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Office of the Ohio Consumers' Counsel

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January 14, 2022

Ms. Tanowa Troupe, Secretary
Public Utilities Commission of Ohio
180 East Broad Street, 11th Floor
Columbus, Ohio 43215

RE: OCC/NOPEC Interlocutory Appeal, Case No. 17-974-EL-UNC

Dear Ms. Troupe:

This letter addresses the resolution of an issue involving the PUCO DIS processing of an OCC/NOPEC filing. On January 10, 2020, OCC/NOPEC timely filed an Interlocutory Appeal from Attorney Examiner Price's January 4, 2022 ruling. It was docketed at 5:22:08 PM, January 10, 2022. Parties of record were served with a PDF of the filing that was fully viewable. The next day, January 11, 2022, we were advised by Docketing personnel that our filing would be "rejected" due to document-file corruption which apparently occurred as a result of PUCO Docketing's processing system.

On January 12, 2022, OCC/NOPEC filed a motion asking the PUCO to resolve the PDF processing issue. A PUCO prehearing conference was held on January 13, 2022. Attorney Examiner Price extended the deadline for filing the OCC/NOPEC interlocutory appeal to January 14, 2022 and asked OCC and NOPEC to file a paper version of the interlocutory appeal to avoid any processing issues. Under Attorney Examiner Price's ruling, any memoranda contra the Interlocutory Appeal are due five days after today's paper filing.

We are available to assist the PUCO with troubleshooting for future avoidance of this issue (which we were advised does occur from time to time).

Thank you.

Very truly yours,

Maureen R. Willis/JK

Maureen R. Willis (0020847)
Counsel of Record
Assistant Consumers' Counsel

cc: Dane Stinson, NOPEC
All Parties of Record & Attorney Examiners

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PUCO

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**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**

Dane Stinson (Reg. No. 0019101)
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
dstinson@bricker.com
(willing to accept service by email)

Bruce Weston (Reg. No. 0016973)
Ohio Consumers' Counsel

Maureen R. Willis (Reg. No. 0020847)
Counsel of Record
John Finnigan (Reg. No. 0018689)
Assistant Consumers' Counsel

Glenn S. Krassen (Reg. No. 0007610)
General Counsel
NORTHEAST OHIO PUBLIC ENERGY
COUNCIL
31360 Solon Road, Suite 33
Solon, Ohio 44139
Telephone: (440) 249-7831
Facsimile: (440) 248-1986
E-mail: gkrassen@nopec.org
(willing to accept service by e-mail)
*Attorneys for Northeast Ohio Public Energy
Council*

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

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In the interest of truth and justice, the Office of the Ohio Consumers' Counsel ("OCC") and the Northeast Ohio Public Energy Council ("NOPEC") appeal two of Attorney Examiner Gregory Price's rulings made at the January 4, 2022 prehearing conference.¹ Attorney Examiner Price prematurely set deadlines for testimony (Feb. 28, 2022) and an evidentiary hearing (Mar. 14, 2022), and deferred ruling on OCC and NOPEC's joint motion for a supplemental audit until after the evidentiary hearing is concluded.²

The PUCO Commissioners should reverse the rulings as against the public's interest in a full investigation of FirstEnergy's compliance with the PUCO's corporate separation rules. Examiner Price's rulings would prematurely end the fact-finding process, preventing a full and proper investigation of FirstEnergy. And the rulings would potentially stymie

¹ Prehearing Conference, Tr. at 24-26 (Jan. 4, 2022); Entry (Jan. 4, 2022). *See attached.*

² Prehearing Conference, Tr. at 24.

further investigation into matters that should be addressed by the PUCO as part of a full investigation of corporate separation violations involving FirstEnergy.

Curiously, this 2017 case languished for several years with little progress allowing FirstEnergy to benefit from the delay in imposing stricter corporate separation standards. But now when FirstEnergy would likely benefit from closing this case sooner to limit review of its involvement in the H.B. 6, the PUCO wants to wrap up the case.

Examiner Price's procedural schedule and his deferred ruling on the OCC/NOPEC joint motion would prejudice OCC, NOPEC and the public interest in light of ongoing and voluminous discovery productions with FirstEnergy Corp. OCC itself has received approximately 233,000 pages of documents from FirstEnergy Corp. in the last month, and more will be provided on a "rolling basis."³ The dates that Examiner Price set by his ruling will be insufficient to accomplish the Herculean task of reviewing and analyzing the discovery to prepare for testimony and the evidentiary hearing. The premature hearing interferes with parties' right to ample discovery guaranteed under Ohio law (R.C. 4903.082) and PUCO rules (O.A.C. 4901-1-16).

Moreover, shareholder and possibly other litigation, state investigations, possible further revelations from the U.S. Attorney, an investigation by the U.S. Securities Exchange Commission, and an important FERC corporate separation audit of FirstEnergy are currently pending. These pending cases are highly relevant to this case and may provide significant information that will assist the development of a full and complete record in this case. Examiner Price's procedural ruling precludes the PUCO from learning more facts that are

³ Prehearing Conference Tr. at 13 (Jan. 4, 2022).

being uncovered in the numerous investigations and suits pertaining to FirstEnergy and its misdeeds involving H.B.6.

The Attorney Examiner's procedural rulings represent a new and novel question of interpretation, law or policy under O.A.C. 4901:1-15(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."⁴ 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.⁵

Second, by oral ruling, Attorney Examiner Price deferred consideration of the OCC/NOPEC joint motion for a supplemental audit.⁶ The supplemental audit was requested so that FirstEnergy Corp.'s admittedly unlawful activities related to the H.B. 6 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 6 political and charitable spending.⁷ The audit should have determined if FirstEnergy made consumers pay for such funding. But the auditor wrote this startling disclaimer in the audit report:

⁴ Prehearing Conference Tr. at 19 (Jan. 4, 2022).

⁵ Prehearing Conference Tr. at 19-20.

⁶ Prehearing Conference Tr. at 24.

⁷ See attachment.

