

**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. 17-0974-EL-UNC
Edison Company's Compliance with)	
R.C. 4928.17 and Ohio Adm. Code)	
Chapter 4901:1-37.)	

**FIRSTENERGY CORP.'S MEMORANDUM CONTRA
INTERLOCUTORY APPEAL, REQUEST FOR CERTIFICATION TO THE
PUCO COMMISSIONERS, AND APPLICATION FOR REVIEW
BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP,
INTERSTATE GAS SUPPLY, INC., AND
NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

I. INTRODUCTION

Throughout these proceedings, the Office of the Ohio Consumers' Counsel ("OCC") has sought to, in its own words, "explore the underlying facts involving key players in the DOJ investigation,"¹ despite the Commission's unambiguous directive that "it is of utmost importance that [PUCO] investigations do not interfere with the criminal investigation by the United States Attorney[.]"² The Attorney Examiners' July 21 oral ruling³ is consistent with that directive, but OCC continues to interfere with the ongoing federal criminal investigation, even in the face of the U.S. Attorney's Office's objection to OCC's recklessness. The Commission should reiterate in this context its December 15 Entry that discovery that could "interfere with the criminal investigation by the United States Attorney" should "be stayed until otherwise ordered by the Commission."⁴

During the July 21, 2022 deposition of Ms. Ebony Yeboah-Amankwah, the Attorney Examiners prohibited "questions related to . . . non-public information, regarding the deferred prosecution agreement that could potentially interfere with the federal investigations."⁵ Now OCC, the Ohio Manufacturers' Association Energy Group ("OMAEG"), the Northeast Ohio Public Energy Council ("NOPEC"), and Interstate Gas Supply Inc. ("IGS") (collectively, the "Intervenors"), are asking the Attorney Examiners and the Commission to reverse course and impermissibly allow discovery of issues that have little to do with Ohio corporate separation law

¹ Case No. 17-974-EL-UNC, Interlocutory Appeal, Request for Certification to the PUCO Commissioners, and Application for Review by OCC, OMAEG, IGS, and NOPEC, Mem. at 15 (July 26, 2022) (the "Intervenors' Mot." or "Intervenors' Mem.").

² Case No. 20-1629-EL-RDR, Entry, at ¶ 14 (Dec. 15, 2022) ("December 15 Entry").

³ Case No. 17-974-EL-UNC, Yeboah-Amankwah Tr. at 192:8-20 (July 21, 2022) ("Yeboah-Amankwah Tr." relevant excerpts attached as Exhibit A) ("July 21 Ruling").

⁴ December 15 Entry, at ¶ 14.

⁵ Yeboah-Amankwah Tr. at 192:8-12.

and everything to do with an ongoing criminal investigation. The Intervenor's thinly veiled attempts to conduct their own extra-judicial investigation should be rejected until the U.S. Attorney's Office has completed its investigation.

First, the Intervenor's request fails procedurally. Interlocutory appeals are not permitted from an oral deposition ruling. The applicable rule limits such appeals to a "ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference."⁶ The July 21 Ruling falls into none of those categories.

Second, the Intervenor's request fails substantively. The Intervenor's Application for Review contradicts the sound logic supporting the Commission's December 15 Entry and its repeated cautions to avoid interfering with the ongoing criminal investigation. The U.S. Attorney's Office publicly indicated their "understanding that PUCO's orders set forth a policy of non-interference for matters that overlap with our criminal investigation and prosecution."⁷ OCC's disregard for the December 15 Entry risks interfering with the pending federal investigation and prosecution, the very things designed "to not only protect the public but also keep the public informed."⁸ The Intervenor's failure to recognize the impact of their actions makes their rhetoric about "transparency" and "justice" ring hollow.⁹

For these reasons and those set forth below, the Intervenor's Request for Certification and Application for Review should be denied.

⁶ O.A.C. 4901-1-15(B).

