

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter 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. )

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**MEMORANDUM CONTRA FIRSTENERGY'S MOTION TO QUASH  
SUBPOENA TO FIRSTENERGY'S CHIEF ETHICS AND COMPLIANCE  
OFFICER ANTONIO FERNANDEZ  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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March 15, 2022

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**I. INTRODUCTION**

Chairperson French has stated an interest in providing “more transparency” “to lift the ‘black cloud’ of [the] HB 6 scandal” from over the PUCO.<sup>1</sup> The PUCO has repeatedly stated that it is “determined to act in a deliberate manner, based upon facts rather than speculation.”<sup>2</sup> However, to take appropriate action for public protection based on facts, the PUCO *must first obtain the facts*.

In this regard, OCC obtained a subpoena seeking to depose FirstEnergy Corp.’s Chief Ethics and Compliance Officer, Antonio Fernandez. Consistent with the PUCO rules on discovery, OCC also asked for Mr. Fernandez to produce documents several days before appearing for OCC’s noticed deposition. Attorney Examiner Price (who

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<sup>1</sup> 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).

<sup>2</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶17 (Nov. 4, 2020).

withdrew from this case on March 4<sup>th</sup>) signed OCC's subpoena and the subpoena was properly served.

Now FirstEnergy Corp. is seeking to limit OCC's fact-finding by refusing to provide subpoenaed documents to OCC. FirstEnergy is also intending to determine the order of witnesses, by expecting OCC to depose other deponents before Mr. Fernandez – even though it's OCC's deposition. FirstEnergy Corp. has moved to quash the subpoena duces tecum on Mr. Fernandez.<sup>3</sup>

FirstEnergy Corp. challenges the relevancy of certain documents OCC seeks related to FirstEnergy's response/reaction to FERC's audit of FirstEnergy Corp. and its subsidiaries. (Meanwhile, in Case No. 20-1502, FirstEnergy Corp. and its affiliates were ordered to produce FERC audit related communications and documents that were provided by FirstEnergy to FERC staff during the audit.)<sup>4</sup> FirstEnergy Corp. also says OCC has subpoenaed the wrong person and asserts that OCC cannot seek documents for the deposition because discovery has closed.<sup>5</sup> It also asserts that OCC cannot show a substantial need for the documents.

FirstEnergy's Motion to Quash should be denied as it relates to the subpoenaed documents. The PUCO should defer ruling on the subpoena as it relates to Mr. Fernandez's deposition.

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<sup>3</sup> *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement at 3-4 (Jul. 22, 2021).

<sup>4</sup> *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company et al.*, Case No. 20-1502-EL-UNC, Prehearing Conference, Tr. 55-59 (Mar. 11, 2022).

<sup>5</sup> See FirstEnergy Corp.'s Motion to Quash (Feb. 28, 2022).

## II. ARGUMENT

### A. To protect consumers, OCC seeks information that is relevant and reasonably calculated to lead to the discovery of admissible evidence.

FirstEnergy Corp. asserts that certain of OCC's document requests that are part of the subpoena are irrelevant. Specifically, FirstEnergy Corp. alleges that "FERC-related" document requests are irrelevant.<sup>6</sup> It asserts that OCC has not shown a "substantial need" for the documents it seeks.<sup>7</sup> FirstEnergy Corp. asserts that OCC made no effort to explain the relevance or substantial need for such documents. FirstEnergy's arguments are not well made.

Here is some context for OCC's discovery and FirstEnergy's efforts to avoid this discovery. Under Ohio law, the FirstEnergy Ohio Utilities must implement and operate under a corporate separation plan that "satisfies the public interest" and is "sufficient" to protect Ohioans from undue preference or advantage being given to the utilities' affiliate(s).<sup>8</sup> The PUCO-appointed auditor (Daymark) noted that FirstEnergy's compliance approach to corporate separation was set up to meet FERC requirements. It found that "FirstEnergy leans heavily on compliance with FERC requirements as a way to meet Ohio corporate separation requirements."<sup>9</sup> Daymark reported that "[i]n many cases, FirstEnergy had no Ohio-specific processes or documentation; rather they relied on procedures developed to meet FERC's Affiliate Restrictions rules that are laid out in 18 CFR §35.39."<sup>10</sup>

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<sup>6</sup> See Motion to Quash at 9.