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).⁸

The Attorney Examiner's ruling deferring consideration of the joint motion for supplemental audit also represents a new and novel question of interpretation, law or policy and a departure from past PUCO precedent under O.A.C. 4901:1-15(B). The oral ruling represents a new or novel interpretation of law because it would permit the attorney examiner to modify the PUCO's November 4, 2020, order that set the scope of the audit. In this case, the PUCO is supposed to be investigating whether the FirstEnergy Utilities or any of its affiliates violated Ohio's corporate separation law in relation to FirstEnergy Advisors' certification or because of H.B. 6 activities. Certainly, investigation of H. B. 6 activities is what OCC sought in its original motion requesting the audit.⁹ After all, that was the PUCO's justification for conducting an additional corporate separation audit –“to include examination of the time leading up to the passage of Am. Sub. H.B. 6 and the subsequent referendum.”¹⁰ But we now know that the PUCO Staff limited the audit to such a degree that it did not include a review of whether FirstEnergy's H.B.6 activities violated Ohio corporate separation law. The auditor's evaluation should have included whether the Ohio FirstEnergy utilities' captive

⁸ Compliance Audit of FirstEnergy Operating Companies at 1 (Sept. 13, 2021).

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

¹⁰ *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶1 (Nov. 4, 2020).

customers were required to subsidize the H.B. 6 activities meant to benefit a competitive affiliate, FirstEnergy Solutions. Such subsidization would violate R.C. 4928.02(H), R.C. 4928.17(A), and O.A.C. 4901:1-37-04(D)(6).

The PUCO can act only upon the majority vote of its commissioners. R.C. 4901.08. The Attorney Examiner essentially modified the PUCO's order making the evaluation ordered in this case contingent on parties producing evidence at hearing to show that an additional investigation is needed. This conflicts with the intent that this corporate separation audit investigate H. B. 6 activities. Under the PUCO's order, evidence on whether H.B. 6 activities violated corporate separation law and rules should have been forthcoming and presented as part of the PUCO-ordered audit, conducted by an independent source. The attorney examiner's ruling not only presents a new and novel interpretation of law, it is unlawful.

In addition, the attorney examiner's ruling violates recent PUCO precedent. In the Certification Case alleged corporate separation violations were also at issue. The PUCO ruled that the parties and auditors should not be required to duplicate efforts in the Certification Case and in this proceeding. For that reason, the PUCO ordered that all corporate separation issues be considered together in a single (this) proceeding. The attorney examiner's oral ruling departs from the PUCO's recent precedent of prohibiting the bifurcation of corporate separation issues.

Consistent with O.A.C. 4901-1-15(B) an immediate determination is needed to prevent the likelihood of undue prejudice or expense to OCC, NOPEC and all other parties. Bifurcation of the corporate separation issues as contemplated by the Examiner's oral ruling would result in considerable and unnecessary time and expense to the parties

and auditors, alike, to prepare for two hearings, with likely overlapping issues. Moreover, if the attorney examiner's procedural schedule is permitted to stand, the parties must proceed forward with trial preparation and end the crucial discovery phase of the investigation, to their prejudice. Accordingly, and to protect utility consumers, the PUCO Commissioners should grant this interlocutory appeal and reverse Attorney Examiner Price's rulings of January 4, 2022 that prematurely establish dates for testimony and an evidentiary hearing, and defer consideration of the joint motion for supplemental audit.

The PUCO should instead hold this proceeding in abeyance until a supplemental audit can be conducted with the results reported to the PUCO. Holding the proceeding in abeyance to permit this required evaluation would allow discovery to continue consistent with the ample rights of discovery afforded to parties under Ohio law (R.C. 4903.082) and PUCO rules (O.A.C. 4901-1-16). In that regard the investigation could complement but not supplant other investigations, especially the FERC audit underway that essentially addresses the same issues.

The reasons for granting this interlocutory appeal are more fully stated in the following memorandum in support.

Respectfully submitted,

Dane Stinson /JF

Dane Stinson (Reg. No. 0019107)
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
dstinson@bricker.com
(willing to accept service by email)

Glenn S. Krassen (Reg. No. 0007610)
General Counsel
NORTHEAST OHIO PUBLIC ENERGY
COUNCIL
31360 Solon Road, Suite 33
Solon, Ohio 44139
Telephone: (440) 249-7831
Facsimile: (440) 248-1986
E-mail: gkrassen@nopec.org
(willing to accept service by e-mail)

*Attorneys for Northeast Ohio Public
Energy Council*

Bruce Weston (Reg. No. 0016973)
Ohio Consumers' Counsel

Maureen R. Willis /JF
Maureen R. Willis (Reg. No. 0020847)
Counsel of Record
John Finnigan (Reg. No. 0018689)
Assistant Consumers' Counsel

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

*Attorneys for Office of the Ohio
Consumers' Counsel*

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**BEFORE
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The corporate separation issues regarding FirstEnergy's management and affiliates in the wake of the H.B. 6 scandal are unprecedented in Ohio. Federal prosecutors have called the H.B. 6 scandal "the largest bribery scheme ever" in Ohio.¹¹ FirstEnergy Corp. fired its CEO and two other top executives on October 29, 2020. The firings occurred the same day that two of the criminal defendants in the *U.S. v. Householder*¹² entered guilty pleas.¹³ FirstEnergy Corp.'s October 29, 2020 SEC filing explained that a committee of independent members of FirstEnergy's Board of Directors was directing an internal investigation of ongoing governmental investigations, and it concluded that the executives' actions related to H.B. 6 had violated company policies and its code of conduct.¹⁴

¹¹ N. Reimann, *Ohio Speaker of the House Arrested in State's 'Largest Bribery Scheme Ever'*, Forbes.com (July 21, 2020).

¹² *U.S. v. Larry Householder, et al.*, Case No. 1:20-cr-00077, Complaint (S.D. Ohio) (July 21, 2020).

¹³ J. Mackinnon, *FirstEnergy fires CEO Chuck Jones after 2 plead guilty in Householder bribery scheme*, Akron Beacon-Journal (Oct. 29, 2020).

¹⁴ FirstEnergy Corp., Form 8-K (Oct. 29, 2020).

Later SEC filings revealed that FirstEnergy, through the course of its internal investigation, had discovered a \$4.3 million payment to a firm controlled by the former PUCO Chair and that ten years of misallocated costs to the FirstEnergy Utilities.¹⁵ The H.B. 6 scandal has now reached the PUCO's doorstep.

