

**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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**JOINT MOTION TO AMEND CONSUMER PARTIES' JUNE 22, 2022 JOINT  
MOTION TO EXTEND AND CONTINUE PROCEDURAL SCHEDULE  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL  
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP  
AND NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

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The Office of the Ohio Consumers' Counsel ("OCC"), Ohio Manufacturers' Association Energy Group ("OMAEG") and Northeast Ohio Public Energy Council ("NOPEC") (collectively, "Consumer Parties") file this motion to amend their Joint Motion to Extend and Continue the Procedural Schedule, filed on June 22, 2022. Per O.A.C. 4901-1-06, the PUCO may allow amendment of a pleading for good cause shown. There is good cause for granting this motion.

The PUCO has not ruled on our June 22<sup>nd</sup> Joint Motion to date. The Attorney Examiner has advised that a new procedural schedule will be issued. The following information should be considered.

FirstEnergy Corp. informed that it will be producing discovery to plaintiffs in securities litigation through September 30, 2022. That date is relevant because FirstEnergy has agreed with OCC and others to provide us with the same information as provided to plaintiffs in federal litigation.

In addition, Consumer Parties' joint motion for extension and a continuance is further justified by additional information reported in FirstEnergy Corp.'s most recent Form 10-Q. There, FirstEnergy Corp. states:

On April 28, 2021, and July 11, 2022, the SEC issued additional subpoenas to FE. While no contingency has been reflected in its consolidated financial statements, FE believes that it is probable that it will incur a loss in connection with the resolution of the SEC investigation.<sup>1</sup>

The newly disclosed subpoenas from the Securities and Exchange Commission will generate additional documents that FirstEnergy Corp. is required to produce under OCC's subpoena in the present case.<sup>2</sup>

Further, the Consumer Parties have a pending Interlocutory Appeal, filed July 26, 2022, from a ruling by the Attorney Examiner. The ruling under appeal has impeded discovery in the July 21, 2022 deposition of former FirstEnergy Vice President, General Counsel and Chief Ethics Officer Ebony Yeboah-Amankwah.

Moreover, OCC has not yet received from the PUCO a signed subpoena (as attached to OCC's July 7, 2022 Motion) for documents from Ex-FirstEnergy CEO Charles Jones. The discovery delay now exceeding a month is impeding case preparation as the Consumer Parties expect that discovery from the terminated FirstEnergy executives who were in management during the period when costs were allocated to the Ohio utilities regarding the FirstEnergy scandal will be allowed.

Also, OCC has not yet received from the PUCO signed subpoenas (as attached to OCC's August 5, 2022 Motions) for depositions of Charles Jones, Steven Strah, Michael

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<sup>1</sup> FirstEnergy Corp. Form 10-Q at 72 (July 26, 2022).

<sup>2</sup> OCC Motion for Subpoena to FirstEnergy Corp. (September 24, 2021).

Dowling, Dennis Chack, Robert Reffner, Eileen Mikkelsen, Justin Biltz, Joel Bailey and Ty Pine. The depositions will require time. The requested discovery is needed for case preparation.

There is good cause for considering this information as an amendment of the Consumer Parties' June 22, 2022 Joint Motion to Extend and Continue the Procedural Schedule. The grounds for this Motion are more fully explained in the attached Memorandum in Support.

Respectfully submitted,

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Chapter 4901:1-37.	)	

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

FirstEnergy Corp. is charged with and has admitted the underlying facts to honest services wire fraud.<sup>3</sup> FirstEnergy Corp. has admitted to making \$60 million in payments to the former Speaker of the House to pass H.B.6 and a \$4.3 million payment to another public official. It was said that these FirstEnergy Corp. payments were:

in return for Public Official B [former PUCO Chair Randazzo] performing official action in his capacity as PUCO Chairman to further FirstEnergy Corp.'s interests relating to passage of nuclear legislation and other specific FirstEnergy Corp. legislative and regulatory priorities, as requested and as opportunities arose.<sup>4</sup>

The Consumer Parties filed a Joint Motion to Extend and Continue the Procedural Schedule on June 22, 2022.<sup>5</sup> Per O.A.C. 4901-1-06, the PUCO may allow amendment of a pleading for good cause shown. There is good cause to grant this Motion to allow amendment of the Consumer' Parties' June 22<sup>nd</sup> Motion.

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<sup>3</sup> *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-00086-TSB, Deferred Prosecution Agreement at 17 (S.D. Ohio) (July 22, 2021).

<sup>4</sup> *Id.* at 17.

<sup>5</sup> Joint Motion to Extend and Continue Procedural Schedule (June 22, 2022).

The first item for consideration is the attached “Joint Status Report Regarding Update to Substantial Completion of Document Production,” filed by FirstEnergy Corp. and the other parties in Federal District Court on July 29, 2022 in *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-3785 (S.D. Ohio). There, FirstEnergy indicates that document production in that case will not be substantially complete until September 30, 2022. That document production is relevant here because FirstEnergy agreed with OCC and others to provide discovery from the Federal case to parties in this PUCO case. This is new information. Counsel for FirstEnergy Corp. previously indicated in a Joint Status Report filed on May 13, 2022 that document production would be substantially complete by August 15, 2022.<sup>6</sup> But it now appears that it will not be.

