

investigations and suits pertaining to FirstEnergy and its misdeeds involving H.B. .

The Attorney Examiner's procedural rulings represent a new and novel question of interpretation, law or policy under O.A.C. 4901-1-1 B given the unprecedented nature and scope of this case. Further, Attorney Examiner Price acknowledged that FirstEnergy Corp.'s discovery production involved a very large number of documents even for Commission purposes.<sup>4</sup> And it appeared from remarks made at the pre-hearing conference that the PUCO Staff and presumably the Auditors may not have even received the voluminous discovery materials that have been produced by FirstEnergy Corp. to OCC.

Second, by oral ruling, Attorney Examiner Price deferred consideration of the OCC NOPEC joint motion for a supplemental audit. The supplemental audit was requested so that FirstEnergy Corp.'s admittedly unlawful activities related to the H.B. scandals can be evaluated as part of the corporate separation review. A PUCO staffer advised potential auditors in this case that they did not need to examine the source of funds for HB political and charitable spending. The audit should have determined if FirstEnergy made consumers pay for such funding. But the auditor wrote this startling disclaimer in the audit report

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. **Emphasis added** .

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<sup>4</sup> Prehearing Conference Tr. at 19 Jan. 4, 2022 .

Prehearing Conference Tr. at 19-20.

Prehearing Conference Tr. at 24.

See attachment.

<sup>8</sup> Compliance Audit of FirstEnergy Operating Companies at 1 Sept. 1, 2021 .

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D GXSOLFDWLRQ RI H[SHQVH DQG HIIRUWV DOO SDUWLHV D  
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SUHVHQWV D QHZ RU QRYHO TXHVWLRQ RI LQWHUS  
WKH DSSURSULDWH DPRXQW RI WLPH SDUWLHV VKR  
XQSUHFHGHQWHG DQG PDVVLYH RQJRLQJ GLVFRYHU  
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UHSRUW EHJLQV ZLWK WKH VWDUWOLQJ GLVFODLPHU WKDW  
WKDW FRXOG UHVXOW LQ FRUSRUDWH VHSDUDWLRQ YLRODV

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7KH WH[W PHVVDJHV VXJJHVV D FRUSRUDWH VHSDUDWLRQ  
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7KH UXOLQJV DUH HVSHFLDOO\ PLVWDNHQ ZKHQ WKHUH  
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RI UHFRUGV UHTXLUHPHQWV IRU KROGLQJ FRPSDQLHV DQG  
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SHUIRUPDQFH DXGLW RI )LUVW(QHUJ\ &RU  
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HVFDSH WKH GDUN FORXG RI WKH + % VFDQGDO

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8WLOLWLHV DQG )(\$1V VKDUHG PDQDJHPHQW YLRODWHG WK  
2KLR 6XSUHPH &RXUW UHYHUVHG DQG UHPDQG HG WKH &RPF  
FHUWLILFDWLRQ &RPSOLDWLRQ WKHU WKDQ VXEMHFW LWVHOI W  
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2&& DQG 123(&¶V LQWHUORFXWRU\ DSSHDO RI WKH \$WW  
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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PREHEARING CONFERENCE

before Mr. Gregory Price, Ms. Megan Addison, and Ms.  
Jacky St. John Werman, Attorney Examiners, at the  
Public Utilities Commission of Ohio, via Webex,  
called at 10:00 a.m. on Tuesday, January 4, 2022.

- - -

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

- - -

APPEARANCES:

FirstEnergy Service Company  
By Mr. Brian Knipe  
76 South Main Street  
Akron, Ohio 44308

Jones Day  
By Mr. Michael Gladman  
325 John H. McConnell Boulevard,  
Suite 600  
Columbus, Ohio 43215

Jones Day  
By Mr. Ryan A. Doringo  
901 Lakeside Avenue  
Cleveland, Ohio 44114

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

Jones Day  
By Mr. Corey Lee  
901 Lakeside Avenue East  
Cleveland, Ohio 44114

On behalf of FirstEnergy Corp. and  
FirstEnergy Service Company.

Bruce J. Weston, Ohio Consumers' Counsel  
By Ms. Maureen R. Willis,  
Senior Counsel  
Mr. John Finnigan,  
Assistant Consumers' Counsel  
65 East State Street, 7th Floor  
Columbus, Ohio 43215

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

- - -

APPEARANCES: (Continued)

Interstate Gas Supply, Inc.  
By Mr. Joseph Oliker,  
Mr. Michael A. Nugent,  
and Mr. Evan F. Betterton  
6100 Emerald Parkway  
Dublin, Ohio 43016

On behalf of the Interstate Gas Supply,  
Inc.

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

On behalf of the Natural Resources  
Defense Council, Ohio Partners for  
Affordable Energy, and Calpine Energy  
Solutions LLC.

Carpenter Lipps & Leland LLP  
By Ms. Kimberly W. Bojko  
and Mr. Thomas V. Donadio  
280 North High Street  
280 Plaza, Suite 1300  
Columbus, Ohio 43215

On behalf of the Ohio Manufacturers'  
Association Energy Group.

McNees, Wallace & Nurick LLC  
By Mr. Todd Long  
21 East State Street, 17th Floor  
Columbus, Ohio 43215

On behalf of the Industrial Energy Users  
of Ohio.

Whitt Sturtevant LLP  
By Mr. Mark A. Whitt  
and Mr. Lucas A. Fykes  
88 East Broad Street, Suite 1590  
Columbus, Ohio 43215

On behalf of the Retail Energy Supply  
Association, Direct Energy Business LLC,  
and Direct Energy Services LLC.

APPEARANCES: (Continued)

Bricker & Eckler, LLP  
By Mr. Dane Stinson  
100 South Third Street  
Columbus, Ohio 43215-4291

Northeast Ohio Public Energy Council  
Mr. Glenn S. Krassen, General Counsel  
31360 Solon Road, Suite 33  
Solon, Ohio 44139

On behalf of Northeast Ohio Public Energy  
Council.

Boehm, Kurtz & Lowry  
By Mr. Michael Kurtz  
and Ms. Jody Kyler Cohn  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

Ohio Environmental Council  
By Mr. Chris Tavenor  
1145 Chesapeake Avenue, Suite I  
Columbus, Ohio 43212

On behalf of the Ohio Environmental  
Council.

Dave Yost, Ohio Attorney General  
Mr. John Jones, Section Chief  
By Mr. Thomas Lindgren  
and Mr. Werner L. Margard, III  
Assistant Attorneys General  
Public Utilities Section  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

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Tuesday Morning Session,  
January 4, 2022.

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EXAMINER ST. JOHN: Let's go on the  
record.

The Public Utilities Commission of Ohio  
calls for a prehearing conference at this place and  
time Case No. 17-974-EL-UNC being in the Matter of  
the Review of Ohio Edison Company, The Cleveland  
Electric Illuminating Company, and the Toledo Edison  
Company's Compliance with Revised Code Section  
4928.17 and Ohio Administrative Code Chapter  
4901:1-37.

My name is Jacky St. John, and with me  
are Gregory Price and Megan Addison. And we are the  
Attorney Examiners assigned to preside over this  
prehearing conference.

Let's begin by taking appearances  
starting with the Companies.

MR. KNIPE: Good morning, your Honors.  
Appearing on behalf of the Ohio Edison Company, The  
Cleveland Electric Illuminating Company, and the  
Toledo Edison Company, Brian Knipe, 76 South Main  
Street, Akron, Ohio 44308.

Also appearing on behalf of the companies

1 from the law firm of Jones Day, Michael Gladman, 325  
2 John H. McConnell Boulevard, Columbus, Ohio 43215.  
3 And Ryan Doringo, North Point, 901 Lakeside Avenue,  
4 Cleveland, Ohio 44114.

5 EXAMINER ST. JOHN: Thank you. While not  
6 a party to the case we have asked Mr. Lee to attend  
7 today as well. Mr. Lee, would you like to make your  
8 appearance now.

9 MR. LEE: Good morning. Yes, Corey Lee  
10 with Jones Day on behalf of the FirstEnergy  
11 Corporation, North Point, 901 Lakeside Avenue,  
12 Cleveland, Ohio 44114.

13 EXAMINER ST. JOHN: Thank you.

14 Next I have Ohio Consumers' Counsel.

15 MS. WILLIS: Thank you, your Honor. On  
16 behalf of the Office of Consumers' Counsel, Maureen  
17 Willis and John Finnigan.

18 EXAMINER ST. JOHN: Thank you.

19 Ms. Willis, we can't see you. We have  
20 the --

21 MS. WILLIS: Yes, your Honor. I see the  
22 background. I am transparent, translucent for  
23 whatever reason. I will try to work on that in the  
24 meantime, but as long as you can hear me, I have got  
25 half the battle won there, so I will be working on

1 that.

2 EXAMINER ST. JOHN: Sounds good. I just  
3 wanted to make sure you were aware of the issue.  
4 Thank you.

5 Next I have Interstate Gas Supply.

6 MR. BETTERTON: Good morning, your  
7 Honors. On behalf of Interstate Gas Supply, Inc.,  
8 it's myself, Evan Betterton; Joseph Olikier; and  
9 Michael Nugent, located at 6100 Emerald Parkway,  
10 Dublin, Ohio 43016.

11 EXAMINER ST. JOHN: Thank you.

12 Retail Energy Supply Association. All  
13 right. Next on my list I have Mr. Robert Dove.

14 MR. DOVE: Good morning, your Honor. On  
15 behalf of the Calpine Energy Solutions, Natural  
16 Resources Defense Council, and Ohio Partners for  
17 Affordable Energy, this is Robert Dove with the law  
18 firm of Kegler, Brown, Hill & Ritter, 65 East State  
19 Street, Columbus, Ohio 43215.

