

In the Matter of the Review of the)
Distribution Modernization Rider of Ohio) Case No. 17-2474-EL-RDR
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo)
Edison Company.)

The Ohio Consumers' Counsel (OCC) moves for an order compelling FirstEnergy to respond to discovery. At issue is whether FirstEnergy¹ is properly earmarking its charges to consumers for \$204 million² annually under its so-called "distribution modernization rider" ("DMR").³ The Public Utilities Commission of Ohio ("PUCO") required FirstEnergy's use of these consumer funds to be "used, directly, or indirectly, in support of grid modernization."⁴ Ironically (and unfortunately) for consumers, the PUCO did not require FirstEnergy to spend its distribution modernization rider charges on distribution modernization. Instead, the DMR was designed to provide credit support to FirstEnergy Corp, allowing FirstEnergy to potentially collect from customers an unlawful subsidy of power plants held by its affiliate, FirstEnergy Solutions.⁵

⁵ *Id.* at ¶185.

By Entry issued on December 13, 2017, the PUCO initiated this proceeding to review FirstEnergy's expenditures regarding the DMR charges.⁶ Under law and rule, the opportunity for discovery commenced. But FirstEnergy has refused to substantively respond to OCC's First Set of Discovery, due to several baseless objections.

Under Ohio Admin. Code 4901-1-12 and 4901-1-23,⁷ the PUCO should compel FirstEnergy to *post haste* respond to OCC's First Set of Discovery, served on March 22, 2018. Answers are needed to advocate for nearly two million consumers. Answers should be compelled for the entire set of discovery, consisting of OCC Requests for Production of Documents Nos. RPD-01 through RPD-06. These discovery requests and FirstEnergy's "response" are attached as OCC Attachments 1 and 2.

The OCC has detailed in the attached affidavit⁸ the efforts that it undertook to resolve differences between it and FirstEnergy, consistent with Rule 4901-1-23(C)(3). At this moment, FirstEnergy and OCC have failed to reach a mutually satisfactory solution to their differences.

The reasons supporting this motion are set forth in the attached Memorandum in Support. The PUCO should grant this motion forthwith.

⁶ Entry (December 13, 2017).

⁷ See Ohio Adm. Code 4901-1-12 and 4901-1-23.

⁸ OCC Attachment 3.

Respectfully submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On March 14, 2018, OCC intervened in this proceeding. As allowed under Ohio law and the PUCO rules, OCC sent discovery to FirstEnergy seeking requests and responses between FirstEnergy and others (including the PUCO Staff, auditor, other parties) (OCC RPD 1-4). OCC also sought copies of the draft Auditor report (and communications regarding the draft Auditor report) (OCC RPD 5, 6). In all, OCC served six requests for FirstEnergy to produce documents. (OCC Attachment 1).

On April 11, 2018, FirstEnergy served its response to OCC's discovery. (Attachment 2). FirstEnergy's response to each and every one of OCC's six requests was identical:

OCC is not entitled to discovery. In addition, this request is overbroad, unduly burdensome and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Furthermore, the documents are protected under 4901.16, Revised Code.

Upon receiving these responses, OCC initiated a dialogue with FirstEnergy's Counsel in an attempt to resolve the discovery dispute. FirstEnergy informed OCC that

FirstEnergy would not be supplementing its responses to the discovery. Specifically, FirstEnergy stated,

“[t]he Companies’ respectfully object to responding to any discovery in [sic] Auditing docket. The Commission opened this docket to implement the third-party Auditor portions of ESP IV. The Commission has not scheduled any proceedings or hearings related to this docket. Moreover, this is neither a contested proceeding nor did any utility open this docket for its own purposes. For those reasons, discovery in this docket is not provided by the Commission’s rules and is not appropriate.”⁹

OCC, once more, attempted to resolve the dispute with FirstEnergy’s Counsel. At the time that this motion was filed, FirstEnergy’s Counsel has failed to respond.

FirstEnergy’s position is not defensible and should be rejected by the PUCO for a number of reasons. First, FirstEnergy is mistaken that “discovery in this docket is not provided by the Commission’s rules and is not appropriate.” Under PUCO rules, any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the “proceeding” -- contested or uncontested.¹⁰ Additionally, the PUCO rules do not distinguish between a regular docket and a “Auditing docket.” Nor, do the PUCO rules state that discovery is only permitted if the docket is opened by a utility “for its own purposes.” FirstEnergy is also wrong in its assertion that R.C. 4901.16, which establishes obligations of the PUCO Staff, applies to FirstEnergy (a utility) and allows it to withhold discovery. The PUCO should summarily

⁹ See Attachment 2.

¹⁰ Ohio Adm. Code 4901-1-16.

reject that argument (as it has in the past),¹¹ and allow discovery to proceed, as envisioned under Ohio law and PUCO Rules.

Additionally, the objection to OCC discovery, based on breadth, relevance, and burden, should be overruled. FirstEnergy has failed to bear its burden of proving that the information sought is not relevant, is overly broad and would cause it undue burden to respond to. The PUCO should grant OCC's motion to compel and require the utility to expeditiously provide responses to OCC's discovery.

II. PARTIES' RIGHT TO DISCOVERY

According to the PUCO "the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side's industry or efforts."¹² The PUCO's rules on discovery "*do not create an additional field of combat to delay trials or to appropriate the Commission's time and resources*"; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings."¹³ The rules are also intended to "minimize commission intervention in the discovery process."¹⁴ These rules are intended to facilitate full and reasonable discovery, consistent with the statutory discovery rights parties are afforded under R.C. 4903.082.