⁷ Regulators block deposition of FirstEnergy's former ethics chief: State watchdog agency and DOJ clash, Ohio Capital Journal (July 29, 2022), <https://ohiocapitaljournal.com/2022/07/29/regulators-block-deposition-of-firstenergys-former-ethics-chief-watchdog-doj-clash/>.

⁸ *Id.*

⁹ Intervenor's Mot. at 2.

II. ARGUMENT

A. The Intervenors Cannot Take An Interlocutory Appeal From An Oral Deposition Ruling.

Rule 4901-1-15(B), O.A.C., permits a party to take an interlocutory appeal from “any ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference.” Prior to Commission consideration, the party’s request must first be certified by the “legal director, deputy legal director, attorney examiner, or presiding hearing officer.”¹⁰ Certification of a request under Rule 4901-1-15(B) requires an applicant to satisfy both of the following requirements:

[1] 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

[2] 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.¹¹

The Intervenors’ Request for Certification does not satisfy any of Rule 4901-1-15’s procedural predicates—the Attorney Examiners made an oral ruling at a deposition, not at a public hearing or prehearing conference. Accordingly, the Attorney Examiners’ July 21 Ruling is procedurally not subject to interlocutory appeal, and the Intervenors’ Request for Certification must be denied.¹²

¹⁰ O.A.C. 4901-1-15(B).

¹¹ See *In the Matter of the Complaint of Suburban Natural Gas Company v. Columbia Gas of Ohio, Inc.*, Case No. 17-2168-GA-CSS, 2018 Ohio PUC LEXIS 603, Entry at ¶ 24 (May 25, 2018); *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, Entry at ¶ 8 (Oct. 21, 2008) (“[T]o certify an interlocutory appeal to the Commission, both requirements need to be met.”).

¹² In light of the Intervenors’ procedural failings, resolution of this dispute does not require consideration of the “new or novel” or “undue prejudice” requirements.

B. The Application For Review Should Be Denied.

In addition to being procedurally improper, the Intervenor's Request and Application for Review are meritless. The Intervenor's claim "[t]he Attorney Examiners' broad ruling is far reaching and devastating for the PUCO and Appellants' investigation of FirstEnergy Utilities and corporate separation violations."¹³ They demand the Commission reverse the Attorney Examiners' Ruling excluding "questions related to . . . non-public information, regarding the deferred prosecution agreement that could potentially interfere with the federal investigations"¹⁴ and allow the Intervenor "full and complete discovery" and "thorough questioning of FirstEnergy executives (both past and present)."¹⁵ The relief the Intervenor request would improperly enlarge this corporate separation case such that issues that are currently part of other ongoing criminal investigations would be subsumed by this Commission proceeding.

The Attorney Examiners' July 21 Ruling is consistent with the Commission's December 15 Entry, which prudently stayed discovery to avoid interference with the ongoing federal criminal investigation. Specifically, in its December 15 Entry, the Commission noted that its investigations "do not seek to supplant" the ongoing criminal investigation.¹⁶ Indeed, the Commission was unequivocal: it was of the "utmost importance" that the Commission's work not interfere with other investigations being undertaken by state and federal law enforcement authorities.¹⁷

When asked at the deposition if the December 15 Entry remained the law of the case, the Attorney Examiners confirmed that "[i]t continues to be the Commission's interest . . . to not

¹³ Intervenor's Mot. at 4.

¹⁴ Yeboah-Amankwah Tr. at 192:8-12.

¹⁵ Intervenor's Mem. at 15.

¹⁶ December 15 Entry ¶ 14.

¹⁷ *Id.* See also Case No. 17-974-EL-UNC, Hr'g Tr., at 13:22-14:5 (June 30, 2021).

interfere with the ongoing criminal investigation by the United States Attorney for the Southern District of Ohio, or the civil action by the Ohio Attorney General, Dave Yost, specific to Ohio's civil RICO statute.”¹⁸

Yet, the discovery the Intervenors pursued directly overlaps with DOJ's investigation, and they cannot identify any reason why the questions cannot wait until after DOJ's investigation is complete. Indeed, the Intervenors repeatedly inquired into non-public matters regarding House Bill 6, former PUCO Chairman Randazzo, and other topics far outside the scope of this corporate separation case:

“[H]ave you been notified by anyone from the Department of Justice that you are under investigation?” (Yeboah-Amankwah Tr. at 39:13-14)

“So did you have any role in any investigation that occurred before Mr. Jones was fired relating to what his role was with House Bill 6?” (*Id.* at 85:9-12)

“Did you perform any part of the investigation into Mr. Jones' conduct that led up to his firing?” (*Id.* at 87:7-9)

“[D]id you have any responsibility for dealing with complaints of criminal violations that were reported to you?” (*Id.* at 91:22-25)

“[D]id you ever become aware of any complaints of improper conduct by Mike Dowling?” (*Id.* at 94:23-24)

“[W]ere you ever aware of any allegations of improper conduct by Mr. Dennis Chack?” (*Id.* at 95:5-6)

“Has the company notified you that they may clawback any of your compensation – [?]” (*Id.* at 98:25-99:1)

“When did you become aware of FirstEnergy's or any FirstEnergy entity used, its agreement with [former Commissioner Randazzo's company] SFA?” (*Id.* at 113:2-4)

“[A]re you familiar with the initial 2013 agreement with SFA?” (*Id.* at 116:18-19)

¹⁸ Yeboah-Amankwah Tr. 188:11-17; *see also* at 192:8-20.

“Do you understand that your employment at FirstEnergy ended, because of some improper tone at the top that influenced your work there?” (*Id.* at 40:24-41:2)

“[D]o you feel that you did anything wrong during your employment at FirstEnergy that led to your employment ending?” (*Id.* at 41:19-21)

“Did Mr. Evans ever meet with any legislators to argue in favor of legislation that would have benefited FirstEnergy?” (*Id.* at 81:23-25)

“Did Mr. George ever register as a lobbyist for FirstEnergy?” (*Id.* at 82:15-16)

The Intervenor’s attempted inquiry into these issues lays bare the true motivations and the risk for interfering with the ongoing federal criminal investigation and prosecution.

The Intervenor’s attempt to portray as somehow nefarious FirstEnergy Corp.’s fulfillment of its judicially required cooperation with DOJ¹⁹ by informing them in real time of a development material to their investigation is mistaken at best, and, more likely, disingenuous.²⁰ Counsel contacted DOJ because the Intervenor continued to ignore the Commission’s December 15 Entry and posed questions irrelevant to corporate separation rules, but that went directly to issues at the heart of the federal criminal investigation.²¹ The U.S. Attorney’s Office authorized FirstEnergy Corp.’s counsel to represent to the Attorney Examiners, on the record, that DOJ objected to lines of questioning at this time about former PUCO Chair Randazzo and his company SFA, and that

¹⁹ July 20, 2021 Deferred Prosecution Agreement between FirstEnergy Corp. and the U.S. Attorney’s Office for the Southern District of Ohio (the “DPA”), at 2; *id.* at 3 (“Defendant’s Obligations: Cooperation. . . . proactively identifying issues and facts that would likely be of interest to the government; making regular factual presentations to the government; sharing information that would not have been otherwise available to the government; . . .”); *id.* (“FirstEnergy Corp. agrees that its cooperation shall include, but not be limited to, . . . [c]ontinued full, complete, and truthful cooperation in any matter in which it is called upon to cooperate by a representative of the USAOSDOH; . . . [t]imely disclosure of all factual information with respect to its activities, those of its subsidiaries and affiliates [;] . . . [d]isclosure of any information . . . requested by the government in connection with the investigation . . . [; u]se of good faith efforts . . . to provide additional information and materials concerning any and all investigations . . .”). Indeed, “[f]ailure to provide full, complete, and truthful cooperation” constitutes a violation of the DPA such that FirstEnergy Corp. could be subject to DOJ prosecution. *Id.* at 4, 10.

²⁰ See, e.g., Intervenor’s Mot. at 1, 2, 4, 8; Mem. at 3, 7, 8.

