

**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
)	
)	
)	
)	

In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.)	Case No. 20-1629-EL-RDR
)	
)	
)	
)	

**REPLY TO FIRSTENERGY'S OPPOSITION TO OCC'S STATEMENT OF
ADDITIONAL AUTHORITY FOR OCC'S OCTOBER 18, 2021 INTERLOCUTORY
APPEAL
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

FirstEnergy Corp., the company now charged with a federal crime, and FirstEnergy Service Company (together "FirstEnergy") don't want the PUCO to consider the additional legal authority submitted by OCC for obtaining the secret FirstEnergy investigation report. It's part of a FirstEnergy theme: cover up instead of fess up. This on top of the FirstEnergy Utilities opposing OCC's September 8, 2020 motions for investigating it, opposing and delaying OCC's deposition of Santino Fanelli, moving to quash OCC's subpoenas, and objecting to and delaying countless OCC's written discovery requests. FirstEnergy's tag team approach has resulted in ten OCC motions to compel and eight OCC interlocutory appeals in the four investigations pending before the PUCO.

The PUCO has stated, regarding the scandal and tainted H.B. 6 that it is “determined to act in a deliberate manner, based upon facts rather than speculation.”¹ Learning facts requires investigation. But PUCO Attorney Examiner Gregory Price granted FirstEnergy Corp.’s effort to keep secret from OCC a FirstEnergy internal investigation. FirstEnergy’s Board investigated the ongoing government investigations, including its scandal related to tainted H.B. 6 and potentially its relationship with the former PUCO Chair and other matters.² We appealed the Attorney Examiner’s ruling to the PUCO Commissioners, as is our right.³ Later, we provided the PUCO with additional authority from a Maryland Public Service Commissioner, for our interlocutory appeal. The Maryland Commissioner ordered Potomac Edison (a FirstEnergy utility) to produce the internal investigation report, acting upon a motion to compel by the Maryland People’s Counsel (OCC’s counterpart).⁴

FirstEnergy Corp. and FirstEnergy Service Company do not want the PUCO to even consider the additional authority.⁵ To further its own stated objective of acting in a “deliberate manner, based upon facts rather than speculation,” the PUCO should reject FirstEnergy Corp.’s and FirstEnergy Service Company’s efforts to hide information from the PUCO and public. In consumers’ interest, the PUCO should consider the additional authority we provided. (FirstEnergy has now appealed the Maryland ruling to the full Maryland Commission.)

¹ *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 (November 4, 2020).

² *See id.* at Entry (October 12, 2021).

³ *See id.* at Request Interlocutory Appeal, Request for Certification to the PUCO Commissioners, Application for Review (October 18, 2021).

⁴ *See id.* at Motion to Accept Statement of Additional Authority Regarding OCC’s October 18, 2021 Interlocutory Appeal, Instant and Statement of Additional Authority for OCC’s October 18, 2021 Interlocutory Appeal (November 19, 2021).

⁵ *See id.* at Memorandum Contra the Office of the Ohio Consumers’ Counsel’s Motion to Accept Statement of Additional Authority (December 6, 2021).

II. ARGUMENT

A. In the interest of truth and justice, the PUCO should consider OCC's additional authority.

The additional authority that we provided to the PUCO for its consideration is a decision by a Commissioner of the Maryland Public Service Commission, from a hearing held on November 4, 2021.⁶ The Commissioner granted the Motion to Compel of the Maryland Office of People's Counsel (OCC's counterpart in Maryland).⁷ Accordingly, FirstEnergy's subsidiary in Maryland, Potomac Edison, is compelled to produce to the People's Counsel the internal investigation report of the FirstEnergy Corp. Board of Directors. FirstEnergy has appealed that decision to the full Maryland Commission.⁸ The report is the same FirstEnergy document that PUCO Attorney Examiner Gregory Price has denied to OCC.

FirstEnergy Corp. and FirstEnergy Service Company assert that the PUCO should not consider our additional authority for three reasons:

First, the Maryland Proposed Order is not final because it is subject to a pending appeal. **Second**, the Maryland Proposed Order is in direct conflict with the Attorney Examiners' October 12 ruling, which followed an *in camera* review. **Third**, rulings from the Maryland Public Service Commission are not binding on the Public Utilities Commission of Ohio nor Ohio courts.⁹

These reasons are without merit.

The Ohio Administrative Code specifically allows parties to amend their pleadings, upon good cause.¹⁰ The PUCO has previously allowed parties to provide additional authority after the

⁶ *In the Matter of the Petition of the Maryland Office of People's Counsel to Investigate the Future of FirstEnergy's Relationship with Potomac Edison in Light of Recent Events*, Case No. 9667, Order No. 89990 (Nov. 18, 2021).

⁷ *Id.* at Paragraph 13.

⁸ *Id.*, Potomac Edison Company Notice of Appeal and Memorandum in Support of Appeal (Nov. 29, 2021).

⁹ Memorandum Contra at 2.

¹⁰ O.A.C. 4901-1-06.

filing of a pleading when such authority is issued after the filing of the pleading (as is the case here).¹¹ Indeed, AEP just recently filed an additional authority in PUCO Case No. 21-0990-EL-CSS.

Contrary to FirstEnergy's assertions, there is no requirement that the additional authority be unappealed or unappealable. The PUCO is capable of evaluating the additional authority and giving it the weight that it deserves.