¹¹ *In the Matter of the Application of Columbus Southern Power Company for Authority to Amend its Filed Tariffs*, Case No. 91-416-EL-AIR, Entry at 3 (granting OCC's motion to compel over the utility's claims that R.C. 4901.16 precludes them from responding to discovery where an investigation by the Staff was underway).

¹² *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 23 (Mar. 17, 1987).

¹³ *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76. (Emphasis added).

¹⁴ Ohio Adm. Code 4901-1-16(A).

R.C. 4903.082 states that “[a]ll parties and intervenors shall be granted ample rights of discovery.” Therefore, the OCC, as a party in this proceeding,¹⁵ is entitled to timely and complete responses to its discovery inquiries. Additionally, R.C. 4903.082 directs the PUCO to ensure that parties are allowed “full and reasonable discovery” under its rules.

Under its rules, the PUCO has established that “discovery may begin immediately after a proceeding is commenced.”¹⁶ For instance, the PUCO has rejected the notion that discovery in a complaint proceeding may not commence without a PUCO finding of reasonable grounds.¹⁷ The PUCO has also specifically refused to find that discovery should be held up before the issuance of a staff or Auditor report.¹⁸ Simply put, there is no statute or PUCO rule that prohibits OCC from engaging in discovery in this proceeding or otherwise limits OCC's right to conduct discovery.¹⁹

¹⁵ See Ohio Adm. Code 4901-1-16(H). OCC filed a Motion to intervene on June 9, 2017. Its motion to intervene has not been granted.

¹⁶ Ohio Adm. Code 4901-1-17 (A). *Accord*, Ohio Civ. R. 33 (A) (interrogatories may be served by any party without leave on the plaintiff “after commencement of the action.”).

¹⁷ *Office of Consumers' Counsel v. West Ohio Gas Co.*, Case No. 89-275-GAS-CSS, Entry, (Apr. 18, 1989); *Office of the Consumers' Counsel v. Dayton Power and Light Company*, Case No. 88-1744-EL-CSS, Entry (June 6, 1989). See also, *In the Matter of the Complaint of OCC v. Duke*, Case No. 15-1588-GE-CSS, Entry at fn. 3 (Oct. 11, 2017) (where the PUCO noted that “there is no basis in our rules for a party to stymie discovery while a motion to dismiss is under consideration.”).

¹⁸ See, e.g., *In the Matter of the Audit of Transportation Migration Rider --Part B of the East Ohio Gas Company*, Case No. 17-219-GA-EXR, Entry (Sept. 28, 2017) (rejecting utility's argument that discovery (before the audit report was issued) not be had as it would be redundant of auditor's review).

¹⁹ *Id.*

The PUCO has also adopted rules that specifically define the scope of discovery.

Ohio Adm. Code 4901-1-16(B) provides:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

The PUCO's rule is similar to Ohio Civ. R. 26 (B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.²⁰

This scope of discovery is applicable to requests for production. Requests for production may elicit documents within the possession, custody, or control, of the party upon whom the discovery is served, under Ohio Adm. Code 4901-1-20.

OCC's right to discovery is assured by law, rule and Supreme Court of Ohio ("Court") precedent.²¹ OCC is entitled to timely and complete responses to its discovery inquiries. OCC seeks responses to its discovery requests and is unable to obtain the responses without the PUCO compelling FirstEnergy to respond.

In Ohio Adm. Code 4901-1-23, the PUCO provided the procedure for parties to obtain the enforcement of these discovery rights, guaranteed by law and rule. Ohio Adm. Code 4901-1-23(A) and (B) provide a means for the PUCO to compel a party to answer discovery when the party has failed to do so, including when answers are evasive or

²⁰ *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St.3d 1479.

²¹ *OCC v. PUC*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213.

incomplete. Ohio Adm. Code 4901-1-23(C) details the technical requirements for a motion to compel, all of which are met by OCC in this pleading.

The motion to compel is to be accompanied by a memorandum in support setting forth the basis of the motion and authorities relied upon; a brief explanation of how the information sought is relevant; and responses to objections raised by the party from whom the discovery is sought.²² Copies of the discovery requests and the responses are to be attached.²³ Finally, Ohio Adm. Code 4901-1-23(C) also requires the party seeking discovery to file an affidavit explaining how it has exhausted all other reasonable means of resolving the differences with the party from whom the discovery is sought.

OCC has detailed in the attached affidavit, consistent with Ohio Adm. Code 4901-1-23(C)(3), the efforts that it undertook to resolve differences between it and FirstEnergy. At this moment it is clear that there is no resolution. OCC seeks responses to its discovery from FirstEnergy and is unable to obtain the responses without the PUCO compelling such a result.

III. ARGUMENT

A. FirstEnergy misinterprets Ohio Admin. Code 4901-1-16 by adding qualifications to a “commission proceeding” that do not exist, thereby impeding case preparation for the consumers’ advocate.

As part of its dialogue with OCC, FirstEnergy objected to responding to discovery in this docket, claiming the case is simply intended to Auditor portions of FirstEnergy’s latest electric security plan.²⁴ In addition, FirstEnergy objects to responding because there

²² See Ohio Adm. Code 4901-1-23(C)(1).

²³ Ohio Adm. Code 4901-1-23(C)(2).