20 EXAMINER ST. JOHN: Thank you.

21 Environmental Law & Policy Center. Next  
22 I have Industrial Energy Users of Ohio

23 MR. LONG: Good morning, your Honors. My  
24 name is Todd Long. I am with the law firm McNees,  
25 Wallace & Nurick. We represent Industrial Energy



1 Users - Ohio. My office address is 21 East State  
2 Street, Suite 1700, Columbus, Ohio 43215.

3 EXAMINER ST. JOHN: Thank you.  
4 Ohio Energy Group.

5 MS. COHN: Good morning, your Honor. On  
6 behalf of Ohio Energy Group, Jody Cohn and Mike Kurtz  
7 from the law firm of Boehm, Kurtz & Lowry, 36 East  
8 Seventh Street, Suite 1510, Cincinnati, Ohio 45202.

9 EXAMINER ST. JOHN: Thank you.  
10 Citizens Utility Board of Ohio.  
11 Northeast Ohio Public Energy Council.

12 MR. STINSON: Thank you, your Honor. On  
13 behalf of the Northeast Ohio Public Energy Council,  
14 Dane Stinson of the law firm Bricker & Eckler, 100  
15 South Third Street, Columbus, Ohio 43215, and Glenn  
16 S. Krassen, General Counsel, Northeast Ohio Public  
17 Energy Council, 31360 Solon Road, Suite 33, Solon,  
18 Ohio 44139.

19 EXAMINER ST. JOHN: Thank you. Ohio  
20 Manufacturers' Association Energy Group.

21 MS. BOJKO: Thank you, your Honors. On  
22 behalf of OMAEG, Kimberly W. Bojko and Thomas Donadio  
23 with the law firm Carpenter Lipps & Leland, 280 North  
24 High Street, Suite 1300, Columbus, Ohio 43215.

25 EXAMINER ST. JOHN: Thank you. Ohio

1 Environmental Council.

2 MR. TAVENOR: Thank you, your Honor.  
3 Chris Tavenor on behalf of the Ohio Environmental  
4 Council, 1145 Chesapeake Avenue, Suite I, Columbus,  
5 Ohio 43212.

6 EXAMINER ST. JOHN: Thank you.  
7 Direct Energy.

8 MR. WHITT: Good morning. Mark Whitt and  
9 Lucas Fykes from the firm of Whitt Sturtevant, 88  
10 East Broad Street, Suite 1590, Columbus, Ohio 43215.

11 EXAMINER ST. JOHN: Thank you.  
12 Northwest Aggregation Coalition. And  
13 last I have on behalf of Staff.

14 MR. LINDGREN: Thank you, your Honor. On  
15 behalf of the Staff, Ohio Attorney General Dave Yost  
16 by Thomas Lindgren and Werner Margard at 30 East  
17 Broad Street, 26th Floor, Columbus, Ohio 43215.

18 EXAMINER ST. JOHN: Thank you.  
19 There are a couple of issues I would like  
20 to address as just preliminary matters. So the first  
21 one is the pending Motion to Intervene out of time  
22 that was filed by the Northwest Aggregation  
23 Coalition. Unfortunately they are not here to hear  
24 this ruling, but I will, first of all, mention that  
25 no memoranda contra were filed. In the motion NOAC

1 stated that the deadline to intervene had passed, but  
2 since that time the utilities had entered into a  
3 deferred prosecution agreement and the audit report  
4 was filed. And because of those two events, they  
5 would like to intervene out of time.

6 We find at this time that NOAC has  
7 demonstrated the extraordinary circumstances in the  
8 case that are required for the Motion to Intervene to  
9 be granted. We find that motion to be reasonable and  
10 is granted at this time.

11 The next issue that I would like to  
12 address are the pending motions for protective order  
13 for the comments. Those were filed by Industrial  
14 Energy Users - Ohio on November 23 and by Interstate  
15 Gas Supply on November 22. Both of those parties  
16 filed their redacted comments along with the  
17 confidentially filed unredacted documents. And both  
18 parties stated that the confidential portions were  
19 produced by FirstEnergy subject to a protective  
20 agreement. No memoranda contra were filed to those  
21 motions. And we find that those motions for  
22 protective order should be granted at this time.

23 And with that, I will go ahead and turn  
24 things over to Judge Price.

25 EXAMINER PRICE: Thank you.

1           Among the numerous housekeeping issues  
2           that we were pulling together for this prehearing  
3           conference, one was the status of the motion for  
4           subpoena filed on September 24, 2021. Since that  
5           time we've received a motion and amended motion from  
6           OCC regarding that subpoena.

7           Nonetheless, we would like an update from  
8           OCC and FirstEnergy Corp. as to what has been done  
9           under the subpoena. The Bench is somewhat  
10          disadvantaged when we sign a subpoena like this. The  
11          good news is if we never hear from anybody again,  
12          then everything has gone well. The bad news is we  
13          have no knowledge of whether information was ever  
14          disclosed or the parties worked out things.

15          So if OCC first and then followed by  
16          FirstEnergy Corp. could just give us a brief  
17          discussion of what has been produced and then we will  
18          go from there.

19          MS. WILLIS: Thank you, your Honor. Yes,  
20          we did -- in September of 2021, we did file a  
21          subpoena requesting that FirstEnergy Corp. -- or  
22          requesting to obtain documents from FirstEnergy Corp.  
23          that FirstEnergy had produced to the Department of  
24          Justice and the Securities Exchange Commission under  
25          the order by Chief Judge Marbly of the Southern

District of Ohio in the securities case. And we were able to resolve that -- that subpoena by agreeing with FirstEnergy Corp. on the production of documents.

There was an agreement reached where FirstEnergy Corp. would produce documents. The documents are estimated to be between 40,000 to 50,000 pages. And these -- I would note that the subpoenas were filed in all four of the FirstEnergy investigation cases. The document production is ongoing. It was on a rolling basis. It began in mid-October and again originally estimated to be -- to be between 50,000 to 60,000 pages of documents to be produced.

At this stage we understand the document production is continuing. I would say the latest batch of documents according to our records occurred about a month ago and that was approximately 56,000 pages. We are not sure whether or not FirstEnergy has -- FirstEnergy Corp. has finished producing documents, but to date we've received approximately 233,000 pages of documents to review.

So as you might imagine, that's been quite a task. We appreciate the being able to work out that agreement with FirstEnergy Corp., and we

1 continue in our document review and analysis.

2 EXAMINER PRICE: Thank you.

3 Mr. Lee.

4 MR. LEE: The only thing I would add to  
5 that, yes, in fact, the FirstEnergy Corp. did, in  
6 fact, agree to produce to OCC all documents being  
7 produced to securities' plaintiffs. That production  
8 is, in fact, ongoing and there is probably no end in  
9 sight.

10 One of the things which we made clear to  
11 the OCC is that discovery in large part in the  
12 securities case has not really begun, so they will be  
13 getting documents until this matter probably either  
14 resolves or that matter resolves because discovery in  
15 the securities case is just really beginning, so I  
16 cannot come before the court and say we will be  
17 finished with producing documents on any date  
18 certain, but we will continue to produce documents on  
19 a rolling basis as they are produced to the  
20 securities' plaintiffs.

21 The other thing I would like to say is in  
22 regards to the motion that was served by the OCC, OCC  
23 is getting the exact same documents as were produced  
24 to the DOJ, what was produced to SEC, and what is  
25 being provided to the securities' plaintiffs.

1           So to the extent they think they are  
2     having documents withheld -- withheld from them, they  
3     are getting the exact same production all other  
4     parties are getting and that's something we will have  
5     to deal with at a later date in response to their  
6     motion.

7           EXAMINER PRICE: If you could just give  
8     me an indication. OCC indicates that you withheld  
9     some documents in their motion because you -- under  
10    privilege claim. Can you give the Bench an idea --  
11    you've produced over 200,000 pages of documents.  
12    What is the scale of the documents that have been  
13    withheld under a privilege claim?

14          MR. LEE: Honestly, your Honor, I'm not  
15    prepared to speak to that today. What I would say is  
16    that the documents that have been withheld were also  
17    withheld from DOJ and SEC. I can go back and we will  
18    have to do some analysis around the number that has  
19    been withheld.

20          What I would say for the court today is  
21    that the privilege logs that were attached to the  
22    motion have nothing to do with the productions made  
23    by FirstEnergy Corp. Those were privilege logs by  
24    the utilities themselves and have nothing to do with  
25    production of FirstEnergy Corporation.

1 MS. WILLIS: And, your Honor, if I might  
2 add, we do recognize that, you know, we had some  
3 discussions this morning. There may be a need to  
4 revise that motion. I'm not sure whether or not the  
5 privilege logs that -- certainly Mr. Lee is right the  
6 privilege log related to FirstEnergy utilities. They  
7 also relate to the -- a different case, 20-1502.

8 So I would agree that there is going to  
9 be some analysis and relooking at, revisions needed  
10 to that particular filing, so I would ask that --  
11 that the Commission defer ruling until OCC can  
12 re-review and analyze that and, if needed, refile in  
13 the appropriate case and with the appropriate parties  
14 identified.

15 MR. FINNIGAN: Your Honor, may I ask a  
16 point of clarification? This is John Finnigan.

17 EXAMINER PRICE: Yes, sir.

18 MR. FINNIGAN: For Mr. Lee, were there  
19 any privilege logs that FirstEnergy produced  
20 associated with the documents subpoenaed from  
21 FirstEnergy Corp.?

22 MR. LEE: I believe you got the privilege  
23 log for the documents related to the -- the internal  
24 investigation reports which were also produced to  
25 Attorney Examiner Price, and those documents were



1 reviewed by him in camera. Otherwise, you have not  
2 had any documents withheld from you specifically, but  
3 I think also this is not the appropriate time to get  
4 into this discussion. I am happy to talk with you  
5 offline.

6 EXAMINER PRICE: I think in light of the  
7 fact OCC has asked us to defer ruling on this, I  
8 think we've probably gone as far as we can go on this  
9 issue today. Hopefully the parties can work this out  
10 and there will be no amended motion but certainly OCC  
11 should have a chance to take a look at any  
12 developments and any needed changes to their motion.