Most recently, FirstEnergy Advisors ("FEA") (the affiliate of the FirstEnergy utilities) disclosed troubling text messages reflecting apparent corporate separation violations and seemingly unlawful ex parte communications. The text messages were between Dennis Chack (then President and Manager of FEA) and Charles Jones (then CEO of FirstEnergy Corp., Manager of FEA, and Director of the Ohio FirstEnergy utilities) and the former Chair of the PUCO toward securing approval of FEA's application.¹⁶ In one text message, former FEA President Chack asked about the status of the FEA energy license: "Any luck on talking with Sam on energy license [W]e just received request for additional comments" (March 3, 2020).¹⁷ The next day former FirstEnergy CEO and Ohio FirstEnergy Utilities director Charles Jones replied to Dennis Chack saying that the former PUCO Chair:

*[W]ill get it done for us but cannot just jettison all process. Says the combination of overruling Staff and other Commissioners on decoupling, getting rid of SEET and burning the DMR final report has a lot of talk going on in the halls of PUCO about does he work there or for us? He'll move it as fast as he can. Better come up with a short term work around. (Emphasis added)*¹⁸

¹⁵ FirstEnergy Corp., Form 10-K (Feb. 18, 2021).

¹⁶ See, Certification Case, Motion to Withdraw the Certification Application of Suvon, LLC d/b/a FirstEnergy Advisors as a Competitive Retail Electric Service Power Broker and Aggregator (Nov. 2, 2021), Exhibit A.

¹⁷ *Id.*

¹⁸ *Id.*

These texts, only recently disclosed, demonstrate clear ex parte violations and potentially corporate separation violations not considered by either of the auditors in this case.

To protect consumers, OCC and NOPEC filed a joint motion on November 5, 2021, asking the PUCO to order a supplemental audit to complete the investigation into FirstEnergy's H.B. 6 activities consistent with the PUCO's order of November 4, 2020. As a part of the supplemental audit, OCC and NOPEC also requested that the investigation include the apparent corporate separation violations surrounding the March 2020 text messages between former FirstEnergy executive Jones and the former chair.

OCC has also undertaken great efforts to investigate FirstEnergy's corporate separation violations through discovery. To date, OCC has received and is reviewing approximately 233,000 pages of documents from FirstEnergy Corp. FirstEnergy Corp. is also producing more documents, on a rolling basis, responsive to OCC's discovery. According to FirstEnergy Corp.'s counsel, the discovery production "is, in fact, ongoing and there is probably no end in sight."¹⁹ On top of that OCC has been engaged in seeking discovery from the FirstEnergy Utilities as well.

At the January 4, 2022 prehearing conference, the attorney examiner ruled that consideration of the joint motion for a supplemental audit should be deferred until after the hearing is held in this proceeding. The oral ruling represents a new or novel interpretation of law, because it would permit the Attorney Examiner to modify the PUCO's November 4, 2020, order that set the scope of the audit. The ruling also violates the precedent established in the recent Certification Case that corporate separation issues

¹⁹ Prehearing Conference Tr. at 13 (Jan. 4, 2022).

not be bifurcated into two hearings. The PUCO should order that this proceeding be held in abeyance pending completion of the supplemental audit.

Additionally, at the January 4, 2022 prehearing conference, and as reflected in the January 4 Entry, the Attorney Examiner extended the dates for intervenor testimony and the evidentiary hearing to February 28 and March 14, 2022 respectively.²⁰ The oral ruling represents a new or novel interpretation of law, because it fails to recognize that the extraordinary nature of this investigation requires extensive fact finding that would be prematurely extinguished if the parties are forced, in short order, to file testimony and proceed to hearing in the next two months. While the Attorney Examiner's extension of the testimony and hearing are a move in the right direction, it fails to provide sufficient time to allow crucial fact-finding to continue. It is the fact-finding that should be occurring consistent with the parties' rights to ample discovery under Ohio law (R.C. 4903.082) and PUCO rule (O.A.C. 4901-1-16).

The PUCO should grant OCC and NOPEC's interlocutory appeal. The PUCO should allow discovery to continue. And the PUCO should hold the proceeding in abeyance to allow the requested supplemental audit to be completed. This investigation will complement but not supplant other investigations. Other investigations include those at FERC where an audit is underway that essentially addresses the same issues the PUCO is investigating.

²⁰ Prehearing Conference, Tr. at 28-29 (Sept. 14, 2021).

II. STANDARD OF REVIEW

The PUCO will review an Attorney Examiner's ruling if the Attorney Examiner (or other authorized PUCO personnel) certifies the appeal.²¹ The standard applicable to certifying an appeal is 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 precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the commission ultimately reverse the ruling in question."²² Upon consideration of an appeal, the PUCO may affirm, reverse, or modify the ruling or dismiss the appeal.²³

III. REQUEST FOR CERTIFICATION

A. **The Attorney Examiner's oral ruling deferring a ruling on OCC and NOPEC's joint motion for a supplemental audit presents a new or novel question of interpretation, law or policy and a departure from precedent.**

Upon OCC's motion, the PUCO ordered that an audit be conducted to investigate information revealed in FirstEnergy Corp's Form 8-K filed with the U.S. Securities and Exchange Commission on October 29, 2020. Form 8-K disclosed that three executives (including Charles Jones and Dennis Chack) were terminated for violating certain FirstEnergy Corp policies and its code of conduct related to the H.B. 6 scandals. The PUCO explicitly directed its Staff to:

²¹ O.A.C. 4901-1-15(B).

²² *Id.*

²³ O.A.C. 4901-1-15(E).

***issue the attached RFP for audit services to conduct an additional corporate separation audit for the period between November 1, 2016 and October 31, 2020, which includes examination of the time period leading up to the passage of Am. Sub. H.B. 6 and the subsequent referendum.²⁴

However, when a prospective auditor subsequently asked Staff whether the audit should include the source of funds for political and charitable spending in support of H.B. 6, Staff responded, “No.”²⁵ Whether the regulated Ohio FirstEnergy Utilities used their captive customers’ funds to support the H.B. 6 activities meant to benefit their non-regulated affiliate (FirstEnergy Solutions) goes to the heart of corporate separation policy.²⁶ *See e.g.*, R.C. 4928.17(A)(1), R.C. 4928.02(H), O.A.C. 4901:1-37-04(D)(6), which prohibit anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service.

In its report filed September 13, 2021, Daymark recognized that the cross-subsidization issue fell squarely within a corporate separation evaluation. However, it admitted that the scope of its audit had been limited:

While information or documents produced in response to other audits or investigators 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.²⁷

²⁴ Entry, November 4, 2020 at 4-5.