²⁴ See Attachment 4.

are no scheduled hearings related to this docket, it is allegedly an “uncontested proceeding,” and FirstEnergy did not open this docket for its own purposes. FirstEnergy’s objections have no merit.

The PUCO’s rules are designed to allow broad discovery of material that is relevant to the proceeding and to allow parties to prepare thoroughly and adequately. Ohio Admin. Code 4901-1-17(A) provides that discovery may begin immediately after a proceeding is commenced. The PUCO has continuously denied arguments that discovery cannot occur until a hearing is scheduled.²⁵ Additionally, there is no requirement that the proceedings must be contested or opened by a utility for its own purposes. The only requirement is that a proceeding must have been commenced.²⁶ By Entry, the PUCO commenced this proceeding on December 13, 2017. An intervening party could seek discovery from FirstEnergy immediately following the PUCO’s Entry. Thus, the PUCO should deny any argument by FirstEnergy that would deny rights to discovery under law and rule.

Additionally, the PUCO authorized parties to review the information OCC is requesting in this proceeding. By Entry, the PUCO approved the Request for Proposal (“RFP”) and instructed Staff to issue the RFP.²⁷ The Entry and PUCO approved RFP clearly states that “Any conclusions, results or recommendations formulated by the

²⁵ See *In the Matter of the Audit of East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 17-219-GA-EXR *et al.*, Opinion at ¶13 (Sept. 28, 2017) (Granting OCC’s motion to compel over company’s objections that discovery is not appropriate until a procedural schedule is established.); *In re the Application of Columbia Gas of Ohio, Inc.*, Case No. 11-5351-GA-UNC *et al.*, Entry at 8 (Jan. 27, 2012) (Denying company’s motion to stay discovery where the PUCO has not established a procedural schedule.); *In re the Application of Dayton Power and Light Co.*, Case No. 13-2420-EL-UNC, Entry at 9 (May 30, 2014) (Denying company’s motion for protective order finding no merit to company’s argument that a hearing must be set before discovery can be conducted).

²⁶ See Ohio Admin. Code 4901-1-17(A).

²⁷ Entry (December 13, 2017).

Auditor may be examined by any participant to this proceeding.”²⁸ FirstEnergy did not file an application for rehearing on the Entry to challenge any participant’s right to examine documents, similar to those requested in discovery, in this proceeding. OCC is a participant in this proceeding.²⁹ Thus, there can be no denying that the OCC is entitled to discovery in this case.

B. The information OCC seeks is reasonably calculated to lead to the discovery of admissible evidence for protecting consumers.

The PUCO has held in the past that intervening parties are permitted access to draft audit reports and related communications.³⁰ Nevertheless, in conflict with this legal precedent, FirstEnergy is refusing OCC access to draft reports and any related communications. Given the nature of a draft audit report and the liberal discovery rules³¹ and laws³² in Ohio, there can be no doubt that draft reports, prior versions of the draft reports, and related communications in this proceeding are relevant and reasonably calculated to lead to the discovery of admissible evidence.

²⁸ *Id.* ¶9; RFP at III B.

²⁹ See *e.g.* OCC Motion to Intervene (March 14, 2018); Ohio Admin. Code 4901-1-16(H) (For purposes of discovery “the term ‘party’ includes any person who has filed a motion to intervene which is pending at the time a discovery request or motion is to be served or filed”).

³⁰ See *In the Matter of the Application of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case Nos. 11-5906-EL-FAC, et al., Entry (February 3, 2016).

³¹ See Ohio Admin. Code 4901-1-17(A) (stating that “discovery may begin immediately after a proceeding is commenced.”); Ohio Admin. Code 4901-1-16(B) (stating that “any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”).

³² See R.C. 4903.082 (stating that “[a]ll parties and intervenors shall be granted ample rights of discovery” and that the PUCO should ensure that all parties are allowed “full and reasonable discovery”); Ohio Civ. R. 26(B) (this rule has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding. See *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, P83, citing to *Moskovitz v. ML Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St.3d 1479).

This case is a review of FirstEnergy's DMR charges and expenditures. The Auditor has been directed to docket two reports and produce two other interim reports documenting its opinion on whether FirstEnergy has implemented the DMR in compliance with applicable PUCO Orders. In this proceeding, FirstEnergy has not at any time contested the PUCO's authority to conduct the review. Nor has it contested the PUCO Order setting the scope of the review.

Through its discovery, OCC sought copies of any drafts of the above-mentioned reports (and communications regarding any draft reports) (OCC RPD 5, 6) that are in FirstEnergy's possession. Examining the draft Auditor report(s) will enable intervenors to determine whether and how any conclusions, results, or recommendations have changed between the issuance of any drafts and the final report(s). In particular, intervenors should be aware of any conclusions, results, or recommendations that were in the draft report but not in the mid or final report so the reasons why they were excluded can be examined. This information will enable intervenors to assess the justness and reasonableness of the Auditor's conclusions in its mid or final report. And it will inform intervenors as to whether the audit process is truly an independent process, as the PUCO intended. This is especially needed where the Auditor is not subject to discovery that is otherwise permitted between and among parties to a PUCO proceeding. Further, allowing parties access to the draft audit report(s) will produce more informed comments from the intervenors, which will only help to develop a more complete and informed record for the PUCO. Thus, the draft Auditor report(s) and related communications in this case are relevant evidence and denying parties access to the evidence would be unreasonable and contrary to legal precedent.