<sup>7</sup> See *Id.*

<sup>8</sup> R.C. 4928.17.

<sup>9</sup> Daymark Audit at 28 (Sept. 13, 2021).

<sup>10</sup> *Id.* at 29.

Recently, FERC’s Division of Audits and Accounting undertook an audit of FirstEnergy Corp., including its service companies and other companies in the FirstEnergy holding company system.<sup>11</sup> That audit covered a five-year period and evaluated, among other things, compliance with cross subsidization restrictions on affiliate transactions, service companies accounting and recordkeeping, and accounting and reporting for franchised public utilities for their transactions with associated entities. (See Attachment).

Note that FERC’s audit findings included its acknowledgement of “significant shortcomings” in FirstEnergy and its subsidiaries’ internal controls over financial reporting for expenses relating to civic, political and lobbying activities. FERC additionally noted that:

[e]ven more concerning, several factual assertions agreed to by FirstEnergy in DPA [deferred prosecution agreement] and the remedies FirstEnergy agreed to undertake, point towards *internal controls having been possibly obfuscated or circumvented to conceal or mislead* as to the actual amounts, nature, and purpose of the lobbying expenditures made, and as a result, the improper inclusion of lobbying and other nonutility costs in wholesale transmission billing rates. (Emphasis added.)<sup>12</sup>

Given the FirstEnergy Ohio Utilities’ heavy reliance on maintaining a corporate separation plan that meets FERC requirements (and not necessarily Ohio requirements), it is crucial to understand whether and to what extent FirstEnergy Corp. and the FirstEnergy Ohio Utilities are complying with FERC’s rules and regulations on corporate separation. The “FERC-related” documents are highly relevant to this case involving corporate

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<sup>11</sup> (Docket No. FA19-1-000).

<sup>12</sup> *Id.*, Audit Report at 48 (Feb. 4, 2022).

separation compliance. FirstEnergy Corp. and the FirstEnergy Ohio Utilities have themselves made them highly relevant.

The Attorney Examiner in Case No. 20-1502 recently issued a ruling on a similar issue where OCC had filed a motion to compel discovery seeking FERC audit related documents.<sup>13</sup> The examiner ruled that OCC is entitled to all documents and communications provided to FERC Staff by all FirstEnergy entities during the course of the FERC audit, pertaining to the FirstEnergy Ohio Utilities.<sup>14</sup>

We note this ruling for several reasons. First, the utilities (unlike FirstEnergy Corp.) did not claim the information was not relevant to the proceeding. Second, the FERC documents at issue here pertain to the same audit. The documents sought, however, are much more limited in scope to (1) records provided to FERC two weeks before the audit was released and thereafter and (2) records and correspondence exchanged between FERC and FirstEnergy after the audit was issued. The PUCO should, consistent with its ruling in Case No. 20-1502, require the production of these documents prior to the deposition of Mr. Fernandez, or related FirstEnergy Service Company employees (Mattiuz and Pannell).

The documents requested by OCC cannot be obtained from other sources. FirstEnergy should identify those sources if it claims otherwise. OCC would face undue hardship if it were deprived of these documents. OCC clearly has a substantial need for the documents that cannot be met through other means. And FirstEnergy Corp. has failed to show that producing the documents would create an undue burden on it. In fact,

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<sup>13</sup> *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company et al.*, Case No. 20-1502-EL-UNC, Prehearing Conference, Tr. 55-59 (Mar. 11, 2022).

<sup>14</sup> *Id.* Tr. 37, 56-59.

FirstEnergy should show undue burden (via an affidavit) in order to trigger OCC's obligation to show substantial need. *See, e.g.*, Ohio Civ. Rule 45.

The Motion to Quash as it relates to the subpoenaed documents should be denied.

**B. The PUCO should defer ruling on the subpoena to depose Mr. Fernandez, FirstEnergy Corp.'s Vice President and Chief Ethics and Compliance Officer, in this case involving ethics and compliance with Ohio's corporate separation law. But it should order the production of the requested documents.**

FirstEnergy Corp. asserts that Mr. Fernandez, FirstEnergy Corp.'s Vice President and Chief Ethics Officer, is the wrong person to discuss issues of ethics and compliance with Ohio's corporate separation law.<sup>15</sup> That remains to be seen.