²⁵ *See* attached.

²⁶ Daymark agrees: “OAC 4901:1-37, Ohio’s corporate separation requirements, are in place to ensure fair competition for retail electric service providers. To accomplish that, Ohio’s corporate separation rules are designed to prevent any cross-subsidization between affiliates of a regulated utility.”^{***}In summary, the OAC 4901:1-37 rules contain provisions that require any company with affiliates to:

- Ensure no cross-subsidization occurs between affiliates. ^{****} Daymark Audit Report at 1.

²⁷ Daymark Audit Report at 1.

Daymark did not fulfill the intended scope of the PUCO-ordered audit of FirstEnergy's corporate separation compliance as related to its H.B. 6 activities.

1. **The Attorney Examiner's oral ruling presents a new or novel question of interpretation, law or policy and, indeed, is unlawful. R.C. 4901.08.**

The scope of the Daymark Audit was set pursuant to a PUCO order issued November 4, 2020. Under that order, the audit was intended to include an evaluation of whether the FirstEnergy Utilities or any of its affiliates violated Ohio's corporate separation law in relation to FirstEnergy Advisors' certification or because of H.B. 6, e.g., to examine the time period leading up to the passage of H.B. 6 and the subsequent referendum,²⁸ to "ensure compliance by the Companies and its affiliates with the corporate separation provisions of R.C. 4928.17 and with the Companies' Commission-approved corporate separation plans."²⁹

Regrettably, in recently disclosed emails obtained pursuant to a public records request, it appears that the Staff limited the PUCO-ordered scope of the audit. For this reason, OCC and NOPEC filed their joint motion for an auditor to conduct a broader evaluation than conducted by Daymark. Consistent with the PUCO's order setting the scope of the audit, and the Commission's order in the Certification Case that all corporate separate issues be considered in this proceeding, OCC and NOPEC also requested that the supplemental audit also evaluate the shocking March 2020 test messages between former FEA president Chack and Chuck Jones, FirstEnergy Corp's CEO and director of the Ohio FirstEnergy Utilities.

²⁸ Entry at ¶17 (Nov. 4, 2020).

²⁹ *Id.*

At the January 4, 2022, prehearing conference, the attorney examiner orally ruled that he would “defer” making a determination on the joint motion. The examiner reasoned that “[i]f the evidence presented at the hearing demonstrates a need for supplemental audit, the Commission will consider supplemental audit after the hearing...”³⁰ The examiner essentially modified the PUCO order – which found cause for a full investigation of the time period during which H.B. 6 activities were being undertaken– by making the evaluation contingent upon evidence presented at hearing.

The examiner’s ruling constitutes not only a new or novel interpretation of law, it also is unlawful. Under R.C. 4901.08, a quorum (or majority) of Commissioners is required for the exercise of any lawful PUCO power. A quorum of Commissioners lawfully ordered that the audit include an evaluation of the time period under which H.B. 6 activities were being undertaken. An attorney examiner cannot modify that order by later making the evaluation contingent on parties producing evidence to justify the requested inquiry. The evaluation the PUCO ordered was intended to produce evidence for hearing, not the other way around.

2. The attorney examiner’s ruling represents a departure from precedent.

As the PUCO is well aware, OCC and NOPEC objected to FirstEnergy Advisors’ certification application on the basis that it violated various corporate separation rules.³¹ Among these alleged violations was that the regulated Ohio FirstEnergy Utilities shared the same senior management team with their unregulated, competitive affiliate,

³⁰ Prehearing Tr. at 24.

³¹ See, generally, the *Certification Case*, Case No. 20-103-EL-AGG.

FirstEnergy Advisors. The concern (now shared by Daymark³²) was that the executives could not erect a barrier between their regulated duties with the Ohio FirstEnergy Utilities and their competitive duties with FEA, in violation of the Code of Conduct required under the Ohio Administrative Code. *See, e.g.*, O.A.C. 4901:1-37-04(D)(3). Rather than address these issues in the certification case, the PUCO deferred consideration of corporate separation issues to this proceeding.³³ The PUCO reasoned that the consideration of all corporate separation issues in a single (this) proceeding would avoid a duplication of expense and efforts all parties and auditors.

In stark contrast, the attorney examiner's ruling deferring consideration of alleged corporate separation violations would bifurcate the corporate separation issues presented in this proceeding. This bifurcation would result in a duplication of efforts, requiring the parties and the auditors to incur the time and expense for a second hearing on some of the same corporate separation issues that will be addressed at the hearing currently scheduled for March 14, 2022.

B. The Attorney Examiner's ruling setting testimony and hearing deadlines presents a new or novel question of interpretation, law or policy regarding the appropriate amount of time parties should have to review the unprecedented and massive ongoing discovery in one of, if not the worst, scandals in state history.

This proceeding regarding FirstEnergy is no ordinary corporate separation audit case. As noted above, and as explained in OCC's previous filings, the fallout from the H.B. 6 scandal has revealed FirstEnergy's failures to maintain a culture of compliance

³² *See* Daymark Audit Report at 67.

³³ Certification Case, Finding and Order (April 22, 2020) at ¶ 20; Entry on Rehearing (June 17, 2020) at ¶ 15.

with corporate separation regulations. Standard and Poor's, the well-known credit ratings agency, gave this dour assessment of FirstEnergy's management:

We believe these violations at the highest level of the company are demonstrative of insufficient internal controls and a cultural weakness. We view the severity of these violations as significantly outside of industry norms and in our view, they represent a material deficiency in the company's governance.³⁴

Events on the regulatory side of the equation also reveal the extraordinary nature of this case and that additional time is needed to allow for a full investigation—one that permits the ample discovery rights parties are guaranteed under Ohio law and the PUCO rules. As stated above, the Staff of the PUCO inexplicably excluded FirstEnergy's H.B.6 misdeeds from the scope of the corporate separation audit. That action is a (not very good) reason for why the audit report begins with the startling disclaimer that Daymark did not review potential cross subsidies that could result in corporate separation violations.³⁵

And then there is the shocking revelation of the March 2020 FirstEnergy text messages. The text messages suggest a corporate separation violation (if not other types of violations) between shared senior officials of the regulated FirstEnergy Ohio utilities and their competitive affiliate, FirstEnergy Advisors.