13 We were prepared not to rule on this but  
14 to schedule another prehearing conference to do an in  
15 camera review, if necessary, but I think even that  
16 seems premature at this point. But we are prepared  
17 to do another in camera review to the extent  
18 necessary depending how things work out between the  
19 parties.

20 But I want to thank the parties for the  
21 update. It's very helpful. We might have a  
22 follow-up question on this a little bit later, but we  
23 will come back around for that.

24 MS. WILLIS: Thank you, your Honor.

25 EXAMINER PRICE: At this time we are

1 going to move on to the application for interlocutory  
2 appeal. The application -- the interlocutory appeal  
3 is granting a motion to quash subpoena. This is the  
4 interlocutory appeal filed on September 20, 2021.  
5 FirstEnergy Corp. filed a memo contra on  
6 September 27, 2021.

7 The certification of this interlocutory  
8 appeal will be denied. OCC has not demonstrated that  
9 the appeal presents a new or novel question of  
10 interpretation, law, or policy or is taken from a  
11 ruling which represents a departure from past  
12 precedence as required by Ohio Administrative Code  
13 4901-1-15(B).

14 The Attorney Examiners have extensive  
15 experience with respect to procedural matters such as  
16 discovery and subpoenas which are routine matters  
17 that do not involve new or novel questions of law or  
18 interpretation or policy. See In Re: Ohio Power  
19 Company, Case No. 16-1852-EL-SSO, et al., entry dated  
20 September -- February 8, 2018, at paragraph 24; In  
21 Re: The Dayton Power and Light Company, Case No.  
22 12-426-EL-SSO, et al., entry dated January 14, 2013,  
23 at 5; as well as In Re: Ohio Edison Company, The  
24 Cleveland Electric Illuminating Company, and The  
25 Toledo Edison Company, Case No. 12-1230-EL-SSO, entry

1     dated May 2, 2012, at 4. Moreover, there is nothing  
2     new or novel regarding subpoenas or motion to quash  
3     subpoenas.

4             The ruling also directed FirstEnergy  
5     Corporation to provide the documents for an in camera  
6     review regarding the attorney-client privilege and  
7     attorney work product claims. There is nothing new  
8     or novel about conducting in camera review for these  
9     claims. See In Re: Dayton Power and Light Company,  
10    Case No. 12-426-EL-SSO, et al., transcript dated  
11    January 30, 2013, prehearing conference, at 141-144.

12            I will also note OCC has pointed out in  
13    this case another case where we did an in camera  
14    review. I believe it was the all electric cases,  
15    10-176-EL-ATA, where we conducted two in camera  
16    reviews of -- the roles were reversed. Those were in  
17    camera reviews of documents OCC sought to withhold,  
18    and FirstEnergy sought to be disclosed.

19            In addition, we -- the Attorney Examiners  
20    find OCC has not demonstrated any prejudice from  
21    their ruling. There is no reason to believe the  
22    documents containing facts referenced in the report  
23    are not otherwise discoverable, especially given the  
24    ample discovery in this case and the three other  
25    ongoing investigations into FirstEnergy.

1           With that I do have a follow-up question  
2   for Mr. Lee, and I want to say this very carefully.  
3   The internal investigation flags -- that was provided  
4   for in camera review flags certain documents and  
5   other communications along with various theories of  
6   the attorneys in the case. Have those documents been  
7   disclosed to OCC as part of your general production  
8   of documents?

9           MR. LEE: So the underlying documents  
10   that were produced to the DOJ and SEC either have  
11   been or will be produced to OCC.

12           EXAMINER PRICE: Thank you. So you are  
13   not withholding those documents because they were  
14   flagged.

15           MR. LEE: Correct. That is correct.

16           EXAMINER PRICE: And I'm not expecting  
17   you to note that those documents were flagged in the  
18   internal investigation. They should be part of the  
19   general discovery, and then OCC can find them as they  
20   will.

21           MR. LEE: And that is what has happened,  
22   your Honor.

23           EXAMINER PRICE: I guess I have one other  
24   follow-up question. This is a very large number of  
25   documents even for Commission purposes. Have you

1     been serving the other parties to this proceeding  
2     including Staff with these documents?

3             MR. LEE: I know we have been serving the  
4     other parties that requested the documents and  
5     entered a protective order. I am not certain if  
6     Staff has been receiving those full productions. We  
7     can make accommodations to do so if Staff would like  
8     these full sets of documents.

9             EXAMINER PRICE: Speaking on behalf of  
10    the Commission, I think we would expect Staff would  
11    have access, and you should work that out with  
12    Staff's counsel. Thank you.

13            Moving along to the motion to accept  
14    additional authority filed by Ohio Consumers' Counsel  
15    on November 19, 2021, memo contra was filed on  
16    December 6, 2021, OCC filed its reply on December 13,  
17    2021. The motion will be granted. We note that an  
18    interlocutory appeal has been filed regarding the  
19    ruling that was provided as additional authority.  
20    OCC and FirstEnergy Corp. will be under continuing  
21    obligation to provide the Bench with updates filed in  
22    the docket when the Maryland Public Service  
23    Commission has issued a ruling on the interrogatory  
24    appeal adverse to the parties' interests or not and  
25    if and when any additional documents -- any documents

1 are actually provided under that ruling.

2 OCC and FirstEnergy Corporation will also  
3 be under a continual obligation to provide the Bench  
4 with any discovery rulings in the civil litigation  
5 before Judge Marbly in the United States District  
6 Court for Southern District of Ohio including any  
7 rulings adverse to the parties' positions in this  
8 case.

9 Our next item is the application for  
10 interlocutory appeal of the ruling granting the  
11 motion to quash subpoena following the in camera  
12 review. The application was filed on October 18,  
13 2021. The memo contra was filed on October 25, 2021.  
14 We are going to continue to defer ruling on the  
15 certification of the interlocutory appeal until after  
16 the Maryland Public Service Commission has ruled on  
17 its interlocutory appeal.

18 I would note that if FirstEnergy Corp.  
19 does involuntarily provide disputed materials under a  
20 ruling from Maryland Public Service Commission, the  
21 parties can expect additional rounds of briefs  
22 regarding the effect of an involuntary disclosure of  
23 privileged materials upon a privilege claim under  
24 Ohio law. I do not believe it is as simple as if  
25 they provide a document under subpoena, that that

1 counts as a voluntary or a waiver of the privilege.  
 2 But that's a question I'm certain the answer is out  
 3 there for the parties and there is cases under Ohio  
 4 law, and we will review those very carefully if and  
 5 when that time comes.

6 Our next item is a motion for subpoena  
 7 from the Oxford Advisors. The motion was filed by  
 8 OCC on December 10, 2021, memo contra filed on  
 9 December 27 by Staff, and reply was filed by OCC on  
 10 January 3, 2022. In this case, and I'm saying  
 11 09-974-EL-UNC, the motion will be denied on the  
 12 grounds of relevance.

13 The request is not reasonably calculated  
 14 to lead to the discovery of admissible evidence. The  
 15 subpoena seeks information, communications from  
 16 Oxford Advisors concerning FirstEnergy's use of  
 17 distribution modernization funds. This proceeding  
 18 seeks to determine whether FirstEnergy complied with  
 19 the corporate separation requirements. If OCC has  
 20 evidence that the use of the DMR fund violated the  
 21 corporate separation requirements, OCC should direct  
 22 questions regarding that evidence to the auditor  
 23 selected to conduct the two corporate separation  
 24 audits in this case.

25 If OCC has no evidence, the subpoena is

1 simply a fishing expedition and there are no grounds  
2 to bring Oxford Advisors who are not the auditor in  
3 this proceeding with the time and cost complying with  
4 subpoena as to this proceeding.

5 And this strikes me as a convenient time  
6 to raise this issue which I touched on in a recent  
7 Attorney Examiner entry. The dual captioning and  
8 multi-captioning of motions just needs to stop.  
9 These cases are not consolidated, and we are blurring  
10 the records of these various proceedings. Absent  
11 permission from the -- prior permission from Attorney  
12 Examiners, motions should be filed individually in  
13 each respective docket.

14 Any motions that are currently filed with  
15 multiple captions will continue the process as we  
16 have been, but these cases have not been  
17 consolidated. I know we have said we will take  
18 administrative notice of evidence produced in one  
19 proceeding in these other proceedings, but I want to  
20 keep the records clear, these various cases, when --  
21 if and when these case goes up to the Ohio Supreme  
22 Court.

23 That caution we'll move ahead to our next  
24 issue, the joint motion for supplemental audit, and  
25 the motion for extension of procedural schedules.



1 That motion was filed on November 5, 2021. You know,  
2 the Examiners would note as a general matter this  
3 case has been open for nearly five years. We've had  
4 two audit reports filed in this case. We stayed the  
5 case pending FirstEnergy Solutions' bankruptcy  
6 proceedings. We've had three separate comment  
7 periods. Hundreds of pages of comments have been  
8 filed by the parties. We've allowed new Intervenor  
9 well after the initial deadlines for matters as these  
10 cases developed. The time has come to hold the  
11 hearing in this proceeding.

12 As to the motion for supplemental audit,  
13 the Bench will defer ruling on the motion at this  
14 time. This case is set for hearing. Evidence will  
15 be presented at the hearing. And the Commission has  
16 expressed its determination to follow the facts  
17 wherever they may lead. If the evidence presented at  
18 the hearing demonstrates a need for supplemental  
19 audit, the Commission will consider supplemental  
20 audit after the hearing, but we do believe the  
21 auditors should have an opportunity to speak to the  
22 need of a supplemental audit before any decision is  
23 made to conduct one.

24 They are in the comments in this  
25 proceeding. There was discussion of the burden of

1 proof in this proceeding. The burden of proof in any  
2 case, it's not set at the Attorney Examiner's  
3 discretion. The burden of proof is set by law, by  
4 rule, or by the nature of the proceeding. The  
5 parties will have the opportunity following the  
6 hearing to brief the burden of proof as to the  
7 Commission's ultimate decision in this case.

