rider DCR are based
24 on the revenue caps in that time period.

25 Q. Did the fact that the generation --

1 strike that.

2 Did the Company exceed the revenue caps
3 in terms of its -- the amounts that could otherwise
4 have been collected under Rider DCR in 2018?

5 A. The Companies' Rider DCR revenue
6 requirements were in excess of the revenue caps.

7 Q. So that's why you say that the Generation
8 Now costs didn't impact the calculation because you
9 exceeded the caps.

10 A. Those capitalized dollars for those
11 payments did not impact the overall Rider DCR rates
12 because the revenue requirements were in excess of
13 the revenue caps.

14 Q. Okay. Now, please turn your attention to
15 Rider GEN, Gary Edward Nancy. Are you familiar with
16 that one?

17 A. Yes.

18 Q. Does that rider include any capital
19 accounts?

20 A. No.

21 Q. Was that rider updated in 2018?

22 A. There was a pricing update in 2018.

23 Q. Was the amount of that pricing update in
24 2018 impacted by the fact that the Ohio utilities had
25 Generation Now costs on their books at that time?

1 A. No. There was no impact on the Rider GEN
2 prices.

3 Q. Why not?

4 A. Because the costs for those payments
5 incurred by the Companies are not included in Rider
6 GEN.

7 Q. Okay. So Rider GEN only includes certain
8 accounts and not the Companies that these Generation
9 Now costs would have been recorded in, correct?

10 A. Yes. Yes.

11 Q. Now, please turn your attention to Rider
12 DUN, David, Ulysses, Nancy. Are you familiar with
13 that one?

14 A. Yes.

15 Q. Does that rider include any capital
16 accounts?

17 A. No.

18 Q. Was that rider updated in 2018?

19 A. There were pricing updates in 2018.

20 Q. Was that update in 2018 of Rider DUN
21 impacted by the fact that Generation Now costs were
22 on the books of the Ohio utilities?

23 A. No, there was no impact on Rider DUN
24 prices.

25 Q. Why not?

1 A. Rider DUN recovers distribution-related
2 uncollectible expenses. So the costs of the payments
3 that you asked about would not have been included in
4 Rider DUN.

5 Q. Okay. Now, please turn your attention to
6 Rider NDU, Nancy David, Ulysses. Are you familiar
7 with that one?

8 A. Yes.

9 Q. Does that include any capital accounts?

10 A. No.

11 Q. Was that rider updated in 2018?

12 A. There were pricing updates in 2018.

13 Q. Were those 2018 updates to Rider NDU
14 impacted by the fact that the Ohio utilities had
15 Generation Now costs on their books?

16 A. No.

17 Q. Please turn your attention to Rider PUR,
18 Patrick Ulysses Robert. Are you familiar with that
19 one?

20 A. Yes.

21 Q. Was that rider updated in 2018?

22 A. There were pricing updates in 2018.

23 Q. Were those 2018 pricing updates impacted
24 by the fact that the Companies had Generation Now
25 costs on their books?

1 A. No, there was no impact on Rider PUR.

2 Q. Okay. Let me ask you to turn your
3 attention to Rider EDR, Edward David Robert. Was
4 that rider updated in 2018?

5 A. There were pricing updates in 2018.

6 Q. Does that rider include collection of any
7 costs that are in capital accounts?

8 A. No.

9 Q. Was the 2018 update to Rider EDR impacted
10 by the fact that the Ohio utilities had Generation
11 Now costs on their books at that time?

12 A. No, there were no impacts on Rider EDR
13 prices.

14 Q. Please turn your attention to Rider GCR,
15 Gary Charlie Robert. Are you familiar with that?

16 A. Yes.

17 Q. Was that rider updated in 2018?

18 A. There were pricing updates to Rider GCR.

19 Q. Were those pricing updates to Rider GCR
20 in 2018 impacted by the fact that the utilities had
21 Generation Now costs on their books at that time?

22 A. No, there was no impact on Rider GCR
23 rates.

24 Q. Please turn your attention to Rider AMI,
25 Albert Mary Irene. Are you familiar with that one?

1 A. Yes.

2 Q. Was that rider updated in 2018?

3 A. There were pricing updates in 2018.

4 Q. Did those updates include amounts that
5 are in capital accounts?

6 A. For certain projects, yes.

7 Q. Now, does the update that occurred in
8 2018 reflect the fact that there were Generation Now
9 costs on the books of the Ohio companies at that
10 time?

11 A. The Rider AMI prices were not impacted by
12 those costs.

13 Q. Why not?

14 A. Because those costs aren't part of the
15 Rider AMI revenue requirement calculation.

16 Q. Well, I thought the revenue requirement
17 calculation included certain capital accounts; is
18 that not correct?

19 A. Revenue requirement calculation includes
20 capital costs for certain projects.

21 Q. Okay. And you testified yesterday that
22 the Generation Now costs were capitalized across all
23 capital accounts of the utilities. Do you recall
24 that?

25 A. I believe I said all capital projects

1 excluding grid modernization projects.

2 Q. No, you didn't say that, but is that
3 true?

4 MR. GLADMAN: Move to strike. You're
5 misremembering his testimony, but you may go on.

6 A. Could you please rephrase the question,
7 Mr. Finnigan?

8 Q. Okay. I understood you to say yesterday
9 that these Generation Now costs that you discovered
10 in September of 2020 had been broken out into both
11 capital and expense accounts for the Ohio utilities,
12 and the capitalization portion was capitalized across
13 all Ohio accounts. Am I misremembering that or is
14 that, in fact, what occurred?

15 A. I apologize if there was any
16 miscommunication. The capitalized portion of those
17 costs, as I understand it, were spread across the
18 Ohio Companies' capital projects excluding grid
19 modernization projects that are recovered through
20 Rider AMI.

21 Q. Why were those AMI projects excluded from
22 the capitalization of the Generation Now costs?

23 A. Because the Rider AMI costs are charged
24 to specific cost collectors.

25 Q. You mean to specific FERC accounts?

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

11/12/2021 5:02:09 PM

in

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

Summary: Memorandum Contra to OCC's Revised Motion for an Independent Auditor and Motion for the PUCO to Appoint an Independent Committee electronically filed by Mrs. Shalini B Goyal on behalf of The Toledo Edison Company and Ohio Edison Company and The Cleveland Electric Illuminating Company