These events and the sheer mass of documents that FirstEnergy has dumped on OCC shows that this case is not an ordinary PUCO audit case. The integrity of state government is at issue. The PUCO should allow for a full-fledged inquiry to proceed and

³⁴ See Khalid, U., *S&P downgrades FirstEnergy following \$1.95B draw on revolving credit facility*, S&P Market Intelligence (Nov. 25, 2020).

³⁵ Compliance Audit of FirstEnergy Operating Companies at 1 (Sept. 13, 2021).

should take advantage of the information that is being developed in other state investigations, civil lawsuits, and at FERC and the U.S. Securities Exchange Commission. The PUCO and the Ohio consumers that OCC and NOPEC represent will lose out if parties are prematurely forced to hearing before fact-finding guaranteed by Ohio law (R.C. 4903.082) and PUCO rules (O.A.C. 4901-1-16) has concluded.

Ohio is not the only jurisdiction that has investigations underway concerning FirstEnergy. The H.B. 6 scandal has resulted in investigations regarding FirstEnergy in other states (New Jersey³⁶ and Maryland) and a corporate separation audit by FERC. The Securities and Exchange Commission is investigating possible securities laws violations by FirstEnergy as well.³⁷ Additionally, as the PUCO is well aware, there are numerous civil lawsuits filed against FirstEnergy entities at various stages of discovery. For instance, in the civil suit derivative shareholder suit in the federal court (Northern District Court of Ohio, depositions of numerous FirstEnergy employees (current and former) are being scheduled.³⁸ All of these forums allow for more facts to be gathered that may be highly relevant to matters the PUCO is considering in this case.

C. An immediate determination is needed to prevent undue prejudice.

This appeal should be certified to the PUCO. An “immediate determination” by the PUCO is needed to prevent undue prejudice³⁹ to OCC, NOPEC and Ohio consumers. If the PUCO reverses the attorney examiner’s rulings after this matter is heard and briefed, OCC and NOPEC will be prejudiced by denial of (1) ample discovery rights

³⁶ See attachment.

³⁷ See, e.g. FirstEnergy Form 10K at 42 (Feb. 18, 2021).

³⁸ See attached.

³⁹ O.A.C. 4901-1-15(B).

under R.C. 4903.082 and O.A.C. 4901-1-16 et seq., and (2) a complete evaluation of whether FirstEnergy's H.B. 6 activities and ex parte communications with the former PUCO chair violated Ohio law as well as the corporate separation rules under the Ohio Administrative Code.

IV. APPLICATION FOR REVIEW

OCC asks the PUCO Commissioners to reverse two of the Attorney Examiner's January 4, 2022 rulings, under O.A.C. 4901-1-15(B) and (E). The Attorney Examiner's rulings will effectively stop any further investigations of these important matters and force OCC and others to focus efforts on testimony and preparing for an evidentiary hearing.

The rulings are especially mistaken when there are so many opportunities for the PUCO to learn from other pending proceedings. A case in point is the FERC audit of FirstEnergy.

On February 6, 2019, the Division of Audits and Accounting in the FERC Office of Enforcement notified FirstEnergy that it was "commencing an audit of FirstEnergy Corp (FirstEnergy), including its service companies and other associated companies in the FirstEnergy holding company system (collectively, the Companies)."⁴⁰ FERC advised that 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

⁴⁰ See attachment.

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 369.” FERC advises that the audit period would cover January 1, 2015 to present and noted that the audit period “may be expanded if necessary and recommendations for corrective actions may also cover preceding years.” This audit is underway and would be highly relevant to the corporate separation issues before the PUCO. But the Attorney Examiner’s Entry moving the matters to hearing in March would deny parties and the PUCO the information produced under the FERC audit.

And then there are the state investigations being undertaken. For instance, in New Jersey, the Board of Public Utilities has ordered a financial audit and a management and performance audit of FirstEnergy related to H.B.6.⁴¹ Not to mention the civil litigation where discovery is ongoing and depositions are being scheduled. For instance, in *Miller v. Anderson*,⁴² depositions are being scheduled for party witnesses starting in February. The deponents include Chuck Jones, Ebony Yeboah (former Chief Ethics Officer in charge of compliance for corporate separation), Robert Reffner, Dennis Chack and Michael Dowling, to name a few. These depositions may reveal a lot of facts that are germane to corporate separation issues in this proceeding.

And there is more. As explained in the prehearing conference OCC is reviewing over 233,000 pages of documents provided by FirstEnergy Corp. Under the Attorney Examiner’s Entry, the OCC and others would not have time to wade through the

⁴¹ See attached.

⁴² *Miller v. Anderson et al.*, Case No. 5:20-CV-01743, (S.D. Ohio), Deposition Schedule (Dec. 3, 2021).

mountain of discovery that OCC has received from FirstEnergy Corp.—discovery that is continuing, “with no end in sight.”⁴³

The PUCO has noted that “it is determined to act in a deliberate manner, based on facts rather than speculation.”⁴⁴ In order to do so, it has to obtain the facts. Here the PUCO would be putting an end to fact-finding when we have only begun to unearth issues related to corporate separation. The PUCO should accordingly allow fact-finding to continue and hold the proceeding in abeyance to provide full discovery rights and the supplemental audit requested by OCC and NOPEC.

A deliberate and transparent process is especially needed in these times where the integrity of state government is at issue. In this regard, deferring a ruling on OCC and NOPEC’s request for a supplemental audit makes little sense for the PUCO who is reportedly attempting to escape the dark cloud of the H.B. 6 scandal.⁴⁵

The PUCO refused to consider in the Certification Case whether the Ohio FirstEnergy Utilities and FEA’s shared management violated the PUCO’s corporate separation rules. The Ohio Supreme Court reversed and remanded the Commission’s order approving FEA’s certification application.⁴⁶ However, rather than subject itself to scrutiny on remand, FEA moved to withdraw its application.⁴⁷ In its November 2, 2021 motion it disclosed for the first time the bombshell March 2020 text messages between

⁴³ Prehearing Conference Tr. at 13 (by Mr. Lee for FirstEnergy Corp.).

⁴⁴ *In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's compliance with R.C. 4928.17*, Case No. 17-974-EL-UNC, Entry at ¶17 (Nov. 4, 2020).

⁴⁵ J. Pelzer, *New PUCO Chair Jenifer French: more transparency needed to lift the 'black cloud' of [the] HB 6 scandal*, Cleveland.com (May 18, 2021).

⁴⁶ *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Op. No. 2021-Ohio-3630.