²¹ Yeboah-Amankwah Tr. at 171:25-173:2.

the prosecutor was willing to speak with the Attorney Examiners.²² The Intervenor's claim that the Attorney Examiners issued their July 21 Ruling based on the "bald assertions"²³ of counsel is incorrect and contradicted by the U.S. Attorney's Office's public statement on this issue.²⁴ The Intervenor's repeated suggestion that FirstEnergy Corp. misled the Attorney Examiners as to the nature of the Company's cooperation obligations and communications with DOJ are simply false.²⁵

Finally, there is no prejudice to the Intervenor from the July 21 Ruling, which only delays certain questions until the conclusion of DOJ's investigation. As the U.S. Attorney's Office noted in its public statement, the "information will become public in due course."²⁶ The Attorney Examiners' July 21 Ruling does not prohibit the Intervenor from probing any and all factual matters related to DOJ's criminal investigation, it merely (and rightly) recognizes the wisdom in waiting until DOJ's non-public work is complete.

III. CONCLUSION

The Intervenor's attempted interlocutory appeal is procedurally improper and should be rejected for that reason alone. The Commission should also reject the Intervenor's repeated attempts to interfere with DOJ's criminal investigation and reiterate the logic supporting its

²² *Id.* See also *id.* at 183:1-11 ("It clearly was not done in secret, because I immediately informed counsel for OCC of the conversation, and of the AUSA's position that questions into these topics, into these subject matters, does exactly what the Commission was worried it would do and would interfere with her ongoing investigation. You don't have to take it from me. I am representing to you that that was her position, and she is more than happy to share it with you.").

²³ Intervenor's Mem. at 7.

²⁴ Regulators block deposition of FirstEnergy's former ethics chief: State watchdog agency and DOJ clash, Ohio Capital Journal (July 29, 2022), <https://ohiocapitaljournal.com/2022/07/29/regulators-block-deposition-of-firstenergys-former-ethics-chief-watchdog-doj-clash/>.

²⁵ See, *supra* at n.22.

²⁶ Regulators block deposition of FirstEnergy's former ethics chief: State watchdog agency and DOJ clash, Ohio Capital Journal (July 29, 2022), <https://ohiocapitaljournal.com/2022/07/29/regulators-block-deposition-of-firstenergys-former-ethics-chief-watchdog-doj-clash/>.

December 15 Entry that discovery that could “interfere with the criminal investigation by the United States Attorney” should “be stayed until otherwise ordered by the Commission.”²⁷ The July 21 Ruling does not “sacrifice” the interests of Ohio consumers as the Intervenors wrongly suggest²⁸—it allows DOJ to complete its work without interference by the Intervenors. Accordingly, the Intervenors’ Motion for Interlocutory Appeal, Request for Certification, and Application for Review should be rejected.

²⁷ December 15 Entry ¶ 14.

²⁸ Intervenors’ Mot. at 1.

Dated: August 1, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on August 1, 2022. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Corey Lee

Corey Lee
On behalf of FirstEnergy Corp.

EXHIBIT A

BEFORE THE PUBLIC UTILITIES
COMMISSION OF OHIO

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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 ADMIN CODE  
CHAPTER 4901:1-37

