

**In the Matter of the Review of Ohio Edison)
Company, The Cleveland Electric Company,)
and The Toledo Edison Company's) Case No. 17-0974-EL-UNC
Compliance with R.C. 4928.17)
)**

*On behalf of Ohio Edison Company,
The Cleveland Electric Illuminating Company,
and The Toledo Edison Company*

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I. INTRODUCTION

The current discovery dispute arises from the notion held by the Office of the Ohio Consumers' Counsel ("OCC") that it should serve as the uber-auditor for any examination undertaken by or on behalf of the Commission or its staff. Long before the issuance of the audit report in this case, OCC demanded discovery of everything Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies") had provided to the Commission's appointed auditor. OCC contended that it needed discovery "post haste" to make sure that the auditor was asking the right questions.¹ The Companies resisted OCC's improper attempt to insert itself into the audit process. Notably, the Companies said that they would appropriately supplement their discovery responses after the final audit report was issued. That report was filed on May 14, 2018, and since that time, the Companies have provided OCC with nearly all the information it requested. Yet, consistent with its view that it serves as the uber-auditor in Commission investigations and audits, OCC now contends that because it has not received every shred of data the Companies gave to the auditor, the Companies have not met their obligations under the discovery rules.

In this first-of-its-kind case, the Commission should be wary of establishing a precedent requiring the Companies and future, similarly situated companies to provide intervening parties with everything that was given to the auditor; all of the information requested by the auditor will not be relevant to the final report in each of these cases. Given that the Companies were expressly ordered not to object to any data requests from the auditor², the fact that there was a response to a data request from the auditor does not make the response or information contained

¹ Companies' Memorandum Contra the Motion to Compel of the Office of the Ohio Consumers' Counsel, at 11 (April 13, 2018) ("Memo Contra").

² Entry at ¶ 11 (May 17, 2017) ("Upon request of the auditor or Staff, FirstEnergy shall provide any and all documents or information requested.")

therein relevant. Indeed, the auditor's requests here required the Companies to produce voluminous, sensitive information about their finances and operations, and as explained below, a number of these requests have no bearing on whether the Companies are in compliance with Ohio's corporate separation requirements and no bearing on the conclusions, results, and recommendations of the final report. The Companies' responses are therefore not discoverable.

As they were ordered to do, the Companies cooperated completely during the audit period. Now, they have in good faith provided OCC with nearly all they gave to the auditor. Thus, OCC's motion to compel is now mostly moot. What's left is OCC's groundless insistence on its entitlement to the production of materials that are facially irrelevant. If the Commission should effectively adopt a rule that any auditor's request is relevant and properly the subject of subsequent discovery, the Commission will be setting a dangerous precedent; a precedent that will be sure to make those entities subject to audits less willing to produce irrelevant material, regardless of any prior orders not to object. It will set a precedent which will require entities subject to audits to resist and even litigate the propriety of data requests. It will set a precedent that will make audits more difficult, more lengthy, and more expensive. The Motion to Compel should be denied.³

II. RELEVANT FACTS

A. Procedural History

On April 12, 2017, the Commission opened this docket to audit the Companies' compliance with the Commission's corporate separation rules. A month later, the Commission issued an Entry ordering that Staff issue a request for proposal to select an auditor to assist the

³ Attachment 1 hereto is a schedule showing (1) the responses to the auditor's requests that remain in dispute and (2) the responses that have been produced to OCC.

Commission with the review of the Companies' compliance.⁴ On July 5, 2017, the Commission ordered that Sage Management Consultants, LLC ("Sage") perform the audit.⁵ Initially, the audit period was to conclude on February 28, 2018 with the final report due on March 14, 2018.⁶ The Commission later extended the audit period with the final audit report due on May 14, 2018.⁷

During the audit period, the Companies responded to approximately 250 data requests from Sage. Those requests were numerous and broad, covering virtually every aspect of the Companies' operations and finances.⁸ Sage filed the Final Report of the Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio (the "Audit Report") on May 14, 2018.

B. OCC's Discovery Requests

On February 13, 2018, several months before Sage had issued the Audit Report, OCC served the Companies with requests for production ("RPDs").⁹ The RPDs sought, among other things, each and every data request that the Commission, its Staff, the Auditor, and the Attorneys General formally or informally served on the Companies and the Companies' responses thereto.¹⁰ The Companies timely submitted responses and properly objected to the requests.

OCC moved to compel the Companies' responses to its RPDs on March 29, 2018. The Companies responded on April 13, explaining that, since the Audit Report had not yet been issued, OCC's discovery requests were, at best, premature and that numerous requests were

⁴ Entry at ¶5 (May 17, 2017).

⁵ Entry at ¶1 (July 5, 2017).

⁶ Entry at Request for Proposal, p. 3 (May 17, 2017).

⁷ Entry at ¶8 (March 22, 2018).

⁸ See Audit Report at Appendix A (listing Sage's document requests); Memo Contra at 9-10.

⁹ OCC's Motion to Compel at Attachment 1.

¹⁰ *Id.*

irrelevant and overbroad in any event.¹¹ The Companies also explained that they would supplement their discovery responses after the Audit Report was issued.¹² OCC filed a reply in support of its motion on April 20. The Commission did not rule on OCC's motion before Sage issued the Audit Report.