8 Regarding the question to extend the  
9 comment period, clearly that request is moot.  
10 Numerous parties have filed thoughtful and thorough  
11 comments in the proceeding. We very much appreciate  
12 the effort that went into those, but the time has  
13 come to hold the hearing.

14 Nonetheless, we do believe parties,  
15 especially given the development we discussed today,  
16 should have an opportunity for additional time to  
17 prepare for the hearing. We will grant the motion to  
18 extend the hearing date for an approximate additional  
19 30 days.

20 Currently Companies' testimony is due  
21 January 13, 2022. We will be looking at February 14,  
22 2022. Intervenor testimony is due January 27. We  
23 will be looking at February 28 for Intervenor  
24 testimony. The hearing is scheduled to commence  
25 February 10 which would take us to approximately

1 March 10. Since March 10 is a Thursday, my  
2 preference would be to start actually on March 14,  
3 but I also understand that we are approaching spring  
4 break schedules. I don't want to ruin anybody's  
5 vacation. Does anybody have a spring break as early  
6 as March 14?

7 Great. Perfect. Then we will go ahead  
8 and we will set the hearing now for March 14, 2022,  
9 at 10:00 a.m. We will most likely be live pending  
10 the continuing surge in Omicron and the pandemic.  
11 Any questions regarding the hearing schedule?

12 Okay.

13 MR. OLIKER: Your Honor, I am not sure  
14 this is the appropriate time to raise this, but one  
15 of the questions that parties have raised is what the  
16 scope of the hearing is. We've had some very large  
17 breadth of comments, and I wasn't sure if there was  
18 any focus for testimony, or if you were leaving it to  
19 the parties to determine what to include in their own  
20 testimony.

21 EXAMINER PRICE: Well, they should  
22 include relevant evidence to this proceeding. The  
23 proceeding is about FirstEnergy's compliance with the  
24 corporate separation requirements contained in Ohio  
25 Revised Code 4928.17 and the appropriate Ohio

1 Administrative Code Chapter. If parties have issues  
2 that they believe should be relevant and want to  
3 include them in testimony, then we will make the  
4 relevance call once the testimony is filed.

5 MR. OLIKER: Thank you, your Honor.

6 MR. WHITT: Your Honor, if I may, this is  
7 Mark Whitt. The statutes do say that the notice of  
8 hearing has to provide notice of what the hearing is  
9 about. And I guess to follow on to Mr. Oliker's  
10 point, we've all received notice that there will be a  
11 hearing in a case generally captioned as an  
12 investigation of corporate separation compliance  
13 but --

14 EXAMINER PRICE: We have a statute,  
15 4928.17, that sets forth corporate separation  
16 requirements. We have an entire Administrative Code  
17 Chapter that sets forth corporate separation  
18 requirements. And we have two audit reports.  
19 Anything fitting within those three categories is  
20 relevant to the scope of the testimony.

21 I am not going to just simply sit here  
22 and go back and forth on various ideas of what the  
23 parties think should or shouldn't be included. You  
24 should include things in your testimony that are  
25 relevant to the proceeding. If you include something

1 that's not relevant to the proceeding and a party  
2 moves to strike it, most likely it will be stricken.

3 MR. WHITT: I guess it's not entirely  
4 self-evident when we are referring to the proceeding  
5 what exactly --

6 EXAMINER PRICE: The proceeding is Case  
7 No. 09-974-EL-UNC which is not been consolidated with  
8 any other proceeding, and I think the place to start  
9 are the two audit reports conducted on behalf of the  
10 Staff. Anything else?

11 MR. WHITT: No. Thank you.

12 MS. WILLIS: Your Honor, if I may ask or  
13 inquire, is it the Bench's intention to issue written  
14 rulings other than the rulings -- the written rulings  
15 that you are making this morning? Will you be  
16 following up with an entry designating those rulings?

17 EXAMINER PRICE: No. These are our  
18 rulings. The only caveat would be just to help out  
19 the world we might put out an entry with the new  
20 procedural schedule, particularly with respect to the  
21 parties who are not -- were unable to be here today.  
22 I would hate for a party to show up here on  
23 February 10 looking for a hearing when it's been  
24 scheduled to March 14, so we most likely will put out  
25 an entry just memorializing the new hearing dates and

1 the new procedural schedule. But otherwise the  
2 rulings you've heard are our rulings in this case.

3 So the last issue that we had is  
4 compliance with past motions to compel and the  
5 motions for protective order. We held a prehearing  
6 conference on June 30, 2021. Some matters were  
7 discussed, were deferred subject to further  
8 discussion by the parties. And we just wanted to  
9 follow up and see if all those issues have been  
10 resolved.

11 MS. WILLIS: Honestly, your Honor, I am  
12 at this point not recalling exactly what those  
13 matters would be. I -- the cases are all blurring.  
14 You know, we got four cases. I am involved in pretty  
15 much every one of those, so unfortunately I am not in  
16 a position right now to report to you what those  
17 matters were and whether they were resolved. I will  
18 say though that we have been able to in most  
19 instances work with the utilities and with  
20 FirstEnergy Corp. to try to resolve issues and that  
21 has been largely more successful than it has been in  
22 the past. But I guess I would --

23 EXAMINER PRICE: We were so close to  
24 complimenting each other and working together until  
25 we had to pull it back just a bit.

1 MS. WILLIS: I don't want to be quoted in  
2 a publication again for my prognostication about  
3 something or my characterization of something, so I  
4 am trying to be a little bit more careful.

5 So, yeah, I guess I would ask the Bench's  
6 indulgence to -- for OCC to kind of go back to its  
7 files and check and perhaps we could alert the Bench  
8 by correspondence as to whether or not issues have  
9 been resolved. We generally though -- if issues have  
10 not been resolved, you generally will hear from us  
11 through a motion to compel or otherwise.

12 EXAMINER PRICE: And I expect so; but,  
13 you know, the difficulty is, you know, there has been  
14 a lot of argument and rhetoric in this case, and we  
15 have had one side saying the other party is stalling  
16 and the other side is saying we have been abundantly  
17 cooperative. And so I just want to make sure that  
18 the -- what's actually been done matches the  
19 rhetoric.

20 And the -- one, I don't blame you for not  
21 being on top of this one because Mr. Finnigan had  
22 actually argued on June 30, so he might be able to --  
23 it's fine if he can't, but it was really request for  
24 production of documents 13, 14, and 15 we deferred  
25 ruling on.

1 MR. FINNIGAN: Your Honor, I need to go  
2 back and check that, and we can alert you by e-mail  
3 if that would be satisfactory.

4 EXAMINER PRICE: That's fine. That's  
5 fine. In fact, I mean, it's -- I suspect it's likely  
6 we will have another prehearing conference, so we can  
7 defer that issue to the next prehearing conference.

8 Okay. Those are all the items that I  
9 have flagged and that Ms. St. John has flagged. Are  
10 there any items that should be brought before the  
11 Bench as we get ready for the hearing in this case?

12 MS. WILLIS: Your Honor, I believe that  
13 is all that I have on my list. You did cover what I  
14 had noted.

15 EXAMINER PRICE: Great. As you've all --  
16 many of you have seen, I'm sure, we've set prehearing  
17 conferences for the next several days in all four of  
18 the FirstEnergy-related investigations, so everybody  
19 should be on notice we are going to be looking for  
20 updates in all these cases including past discovery  
21 disputes.

22 So if there is anything that either we  
23 said we were going to defer ruling for a time while  
24 the parties work out or while events develop, those  
25 will be the opportunity to revisit those issues. Not



1 to revisit issues we previously ruled upon, of  
2 course.

3 Anything else that we need to discuss at  
4 this time?

5 Thank you all for your time and  
6 attention. We are adjourned.

7 Let's go off the record.

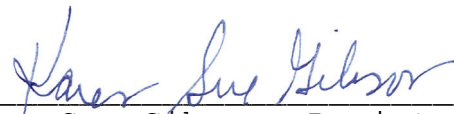
8 (Thereupon, at 10:38 a.m., the prehearing  
9 conference was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Tuesday, January 4,  
2022, and carefully compared with my original  
stenographic notes.




---

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-7209)

- - -

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF OHIO  
EDISON COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY,  
AND THE TOLEDO EDISON COMPANY'S  
COMPLIANCE WITH R.C. 4928.17 AND  
OHIO ADM.CODE CHAPTER 4901:1-37.

CASE NO. 17-974-EL-UNC

### ENTRY

Entered in the Journal on January 4, 2022

{¶ 1} In this Entry, the attorney examiner modifies the procedural schedule and reschedules the evidentiary hearing to be held on March 14, 2022, to take place at the offices of the Commission.

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are electric distribution utilities, as defined by R.C. 4928.01(A)(6), and public utilities, as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} To assist the Commission with the review of FirstEnergy's compliance with the corporate separation rules set forth in Ohio Adm.Code Chapter 4901:1-37, the Commission directed Staff, on May 17, 2017, to issue a request for proposal (RFP) for audit services. On July 5, 2017, the Commission issued an Entry selecting Sage Management Consultants, LLC (Sage) to conduct the requested audit services, in accordance with the terms set forth in the RFP. Pursuant to the terms of the RFP, a draft audit report was to be submitted by February 28, 2018, with the final audit report due on March 14, 2018. The deadline for the draft audit report and final audit report was extended to April 30, 2018, and May 14, 2018, respectively. Sage filed the final audit report on May 14, 2018.

{¶ 4} Comments regarding the Sage audit report were timely filed by Interstate Gas Supply, Inc. (IGS), Ohio Consumers' Counsel (OCC), Northeast Ohio Public Energy Council (NOPEC), the Companies, and Retail Energy Supply Association (RESA). Reply comments

were filed by NOPEC, FirstEnergy Solutions Corp. (FES), OCC, and the Companies. Joint reply comments were filed by RESA and IGS.