Mr. Fernandez was named Vice President and Chief Ethics and Compliance Officer at FirstEnergy Corp. effective April 12, 2021.<sup>16</sup> FirstEnergy Corp. reported, in a Nov. 19, 2020 U.S. S.E.C. filing, that Ms. Ebony Yeboah-Amankwah (its former Chief Ethics Officer) was "separated from FirstEnergy due to inaction and conduct that the Board determined was influenced by the improper tone at the top."<sup>17</sup>

It is hard to believe that Mr. Fernandez, who succeeded Ms. Yeboah-Amankwah, would have no relevant information on FirstEnergy's compliance with Ohio corporate separation laws. FirstEnergy's news release leads us to believe otherwise.

In FirstEnergy's March 22, 2021 press release it reported that Mr. Fernandez was to "manage a dedicated team of compliance professionals and strengthen FirstEnergy's ethics and compliance function." And that FirstEnergy press release reported that Mr.

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<sup>15</sup> *See* Motion to Quash at 5-6.

<sup>16</sup> FirstEnergy Corp. News Release, *FirstEnergy Names Antonio Fernandez Chief Ethics and Compliance Officer* (Mar. 22, 2021).

<sup>17</sup> FirstEnergy Corp. Form 10Q at 36 (Nov. 19, 2020).

Fernandez would “collaborate closely with the compliance oversight subcommittee of the Audit Committee.” (See Attachment) To now claim that Mr. Fernandez has no information relevant to this case involving ethics and compliance with Ohio’s corporate separation laws appears at odds with FirstEnergy’s public relations machine.

Nonetheless, OCC has agreed, as a means to resolve differences with FirstEnergy Corp., to stay Mr. Fernandez’s deposition pending the depositions of two other FirstEnergy Corp. employees. FirstEnergy Corp. Counsel has said that two other FirstEnergy Service Company employees are more “suited” to testify on corporate separation matters: Mr. Mattiuz and Mr. Pannell. Mr. Robert Mattiuz, Jr., VP, Compliance & Regulated Services, was the Companies’ compliance officer beginning in September 2021. Mr. Olenger Pannell succeeds Mr. Mattiuz in that position, starting in February 2022.

Accordingly, the PUCO should defer ruling on OCC’s subpoena for Mr. Fernandez’s deposition testimony. OCC is not insisting on going forward with that deposition at this time, due to the agreement with FirstEnergy Corp.’s Counsel that it will first depose Mr. Mattiuz and Mr. Pannell. OCC will keep the bench apprised of any need to revisit this issue.

But the PUCO should deny the Motion to Quash as it relates to the documents OCC has subpoenaed. FirstEnergy Corp.’s assertions that Mr. Fernandez does not have requested documents in his “custody”<sup>18</sup> must fail. The obligation on Mr. Fernandez is not to only those documents within his custody. Mr. Fernandez must produce documents

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<sup>18</sup> See, e.g., Motion to Quash at 6.

within his “control.”<sup>19</sup> He is the Chief Ethics and Compliance Officer for the FirstEnergy Corp. He most assuredly has the legal right to obtain the documents we request upon demand, the very definition of “control.”<sup>20</sup> The Motion to Quash should be denied as it relates to the subpoenaed documents.

**C. OCC’s subpoena duces tecum is in consumers’ interest and does not violate the procedural schedule in this case, as FirstEnergy Corp. asserts.**

FirstEnergy Corp. asserts that the subpoena signed by the Attorney Examiner is “procedurally improper” because document discovery is closed.<sup>21</sup> FirstEnergy Corp.’s effort to prevent OCC’s fact-finding is, once again, wrong and contrary to the PUCO’s discovery rules.

The PUCO rules only require that discovery be completed prior to the commencement of a hearing. O.A.C. 4901-1-17(A). The production of documents under the subpoena is intended to be completed prior to the hearing in this case, which is currently scheduled for May 9, 2022.