CASE NO. 17-974-EL-UNC

~~~~~

DEPOSITION OF
EBONY YEBOAH-AMANKWAH

July 21, 2022

10:08 a.m.

Taken at:

Embassy Parkway Suites
4040 Embassy Parkway
Fairlawn, Ohio

Kurt M. Spencer, Notary Public

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TRANSCRIPT INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES.....	2
EXAMINATION OF EBONY YEBOAH-AMANKWAH	
BY MR. FINNIGAN.....	12
BY MR. OLIKER.....	100
BY MS. BOJKO.....	121
BY MR. STINSON.....	154
REPORTER'S CERTIFICATE.....	202
EXHIBIT CUSTODY	
NO EXHIBITS MARKED	

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1 pull that up.

2 MR. GLADMAN: I'm sorry. Can you
3 repeat that. It wasn't quite clear.

4 MS. LAPE: Yes. It is in the
5 December 15, 2021 Order, Case No. 20-1629 in
6 paragraph 14, where the Commission states that
7 it is of the utmost importance that our
8 investigations do not interfere with the
9 criminal investigation by the United States
10 Attorney or the action brought by the Ohio
11 Attorney General.

12 Q. Ma'am, have you been notified by
13 anyone from the Department of Justice that you
14 are under investigation?

15 MS. LAPE: Objection. Do not
16 answer that question.

17 Q. Ma'am, I want to ask you about the
18 circumstances under which your employment ended
19 with FirstEnergy. Who notified you that your
20 employment was ending?

21 MS. LAPE: Objection.

22 THE WITNESS: Can I answer the
23 question?

24 MS. LAPE: Yes.

25 A. My counsel.

1 Q. Who?

2 A. Counsel.

3 Q. And what was counsel's name?

4 A. Pat Fitzgerald.

5 Q. What do you understand were the
6 reasons why your employment at FirstEnergy
7 ended?

8 A. I think the company issued an AK
9 that provided its reasons.

10 Q. And I have read that AK, and it
11 says the reason was because of inaction on your
12 part that was influenced by improper tone at
13 the top; is that correct?

14 MS. LAPE: Objection.

15 A. I think the document states what it
16 states.

17 Q. Is that what you understand was the
18 reason?

19 A. My understanding was the document.

20 Q. All right. Do you understand that
21 your employment at FirstEnergy ended, because
22 of any inaction on your part?

23 A. Not to my knowledge.

24 Q. Do you understand that your
25 employment at FirstEnergy ended, because of

1 some improper tone at the top that influenced
2 your work there?

3 MS. LAPE: Objection.

4 MR. GLADMAN: Let me get an
5 objection in. Unless you are asking whether or
6 not there was something to do with Corporate
7 Separation related to Ebony's departure from
8 the company, I think this is inappropriate. So
9 note my objection.

10 A. No behavior on my part, but I can't
11 speak to the Company's rationale. You would
12 have to ask the company.

13 Q. So you don't really know why your
14 employment ended at FirstEnergy --

15 MS. LAPE: Objection. Asked and
16 answered.

17 Q. Is that fair?

18 A. I've indicated my understanding.

19 Q. And do you feel that you did
20 anything wrong during your employment at
21 FirstEnergy that led to your employment ending?

22 MS. LAPE: Objection. Scope.

23 A. Absolutely not.

24 MR. GLADMAN: Objection scope.

25 Q. During your tenure at FirstEnergy,

1 back that Attorney Examiner's ruling, because
2 I'm pretty confident that she said the
3 questions related to these issues should be in
4 the confidential session.

5 MR. HOLLINGSWORTH: Yes. Erring on
6 the side of caution.

7 MS. LAPE: I mean, we have the
8 transcript.

9 MS. WILLIS: We don't need to do
10 that. Let's just move on.

11 Q. Ma'am, do you know a gentleman by
12 the name of Matt Evans?

13 A. I've met Mr. Evans.

14 Q. And by whom is he employed?

15 A. At the time I met him, he was
16 employed by Boych.

17 Q. Did FirstEnergy ever have any
18 consulting agreement with Boych?

19 A. I don't know.

20 Q. Did Mr. Evans ever perform any
21 services for FirstEnergy?

22 A. I don't know.

23 Q. Did Mr. Evans ever meet with any
24 legislators to argue in favor of legislation
25 that would have benefited FirstEnergy?

1 A. I don't know.

2 MR. HOLLINGSWORTH: And I would
3 object on scope and how this ties with
4 Corporate Separation.