{¶ 5} In their comments, the Companies noted that, on March 20, 2018, FES filed a voluntary petition in the United States Bankruptcy Court for relief pursuant to Chapter 11 of Title 11 of the United States Code. Further proceedings in this case were deferred until the resolution of FES' bankruptcy proceeding.

{¶ 6} On March 20, 2020, the Companies filed a notice in this proceeding. The Companies represented that FES had emerged from bankruptcy as Energy Harbor Corp. (Energy Harbor) and that Energy Harbor is no longer an affiliate of the Companies' parent, FirstEnergy Corp.

{¶ 7} Further, on January 17, 2020, Suvon, LLC d/b/a FirstEnergy Advisors (Suvon) filed an application for certification as a competitive retail electric service power broker and aggregator in the state of Ohio. *In re Suvon LLC*, Case No. 20-103-EL-AGG. Suvon is an affiliate of the Companies. The Commission approved Suvon's application on April 22, 2020. The Commission also ruled that, although various parties in that case had raised issues both with Suvon's use of a trade name and with compliance with the corporation separation requirements by the Companies and other affiliates of FirstEnergy Corp., those issues were best addressed in this proceeding. *In re Suvon LLC*, Case No. 20-103-EL-AGG, Finding and Order (Apr. 22, 2020) at ¶ 20, 22.

{¶ 8} On April 29, 2020, the attorney examiner established a supplemental comment period regarding the audit report filed in this proceeding. Supplemental comments were timely filed by Vistra Energy Corp., NOPEC, IGS, OCC, RESA, and the Companies. Supplemental reply comments were timely filed by OCC, NOPEC, IGS, RESA, and the Companies.

{¶ 9} On September 8, 2020, the OCC filed motions in this proceeding for an investigation and management audit of FirstEnergy, its corporate governance, and its



activities regarding Am. Sub. H.B. 6, to hire an independent auditor, to reopen the distribution modernization rider audit case, and to require FirstEnergy to show that it did not improperly use money collected from consumers or violate any utility regulatory laws, rules, or orders in its activities regarding Am. Sub. H.B. 6. The Companies filed a memorandum contra OCC's motions on September 23, 2020. OCC filed a reply on September 30, 2020.

{¶ 10} On September 15, 2020, the Commission opened a proceeding 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. *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 20-1502-EL-UNC.

{¶ 11} On October 29, 2020, FirstEnergy Corp., the corporate parent of the Companies, filed a Form 8-K with the United States Securities and Exchange Commission reporting the termination of certain officers and appointment of new interim chief executive officers. The Form 8-K further stated that, during the course of FirstEnergy Corp.'s internal investigation related to ongoing government investigations, the Independent Review Committee of the Board of Directors determined that each of the terminated executives violated certain FirstEnergy Corp. policies and its code of conduct.

{¶ 12} On November 4, 2020, the Commission issued an Entry directing, in the instant case, Staff to issue an RFP to acquire audit services to assist the Commission with the review of FirstEnergy's compliance with the corporate separation provisions of R.C. 4928.17 and with the Companies' Commission-approved corporate separation plans for the period between November 1, 2016, and October 31, 2020.

{¶ 13} On January 27, 2021, the Commission selected Daymark Energy Advisors, Inc. (Daymark) and directed the Companies to enter into a contract with Daymark to perform the audit services described in the RFP and its proposal. In the Entry, the Commission also

set the deadline for the completion of the audit report as June 21, 2021. Motions to extend the filing date of the audit report were subsequently filed and granted.

{¶ 14} On September 13, 2021, Daymark filed the final audit report with the Commission.

{¶ 15} On September 17, 2021, the attorney examiner set a comment period and procedural schedule for this proceeding, which was extended by Entry dated October 12, 2021.

{¶ 16} A prehearing conference was held on January 4, 2021. During that conference, numerous rulings were issued, including an extension of the procedural schedule and the evidentiary hearing. To further memorialize that procedural schedule, we note that the Companies should file testimony by February 14, 2022, and intervenors should file testimony by February 28, 2022. The evidentiary hearing is rescheduled from February 10, 2022, to March 14, 2022. The hearing shall commence at 10:00 a.m. on March 14, 2022, at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio 43215. The parties should register at the lobby desk and then proceed to the 11th floor to participate in the hearing.

{¶ 17} Any accommodations necessary to ensure availability of social distancing and plexiglass dividers should be made in advance of the hearing. As pandemic restrictions are evolving, additional instructions regarding further safety requirements or accommodations for the hearing room will be forthcoming, either posted on the Commission's website or communicated to the parties.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the procedural schedule be modified in accordance with Paragraph 16. It is, further,

{¶ 20} ORDERED, That the evidentiary hearing be rescheduled to March 14, 2022. It is, further,

{¶ 21} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jacky Werman St. John

By: Jacky Werman St. John  
Attorney Examiner

GAP/kck



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

**1/4/2022 4:14:08 PM**

**in**

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

Summary: Attorney Examiner Entry ordering that the procedural schedule be modified in accordance with Paragraph 16 and ordering that the evidentiary hearing be rescheduled to March 14, 2022. electronically filed by Kelli C. King on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio



**From:** McCarter, Doris  
**To:** Marie Fagan  
**Subject:** RE: RFP RA20-CA-X, questions  
**Date:** Friday, November 13, 2020 4:18:00 PM  
**Attachments:** rfp20011.jpg

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@puc.ohio.gov](mailto:Doris.mccarter@puc.ohio.gov)

**From:** McCarter, Doris  
**Sent:** Friday, November 13, 2020 4:07 PM  
**To:** Marie Fagan <[marie@london-economics.com](mailto:marie@london-economics.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@puc.ohio.gov](mailto:Doris.mccarter@puc.ohio.gov)

**From:** Marie Fagan <[marie@london-economics.com](mailto:marie@london-economics.com)>  
**Sent:** Friday, November 13, 2020 2:04 PM  
**To:** McCarter, Doris <[doris.mccarter@puc.ohio.gov](mailto:doris.mccarter@puc.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-EL-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: 1-617-953-7205  
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[www.london-economics.com](http://www.london-economics.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.london-economics.com](http://www.london-economics.com).

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**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  
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**MARCUM**  
ACCOUNTANTS + ADVISORS



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



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 9<sup>th</sup> Floor**  
**Post Office Box 350**  
**Trenton, New Jersey 08625-0350**  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

**MINUTES OF THE REGULAR MEETING OF THE  
BOARD OF PUBLIC UTILITIES**

A Regular Board meeting of the Board of Public Utilities was held on May 5, 2021, via Teleconference: 1 312 626 6799 Webinar ID: 980 6608 5233 or watch online @ <https://youtu.be/vlUMbOIJ9f8>

Public notice was given pursuant to N.J.S.A. 10:4-18 by posting notice of the meeting at the Board's Trenton Office, on the Board's website, filing notice of the meeting with the New Jersey Department of State and the following newspapers circulated in the State of New Jersey:

Asbury Park Press  
Atlantic City Press  
Burlington County Times  
Courier Post (Camden)  
Home News Tribune (New Brunswick)  
North Jersey Herald and News (Passaic)  
The Record (Hackensack)  
The Star Ledger (Newark)  
The Trenton Times

The following members of the Board of Public Utilities were present:

Joseph L. Fiordaliso, President  
Mary-Anna Holden, Commissioner  
Dianne Solomon, Commissioner  
Upendra J. Chivukula, Commissioner  
Robert M. Gordon, Commissioner

President Fiordaliso presided at the meeting and Aida Camacho-Welch, Secretary of the Board, carried out the duties of the Secretary.

It was announced that the next regular Board Meeting would be held on May 19, 2021 at 10:00 a.m. via teleconference with details to follow.

## CONSENT

### I. AUDITS

#### A. Energy Agent, Private Aggregator and/or Energy Consultant Renewal Registrations

EE21010072L	M and L Service Providers, LLC d/b/a Diamond Energy	R – EA
EE21020522L	ARA Consulting Group, LLC d/b/a Commercial Power	R – EA
EE21020490L	Energy Procurement Partners, Inc.	R – EA
EE20070500L	The Eric Ryan Corporation	R – EA
EE21010078L GE21010079L	Gabel Associates, Inc.	R – EA/PA/EC

#### Electric Power Supplier Initial License

EE21020106L	MeterGenius, Inc. d/b/a Hero Power	I – ESL
-------------	---------------------------------------	---------

**BACKGROUND:** The Board must register all energy agents, private aggregators, and consultants, and the Board must license all third party electric power suppliers and natural gas suppliers. On May 10, 2019, P.L. 2019, c. 100-101 was signed into law providing that third party electric power and natural gas supplier licenses issued by the Board may be renewed without expiring if certain conditions are met. An electric power supplier and/or natural gas supplier license shall not expire so long as the licensee pays to the Board a license renewal fee accompanied by an annual information update on a form prescribed by the Board. The renewal fee and annual information update form must be submitted within 30 days prior to the anniversary date of the last approved licensing application. P.L. 2019, c. 100-101 became operative 60 days following the date of enactment.

As such, any third party suppliers with a license expiring prior to July 9, 2019 were still required to submit the previous renewal application form. Any third party supplier renewal application that was filed prior to July 9, 2019 has been, and will continue to, be processed by Board Staff for approval or denial in accordance with N.J.A.C. 14:4-5.7.

The anniversary date for companies with a pending application will be the date that the renewal application receives Board approval. An energy agent, private aggregator, or energy consultant registration shall be valid for one year from the date of issue. Annually thereafter, licensed electric power suppliers and natural gas suppliers, as well as energy agents, private aggregators, and energy consultants, are required to renew timely their licenses and registrations in order to continue to do business in New Jersey.