FirstEnergy wrongly suggests that the additional authority should be excluded because it "is in direct conflict with the Attorney Examiner's October 12 ruling." That is precisely why the PUCO should consider it in an *interlocutory appeal*. We get it, from revelations in the U.S. criminal investigation, that FirstEnergy has a control issue. But placing this authority in front of the PUCO is appropriate.

We do not dispute that Maryland's decision is not binding on the PUCO. But the PUCO has routinely considered decisions from other jurisdictions.¹² It has even ordered parties to file "informational exhibits" regarding decisions from other jurisdictions.¹³ As Ohio's courts have recognized, decisions from other jurisdictions, while not binding, can be considered and their reasoning persuasive.¹⁴

¹¹ *In re Application of Ohio Power Co. to Adopt a Final Implementation Plan for the Retail Stability Rider*, Case No. 14-1186-EL-RDR, Finding & Order (Apr. 2, 2015).

¹² *See, e.g., id.; Brunswick Civic Association et al. v. The Northern Ohio Telephone Company*, Opinion (June 8, 1961), 1961 PUC Lexis 4, *4 (PUCO noting precedent from other states "to which it may refer").

¹³ *See, e.g., Allnet Comm. et al. v. Oh. Bell. et al.*, Case No. 86-0771-TP-CSS, Entry (Apr. 16, 1992).

¹⁴ *See, e.g., State v. Clark*, 2014-Ohio-4873, para. 27 (Hancock 2014); *State v. Little*, 2014-Ohio-4871, para. 25 (Auglaize 2014); *Hallis v. Consolidated Rail Corp.*, 1983 Ohio App. Lexis 15382, *5-6 (Franklin 1983).

III. CONCLUSION

FirstEnergy has consistently tried to keep information about tainted H.B. 6 secret from the public. This includes its internal investigation report. Maryland has ordered the internal investigation report to be produced. As the PUCO considers whether to order it produced in Ohio, it should consider the decision of our sister state.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis

Maureen R. Willis (0020847)
Senior Counsel
Counsel of Record – 17-974-EL-UNC
John Finnigan (0018689)
Assistant Consumers' Counsel
(614) 466-9567 (Willis)
(614) 466-9585 (Finnigan)

/s/ William J. Michael

William J. Michael (0070921)
Counsel of Record – 20-1629-EL-RDR
Ambrosia E. Wilson (0096598)
Assistant Consumers' Counsel
(614) 466-1291 (Michael)
(614) 466-1292 (Wilson)

Office of the Ohio Consumers' Counsel

65 East State Street, Suite 700
Columbus, Ohio 43215
Maureen.willis@occ.ohio.gov
John.finnigan@occ.ohio.gov
William.michael@occ.ohio.gov
Ambrosia.wilson@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Reply in Support was served upon the persons listed below by electronic transmission this 13th day of December 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

17-974-EL-UNC:

thomas.lindgren@ohioAGO.gov
werner.margard@ohioAGO.gov
joliker@igsenergy.com
Mnugent@igsenergy.com
bethany.allen@igs.com
evan.betterton@igs.com
gkrassen@bricker.com
dstinson@bricker.com
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com
mfleisher@dickinsonwright.com
mwise@mcdonaldhopkins.com
glpetrucci@vorys.com
dparram@bricker.com
rmains@bricker.com
trhayslaw@gmail.com
Leslie.kovacik@toledo.ohio.gov

bknipe@firstenergycorp.com
mrgladman@jonesday.com
mdengler@jonesday.com
radoringo@jonesday.com
calee@jonesday.com
sgoyal@jonesday.com
mwager@taftlaw.com
iavalon@taftlaw.com
mpritchard@mcneeslaw.com
tlong@mcneeslaw.com
rdove@keglerbrown.com
bojko@carpenterlipps.com
donadio@carpenterlipps.com
mleppla@theOEC.org
tdougherty@theOEC.org
ctavenor@theOEC.org
rlazer@elpc.org

Attorney Examiner:

Gregory.price@puco.ohio.gov
Megan.addison@puco.ohio.gov
Jacqueline.st.john.puco.ohio.gov

Case No. 20-1629-EL-RDR

werner.margard@ohioAGO.gov
Thomas.lindgren@ohioAGO.gov
Bojko@carpenterlipps.com
Donadio@carpenterlipps.com
ccox@elpc.org
rlazer@elpc.org
mleppla@theOEC.org
tdougherty@theOEC.org
ctavenor@theOEC.org

Attorney Examiner:

Megan.addison@puco.ohio.gov
Gregory.price@puco.ohio.gov
Jacqueline.st.john@puco.ohio.gov

bknipe@firstenergycorp.com
mrgladman@jonesday.com
mdengler@jonesday.com
radoringo@jonesday.com
rdove@keglerbrown.com
drinebolt@opae.org
dparram@bricker.com
eakhbari@bricker.com
rmains@bricker.com

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on
12/13/2021 4:08:51 PM**

in

Case No(s). 17-0974-EL-UNC, 20-1629-EL-RDR

Summary: Reply Reply to FirstEnergy's Opposition to OCC's Statement of Additional Authority for OCC's October 18, 2021 Interlocutory Appeal by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Willis, Maureen R.