⁴⁷ Certification Case, Motion to Withdraw (Nov. 2, 2021).

Chuck Jones and the former PUCO chair. Those emails suggest that the PUCO's scant review and approval of FEA's certification application was not based on the merits of the application.

Unfortunately, the PUCO approved FEA's motion to withdraw its certification application (within about 7 business hours after it was filed), apparently permitting FEA to escape accountability for any violations represented by the text messages.

Now OCC and NOPEC find themselves in a position in which the attorney examiner has at least preliminarily prohibited further evaluation of the text messages, and the circumstances surrounding them. OCC and NOPEC urge the PUCO to err on the side of transparency in this proceeding and hold FirstEnergy's accountable for its corporate separation violations, whatever they may be.

V. CONCLUSION

Interestingly, this case languished for several years with no progress when FirstEnergy benefitted from the delay in imposing stricter corporate separation standards. But now when FirstEnergy would likely benefit from closing this case sooner regarding its scandal, the PUCO wants to wrap up the case.

OCC and NOPEC's interlocutory appeal of the Attorney Examiner's January 4, 2022 rulings meet the standard for granting interlocutory appeals. OCC and NOPEC's appeal on behalf of millions of Ohio consumers should be certified to the PUCO. The PUCO Commissioners should promptly reverse the rulings of Attorney Examiner Price. The PUCO should hold the proceeding in abeyance indefinitely while fact-finding continues and under an expanded audit scope requested under OCC/NOPEC's joint motion.

Respectfully submitted,

Dane Stinson /JSF

Dane Stinson (Reg. No. 0019101)
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
dstinson@bricker.com
(willing to accept service by email)

Glenn S. Krassen (Reg. No. 0007610)
General Counsel
NORTHEAST OHIO PUBLIC ENERGY
COUNCIL
31360 Solon Road, Suite 33
Solon, Ohio 44139
Telephone: (440) 249-7831
Facsimile: (440) 248-1986
E-mail: gkrassen@nopec.org
(willing to accept service by e-mail)

*Attorneys for Northeast Ohio Public
Energy Council*

Bruce Weston (Reg. No. 0016973)
Ohio Consumers' Counsel

Maureen R. Willis /JSF

Maureen R. Willis (Reg. No. 0020847)
Counsel of Record
John Finnigan (Reg. No. 0018689)
Assistant Consumers' Counsel

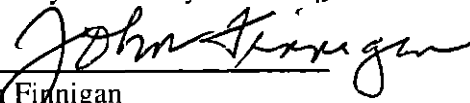
Office of the Ohio Consumers' Counsel

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

*Attorneys for Office of the Ohio
Consumers' Counsel*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the 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 was provided electronically to the persons listed below this 14th day of January 2022.


John Finnigan
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

thomas.lindgren@ohioAGO.gov
werner.margard@ohioAGO.gov
joliker@igsenergy.com
Mnugent@igsenergy.com
bethany.allen@igs.com
evan.betterton@igs.com
gkrassen@bricker.com
dstinson@bricker.com
whitt@whitt-sturtevant.com
trent@hubaydougherty.com
mwise@mcdonaldhopkins.com
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com
talexander@beneschlaw.com
khehmeyer@beneschlaw.com

Attorney Examiners:
Gregory.price@puco.ohio.gov
Megan.addison@puco.ohio.gov
Jacqueline.St.John@puco.ohio.gov

edanford@firstenergycorp.com
cwatchorn@firstenergycorp.com
bknipe@firstenergycorp.com
mrgladman@jonesday.com
mdengler@jonesday.com
radoringo@jonesday.com
iavalon@taftlaw.com
kverhalen@taftlaw.com
mpritchard@mcneelaw.com
rdove@keglerbrown.com
bojko@carpenterlipps.com
donadio@carpenterlipps.com
tdougherty@theOEC.org
ctavenor@theOEC.org
jweber@elpc.org
trhayslaw@gmail.com
leslie.kovacik@toledo.oh.gov
sgoval@jonesday.com
calee@jonesday.com
glpetrucci@vorys.com
dparram@bricker.com
rmains@bricker.com

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.

- - -

1 APPEARANCES: (Continued)

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

6 On behalf of the Interstate Gas Supply,
 7 Inc.

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

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

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

14 On behalf of the Ohio Manufacturers'
 15 Association Energy Group.

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

18 On behalf of the Industrial Energy Users
 19 of Ohio.

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

22 On behalf of the Retail Energy Supply
 23 Association, Direct Energy Business LLC,
 24 and Direct Energy Services LLC.
 25

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.

- - -

1 Tuesday Morning Session,
2 January 4, 2022.

3 - - -

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

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

5 There was an agreement reached where
6 FirstEnergy Corp. would produce documents. The
7 documents are estimated to be between 40,000 to
8 50,000 pages. And these -- I would note that the
9 subpoenas were filed in all four of the FirstEnergy
10 investigation cases. The document production is
11 ongoing. It was on a rolling basis. It began in
12 mid-October and again originally estimated to be --
13 to be between 50,000 to 60,000 pages of documents to
14 be produced.

15 At this stage we understand the document
16 production is continuing. I would say the latest
17 batch of documents according to our records occurred
18 about a month ago and that was approximately 56,000
19 pages. We are not sure whether or not FirstEnergy
20 has -- FirstEnergy Corp. has finished producing
21 documents, but to date we've received approximately
22 233,000 pages of documents to review.

23 So as you might imagine, that's been
24 quite a task. We appreciate the being able to work
25 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.

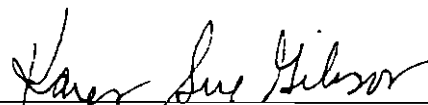
8 (Thereupon, at 10:38 a.m., the prehearing
9 conference was adjourned.)

10 - - -

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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**

1. I am an active / former. Actually, it has to be for the whole period because my work was always computer dependent and I was not only a member of the computer department but also a heavy user of Code of Conduct.