Staff recommended that the following applicants be issued renewal registrations as an energy agent, private aggregator and/or energy consultant for one year:

- M and L Service Providers LLC d/b/a Diamond Energy
- ARA Consulting Group, LLC d/b/a Commercial Power
- Energy Procurement Partners, Inc.
- The Eric Ryan Corporation
- Gabel Associates, Inc.

Staff also recommended that the following applicant be issued initial license as an electric power supplier for one year:

- MeterGenius, Inc. d/b/a Hero Power

**DECISION:** The Board adopted the recommendation of Staff as set forth above.

## **II. ENERGY**

### **A. Docket No. ER20030190 – In the Matter of the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2021 – Compliance Filings of the Electric Distribution Companies (EDCs) Tariffs.**

**BACKGROUND:** Beginning on February 5, 2021 and ending on February 9, 2021, two descending clock auctions were initiated to secure the Basic Generation Service (BGS) electricity requirements of Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company, and Rockland Electric Company (Rockland) (collectively EDCs).

On February 11, 2021, the Board certified the results of the Auctions for BGS-Residential and Small Commercial Pricing (BGS-RSCP) and Commercial Industrial Energy Price supply and ancillary services. The Board also directed the EDCs to:

- 1) Execute the necessary documents with the winning bidders, including the BGS Supplier Master Agreements;
- 2) Implement the BGS rates resulting from the Auctions beginning June 1, 2021; and
- 3) File revised tariff sheets reflecting the BGS rates resulting from the Auction by March 1, 2021.

The Board noted that Rockland was previously directed to execute the necessary documents with the winning bidder and further directed Rockland to implement the BGS rates resulting from the Request for Proposal (RFP) as blended with the prices approved in the BGS Auctions beginning June 1, 2021.

Consistent with the Board's directive, the EDCs filed revised tariffs to become effective on June 1, 2021 that incorporated the changes resulting from the recently completed auctions and the Rockland RFP. Staff reviewed the tariff filings of the EDCs and found them

consistent with the rate structure and results approved by the Board for this auction process.

Staff recommended that the Board approve the tariff filings of the EDCs and notify interested parties through a Secretary's letter. Staff also recommended that the Board direct the EDCs to post the approved tariffs on their respective websites.

**DECISION:** The Board adopted the recommendation of Staff as set forth above.

**B. Docket Nos. ER20120746 and OAL PUC 00284-2021S – In the Matter of the Petition of Atlantic City Electric Company for Approval of Amendments to its Tariff to Provide for an Increase in Rates and Charges for Electric Service Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and for Other Appropriate Relief (12/2020).**

**BACKGROUND:** On December 9, 2020, Atlantic City Electric Company (ACE or Company), filed a petition with the Board for approval of an increase in its current base rates for electric service of approximately \$71.8 million, including Sales and Use Tax (SUT), to be effective for electric service provided on or after January 8, 2021 (Petition).

The Company also requested a return on equity of 10.30%. The Company stated that the current base rates do not: (i) provide sufficient operating revenues to reflect increased investment in the Company's rate base, meet operating expenses, taxes, and fixed charges, and maintain its financial viability; and (ii) provide an opportunity to earn a reasonable rate of return on the fair value of the Company's property.

ACE sought authority from the Board to do the following:

1. Increase rates and charges for electric service that would result from the proposed amendments to the Company's tariff;
2. Implement an Economic Relief Rider to be in effect for approximately four months to provide offsetting credits to mitigate the increase resulting from this base rate case;
3. Create a regulatory asset to record costs related to its solar hosting initiative, at a total cost of up to \$10 million over two years, to be recovered in a future base rate case;
4. Recover an under-recovery for the Company's PowerAhead program through the creation of a regulatory asset to be amortized over a period of three years;
5. Create a regulatory asset/liability to begin tracking Average Rate Assumption Method (ARAM) differences in customer' rates and the actual realized ARAM amounts;
6. Incorporate the results of its cost of service study and consider the unitized rate of return for each customer rate class in the allocation of overall revenue requirements among rate classes;
7. Modify certain charges, including the monthly customer charges; and
8. Update its tariff for certain tariff modifications, including the addition of a new tariff for light emitting diode street lighting.

Since a review of this matter was not complete prior to January 8, 2021, at the recommendation of Board Staff, the Board issued an order on January 7, 2021 suspending the proposed rate increase until May 8, 2021. This matter was transmitted to the Office of Administrative Law (OAL) as a contested case, and was assigned to Administrative Law Judge (ALJ) Jacob S. Gertsman for consideration and hearing.

On February 26, 2021, ACE updated its petition to include 12 months of actual data. The requested rate increase was modified to approximately \$71.3, including SUT.

A review of this matter was not complete prior to May 8, 2021. Staff recommended that a second order be issued in this matter, suspending the proposed rate increase until September 8, 2021, pending resolution of this matter at the OAL.

**DECISION:** The Board adopted the recommendation of Staff as set forth above.

**III. CABLE TELEVISION**

There were no items in this category.

**IV. TELECOMMUNICATIONS**

There were no items in this category.

**V. WATER**

There were no items in this category.

**VI. RELIABILITY AND SECURITY**

There were no items in this category.

**VII. CUSTOMER ASSISTANCE**

There were no items in this category.

**VIII. CLEAN ENERGY**

There were no items in this category.



**IX. MISCELLANEOUS**

**A. Approval of Minutes for the March 24, 2021 Agenda Meeting.**

**BACKGROUND:** Staff presented the March 24, 2021 Board meeting minutes and recommended they be accepted.

**DECISION:** The Board adopted the recommendation of Staff as set forth above.

**After appropriate motion, the consent agenda was approved.**

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

## AGENDA

### 1. AUDITS

**A. Docket No. EA20110733 – In the Matter of an Audit of the Affiliated Transactions Between Jersey Central Power and Light Company, First Energy Corp. and its Affiliates Pursuant to N.J.S.A. 48:3-49, 48:3-55, 48:3-56, 48:3-58 and N.J.A.C. 14:4-3.7(e) and (f) – Executive Session.**

Alice Bator, Director, Division of Audits, presented this matter.

**BACKGROUND AND DISCUSSION:** This matter was first discussed in Executive Session and it involved a commencement of the Audit of Affiliated transactions of Jersey Central Power and Light Company (JCP&L), its parent First Energy, affiliates and subsidiaries, and a comprehensive management audit of JCP&L. Specifically, before you today is the selection of the consultant.

The Division of Audits received bid proposals from SilverPoint Consulting, Sage Management Consultants, Schumaker and Company, The Liberty Consulting Group (Liberty) and Saleeby Consulting and Overland Consulting. The bids ranged from a low of \$668,900.00 to a high of \$1,469,584.00. The Evaluation Committee, which was comprised of representatives from the Divisions of Audits, Energy, Reliability and Security and the Offices of the Economist and Counsel, has reviewed the bid proposals and recommends that Liberty be awarded this consulting engagement at a not to exceed price of \$1,469,584.00. The basis for the selection of Liberty is explained in the Evaluation Committee Report.

Staff recommended that the Board authorize President Fiordaliso to execute a consulting agreement with Liberty consistent with the proposed agreement. In the event that Liberty seeks any substantive modifications to the proposed agreement, Staff will return to the Board for consideration of those modifications.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

## 2. ENERGY

### A. Docket No. GR20060383 – In the Matter of the Petition of South Jersey Gas Company to Revise the Level of its Basic Gas Supply Service Charge and Conservation Incentive Program Charges for the Year Ending September 30, 2021.

**Stacy Peterson, Director, Division of Energy**, presented this matter.

**BACKGROUND AND DISCUSSION:** On June 1, 2020, South Jersey Gas Company (South Jersey or Company) filed a petition with the Board seeking authority to: 1) decrease its Periodic Basic Gas Supply Service (BGSS) rate; 2) revise the charges related to its Balancing Service Clause (BSC); and 3) revise its Conservation Incentive Program (CIP) rates (2020 BGSS/CIP Petition).

The Company requested authority to change its current Periodic BGSS rate from \$0.447769 per therm to \$0.301985 per therm, effective October 1, 2020, resulting in a total deferred under recovered balance of \$17,596,777.00 to be recovered in the 2020-2021 BGSS Year. In determining the proposed rate, South Jersey included a credit to BGSS gas costs of \$24.1 million that was derived from the Board's approved margin sharing formula applicable to off-system sales, interruptible sales and transportation, and capacity releases.

South Jersey also proposed to recover \$24,558,175.00 of gas supply and related costs incurred as a result of the resolution of a contract dispute with Antero Resources Corporation (Antero), one of the Company's gas suppliers. South Jersey proposed to recover this over a two-year period.

By Order dated September 9, 2020, the Board issued an Order in this docket, which approved a stipulation executed by South Jersey, the New Jersey Division of Rate Counsel, and Board Staff (Staff) (collectively, Parties). The September 2020 Provisional Order authorized South Jersey to implement its proposed BGSS, BSC and CIP rates effective October 1, 2020, on a provisional basis with the exception of the amount pertaining to the Antero litigation. The Antero litigation amount was removed pending a complete review. As a result of the September 2020 Provisional Order, the monthly bill impact on a typical residential customer using 100 therms was a decrease of approximately \$13.60.

On September 17, 2020, the Board transmitted this matter to the Office of Administrative Law as a contested case where it was subsequently assigned to Administrative Law Judge (ALJ) Gail M. Cookson.

The Parties executed a Stipulation for Final Rates (Stipulation). The Stipulation recommended approval of a modified BGSS rate to include the Company's proposal related to the Antero litigation. Additionally, the Parties recommended approval of the provisional BSC and CIP rates as final.

Subsequently, ALJ Cookson issued an Initial Decision adopting the Stipulation of the Parties, finding that the Parties voluntarily agreed to the Stipulation and that the Stipulation fully disposed of all issues in controversy and was consistent with the law.

Staff recommended that the Board issue an Order approving the Initial Decision and Stipulation. In addition, Staff recommended that the Board direct South Jersey to file tariff sheets consistent with the terms and conditions of the Order by June 1, 2021.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**3. CABLE TELEVISION**

There were no items in this category.