5 Q. Did Mr. Evans ever register as a
6 lobbyist on behalf of FirstEnergy?

7 A. I don't know.

8 Q. Do you know Tony George?

9 A. I've heard the name.

10 Q. In what context?

11 A. I don't remember.

12 Q. Did Mr. George ever perform
13 lobbying services on behalf of FirstEnergy?

14 A. I don't know.

15 Q. Did Mr. George ever register as a
16 lobbyist for FirstEnergy?

17 MR. HOLLINGSWORTH: Same objection
18 as to scope.

19 A. I don't know.

20 Q. I want to go back to your role with
21 the Ohio Corporate Separation plan. Were you
22 ever designated as the Compliance Officer for
23 the Ohio Corporate Separation Plan for the Ohio
24 FirstEnergy utilities?

25 A. Yes, I was.

1 time when your employment with FirstEnergy
2 ended -- you said that was in November of 2020?

3 A. That's correct.

4 Q. Was there a period of time from
5 when Mr. Jones was fired by FirstEnergy, before
6 you were separated?

7 MS. LAPE: Objection.

8 A. Yes.

9 Q. So did you have any role in any
10 investigation that occurred before Mr. Jones
11 was fired relating to what his role was with
12 House Bill 6?

13 MR. HOLLINGSWORTH: Objection to
14 scope.

15 MS. LAPE: And you can answer a
16 specific question about whether an
17 investigation existed, but I would caution you
18 not to waive any attorney/client privilege,
19 unless your -- unless FirstEnergy's counsel is
20 permitting that.

21 MR. HOLLINGSWORTH: No. We would
22 also uphold the privilege here.

23 MR. DORINGO: Companies also object
24 on scope.

25 A. Could you repeat the question.

1 know, it is related to the case.

2 MR. HOLLINGSWORTH: And just to
3 make sure the record is clear, we are also
4 asserting privilege objection to this question,
5 as well.

6 A. Jones Day.

7 Q. All right. Did you perform any
8 part of the investigation into Mr. Jones'
9 conduct that led up to his firing?

10 MR. HOLLINGSWORTH: Objection.
11 Scope and privilege.

12 MS. LAPE: Yes. Same objection.
13 It's a privileged investigation. She says she
14 was acting as counsel. It has nothing to do
15 with Corporate Separation, and I don't know why
16 you keep pursuing these lines.

17 MR. FINNIGAN: Well, this has
18 everything to do with Corporate Separation,
19 because --

20 MR. HOLLINGSWORTH: And we would
21 instruct the witness not to answer this
22 question.

23 MR. FINNIGAN: I don't know that
24 you have any ability to do that. But let me
25 just say that, for the record, these questions

1 what allowed the improper cost misallocations.

2 MR. HOLLINGSWORTH: Sure. So if
3 you want to get onto those questions.

4 MR. FINNIGAN: I will. But I'm
5 going to ask these first as background, so I
6 need to find out how they happened. It's
7 important to this case. It is important for
8 finding out, you know, how and why and who were
9 involved in the misallocations. We can't just
10 receive a number that there was \$24 million in
11 improper cost misallocations, and just be
12 satisfied with that. We have to find out the
13 background of who did it, why they did it, who
14 they did it with, how it happened and that's
15 what all these questions related to.

16 MR. HOLLINGSWORTH: But you haven't
17 asked any of those questions yet.

18 MR. FINNIGAN: Well, I certainly
19 am, and you're not letting the witness answer
20 them.

21 Q. So let me ask you this, Ma'am, in
22 your role as Chief Ethics Officer, did you have
23 any responsibility for dealing with complaints
24 of criminal violations that were reported to
25 you?

1 Q. Just go ahead.

2 MR. FINNIGAN: I mean, you can
3 instruct the witness not to answer, but,
4 otherwise, I will ask the questions I am
5 inclined to ask, not the ones you would like me
6 to ask her.

7 A. I apologize. I just don't know
8 what would be a violation of my attorney/client
9 obligations, at this point, with that question.

10 Q. During your employment at
11 FirstEnergy, did you ever have to take any
12 action in your role as Chief Ethics Officer
13 with relation to the Corporate Compliance
14 Program that involved Mr. Jones?

15 MR. HOLLINGSWORTH: Same objection.
16 Same instruction. Again, the question is not
17 tailored to Corporate Separation, and to the