FirstEnergy Corp., however, relies on two Entries of the PUCO that were issued many months ago,<sup>22</sup> before the hearing date was rescheduled. At the time of those Entries, the discovery cut off was established consistent with O.A.C. 4901-1-17(A). Discovery was to be completed before the hearing was to take place. Unfortunately, in

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<sup>19</sup> Oh. Rs. Civ. Pro. 34, 45; O.A.C. 4901-1-20 (A); *see also Searock v. Stripling*, 736 F.2d 650, 653-54 (11<sup>th</sup> Cir. 1984) (Control is a broad concept which means more than actual physical possession. Something is within the control of a party if he or she has the legal right to obtain it upon demand. Test is control and not possession); *Sagraves v. Lab One*, 2004 U.S. Dist. Lexis 34558, \*12 (S. Dist. Oh. 2004) (same).

<sup>20</sup> *See, e.g., Searock; Sagraves.*

<sup>21</sup> *See* Motion to Quash at 7-8.

<sup>22</sup> *See* Entry (Sept. 17, 2021) (setting a hearing date of January 4, 2022, with discovery cut off Nov. 1, 2021); Entry (Oct. 12, 2021) (setting a hearing date of Feb. 10, 2022, with discovery cut off Nov. 24, 2021).

the last PUCO Entry,<sup>23</sup> which set the new hearing date of May 9, 2022, the PUCO failed to establish a new discovery cut-off. We believe this to be an inadvertent omission by the PUCO.

Also, FirstEnergy Corp. fails to recognize that even in the Entries which set a discovery cut-off, the Attorney Examiner allowed parties to conduct depositions.<sup>24</sup> Depositions of non-party deponents can be conducted, with attendance compelled through subpoenas. O.A.C. 4901-1-25(A) allows the PUCO (and those acting on its behalf) to issue a subpoena to compel a person to give testimony at a time and place specified and command such person to produce “books, papers, documents, or other tangible things.” O.A.C. 4901-1-25(D) allows parties to subpoena a person to attend and give testimony at a deposition, *and “to produce designated books, papers, documents, or other tangible things within the scope of discovery.”* That is just what OCC has done, consistent with the Entries allowing depositions to go forward, despite a discovery cut-off.

The Attorney Examiner did not rule that parties could not exercise their right to ask for documents to be produced at depositions. Nor did FirstEnergy Corp. or the FirstEnergy Utilities seek clarification of the Examiner’s ruling. The Attorney Examiner in fact signed OCC’s subpoena duces tecum. Unfortunately for consumers, OCC does not have subpoena power (the General Assembly should change that). It must first get PUCO-ok to issue a subpoena.

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<sup>23</sup> Entry (Feb. 10, 2022).

<sup>24</sup> Case No. 17-974-EL-UNC, Entry, at ¶18(a) (Sept. 17, 2021) (“The deadline for the service of discovery, except for notices of deposition, shall be set for November 1, 2021.”); Case No. 17-974-EL-UNC, Entry, at ¶24(a) (Oct. 12, 2021) (extending discovery cut-off to Nov. 24, 2021).

An Attorney Examiner, on his or her own, may quash the subpoena.<sup>25</sup> He did not do so here.

FirstEnergy cites to several proceedings where the PUCO granted motions to quash the production of documents under a deposition subpoena.<sup>26</sup> Those cases, however, did not involve the truly unique circumstances that surround the PUCO's FirstEnergy investigation cases concerning FirstEnergy's H.B. 6 activities. These cases stem from what has been described as "likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio." FirstEnergy Corp., the entity seeking to shut down OCC's fact-finding, stands charged with a federal crime—a crime which it has admitted.<sup>27</sup>

The Motion to Quash should be denied as it relates to the documents subpoenaed by OCC as part of the deposition of Mr. Fernandez.<sup>28</sup>

### **III. CONCLUSION**

The PUCO's Attorney Examiner signed OCC's subpoena, which is part of giving Ohioans the benefit of a full investigation of FirstEnergy's corporate separation plan, including issues involving the FirstEnergy scandals. The PUCO must consider whether the plan satisfies the public interest. And the PUCO must consider whether the plan is

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<sup>25</sup> O.A.C. 4901-1-25(C).

<sup>26</sup> *See, e.g.*, Motion to Quash at 4.