In addition, OCC's discovery sought copies of the discovery/data requests and responses made in this case between FirstEnergy and others (including the PUCO Staff, Auditor, and other parties) and any other documents that FirstEnergy sent to the parties (OCC RPD 1-4). Discovery requests of this type are almost certainly asked in every PUCO proceeding. And, as the PUCO has previously held, a utility's answers to staff data requests are "certainly relevant."³³

Finally, FirstEnergy has failed to carry its burden with regards to a relevant objection. The party opposing the discovery request has the burden to establish that the requested information would not reasonably lead to the discovery of admissible evidence.³⁴ Here, FirstEnergy has provided no explanation for its relevancy objections. With no support and no specifics provided, the PUCO should overrule FirstEnergy's objections.

C. FirstEnergy has failed to show how OCC's requests are overly broad and/or unduly burdensome.

OCC's requests for production are not overly broad or unduly burdensome. The discovery requests are common, well-defined, and do not extend beyond the scope of this proceeding as every request for production is tied to communications made (in the form of documents) *in this proceeding*. OCC is only requesting that FirstEnergy produce documents that have been given to it or it has already produced to other parties (e.g., discovery responses, communications on draft reports). Forwarding these documents to OCC does not seem to be unduly burdensome. Especially, in a proceeding that has only

³³ See, e.g., *In the Matter of the Application of Columbus Southern Power Company for Authority to Amend its Filed Tariffs*, Case No. 91-416-EL-AIR, Entry at 3 (Aug. 23, 1991)(acknowledging such a practice and ruling that the utility's reliance on R.C. 4901.16 was erroneous).

³⁴ *State ex rel. Fisher v. Rose Chevrolet, Inc.*, (C.A. 1992), 82 Ohio App.3d 520, 523.

two intervenors (i.e., OCC and the Ohio Energy Group) and has not been the subject of protracted litigation. Moreover, the PUCO previously ruled that draft reports and staff data requests and responses should be produced, if requested, through discovery.³⁵

Further, FirstEnergy's objection that it is overly burdensome to respond to OCC's discovery has never been adequately explained to OCC. Such conclusory statements, without further explanation, cannot be the basis for refusing to respond to discovery. Federal case law³⁶ has held that, when a party objects to an interrogatory based on oppressiveness or undue burden, that party must show specifically how, despite the broad and liberal construction afforded discovery rules, each interrogatory is overly broad, burdensome, or oppressive.³⁷ In objecting, the party must submit affidavits or offer evidence revealing the nature of the burden.³⁸ General objections without specific support may result in waiver of the objection.³⁹

Here, FirstEnergy has failed to show how the requests for production of information already being provided to the Staff, Auditor, or other parties are unduly burdensome. Because the burden falls upon the party resisting discovery to clarify and

³⁵ See, e.g., *In the Matter of the Application of Columbus Southern Power Company for Authority to Amend its Filed Tariffs*, Case No. 91-416-EL-AIR, Entry at 3 (Aug. 23, 1991); *In the Matter of the Application of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case Nos. 11-5906-EL-FAC, et al., Entry (February 3, 2016).

³⁶ Although federal case law is not binding upon the PUCO with regard to interpreting the Ohio Civil Rules of Practice (upon which the PUCO discovery rules are based), it is instructive where, as here, Ohio's rule is similar to the federal rules. Ohio Adm. Code 4901-1-24 allows a protective order to limit discovery to protect against "undue burden and expense." C.R. 26(c) similarly allows a protective order to limit discovery "to protect against undue burden and expense." Cf. *In the Matter of the Investigation into Perry Nuclear Power Station*, Case No. 85-521-EL-COI, Entry at 14-15 (Mar. 17, 1987), where the Commission opined that a motion for protective order on discovery must be "specific and detailed as to the reasons why providing the responses to matters***will be unduly burdensome."

³⁷ *Trabon Engineering Corp. v. Eaton Manufacturing Co.*, (N.D. Ohio 1964), 37 F.R.D. 51, 54.

³⁸ *Roesberg v. Johns-Manville*, (M.D.Pa 1980), 85 RR.D. 292,297.

³⁹ *Id.*, citing *In re Folding Carton Anti-Trust Litigation*, (N.D. HI. 1978), 83 F.R.D. 251, 264.

explain its objections and to provide support,⁴⁰ and FirstEnergy has failed to do so, the PUCO should overrule this objection.

D. FirstEnergy misinterprets R.C. 4901.16, which is no basis for it to withhold documents from OCC.

Another FirstEnergy objection states that the documents OCC sought are protected under R.C. 4901.16.⁴¹ FirstEnergy's reading, interpretation, and application of the statute is flawed. R.C. 4901.16 states, except in a report to the commission, "no employee or agent ***"shall divulge information acquired by him in respect to the transaction, property, or business of any public utility while acting or claiming to act as such employee or agent." Thus, R.C. 4909.16 creates obligations for PUCO employees or its agents—not a utility. Indeed, the PUCO has held that "Section 4901.16 only prevents premature disclosure of information by the staff of the Commission. Nothing in that section prevents the company from providing information to parties in a case."⁴² Consistent with its precedent, the PUCO should overrule FirstEnergy's objection.