The second item relates to a statement in FirstEnergy Corp.’s most recent Federal Form 10-Q. The Form 10-Q discloses a new subpoena issued by the Securities and Exchange Commission to FirstEnergy, relating to the House Bill 6 matter. The Consumer Parties are entitled to receive this information under a subpoena filed by OCC in this case.<sup>7</sup>

Moreover, OCC has not yet received from the PUCO a signed subpoena (as attached to OCC’s July 7, 2022 Motion) for documents from Ex-FirstEnergy CEO Charles Jones. The discovery delay now exceeding a month is impeding case preparation as the Consumer Parties expect that discovery from the terminated FirstEnergy executives who were in management during the period when costs were allocated to the Ohio utilities regarding House Bill 6 will be allowed. Also, OCC has not yet received

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<sup>6</sup> *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-3785, Joint Status Report (S.D. Ohio) (May 13, 2022).

<sup>7</sup> OCC Motion for Subpoena to FirstEnergy Corp. (September 24, 2021).

from the PUCO signed subpoenas (as attached to OCC's August 5, 2022 Motions) for depositions of Charles Jones, Steven Strah, Michael Dowling, Dennis Chack, Robert Reffner, Eileen Mikkelsen, Justin Biltz, Joel Bailey and Ty Pine. The depositions will require time.

Granting this Motion will help the PUCO establish a reasonable hearing date regarding the Consumer Parties' Joint Motion to Extend and Continue the Procedural Schedule. This information was not available to the Consumer Parties when they filed their June 22, 2022 Joint Motion and moved to extend and continue the procedural schedule.

## **II. CONCLUSION**

The PUCO should grant this Motion to amend the Consumer Parties' June 22<sup>nd</sup> Joint Motion to Extend and Continue the Procedural Schedule. The Motion should be granted given the need to protect consumers, preserve the parties' discovery rights under R.C. 4903.082 and the Ohio Administrative Code, and provide the PUCO with the full record it needs for its decision-making in the public interest.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served on the persons stated below via electronic transmission, this 11<sup>th</sup> day of August 2022.

/s/ Maureen R. Willis  
Maureen R. Willis  
Senior 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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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE FIRSTENERGY CORP. SECURITIES  
LITIGATION,

This document relates to:

ALL ACTIONS.

Case No. 2:20-cv-03785-ALM-KAJ

Chief Judge Algenon L. Marbley

Magistrate Judge Kimberly A. Jolson

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**JOINT STATUS REPORT REGARDING UPDATE TO  
SUBSTANTIAL COMPLETION OF DOCUMENT PRODUCTION**

Pursuant to the Joint Status Report Regarding Substantial Completion of Document Production (Doc. #276), Lead Plaintiff and FirstEnergy Corp. jointly submit this status report setting forth a revised proposed deadline for the substantial completion of document productions. As they previously agreed to do (*id.*), Plaintiffs and FirstEnergy have worked cooperatively to adjust the deadline for substantial completion of document productions by FirstEnergy, taking into account FirstEnergy's ongoing meet and confers with Plaintiffs regarding all aspects of Lead Plaintiff's discovery requests.

In connection with Lead Plaintiff's requests for production, counsel for FirstEnergy and Plaintiffs have repeatedly conferred regarding proposed custodians and search terms (in addition to those used by FirstEnergy for document productions in other litigation), and the date range(s) to apply to searches using the proposed terms and custodians. Concurrent with these negotiations regarding search terms, custodians, and date range(s), FirstEnergy began its review and production of responsive, non-privileged documents as soon as agreements on terms and custodians were reached. To date, FirstEnergy has made 22 volumes of productions, and will continue to make regular, rolling productions.

For terms and custodians of FirstEnergy (including all documents associated with any individual defendant represented by counsel for FirstEnergy) where agreement was reached by July 13, 2022, FirstEnergy will substantially complete its production of documents by August 15, 2022. As to terms and custodians where agreement was reached after July 13, 2022 or are still being negotiated, FirstEnergy will substantially complete its production of documents by **September 30, 2022**. Plaintiffs recognize that this proposed date may be subject to adjustment based on FirstEnergy's ongoing meet and confers with Plaintiffs regarding outstanding aspects of Plaintiffs' discovery requests.

Lead Plaintiff and FirstEnergy agree that, for purposes of the Fact Deposition Protocol Order (Doc. #309), the "Substantial Completion Deadline" is **September 30, 2022** and, as with the earlier proposed substantial completion deadline, remains subject to potential adjustment as needed.

Lead Plaintiff and FirstEnergy will update the Court regarding any such potential adjustments in their periodic status reports, and agree to work cooperatively on any such adjustments and related matters.

Dated: July 29, 2022

/s/ Tor Gronborg (with permission)  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed electronically on July 29, 2022. Notice of this filing will be sent to all electronically registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Marjorie P. Duffy

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

**8/11/2022 12:09:43 PM**

**in**

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

Summary: Motion Joint Motion to Amend Consumer Parties' June 22, 2022 Joint Motion to Extend and Continue Procedural Schedule by Office of the Ohio Consumers' Counsel, Ohio Manufacturers' Association Energy Group and Northeast Ohio Public Energy Council electronically filed by Ms. Alana M. Noward on behalf of Willis, Maureen R.