<sup>27</sup> United States of America v. FirstEnergy Corp., Case No. 1:21-cr-86, Deferred Prosecution Agreement (Jul. 22, 2021).

<sup>28</sup> Further, the discovery cut-off, except notices of deposition, has largely been overcome by unforeseen, recent events. Since it agreed to produce documents to OCC in October, FirstEnergy Corp. has been dilatory in producing documents. Also, there have been delays in obtaining documents from the PUCO in response to OCC's public records request. Accordingly, OCC is preparing to file a motion for continuance, in consumers' interest.

sufficient to ensure the FirstEnergy Ohio Utilities do not extend undue preference or advantage to FirstEnergy affiliates, to the detriment of Ohio consumers.

The documents subpoenaed from FirstEnergy's Vice President and Chief Ethics and Compliance Officer are discoverable under law and the Ohio Administrative Code. FirstEnergy's Motion to Quash should be denied as it relates to the subpoenaed documents. Like the FERC documents the Attorney Examiner ordered produced in Case No. 20-1502, FirstEnergy Corp. should be producing the FERC audit documents sought in the subpoena duces tecum.

The PUCO should defer ruling on the subpoena as it relates to Mr. Fernandez's deposition.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ Maureen R. Willis  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electric transmission this 15<sup>th</sup> day of March 2022.

/s/ Maureen R. Willis  
Maureen R. Willis  
Assistant Consumers' Counsel

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

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PUBLIC UTILITIES COMMISSION OF OHIO  
SUBPOENA DUCES TECUM

TO: Mr. Antonio Fernandez  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Mr. Antonio Fernandez, Vice President and Chief Ethics and Compliance Officer of FirstEnergy Service Company, is hereby required to appear for deposition at 10:00 a.m. on March 2, 2022 at OCC's office at 65 East State Street, Suite 700, Columbus, Ohio 43215. Mr. Fernandez is also required to produce the following documents to OCC at the same location, two days prior to the scheduled deposition:

- (1) All records that were in the possession of, or under the control, of Ebony Yeboah-Amankwah related to corporate separation for the FirstEnergy Ohio utilities during 2016 through 2020.
- (2) All records containing processes and procedures that FirstEnergy Ohio utilities used pertaining to Ohio corporate separation requirements during 2016 through 2020.
- (3) All records pertaining to training undertaken with respect to FirstEnergy Ohio utilities' corporate separation compliance from 2016 through 2020.
- (4) All records pertaining to FirstEnergy Ohio Utilities' day-to-day compliance with Ohio's corporate separation rules and law.
- (5) All internal audits conducted during 2016 to 2020, pertaining to the FirstEnergy Ohio Utilities' compliance with Ohio corporate separation requirements.
- (6) All documents relating to changes to the FirstEnergy Ohio Utilities' corporate separation plan since the former Chief Ethics Officer was "separated," including any changes currently under consideration.

- (7) All communications (emails, texts, etc.) between Mr. Fernandez and his supervisor and his supervisees, respectively, relating to the FirstEnergy Utilities' corporate separation plan for Ohio.
- (8) All records containing inquiries by FirstEnergy entities into the information that PUCO auditor Daymark stated (in its audit report) was missing and not available for Daymark's auditing.
- (9) All communications (emails, texts, etc.) between Mr. Fernandez and Ms. Yeboah-Amankwah relating to the FirstEnergy Utilities' corporate separation plan for Ohio, on and after May 1, 2020.
- (10) All records explaining, documenting and/or referencing the statement in an email from Ms. Yeboah-Amankwah about paying Lincoln Electric, including any opinion that she held with regard to making the payment. (Attached).
- (11) All records in any and all forms that Ms. Yeboah-Amankwah took with her from her job that ended at FirstEnergy.
- (12) All records that any and all FirstEnergy entities provided to FERC regarding FERC's audit of FirstEnergy in FERC Docket No. FA19-1-000 for the period two weeks before the audit was released and records after the audit report release on February 4, 2022.
- (13) The FirstEnergy position (job) descriptions for Mr. Fernandez and formerly for Ms. Yeboah-Amankwah.
- (14) Records containing any and all correspondence between FERC and any and all FirstEnergy entities after the February 4, 2022 issuance of FERC's audit in FERC Docket No. FA19-1-000.