18 extent it calls for privileged information, we
19 ask the witness not to answer it.

20 MS. LAPE: Same objection and
21 instruction.

22 Q. During your tenure as Chief Ethics
23 Officer, did you ever become aware of any
24 complaints of improper conduct by Mike Dowling?

25 MR. HOLLINGSWORTH: Same objection.

1 Same instruction.

2 MS. LAPE: Same objection. Same
3 instruction.

4 Q. During your tenure as Chief Ethics
5 Officer, were you ever aware of any allegations
6 of improper conduct by Mr. Dennis Chack?

7 MR. HOLLINGSWORTH: Same objection
8 same instruction.

9 MS. LAPE: Same objection. Same
10 instruction.

11 Q. The media has reported that
12 Mr. Ruffner was separated from the company.
13 What is your understanding of the reason why he
14 was separated?

15 MR. HOLLINGSWORTH: Objection to
16 scope.

17 MS. LAPE: Objection to scope, and,
18 to the extent that your recollection, or
19 anything that you know, came from communication
20 with counsel, that should not be revealed
21 either.

22 THE WITNESS: Could you read back
23 the question?

24 Q. I will re-ask it. I'm just asking,
25 what is your understanding of why Mr. Ruffner

1 A. No.

2 Q. Did you enter into any joint
3 defense privilege with FirstEnergy Corp, or the
4 FirstEnergy utilities, or any other party?

5 MR. HOLLINGSWORTH: Objection.

6 MS. LAPE: Objection. Scope --

7 MR. DORINGO: Objection. Scope.

8 MS. LAPE: -- and instruct you not
9 to answer, to the extent it reveals any
10 privileged information.

11 A. At what time?

12 Q. At any time.

13 A. I believe as an Officer of the
14 company, there may have been a joint defense.

15 Q. I'm asking, did you enter into a
16 joint defense agreement, after your employment
17 ended with FirstEnergy?

18 A. That is a different question.

19 Q. Okay. That is my question.

20 MR. DORINGO: Objection to scope.

21 MS. LAPE: Objection to scope, and
22 to the extent it calls for privileged
23 information.

24 A. I don't think so.

25 Q. Has the company notified you that

1 they may clawback any of your compensation --

2 MS. LAPE: Objection.

3 Q. -- that you received during your
4 employment at FirstEnergy?

5 MS. LAPE: I think we should get
6 the Attorney Examiners back on the line,
7 because this line of questioning has gotten out
8 of control.

9 MR. FINNIGAN: Are you instructing
10 her not --

11 MR. DORINGO: Objection to scope.

12 MS. LAPE: I am instructing her not
13 to answer until we have, unless and until we
14 have a direct Order from the Attorney Examiners
15 to answer this line of questioning.

16 MR. FINNIGAN: Let's take a brief
17 recess for five minutes.

18 (Whereupon, a recess was taken.)

19 MR. FINNIGAN: Okay. Let's go back
20 on the record. That's all the questions that
21 OCC has for the public session. So we will
22 turn it over to any other parties that want to
23 ask questions during the public session.

24 MR. OLKER: John, I have about
25 twenty questions. So I hope I can do it in the

1 to be such.

2 Q. When did you become aware of
3 FirstEnergy's or any FirstEnergy entity used,
4 its agreement with SFA?

5 MR. HOLLINGSWORTH: I'm going to
6 object, and instruct the witness not to answer,
7 to the extent that it reveals any
8 attorney/client privileged information. And,
9 again, I would reiterate my request that these
10 questions be posed in the confidential session.

11 MS. LAPE: I'm also going to
12 object, and instruct that you not waive any
13 attorney/client privileged information. And I
14 do think that these questions should be in the
15 confidential session given the discussion we
16 had earlier with the Attorney Examiner.

17 MR. OLIKER: Okay. If we go down
18 this route, we're going to have to submit this
19 whole transcript to the Attorney Examiners, and
20 make them go through line-by-line for what is
21 confidential and what is not. These questions
22 are not who has any confidential information.

23 MR. DORINGO: Joe, from the
24 Companies' point of view, it's a sensitive
25 enough issue. I would hate to burden the

1 whether this discussion, where you've got a
2 couple of questions, ought to be in a public or
