**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company. | ))))) | Case No. 20-1502-EL-UNC |

**REPLY MEMORANDUM IN SUPPORT OF**

**MOTION TO ACCEPT STATEMENT OF ADDITIONAL AUTHORITY REGARDING
OCC’S MOTION FOR AN INDEPENDENT AUDITOR, INSTANTER
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The FirstEnergy Utilities do not challenge the Office of the Ohio Consumers' Counsel’s ("OCC") request for the Public Utilities Commission of Ohio (“PUCO”) to consider *Newman v. FERC[[1]](#footnote-2)* as additional authority. They disagree whether it applies to this case. The FirstEnergy Utilities contend that it shouldn’t apply at all, because “the court’s opinion centers on an accounting matter and does not—contrary to OCC’s view—dictate ratemaking.”[[2]](#footnote-3) They also argue that “the Companies have already disclosed the rate impact, if any, of HB 6-related spending costs incurred by the Companies, regardless of where those costs were initially booked.”[[3]](#footnote-4)

The FirstEnergy Utilities misapprehend how ratemaking works. Regulatory accounting goes hand-in-hand with ratemaking. The FirstEnergy Utilities must follow the Uniform System of Accounts (“USoA”).[[4]](#footnote-5) The PUCO uses this system of regulatory

accounts established in the USoA as basis in setting utility rates. The significance of *Newman v. FERC* is that it broadens the definition of what is considered political spending and therefore must be excluded from rates. The ruling provides that spending on public relations, advertising, opinion polling and advocacy services in support of a political, regulatory or legislative objective must now be treated as below-the-line political spending by FERC.[[5]](#footnote-6)

The FirstEnergy Utilities initially said that they had no political spending in support of H.B. 6.[[6]](#footnote-7) About one year later, after FirstEnergy Corp. entered into the Deferred Prosecution Agreement (“DPA”), the FirstEnergy Utilities admitted they had some political spending in support of H.B. 6, but it was limited what was disclosed in the DPA (*i.e.,* payments to payments to benefit “Public Official A” (described as “the Speaker of the Ohio House of Representatives from January 7, 2019 to July 30, 2020”) and “Public Official B” (described as “the Chairman of the Public Utilities Commission of Ohio (PUCO) from April 2019 until November 21, 2020, when he resigned”).[[7]](#footnote-8)

Under *Newman v. FERC,* the FirstEnergy Utilities will now be required to update their response to the PUCO’s show-cause order. They must reveal their political and charitable spending to support H.B. 6, using the new definition of political spending provided by *Newman v. FERC.* They should do so proactively and actually practice what they preach regarding transparency. To date, they have talked the talk of transparency, but they certainly do not walk the walk.

At this point in the FirstEnergy scandals (H.B. 6 scandal, PUCO scandal, etc.), it should be all too obvious to the PUCO that FirstEnergy should not be trusted to police itself. The FirstEnergy Utilities didn’t admit to any political spending being included in rates charged to consumers until the DPA showed it had occurred. This further highlights the need for the PUCO to appoint an independent auditor who has full access to the books of the FirstEnergy Utilities and FirstEnergy Service Company. The independent auditor should examine political spending using the new definition established by *Newman v. FERC.* The auditor should also examine the amount of internal labor (and/or other) costs charged to consumers for passing tainted H.B. 6 and defeating the subsequent referendum.

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 Reply Memorandum in Support of Motion to Accept Statement of Additional Authority Regarding OCC’s Motion for an Independent Auditor, Instanter was served on the persons listed below via electronic transmission, this 2nd day of February 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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1. No. 20-1324, 2021 U.S.App.LEXIS 38373 (D.C. Cir. Dec. 28, 2021). [↑](#footnote-ref-2)
2. FirstEnergy Memorandum Contra at 1 (Jan. 26, 2022). [↑](#footnote-ref-3)
3. *Id.* at 1-2. [↑](#footnote-ref-4)
4. R.C. 4905.13; O.A.C. 4901:1-9-05. [↑](#footnote-ref-5)
5. *Newman v. FERC,* No. 20-1324, 2021 U.S.App.LEXIS 38373 (D.C. Cir. Dec. 28, 2021). [↑](#footnote-ref-6)
6. FirstEnergy Response to Show Cause Entry (Sept. 30, 2020). [↑](#footnote-ref-7)
7. Motion to Leave to File a Supplemental Response to the September 15, 2020 Show Cause Entry (Aug. 6, 2021). [↑](#footnote-ref-8)