

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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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. :

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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.

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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.

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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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1 Tuesday Morning Session,  
2 January 4, 2022.

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

6 The Public Utilities Commission of Ohio  
7 calls for a prehearing conference at this place and  
8 time Case No. 17-974-EL-UNC being in the Matter of  
9 the Review of Ohio Edison Company, The Cleveland  
10 Electric Illuminating Company, and the Toledo Edison  
11 Company's Compliance with Revised Code Section  
12 4928.17 and Ohio Administrative Code Chapter  
13 4901:1-37.

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

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

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

25 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



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

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

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

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

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

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

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)

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

Summary: Transcript January 4th 2022 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. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.