From: Minister, JCR
Date: Friday, September 11, 2003 4:07 PM
To: Library & Archives Canada
Subject: RE: 859 B-130-A-6, documents

Abstract

THE UNITED STATES OF AMERICA

Denis E. McCarthy
 Civil Liberties Center and Legal Advocacy Center
 Rules and Analysis Department
 Public Liberties Commission of Ohio
 140 East Broad Street, 8th Floor
 Columbus Ohio 43215
 (614) 464-1111

From: Marc Fagot
Sent: Friday, November 12, 2010 2:04 PM
To: MCKINLEY, CORIN
Subject: WFO RAJICA R. AMERICAN

Dear Mr. McGowan,

- 1) Does the audit requested in RFP A320-CA-1 exclude the time in paragraph 15 of the Government's Form of Request for Audit, RJC in Case No. 17-07471, GRC? In other words, does it include or exclude the Derivative Misrepresentation Report ("DMR"), to determine whether a derivative misrepresentation audit would be conducted in the DMAR?
- 2) Does the audit requested in RFP A320-CA-1 exclude the time in paragraph 15 of the Government's Form of Request for Audit, RJC in Case No. 17-07471, GRC? In other words, does it include or exclude the ability of funds for policies and operations regarding the Commission in support of Air Force H.B. 4 was from "costs or charges" and by that request?
- 3) The audit requested in RFP A320-CA-1 will cover the period November 1, 2015 through October 31, 2020. The period encompasses the period from 25, 2017 through February 25, 2018 which was included in a previous audit by PricewaterhouseCoopers with corporate information performed by Laga Management Consultants, LLC and published May 31, 2018 in Case No. 17-07471 GRC ("Laga Report"). Does any request in RFP A320-CA-1 include a detailed audit and re-examination of the time period already covered in the Laga Report? Or does the audit requested in RFP A320-CA-1 exclude that the consultant will limit its activities with respect to the time 25, 2017-February 25, 2018 time period to reviewing and commenting on the Laga Report, and limit its detailed audit on the time periods before and after the Laga Report time period?

Walter D. Dill
Walter D. Dill

**James
Gibson**
Marine Fugue Poet
Chief Executive
London Maritime International
77, Abchurch Lane, London E.C. 4N 3DF, U.K.
Direct 1-417 613-720
Cell 1-012 224000

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From: McCarter, Doris
To: Fieldman, Alyson
Cc: Wiefeling, Guler Ann; Molter, Lindsey
Subject: 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, 3rd Floor
Columbus, Ohio 43215
Doris.mccarter@puc.ohio.gov

From: Fieldman, Alyson <Alyson.Fieldman@marcumllp.com>
Sent: Friday, November 20, 2020 8:36 AM
To: McCarter, Doris <doris.mccarter@puc.ohio.gov>; Molter, Lindsey <Liz.Molter@puc.ohio.gov>
Cc: Wiefeling, Guler Ann <Guler.Wiefeling@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
6625 Beta Drive
Mayfield Village, OH 44143
P: (440) 459-6969
C: (352) 642-3884
Alyson.Fieldman@marcum.com
LinkedIn

MARCUM
Accountants • Attorneys



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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, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
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
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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.

Roll Call Vote:	President Fiordaliso	Aye
	Commissioner Holden	Aye
	Commissioner Solomon	Aye
	Commissioner Chivukula	Aye
	Commissioner Gordon	Aye

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.

Roll Call Vote:	President Fiordaliso	Aye
	Commissioner Holden	Aye
	Commissioner Solomon	Aye
	Commissioner Chivukula	Aye
	Commissioner Gordon	Aye

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.

Roll Call Vote:	President Fiordaliso	Aye
	Commissioner Holden	Aye
	Commissioner Solomon	Aye
	Commissioner Chivukula	Aye
	Commissioner Gordon	Aye

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.

Roll Call Vote:	President Fiordaliso	Aye
	Commissioner Holden	Aye
	Commissioner Solomon	Aye
	Commissioner Chivukula	Aye

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.

Roll Call Vote:	President Fiordaliso	Aye
	Commissioner Holden	Aye
	Commissioner Solomon	Aye
	Commissioner Chivukula	Aye
	Commissioner Gordon	Aye

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.

Roll Call Vote:	President Fiordaliso	Aye
	Commissioner Holden	Aye
	Commissioner Solomon	Aye
	Commissioner Chivukula	Aye
	Commissioner Gordon	Aye

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.

Roll Call Vote:	President Fiordaliso	Aye
	Commissioner Holden	Aye
	Commissioner Solomon	Aye
	Commissioner Chivukula	Aye
	Commissioner Gordon	Aye

9. MISCELLANEOUS

There were no items in this category.

LATE STARTER A

CLEAN ENERGY

Docket No. QO16100967 – 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.

Roll Call Vote:	President Fiordaliso	Aye
	Commissioner Holden	Aye
	Commissioner Solomon	Aye
	Commissioner Chivukula	Aye
	Commissioner Gordon	Aye

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.

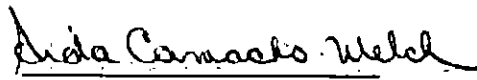
8. CLEAN ENERGY

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 EPAct 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 EPAct, 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 line 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.¹

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

¹ 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

John C. Camillus (0077435)
LAW OFFICES OF JOHN C.
CAMILLUS LLC
P.O. Box 141410
Columbus, OH 43214
Telephone: (614) 992-1000
jcamillus@camilluslaw.com

Liaison Counsel for Lead Plaintiffs

SAXENA WHITE P.A.
Thomas Curry
1000 N. West Street
Suite 1200, Office 1265
Wilmington, DE 19801
Telephone: (302) 485-0480
tcurry@saxenawhite.com

-and-

Respectfully submitted,

/s/ Geoffrey J. Ritts (with permission)

Geoffrey J. Ritts (0062603)
Robert S. Faxon (0059678)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
Email: gjritts@jonesday.com
Email: rfaxon@jonesday.com

Marjorie P. Duffy (0083452)
Jordan M. Baumann (0093844)
JONES DAY
325 John H. McConnell Boulevard, Suite 600
Columbus, OH 43215
Telephone: (614) 469-3939
Facsimile: (614) 461-4198
Email: mpduffy@jonesday.com
Email: jbaumann@jonesday.com

*Attorneys for Defendants Michael J.
Anderson, Steven J. Demetriou, Julia L.
Johnson, Donald T. Misheff, Thomas N.
Mitchell, James F. O'Neil III, Christopher D.
Pappas, Sandra Pianalto, Luis A. Reyes,
Leslie M. Turner, Steven E. Strah, and K. Jon
Taylor*

SAXENA WHITE P.A.
Sara DiLeo
10 Bank Street, 8th Floor
White Plains, NY 10606
Telephone: (914) 437-8551
sdileo@saxenawhite.com