**4. TELECOMMUNICATIONS**

There were no items in this category.

**5. WATER**

There were no items in this category.

**6. RELIABILITY AND SECURITY**

There were no items in this category.

**7. CUSTOMER ASSISTANCE**

There were no items in this category.

**8. CLEAN ENERGY**

**Benjamin Goldstein, Program Specialist, Division of Clean Energy**, presented these matters.

**A. Docket No. QO21040695 – In the Matter of the Clean Energy Program Authorization of Commercial and Industrial Program Energy Efficiency Incentives Exceeding \$500,000.00 – Bristol-Myers Squibb.**

**BACKGROUND AND DISCUSSION:** Commissioner Gordon recused himself from voting on this matter.

Bristol-Myers Squibb (BMS or the Company) submitted an application under the Large Energy Users Program requesting Board approval of a financial incentive of \$819,301.66. This incentive would help fund the installation of energy conservation measures (ECMs) at four different BMS locations across New Jersey. The proposed project has a total cost of \$2,976,966.40.

The proposed ECMs differ at each location. At the Company's Lawrenceville location, existing pneumatic controllers would be replaced with updated models that allow for more efficient air flow, and many laboratory and office areas would receive LED lighting upgrades. At the New Brunswick location, the chiller plant would be upgraded to be fully integrated into a larger building automation system to fully optimize efficiencies, and all laboratory and office areas would receive LED lighting upgrades. At the Princeton Pike Location, the existing LED lighting would be upgraded with occupancy sensors to reduce runtime. Finally, at the Nassau Park location, the existing condenser water system would be replaced with a new, highly-efficient model with variable frequency drives that would allow the system to meet cooling requirements based on actual demand rather than running at a single speed at all times.

On an annual basis, this project is anticipated to conserve 2,636,199 kWh of electricity and 11,577 therms of natural gas. The project will also reduce peak demand by an anticipated 78.3 kW per year and result in annual energy cost savings of about \$272,013.95. The payback period without incentives is 10.9 years; when factoring in the incentives, the payback period is reduced to 7.9 years.

Based on the certifications and the information provided by the Program Manager and Program Administrator, Staff recommended approval of the application for the total estimated incentive amount.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>

**B. Docket No. QO21040696 – In the Matter of the Clean Energy Program Authorization of Commercial and Industrial Program Energy Efficiency Incentives Exceeding \$500,000.00 – Port Authority of New York and New Jersey.**

**BACKGROUND AND DISCUSSION:** The Port Authority of New York and New Jersey submitted an application under Large Energy Users Program requesting Board approval of a financial incentive of \$1,198,352.10. This incentive would help fund an energy efficiency upgrade at the Elizabeth Port Authority Marine Terminal that has a total cost of \$2,675,000.00.

The Elizabeth Port Authority Marine Terminal Facility, operated by Maher Terminals, LLC, is primarily lit by existing high mast poles each containing 12 1000-watt high pressure sodium fixtures. The fixtures are controlled by photocells and operate between dusk and dawn every day of the year. This project involved removing the existing high pressure sodium fixtures on 121 poles and replacing with 3 to 8 new LED fixtures per pole, depending on pole location and area operation. New pole-level controls will be installed on 48 of the 121 poles to allow for additional dimming, while maintaining required light levels.

On an annual basis, this project is anticipated to conserve 3,361,370 kWh of electricity and reduce peak electric demand by 490.4 kW. The project will also result in annual energy cost savings of about \$327,300.00. The payback period without incentives is 5.12 years; when factoring in the incentives, the payback period is reduced to 2.83 years.

Based on the certifications and the information provided by the Program Manager and Program Administrator, Staff recommended approval of the application for the total estimated incentive amount of \$1,198,352.10 and issuance of a standard commitment letter to the applicant, setting forth the terms and conditions of this commitment.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**C. Docket No. QO21010084 – In the Matter of Contract for Analyzing the Rate Impact of the Energy Master Plan – Executive Session.**

**Benjamin Witherell, Chief Economist, Office of the Economist,** presented this matter.

**BACKGROUND AND DISCUSSION:** This matter was initially discussed in Executive Session and it involved a request for the Board to approve a contract for economic analysis and modeling consulting services.

On February 17, 2021 the Board directed staff to issue a Request for Qualifications (RFQ) to retain a consultant to assist Staff with modeling and analysis for a detailed ratepayer impact study of the 2019 Energy Master Plan. Staff issued the RFQ to qualified vendors

on February 25, 2021.

On March 24 2021, proposals were received from two firms in response to the RFQ. Staff reviewed each proposal with thoughtful analysis and scored each proposal received. Staff recommended that the Board approve a contract with the selected consultant, subject to receiving all final required State approvals as discussed in Executive Session.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

**D. Docket No. QO21010066 – In the Matter of the Petition to Review the Transfer from the SREC Registration (NJSRRE154410629) to the TREC Program (John Ranieri).**

**Ronald Jackson, Research Scientist, Division of Clean Energy,** presented this matter.

**BACKGROUND AND DISCUSSION:** On April 7, 2021, the Board denied Mr. John Ranieri Jr.'s (Petitioner) request to deem his father's solar system eligible for the legacy Solar Renewable Energy Certificate Registration Program (SRP). The Project had not received its Permission to Operate (PTO) by the deadline required for SRP eligibility, April 30, 2020. To be eligible for the SRP, a request for a waiver had to be filed supported by the documentation enumerated in the Board Order establishing the PTO Waiver Request process.

The Petitioner asserted that he and his father had submitted all the necessary documentation, but the Board found that one of the five required documents was missing: an affidavit from a person with direct personal knowledge that the project was complete but for final inspections or final permission to interconnect to the grid. The Board denied the petition on that basis.

Following issuance of the Order, Staff became aware of facts that were missing from the record considered by the Board. First, Staff found that Mr. Ranieri, Sr., the owner of the SRECs, had submitted two notarized affidavits in support of the PTO Waiver Request. The first affidavit was submitted on April 29, 2020, and the second affidavit submitted on June 4, 2020, each included an attestation to his personal knowledge, as owner of the system, that the failure to obtain PTO was attributable to COVID-related closures of critical local government offices or delays in the electric distribution companies issuance of PTO.

On June 8, 2020, the Program Administrator received a second affidavit dated June 4, 2020. In a July 6, 2020 letter to the Petitioner, the Program Administrator identified only one missing item, the affidavit signed by a person with direct personal knowledge that the stating that the project was complete but for final inspections and final permission to interconnect to the grid on April 30 2020.

However, neither this letter nor those sent by the Program Administrator subsequently included the explicit requirement that the Affidavit submitted for the “person of knowledge” could not be from the same person or entity as the affidavit required to be submitted by the project owner. The Petitioner indicated that the installer was not helpful in this process, but it also appeared that the Petitioner was not clearly informed of the need for a separate affidavit.

Given the Petitioner’s good faith attempts to follow the direction and timelines provided by the Board for projects whose final inspections and PTO were delayed by COVID-19 and the State of Emergency, the confusion caused by the lack of a clear statement that the PTO Waiver Order was interpreted to require the two affidavits to be submitted by two separate entities, and the failure of the Petitioner’s installer to fulfill its own obligation in a timely manner, Staff recommended that the Board reconsider its April 7 Order and grant the petition.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

## **9. MISCELLANEOUS**

There were no items in this category.

## **LATE STARTER A**

### **CLEAN ENERGY**

**Docket No. Q016100967 – In the Matter of New Jersey Board of Public Utilities Microgrid Report Town Center DER Microgrid Program – Phase II Detailed Designed Incentive Application.**

**James Ferris, Bureau Chief of New Technology, Division of Clean Energy,** presented this matter.

**BACKGROUND AND DISCUSSION:** This matter involved a consideration of an extension of two deadlines set forth in the March 3, 2021 Board Order awarding incentives to eight applicants under the Phase II Town Center Distributed Energy Resources Microgrid Program. The March 3, 2021 Order outlined several requirements and deadlines for the incentive awardees, including the following:

- 1) The Board directed each awardee to enter into a Memorandum of Understanding (MOU) with the Board within 60 days of the date of the March 2021 Order; and



- 2) The Board directed the Electric Distribution Companies (EDC) to meet with Board Staff and any awardee located within their service territory within 60 days of the date of the March 2021 Order's effective date to discuss the design and planning aspects of the proposed project.

Several Awardees notified Board Staff that the 60-day deadlines for both the execution of the MOU and the EDC meetings may be unattainable, and those awardees have made requests to Staff to extend those deadlines.

Some of the Awardees require governing body approval in order to execute the MOU. In some cases, this approval may only be available at a governing body meeting, whose schedule may not align with the 60-day deadline set forth in the March 2021 Order. Further, due to the potential delay in executing the MOUs, the 60-day deadline for meetings with Board Staff, the awardee and the pertinent EDC has also proved a challenge to accommodate. Board Staff considers these delays reasonable.

Staff recommended that the Board approve a 60-day extension for execution of the MOU; and a 90-day extension for the meeting among Board Staff, the awardee and the pertinent EDC. These extensions would be from the effective date of an Order granting the extensions. If the Board approves these extensions today, the new deadlines would be July 14, 2021 for execution of the MOU, and August 13, 2021 for the meeting among Board Staff, the Awardee and pertinent EDC. Staff also recommended that the Board authorize Staff to make additional amendments to the schedule should it be reasonably necessary.

**DECISION:** After discussion, the Board adopted the recommendation of Staff as set forth above.

<b>Roll Call Vote:</b>	<b>President Fiordaliso</b>	<b>Aye</b>
	<b>Commissioner Holden</b>	<b>Aye</b>
	<b>Commissioner Solomon</b>	<b>Aye</b>
	<b>Commissioner Chivukula</b>	<b>Aye</b>
	<b>Commissioner Gordon</b>	<b>Aye</b>

## **EXECUTIVE SESSION**

After appropriate motion, the following matters, which involved pending litigation and/or attorney-client privilege, were discussed in Executive Session.