E. OCC undertook reasonable efforts to resolve the discovery dispute.

As detailed in the attached affidavit, OCC undertook efforts to resolve this discovery dispute. Shortly after receiving FirstEnergy's response, OCC made several attempts to contact FirstEnergy's Counsel. FirstEnergy's Counsel then reaffirmed FirstEnergy's position to deny OCC discovery. In good faith OCC once more reached out

⁴⁰ *Gulf Oil Corp, v Schlesinger*, (E.D.Pa. 1979), 465 F.Supp. 913, 916-917.

⁴¹ See Attachment 2.

⁴² *In the Matter of the Application of Columbus Southern Power Company for Authority to Amend its Filed Tariffs*, Case No. 91-416-EL-AIR, Entry at 3 (granting OCC's motion to compel over R.C. 4901.16 claims and finding the answers to the staff data requests "are certainly relevant" and providing the responses is not unduly burdensome).

to FirstEnergy's Counsel hoping to resolve the discovery dispute. To date, OCC still has not received a response from FirstEnergy's Counsel.

IV. CONCLUSION

FirstEnergy has failed to bear the burden of proving that OCC's discovery will not lead to the discovery of admissible evidence. Nor has FirstEnergy provided anything but conclusory statements as to the "burden" that will be imposed on it to answer OCC's six requests for production. Finally, FirstEnergy's position that R.C. 4901.16 prevents it from providing information to OCC is incorrect.

As such, it is appropriate and fitting that the PUCO, consistent with its rules and Ohio law, grant OCC's Motion to Compel. Granting OCC's motion to compel will allow for participation on behalf of consumers and better inform the PUCO's review of the Auditor report in this case, by providing it with a complete record upon which to base its decision. OCC's Motion to Compel should be granted and FirstEnergy should be ordered to respond to OCC's six requests for production.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Compel was served on the persons stated below via electronic transmission, this 21st day of June 2018.

/s/Zachary E. Woltz

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**REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON FIRSTENERGY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

FIRST SET
(DATED MARCH 22, 2018)

The Office of the Ohio Consumers’ Counsel in the above-captioned proceedings before the Public Utilities Commission of Ohio submits the following Requests for Production of Documents pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from the Cleveland Electric Illuminating Company, Ohio Edison Company and Toledo Edison Company (collectively "FirstEnergy" or “the Companies”) within 20 days, and no later than any shorter period required by the Public Utilities Commission of Ohio or its authorized representative. An electronic, non-pdf (e.g. Excel) response should be provided to the Office of the Ohio Consumers’ Counsel at the following addresses:

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Additionally, FirstEnergy must follow the instructions provided herein in responding to the inquiries. Definitions are provided that are used in the Office of the Ohio Consumers' Counsel's discovery.

DEFINITIONS

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers,

agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately

- identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.
2. “Communication” shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
 3. The “substance” of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
 4. “And” or “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
 5. “You,” and “Your,” or “Yourself” refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
 6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
 7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.

8. “Person” includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. “Identify,” or “the identity of,” or “identified” means as follows:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;
 - E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.

- F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).
10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
11. The term "e.g." connotes illustration by example, not limitation.
12. "OCC" means the Office of the Ohio Consumers' Counsel.
13. "FirstEnergy" or "Utility" or "Companies" means the Cleveland Electric Illuminating Company, Toledo Edison Company and Ohio Edison Company.
14. "Monitor" means Oxford Advisors, LLC. The third party monitor selected by the PUCO in this proceeding as ordered in the January 24, 2018 Entry.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;

- B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files; and
 - D. such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2000 through and including the date of your response.
9. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

REQUEST FOR PRODUCTION OF DOCUMENTS

In accordance with Ohio Adm. Code 4901-1-16(D)(5), OCC is specifically requesting that all responses be supplemented with subsequently acquired information at the time such information is available.

- RPD-1. Please provide copies of all formal and informal requests (e.g. interrogatories, data requests) made to the Companies by the Commission, the PUCO Staff, the Monitor, and the PUCO's Attorneys General in this proceeding, and the Companies' responses to those requests.
- RPD-2. Please provide copies of all documents and workpapers provided to the Commission, the PUCO Staff, the Monitor, and/or the PUCO's Attorneys General in connection with this proceeding.
- RPD-3. Please provide copies of all discovery received by the Companies from other parties in this proceeding, and the Companies' response to that discovery.
- RPD-4. Please provide copies of all Communications (e.g. email, memos, draft reports) related to this proceeding between the Companies and the Commission, the PUCO Staff, the Monitor, and/or the PUCO's Attorneys General.

RPD-5. Please provide any draft reports (i.e., draft interim quarterly reports, draft mid-reports, or draft final reports) received in this Proceeding by the Companies from the PUCO, the PUCO Staff, the Monitor, and/or the PUCO's Attorneys General.

RPD-6. Please provide any communications in this Proceeding between the Companies and the PUCO, the PUCO Staff, the Monitor, and/or the PUCO's Attorneys General relating to any draft reports (i.e., draft interim quarterly reports, draft mid-reports, or draft final reports) identified in response to RPD-5.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Requests for Production of Documents Propounded Upon FirstEnergy by the Office of the Ohio Consumers' Counsel's, First Set*, was served upon the persons listed below by electronic transmission this 22nd day of March 2018.