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
Jeroen van Kwawegen
Alla Zayenchik
Matthew Traylor
Margaret Sanborn-Lowing
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 554-1400
Jeroen@blbglaw.com
Alla.Zayenchik@blbglaw.com
Matthew.Traylor@blbglaw.com
Margaret.Lowing@blbglaw.com

*Proposed Co-Lead Counsel for Proposed
Lead Plaintiffs*

COHEN MILSTEIN SELLERS
& TOLL PLLC
Steven J. Toll
Daniel S. Sommers
1100 New York Ave. NW, Fifth Floor
Washington, D.C. 20005
Telephone: (202) 408-4600
stoll@cohenmilstein.com
dsommers@cohenmilstein.com

- and -

COHEN MILSTEIN SELLERS
& TOLL PLLC
Christopher Lometti
Richard A. Speirs
Amy Miller
88 Pine Street, 14th Floor
New York, NY 10005
Telephone: (212) 838-7797
Facsimile: (212) 838 7745

/s/ Kathleen A. Nitschke (with permission)

Kerin Lyn Kaminski (0013522)
Karen L. Giffen (0042663)
Kathleen A. Nitschke (0073397)
GIFFEN & KAMINSKI, LLC
1300 East Ninth Street, Suite 1600
Cleveland, Ohio 44114
Telephone: (216) 621-5161
Facsimile: (216) 621-2399
E-Mail: kkaminski@thinkgk.com
kgiffen@thinkgk.com
knitschke@thinkgk.com

Barry S. Hyman (pro hac vice pending)
Lawrence H. Heftman (pro hac vice pending)
Ann H. MacDonald (pro hac vice pending)
Kevin J. Whelan (pro hac vice pending)
SCHIFF HARDIN LLP
233 S. Wacker Drive, Suite 7100
Chicago, IL 60606
Telephone: (312) 258-5500
Facsimile: (312) 258-5600
E-Mail: bhyman@schiffhardin.com
lheftman@schiffhardin.com
amacdonald@schiffhardin.com
kwhelan@schiffhardin.com

*Counsel for Nominal Defendant FirstEnergy
Corp.*

/s/ Daniel R. Warren (with permission)

Daniel R. Warren (0054595)
Carole S. Rendon (0070345)
Douglas Shively (0094065)
BAKER & HOSTETLER LLP
Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114-1214
Telephone: (216) 621-0200
Facsimile: (216) 696-0740
Email: dwarren@bakerlaw.com
Email: crendon@bakerlaw.com
Email: dshively@bakerlaw.com

Attorneys for Defendant Charles E. Jones

clometti@cohenmilstein.com
rspeirs@cohenmilstein.com
amiller@cohenmilstein.com

*Counsel for Additional Plaintiff
Massachusetts Laborers Pension Fund*

EDELSON LECHTZIN LLP
Marc H. Edelson
Eric Lechtzin
3 Terry Drive, Suite 205
Newtown, PA 18940
Telephone: (215) 867-2399
Facsimile: (267) 685-0676
medelson@edelson-law.com
elechtzin@edelson-law.com

*Counsel for Additional Plaintiff Jennifer L.
Miller*

/s/ John A. Favret (with permission)

John F. McCaffrey (0039486)
John A. Favret (0080427)
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113
Telephone: (216) 592-5000
Facsimile: (216) 592-5009
Email: john.mccaffrey@tuckerellis.com
Email: john.favret@tuckerellis.com

Attorneys for Defendant Michael J. Dowling

/s/ Marcella L. Lape (with permission)

Marcella L. Lape (0077803)
Gail Lee (admitted *pro hac vice*)
SKADDEN, ARPS, SLATE, MEAGHER,
FLOM, LLP
155 N. Upper Wacker Drive
Chicago, IL 60606-1720
Telephone: (312) 407-0700
Facsimile: (312) 407-0411
Email: marcie.lape@skadden.com
Email: gail.lee@skadden.com

*Attorneys for Defendant Ebony Yeboah-
Amankviah*

/s/ John C. Fairweather (with permission)

John C. Fairweather (0018216)
Lisa S. DelGrosso (0064938)
BROUSE MCDOWELL
388 South Main Street, Suite 500
Akron, OH 44311
Telephone: (330) 535-5711
Facsimile: (330) 253-8601
Email: JFairweather@brouse.com
Email: ldelgrosso@brouse.com

Steven S. Scholes (admitted *pro hac vice*)
David S. Rosenbloom (admitted *pro hac*
vice)

Paul Helms (admitted *pro hac vice*)
MCDERMOTT, WILL, & EMERY, LLP
444 West Lake Street
Chicago, IL 60606-0029
Telephone: (312) 372-2000
Facsimile: (312) 984-7700
Email: sscholes@mwe.com
Email: drosenbloom@mwe.com
Email: phelms@mwe.com

Attorneys for Defendant Robert P. Reffner

/s/ Jeremy R. Teaberry (with permission)

Jeremy R. Teaberry (0082870)
Timothy D. Katsiff (admitted *pro hac vice*)
David L. Axelrod (admitted *pro hac vice*)
Emilia McKee Vassallo (admitted *pro hac*
vice)

BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Telephone: (215) 665-8500
Facsimile: (215) 864-8999
Email: teaberryj@ballardspahr.com
Email: katsiff@ballardspahr.com
Email: axelrodd@ballardspahr.com
Email: mckeevassallo@ballardspahr.com

Attorneys for Defendant James F. Pearson

/s/ Douglas M. Mansfield, Jr. (with
permission)

Douglas M. Mansfield, Jr.
LAPE MANSFIELD NAKASIAN &
GIBSON
9980 Brewster Lane, Suite 150
Powell, OH 43065
Telephone: (614) 763-2316
Facsimile: (614) 467-3704
Email: dmansfield@lmng-law.com

Laura Hughes McNally
Michael L. Kichline
MORGAN, LEWIS & BOCKIUS
1701 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-5000
Facsimile: (215) 963-5001
Email: laura.mcnally@morganlewis.com
Email: michael.kichline@morganlewis.com

Attorneys for Defendant Dennis M. Chack

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)

<u>Name</u>	<u>Date</u>	<u>Time²</u>
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

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

<u>Name</u>	<u>Date</u>	<u>Time²</u>
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 ³

³ 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"), Clearcutting 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.