### **1. AUDITS**

- A. Docket No. EA20110733 – In the Matter of an Audit of the Affiliated Transactions Between Jersey Central Power and Light Company, First Energy Corp. and its Affiliates Pursuant to N.J.S.A. 48:3-49, 48:3-55, 48:3-56, 48:3-58 and N.J.A.C. 14:4-3.7(e) and (f).**

The substance of this discussion shall remain confidential except to the extent that making the discussion public is not inconsistent with law.

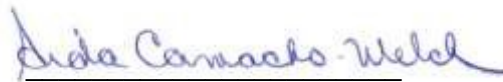
**8. CLEAN ENERGY**

**C. Docket No. QO21010084 – In the Matter of Contract for Analyzing the Rate Impact of the Energy Master Plan.**

The substance of this discussion shall remain confidential except to the extent that making the discussion public is not inconsistent with law.

After appropriate motion, the Board reconvened to Open Session.

There being no further business before the Board, the meeting was adjourned.



AIDA CAMACHO-WELCH  
SECRETARY OF THE BOARD

Date: June 9, 2021

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

In Reply Refer To:  
Office of Enforcement  
Docket No. FA19-1-000  
February 6, 2019

Robert R. Mattiuz, Jr. P.E.  
Vice President, Compliance and Regulated Services,  
and Chief FERC Compliance Officer  
FirstEnergy Corporation  
76 South Main Street  
Akron, OH 44308

Dear Mr. Mattiuz:

The Division of Audits and Accounting (DAA) in the Office of Enforcement of the Federal Energy Regulatory Commission (the Commission) is commencing an audit of FirstEnergy Corporation (FirstEnergy), including its service companies and other associated companies in the FirstEnergy holding company system (collectively, the Companies). The audit will evaluate the Companies' compliance with the Commission's: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R Part 35; (2) service companies accounting, recordkeeping, and FERC Form No. 60 reporting requirements under 18 C.F.R. Parts 366, 367, and 369; (3) accounting and reporting requirements for franchised public utilities for their transactions with associated companies under 18 C.F.R. Parts 101 and 141; and (4) preservation of records requirements for holding companies and service companies under 18 C.F.R. Part 368. The audit will cover the period January 1, 2015 to the present. However, this period may be expanded if necessary, and recommendations for corrective actions may also cover preceding years.

This audit is being conducted pursuant to section 301 of the Federal Power Act (FPA), 16 U.S.C. § 825 (2012), and section 1264(d) of the Energy Policy Act of 2005 (EPA), 42 U.S.C. § 16452 (2012), and is subject to the confidentiality provisions of those sections. Documents and information Commission staff obtains during the audit, as well as all working papers developed, will be placed in nonpublic files. Section 301(b) of the FPA and section 1264(d) of the EPA require the Companies to furnish, within reasonable timeframes, any information the Commission may request; grant Commission staff free access to their property, accounts, records, and memoranda; and allow Commission staff to keep copies of any accounts, records, and memoranda that pertain to

the audit. Pursuant to section 301(b), audit staff reserves the right to obtain and examine all accounts, records, and memoranda in years prior to the audit period stated above, as deemed necessary. Section 301(c) of the FPA and sections 1264(a) and (c) of the EPCA allow Commission staff to examine the books, accounts, records, and memoranda of any person who controls, directly or indirectly, the Companies, and of any other company controlled by such person, insofar as they relate to transactions with or the business of the Companies.

Consistent with the requirements of sections 301, 304, and 311 of the FPA, 16 U.S.C. §§ 825, 825c, and 825j (2012); section 1264(a) of the EPCA, 42 U.S.C. 16452 (2012); and 18 C.F.R. Parts 125 and 368, the Companies must preserve and retain, and shall not discard or destroy, any and all existing and future records or communications, including but not limited to, electronic documents, email, instant messages, text messages, and voice recordings relating to this audit.

We will contact you shortly to schedule a conference call between audit staff and FirstEnergy to: (1) explain the audit process; (2) address any questions about the audit you may have; (3) clarify audit staff's understanding of certain information; (4) discuss the initial data request and response schedule; and (5) discuss scheduling for the initial site visit.

If you have any questions about this letter, please contact Subramaniam Narthana, Auditor-in-Charge, at (202) 502-6102. Also, if you would like to discuss the audit with DAA management at any time during the audit, please contact Christopher Handy, Audit Manager, at (202) 502-6496, or Steven Hunt, Acting Director and Chief Accountant, DAA, at (202) 502-6084.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry R. Parkinson", with a long horizontal flourish extending to the right.

Larry R. Parkinson  
Director  
Office of Enforcement

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

JENNIFER L. MILLER,

Plaintiff,

v.

MICHAEL J. ANDERSON, et al.,

Defendants,

and

FIRSTENERGY CORP.,

Nominal Defendant.

Judge John R. Adams

Case No. 5:20-CV-01743

**Deposition Schedule (per ECF 160)**

Pursuant to the Court's instructions at the November 8, 2021 Case Management Conference and the November 9, 2021 Case Management Plan (ECF 160), and in accordance with the Court's November 23, 2021 Order (ECF 186), the parties respectfully submit this proposed deposition schedule, attached as Exhibit A.<sup>1</sup>

The parties have worked in good faith to develop a schedule for all depositions of plaintiffs and individual defendants in this action, especially in light of the number of parties. The parties reserve all rights, including the right to supplement and/or modify the deposition schedule, and

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<sup>1</sup> By submitting this proposed deposition schedule, the Individual Defendants stipulate to depositions by Plaintiffs in excess of the ten depositions authorized by rule, but only as to depositions of parties in this action. *See* Fed. R. Civ. P. 30(a)(2). The parties may seek leave for depositions in excess of those authorized by rule, and the parties reserve all rights regarding any such motion. Plaintiffs have served or are currently in the process of serving seven non-party document subpoenas and may serve more. Plaintiffs intend to seek approximately five to ten non-party depositions, as well as a 30(b)(6) deposition of FirstEnergy. Plaintiffs' position is that the party depositions should not count toward the ten deposition limit and that Plaintiffs should be permitted to depose up to ten non-parties. The Individual Defendants' position is that the parties may seek leave for depositions in excess of those authorized by rule and that a party's position regarding those depositions should be set forth in the motion, and not in this deposition schedule.

agree to work cooperatively regarding any supplementations or modifications to it. The parties note that discovery is ongoing, document productions are not complete, and additional depositions may be noticed.

In addition, the Special Litigation Committee's investigation is ongoing, and the parties reserve all rights to take discovery of the Special Litigation Committee members, including depositions.

Dated: December 3, 2021

Respectfully submitted,

*/s/ John C. Camillus*

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Respectfully submitted,

*/s/ Geoffrey J. Ritts (with permission)*

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2021, I electronically filed the foregoing paper(s) with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF participants.

/s/ John C. Camillus

John C. Camillus

# **EXHIBIT A**

**DEPOSITION SCHEDULE (PER ECF 160)**

<b><u>Name</u></b>	<b><u>Date</u></b>	<b><u>Time</u><sup>2</sup></b>
Thomas N. Mitchell	February 10, 2022	9:30am
Jennifer Miller	February 14, 2022	9:30am
James F. Pearson	February 16, 2022	9:30am
Sandra Pianalto	February 18, 2022	9:30am
Luis A. Reyes	February 22, 2022	9:30am
Dennis Chack	March 2, 2022	9:30am
Christopher D. Pappas	March 4, 2022	9:30am
Robert P. Reffner	March 7, 2022	9:30am
Michael J. Dowling	March 8, 2022	9:30am
James F. O'Neil, III	March 10, 2022	9:30am
Charles E. Jones	March 11, 2022	9:30am
Representative(s) of Massachusetts Laborers Pension Fund	March 14, 2022	9:30am
Ebony Yeboah-Amankwah	March 15, 2022	9:30am
Leslie M. Turner	March 18, 2022	9:30am

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<sup>2</sup> Depositions to begin at 9:30am local time, unless noted otherwise or otherwise agreed.

<b><u>Name</u></b>	<b><u>Date</u></b>	<b><u>Time<sup>2</sup></u></b>
Representative(s) of Employees Retirement System of the City of St. Louis	March 22, 2022	9:30am
Donald T. Misheff	March 29, 2022	9:30am
K. Jon Taylor	April 1, 2022	9:30am
Steven J. Demetriou	April 13, 2022	10:00am
Julia L. Johnson	April 14, 2022	9:30am
Representative(s) Electrical Workers Pension Fund, Local 103, I.B.E.W	April 18, 2022	9:30am
Michael J. Anderson	April 22, 2022	9:30am
Steven E. Strah	April 29, 2022	9:30am
Third-Party Witnesses	TBD	TBD <sup>3</sup>

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<sup>3</sup> The parties reserve all rights to supplement the deposition schedule to include additional deponents, including but not limited to representatives of FirstEnergy, Energy Harbor, PricewaterhouseCoopers LLP (“PWC”), Clearstulting LLC, Generation Now, Partners For Progress, IEU-Ohio, Sustainability Funding Alliance, the Nathan Cummings Foundation, Green Century Capital Management, Inc., Icahn Capital LP, any current or former member of the FirstEnergy Board of Directors, individuals identified in or with knowledge of the subject matter of the Deferred Prosecution Agreement, individuals identified in the parties’ initial and supplemental initial disclosures, or individuals identified in discovery.

**This foregoing document was electronically filed with the Public Utilities  
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**Case No(s). 17-0974-EL-UNC**

Summary: Application Interlocutory Appeal, Request for Certification to the PUCO Commissioners, and Application for Review by Office of the Ohio Consumers' Counsel and Northeast Ohio Public Energy Council electronically filed by Ms. Patricia J. Mallarnee on behalf of Willis, Maureen Ms.