3 a confidential session. But to save time, and
4 since you are participating in the confidential
5 session, would it make sense for you just to
6 reserve those questions for the confidential
7 session?

8 MR. OLIKER: I have about five
9 questions. I don't want to talk about House
10 Bill 6. I don't want to talk about anything
11 post-2018. I have some simple questions
12 regarding the agreements.

13 MR. FINNIGAN: Well, why don't you
14 ask your five questions, and they can instruct
15 the witness not to answer, if they are
16 declined, or let the witness answer. So go
17 ahead.

18 Q. Ebony, are you familiar with the
19 initial 2013 agreement with SFA?

20 MR. HOLLINGSWORTH: I'm going to
21 object and instruct the witness not to answer,
22 until we are in the confidential session.

23 MS. LAPE: Same objection and
24 instruction.

25 Q. All right. Well, then, are your

1 the record.

2 MR. FINNIGAN: That is on the
3 record. We are going to go off the record now,
4 and end the public session, and we are going to
5 start the confidential session immediately
6 after that.

7 THE WITNESS: I will read.

8 (Morning session concluded at 4:26 p.m.)

9 (NOTE: The confidential afternoon
10 session was ruled by the Attorney
11 Examiners to be moved over and is
12 heretofore a continuous transcript
13 with the public morning session
14 that was just completed.)

15 AE ADDISON: Hello everyone. Can
16 everyone hear me?

17 MR. HOLLINGSWORTH: Yes, we can.
18 Thank you. And so Attorney Examiners, we just
19 wanted to thank you for joining us and
20 apologize for bothering you this late in the
21 day. An issue came up during the course of the
22 deposition that we want to bring to your
23 attention.

24 So since you joined the deposition
25 earlier today, and made your ruling on the

1 It clearly was not done in secret,
2 because I immediately informed counsel for OCC
3 of the conversation, and of the AUSA's position
4 that questions into these topics, into these
5 subject matters, does exactly what the
6 Commission was worried it would do and would
7 interfere with her ongoing investigation. You
8 don't have to take it from me. I am
9 representing to you that that was her position,
10 and she is more than happy to share it with
11 you.

12 AE ADDISON: But she's not
13 available on the phone call right now.

14 MR. HOLLINGSWORTH: I'm happy to
15 provide contact information for you to speak
16 with her.

17 MR. FINNIGAN: And, Your Honor, one
18 other point, the questioning that we were going
19 to do about documents, was going to be in a
20 confidential session of the deposition, where
21 everybody participating has signed a
22 confidentiality agreement with FirstEnergy
23 Corp, that none of the information is going to
24 be disclosed to the public, unless it is done
25 consistent with the terms of the

1 Corporate Separation allocation questions, as
2 well as events and items that happened
3 Corporate Separation related before HB 6, we
4 can ask all those questions, because none of
5 them will be directly in the public record,
6 when we ask them, right?

7 AE ADDISON: Ms. Bojko, my ruling
8 is simply that we are not going to permit
9 questions related to the non-public
10 information, regarding the deferred prosecution
11 agreement that could potentially interfere with
12 the federal investigations. I think that
13 we've, Mr. Hollingsworth made it very clear,
14 based on the representation from the DOJ that
15 that is taking it one step too far.

16 And while my earlier ruling stands,
17 we will go ahead and pump the brakes, as it
18 comes to that particular area of questioning.
19 So anything that is not seeking that, that's
20 where my ruling is limited.

21 MR. HOLLINGSWORTH: And thank you,
22 Your Honor. I think that that helps to
23 clarify. But just to be clear. So the subject
24 of the deferred prosecution agreement relates
25 to the payments related to House Bill 6, and,

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Summary: Memorandum Contra OCC, OMAEG, IGS, and NOPEC's Interlocutory
Appeal electronically filed by Mr. Corey Lee on behalf of FirstEnergy Corp.