/s/ Kevin Moore

Kevin Moore

Assistant Consumers' Counsel

SERVICE LIST

William.wright@ohioattorneygeneral.gov

mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

jkylercohn@BKLawfirm.com

cdunn@firstenergycorp.com

OCC Set 1

Case No. 17-2474-EL-RDR

**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**

REQUEST FOR PRODUCTION

**OCC Set 1 –
RPD-001** Please provide copies of all formal and informal requests (e.g. interrogatories, data requests) made to the Companies by the Commission, the PUCO Staff, the Monitor, and the PUCO's Attorneys General in this proceeding, and the Companies' responses to those requests.

Response: OCC is not entitled to discovery. In addition, this request is overbroad, unduly burdensome and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Furthermore, the documents are protected under 4901.16, Revised Code.

OCC Set 1

Case No. 17-2474-EL-RDR

**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**

REQUEST FOR PRODUCTION

OCC Set 1 – Please provide copies of all documents and workpapers provided to the Commission,
RPD-002 the PUCO Staff, the Monitor, and/or the PUCO's Attorneys General in connection with
this proceeding.

Response: OCC is not entitled to discovery. In addition, this request is overbroad, unduly
burdensome and seeks information that is neither relevant nor likely to lead to the
discovery of admissible evidence. Furthermore, the documents are protected under
4901.16, Revised Code.

OCC Set 1

Case No. 17-2474-EL-RDR

**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**

REQUEST FOR PRODUCTION

OCC Set 1 – Please provide copies of all discovery received by the Companies from other parties in
RPD-003 this proceeding, and the Companies' response to that discovery.

Response: OCC is not entitled to discovery. In addition, this request is overbroad, unduly burdensome and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Furthermore, the documents are protected under 4901.16, Revised Code.

OCC Set 1

Case No. 17-2474-EL-RDR

**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**

REQUEST FOR PRODUCTION

OCC Set 1 – Please provide copies of all Communications (e.g. email, memos, draft reports) related
RPD-004 to this proceeding between the Companies and the Commission, the PUCO Staff, the Monitor, and/or the PUCO's Attorneys General.

Response: OCC is not entitled to discovery. In addition, this request is overbroad, unduly burdensome and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Furthermore, the documents are protected under 4901.16, Revised Code.

OCC Set 1

Case No. 17-2474-EL-RDR

**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**

REQUEST FOR PRODUCTION

OCC Set 1 – Please provide any draft reports (i.e., draft interim quarterly reports, draft mid-reports, or
RPD-005 draft final reports) received in this Proceeding by the Companies from the PUCO, the
PUCO Staff, the Monitor, and/or the PUCO's Attorneys General.

Response: OCC is not entitled to discovery. In addition, this request is overbroad, unduly
burdensome and seeks information that is neither relevant nor likely to lead to the
discovery of admissible evidence. Furthermore, the documents are protected under
4901.16, Revised Code.

OCC Set 1

Case No. 17-2474-EL-RDR

**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**

REQUEST FOR PRODUCTION

OCC Set 1 – Please provide any communications in this Proceeding between the Companies and the
RPD-006 PUCO, the PUCO Staff, the Monitor, and/or the PUCO's Attorneys General relating to any draft reports (i.e., draft interim quarterly reports, draft mid-reports, or draft final reports) identified in response to RPD-5.

Response: OCC is not entitled to discovery. In addition, this request is overbroad, unduly burdensome and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Furthermore, the documents are protected under 4901.16, Revised Code.

BEFORE

In the Matter of the Review of the)
Distribution Modernization Rider of) Case No. 17-2474-EL-RDR
Ohio Edison Company, The Cleveland)
Electric Illuminating Company, and The)
Toledo Edison Company.)

**AFFIDAVIT OF ZACHARY WOLTZ IN SUPPORT OF MOTION TO COMPEL
RESPONSES TO DISCOVERY**

I, Zachary Woltz, attorney for the Ohio Consumers' Counsel ("OCC") in the above-captioned case, submit this affidavit in support of OCC's Motion to Compel Responses to Discovery.

1. OCC served its 1st set of discovery requests on FirstEnergy on March 22, 2018. A true and correct copy of OCC's First set of discovery requests is attached as Attachment 1.

2. On April 11, 2018, FirstEnergy sent OCC an email with an attached file containing FirstEnergy's response to OCC's discovery.

3. The following day, April 12, 2018, OCC contacted via email FirstEnergy's Counsel, Carrie M. Dunn-Lucco, seeking clarification on FirstEnergy's claims that responses were confidential even though no responses were given.

4. On April 18, 2018, after not receiving a response, OCC again contacted FirstEnergy's Counsel, via email, to discuss the objections made by FirstEnergy to

OCC's discovery request. The email outlined OCC's rights to discovery, relevance to the proceeding, and FirstEnergy's misinterpretation of R.C. 4901.16.

5. On April 26, 2018, Ms. Dunn-Lucco replied to OCC's emails. Ms. Dunn-Lucco informed OCC of FirstEnergy's objections to discovery requests. Additionally, Ms. Dunn-Lucco notified OCC that FirstEnergy would not be responding to the discovery requests.

6. On May 1, 2018, OCC responded to Ms. Dunn-Lucco's email. OCC respectfully disagreed with FirstEnergy's interpretation of the discovery rules and provided FirstEnergy with PUCO precedent to show discovery was appropriate. OCC requested that FirstEnergy reconsider its position.

7. On June 8, 2018, after numerous attempts to resolve the issue, I discussed the issues with FirstEnergy counsel Brian Knipe. Mr. Knipe informed me that Ms. Dunn-Lucco was no longer participating in this proceeding. Additionally, co-counsel Scott Casto was out of the country. Mr. Knipe requested time to discuss the issue with Mr. Casto upon his return.