The documents will be produced in connection with the proceeding entitled: "*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 and the Ohio Adm. Code Chapter 4901:1-37 (Case No. 17-0974-EL-UNC),*"

Dated at Columbus, Ohio, this 7 day of February 2022.



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Attorney Examiner

**NOTICE:** If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

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 (EPAAct), 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 EPAAct 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,



Larry R. Parkinson  
Director  
Office of Enforcement

# FirstEnergy Names Antonio Fernández Chief Ethics and Compliance Officer

Will lead FirstEnergy's team of compliance professionals and work to foster a strong culture of compliance, ethics and integrity



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NEWS PROVIDED BY

**FirstEnergy Corp.** →

Mar 22, 2021, 08:00 ET

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AKRON, Ohio, March 22, 2021 /PRNewswire/ -- FirstEnergy Corp. (NYSE: FE) today announced that Antonio Fernández has been named vice president and chief ethics and compliance officer effective April 12. In this role, Fernández will manage a dedicated team of compliance professionals and strengthen FirstEnergy's ethics and compliance function. He will report to Hyun Park, senior vice president and chief legal officer, and the Audit Committee of the Board as well as collaborate closely with the compliance oversight subcommittee of the Audit Committee.

Fernández brings broad and deep experience in the utilities and power sectors as a strategic and accomplished ethics and compliance executive and leader. His experience includes nearly five years as chief compliance, NERC & privacy officer of the Public Service Enterprise Group (PSEG), where he led PSEG's ethics, compliance and privacy programs, counseled senior management and the Board of Directors on the compliance program and provided advice on ethics, compliance, privacy and cybersecurity matters.

"Antonio's skills and experience will be instrumental in reinforcing FirstEnergy's core values and behaviors and further embedding compliance, ethics and integrity into the company's culture," said Donald T. Misheff, non-executive chairman of FirstEnergy's Board of Directors. "We are confident that he will build on the proactive steps the Board and management are taking to address challenges and rebuild trust with stakeholders."

"We are very pleased to welcome Antonio to FirstEnergy," said Steven E. Strah, FirstEnergy president and chief executive officer. "His fresh perspective will be invaluable as we create an environment in which every member of the team views ethics and compliance as critical organizational and personal imperatives."

"I have been extremely impressed by the commitment of Steve Strah, his leadership team, and the Board of Directors to ethics and compliance," Fernández said. "I am excited to begin working with the FirstEnergy team to foster a culture of uncompromising integrity and ethical behavior as well as to build an embedded compliance culture."

Before joining PSEG in 2016, Fernández was Global Ombuds leader and executive counsel for GE Power. During his five years at GE, he held various roles of increasing responsibility in GE's compliance program, including serving as chief compliance officer for GE's nuclear business and as GE's Corporate Ombuds leader.

Prior to GE, he was a senior attorney for Florida Power & Light from 2007 to 2011 and Nuclear counsel for Pacific Gas and Electric Company from 2005 to 2007. Fernández began his career at the United States Nuclear Regulatory Commission Office of the General Counsel in its Honors Program.

Fernández earned a bachelor's degree in political science from the University of Dayton, a Juris Doctor degree (Order of Barristers) from St. Mary's University School of Law and a Master of Laws in international and comparative law from Georgetown University Law Center.

FirstEnergy is dedicated to integrity, safety, reliability and operational excellence. Its 10 electric distribution companies form one of the nation's largest investor-owned electric systems, serving customers in Ohio, Pennsylvania, New Jersey, West Virginia, Maryland and New York.



The company's transmission subsidiaries operate approximately 24,500 miles of transmission lines that connect the Midwest and Mid-Atlantic regions. Follow FirstEnergy online at [www.firstenergycorp.com](http://www.firstenergycorp.com). Follow FirstEnergy on Twitter: @FirstEnergyCorp.

**Editor's Note:** A professional photo of Antonio Fernández is available for download on Flickr.

SOURCE FirstEnergy Corp.

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<http://www.firstenergycorp.com>

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**in**

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

Summary: Memorandum Memorandum Contra FirstEnergy's Motion to Quash Subpoena to FirstEnergy's Chief Ethics and Compliance Officer Antonio Fernandez by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Willis, Maureen R.