8. On June 19, 2018, OCC received an email from the law firm of Jones Day on behalf of FirstEnergy. Jones Day attorney David Kutik reaffirmed the position of Ms. Dunn-Lucco and notified OCC that it would not be providing discovery responses.

9. OCC has exhausted all other reasonable means of resolving the differences with FirstEnergy.

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

The undersigned, being of lawful age and duly sworn on oath, hereby certifies,
deposes and states the following:

I have caused to be prepared the attached written affidavit for OCC in the above
referenced docket. This affidavit is true and correct to the best of my knowledge,
information and belief.


Zachary E. Woltz, Affiant

Subscribed and sworn to before me this 21st day of June 2018.


Notary Public



Debra Jo Bingham, Notary Public
Union County, State of Ohio
My Commission Expires June 13, 2020

Woltz, Zachary

From: Moore, Kevin
Sent: Wednesday, May 09, 2018 12:03 PM
To: Woltz, Zachary
Subject: FW: [EXTERNAL] RE: * Confidential Discovery Response associated with P.U.C.O Case No 17-2474-EL-RDR - - OCC Set 1

From: Moore, Kevin
Sent: Tuesday, May 01, 2018 9:51 AM
To: 'Dunn-Lucco, Carrie M'
Cc: dakutik@jonesday.com; Woltz, Zachary
Subject: RE: [EXTERNAL] RE: * Confidential Discovery Response associated with P.U.C.O Case No 17-2474-EL-RDR - - OCC Set 1

Carrie:

Thank you for the response. I hope everyone in your family is feeling better.

With regards to the arguments in your email, OCC respectfully disagrees. None of the arguments have merit. First, whether the PUCO has scheduled hearings is not relevant. OCC was granted a motion to compel on this precise issue in Case No. 17-219-GA-EXR, which involved an audit of a different utility's riders. Second, whether a proceeding is being "contested" is not the standard for whether discovery is permitted. The discovery standard is explained in the PUCO rules as OCC identified in its last email. And, again, I know of no statute, PUCO rule, or legal precedent that prohibits OCC from engaging in discovery in this proceeding or otherwise limits OCC's rights to conduct discovery in this proceeding. Moreover, OCC has intervened in this proceeding and may "contest" any findings or conclusions reached by the monitor. Lastly, whether a utility opens a docket for its open purposes is also not a standard for whether discovery may be served. The PUCO orders utilities to make filings on a regular basis without prohibiting discovery on the utility. Further, the proceeding was certainly opened for FirstEnergy's purposes as it serves as a review of a rider through which it is charging customers.

I once again urge you to reconsider your position and respond to discovery or OCC will be left with no option but to file a motion to compel. We would expect a response within 5 days.

Also, could you please confirm that your original discovery responses, even though labeled as "confidential" in the subject line, are not considered confidential. OCC does not consider them confidential, and does not plan to treat them as such, as there were no responses; however, we would just like to clarify and confirm that point before moving forward.

Thank you,
Kevin

Kevin F. Moore
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-3485
(614) 387-2965
kevin.moore@occ.ohio.gov

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you are not, or believe that you are not, the intended recipient of this communication, do not read it. Please reply to the sender only and indicate that you have received this message, then immediately delete it and all other copies of it. Thank you.

From: Dunn-Lucco, Carrie M [<mailto:cdunn@firstenergycorp.com>]

Sent: Thursday, April 26, 2018 12:57 PM

To: Moore, Kevin

Cc: dakutik@jonesday.com; Woltz, Zachary

Subject: RE: [EXTERNAL] RE: * Confidential Discovery Response associated with P.U.C.O Case No 17-2474-EL-RDR - - OCC Set 1

Hi Kevin,

My apologies for the delay. We have had quite the illnesses in my household.

Regarding The Office of Ohio Consumers' Counsel's ("OCC") first set of discovery served upon Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's ("Companies") in this matter.

The Companies' respectfully object to responding to any discovery in monitoring docket. The Commission opened this docket to implement the third-party monitor portions of ESP IV. The Commission has not scheduled any proceedings or hearings relating to this docket. Moreover, this is neither a contested proceeding nor did any utility open this docket for its own purposes. For those reasons, discovery in this docket is not provided by the Commission's rules and is not appropriate. Consequently, the Companies will not be responding to the discovery served by OCC. We do however reserve the right to make particularized objections to your request

Thanks,

Carrie

Carrie M. Dunn-Lucco
Attorney
FirstEnergy Service Company
76 S. Main St.
Akron, OH 44308
Tel: 330-761-2352
Fax: 330-384-3875
cdunn@firstenergycorp.com

From: Kevin.Moore@occ.ohio.gov <Kevin.Moore@occ.ohio.gov>

Sent: Wednesday, April 18, 2018 2:05 PM

To: Dunn-Lucco, Carrie M <cdunn@firstenergycorp.com>

Cc: Sweeney, Karen A. <ksweeney@firstenergycorp.com>; dakutik@jonesday.com; Zachary.Woltz@occ.ohio.gov

Subject: [EXTERNAL] RE: * Confidential Discovery Response associated with P.U.C.O Case No 17-2474-EL-RDR - - OCC Set 1

Hi Carrie:

While OCC has not received a response to its initial email, I'd like to follow up with you regarding FirstEnergy's objections to OCC Set 1.

FirstEnergy did not provide responses to any of the requests in OCC Set 1. Instead, it made 3 objections to each request. FirstEnergy's objections and OCC's response to each are below:

1. "OCC is not entitled to discovery."
 - a. As an initial matter, OCC requests further explanation of this objection. Taken at face value, the objection has no merit. The Ohio Rev. Code and Ohio Admin. Code both give OCC, as a party to this proceeding, the right to serve discovery as soon as the proceeding begins on any non-privileged matter which is relevant to the subject matter of the proceeding. (See R.C. 4903.082, O.A.C. 4901-1-16(B), OAC 4901-1-17(A)). FirstEnergy has not asserted that the information is privileged (other than under RC 4909.16, which I will discuss below). I know of no statute, PUCO rule, or legal precedent that prohibits OCC from engaging in discovery in this proceeding or otherwise limits OCC's rights to conduct discovery in this proceeding.
2. "In addition, this request is overbroad, unduly burdensome and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence."
 - a. This objection has no merit as well. OCC's discovery requests are common, clear, well-defined, and relate to directly to the issues in this case. For example, OCC Set 1, RPD 5 requested that FirstEnergy provide copies of any draft quarterly interim reports, mid-reports, and final reports that it has received. This request is not overbroad—it identifies specific documents. The request is not unduly burdensome—it requests FirstEnergy to give certain documents when and if it has them in its possession. And the request is not irrelevant—these reports are specifically contemplated in the PUCO Entry's in this case. (See December 13, 2017 Entry at RFP page 1). Therefore, any drafts of the reports will enable OCC to examine any conclusions, results, or recommendations formulated by the Monitor as part of any draft reports and how those recommendations changed between the draft and final reports. This will enable OCC to assess the justness and reasonableness of the Monitor's conclusions in its final reports. And it will inform OCC as to whether the process is truly an independent process, as the PUCO intended. This is especially needed where the Monitor is not subject to discovery that is otherwise permitted between and among parties to a PUCO proceeding.
3. "Furthermore, the documents are protected under 4901.16, Revised Code."
 - a. This objection has no merit. R.C. 4901.16 applies to an employee or agent of the PUCO. FirstEnergy is not an employee or agent of the PUCO. OCC is requesting the information from FirstEnergy. Therefore, R.C. 4901.16 does not apply. I know of no legal precedent to the contrary. In addition, other Ohio utilities have voluntarily released draft audit reports through discovery in PUCO proceedings without consequence. Duke recently did so in its DCI annual audit (Case No. 17-1118-EL-RDR).

I hope you will reconsider your position and supplement FirstEnergy's responses to OCC Set 1. OCC expects a response within 5 days. If the matter cannot be resolved we will be forced to file a motion to compel the responses.

Please let me know if you'd like to discuss.

Thank you,
Kevin

Kevin F. Moore
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-3485
(614) 387-2965
kevin.moore@occ.ohio.gov

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you are not, or believe that you are not, the intended recipient of this communication, do not read it. Please reply to the sender only and indicate that you have received this message, then immediately delete it and all other copies of it. Thank you.

From: Moore, Kevin
Sent: Thursday, April 12, 2018 9:57 AM
To: Dunn-Lucco, Carrie M
Cc: 'Sweeney, Karen A.'; Woltz, Zachary
Subject: RE: * Confidential Discovery Response associated with P.U.C.O Case No 17-2474-EL-RDR - - OCC Set 1

Carrie:

Thanks for the email. Could you please clarify what, if anything, is confidential about the responses/objections?

FirstEnergy's email states that its responses to OCC's 1st set are confidential, yet there are no responses attached. Were the responses accidentally omitted? If not, is FirstEnergy claiming that its objections are confidential? If so, why? Or, is FirstEnergy simply objecting to the requests because it believes the unprovided responses to be confidential? If so, why does the email subject line state that the information contained herein is confidential?

Either way, FirstEnergy and OCC have not entered into a Protective Agreement in this proceeding. I have attached a draft protective agreement should one be needed.

OCC also disputes the merit of FirstEnergy's objections. After we clarify what exactly FirstEnergy is claiming is confidential we can discuss FirstEnergy's objections and hopefully resolve the issue.

Thank you,
Kevin

Kevin F. Moore
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-3485
(614) 387-2965
kevin.moore@occ.ohio.gov

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From: Sweeney, Karen A. [<mailto:ksweeney@firstenergycorp.com>]
Sent: Wednesday, April 11, 2018 5:16 PM
To: McCarter, Doris; Moore, Kevin
Cc: Fanelli, Santino L; Dunn-Lucco, Carrie M
Subject: * Confidential Discovery Response associated with P.U.C.O Case No 17-2474-EL-RDR - - OCC Set 1

1. Response to PUCO Case No. 17-2474 – DMR OCC Set 1

The Discovery Response is true and accurate based on information currently available to the Companies. These responses are confidential pursuant to O.R.C 4901.16. If you have any questions, please contact Sonny Fanelli at 330-761-7772 or sfanelli@firstenergycorp.com.

Karen A. Sweeney
Rates & Regulatory Affairs-Ohio
FirstEnergy Service Company
Phone: (330) 761-7889
ksweeney@firstenergycorp.com

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Case No(s). 17-2474-EL-RDR

Summary: Motion Motion to Compel Responses to Discovery by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Woltz, Zachary E.