Since Sage issued the Audit Report, the Companies and OCC have engaged in several discussions to narrow the number of RPDs in dispute, and the Companies have made supplemental document productions. To date, the Companies have produced, subject to and without waiving their objections, responses to 236 of Sage's 250 data requests, leaving 14 items in dispute.¹³ On September 27, the Companies reached out to OCC in a final attempt to resolve the remaining issues.¹⁴ OCC indicated that it was not prepared to discuss a resolution before the filing of this Memorandum.¹⁵

In short, in their effort to resolve this dispute, the Companies have produced the vast majority of the information they provided to Sage, even if that information was of questionable relevance to this case. As demonstrated below, the only items that remain at issue are irrelevant to the parties' examination of the Audit Report and are therefore not subject to discovery.

III. LAW AND ARGUMENT

Relevance is the touchstone of discoverability in proceedings before the Commission. Rule 4901-1-16 of the Ohio Administrative Code limits discovery to non-privileged information "which is relevant to the subject matter of the proceedings." And the Commission routinely

¹¹ *See generally* Memo Contra.

¹² *Id.* at 11.

¹³ In addition to producing the Companies' responses to Sage's data requests, the Companies have also directed OCC to the location of publicly available documents that were responsive to several of Sage's other requests. *See* Rule 4901-1-20 (D) ("Where a request calls for the production of a public document on file in this state, . . . it is a sufficient response to such request to specify the location of the document")

¹⁴ *See* Attachment 2 hereto.

¹⁵ *Id.*

denies motions to compel when the movant seeks the production of irrelevant information or when the discovery requested is vague, overly broad or otherwise objectionable.¹⁶

The subject matter of this proceeding is the “conclusions, results, or recommendations formulated by the auditor,” as explained in the Audit Report.¹⁷ OCC’s request for the wholesale production of all information the Companies provided in response to Sage’s requests goes far beyond the four corners of that report, and OCC has nowhere explained why every last data request submitted by Sage is relevant here. OCC contends that it needs all of this information in order make a recommendation “on behalf of residential customers who could be harmed by any anti-competitive activities of FirstEnergy that affect the competitive generation market.”¹⁸ But the 14 items that remain in dispute have no conceivable nexus either to the conclusions, results, or recommendations of the Audit Report or to any potentially “anti-competitive activities.”

A. OCC seeks irrelevant financial data.

Eight of the 14 auditor requests OCC continues to pursue concern the Companies’ finances. These requests are:

- Request 53 – Schedule of long-term debt for all three Ohio companies as of December 31, 2016 and June 30, 2017.

¹⁶ See, e.g., *In the Matter of the Application of Buckeye Wind LLC for a Certificate to Construct Wind-powered Electric Generation Facilities in Champaign County, Ohio*, Case No. 08-666-EL-BGN, 2009 Ohio PUC LEXIS 931 at *8-12 (Oct. 30, 2009) (denying in part motion to compel because several discovery requests were irrelevant, vague and overly broad); *In the matter of the Application of Middletown Coke Co.*, Case No. 08-281-EL-BGN, 2008 Ohio PUC LEXIS 821 at *3-4 (Nov. 4, 2008) (denying motion to compel and holding that irrelevant material was not subject to discovery); *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, 2003 Ohio PUC LEXIS 392 at *34-35 (Sept. 2, 2003) (acknowledging the general rule that discovery is limited to materials “relevant to the subject matter of the proceeding” and denying motion to compel because “the information sought would not be relevant to the determination of [the present] matter”); *In the Matter of the Complaint of Ruth L. Wellman v. Ameritech Ohio*, Case No. 99-768-TP-CSS, 2002 Ohio PUC LEXIS 554 at *2-19 (June 21, 2002) (denying motion to compel where discovery requested was vague, “not imperative in a final determination of [the] matter,” overly broad, and because the respondent had already responded to several of the discovery requests at issue); *In the Matter of Bauman v. The Western Reserve Telephone Co.*, Case No. 90-1095-TP-PEX, 1991 Ohio PUC LEXIS 325 at *7-9 (denying a motion to compel discovery because requested information was irrelevant to the proceeding).

¹⁷ See Entry at Request for Proposal, p. 2 (May 17, 2017) (noting that the role of the parties would be limited to the examination of the “conclusions, results, or recommendations formulated by the auditor.”).

¹⁸ OCC Reply in Support of Motion to Compel at 12.

- Request 151 – Most recent Earnings Driver Report for the three Ohio companies.
- Request 152 – Most recent O&M [Operation and Maintenance] Analysis for the three Ohio companies.
- Request 153 – Most recent Earnings Report for the same period as the two previous documents.
- Request 154 – Power Point presentation of actual vs budget and forecast for the same period as above.
- Request 164 – Sample Daily Cash Position report for September 27, 2017.
- Request 165 – Sample SAP “Net Cash Position by Entity” report for September 27, 2017.
- Request 166 – Quarterly Cash Position/Transaction reports sent to PUCO for 2016 and YTD 2017.

None of these requests are relevant here. The Companies’ debt schedules, operations and maintenance expenses, earnings information, and cash position at distinct moments in time have no bearing on the Audit Report’s conclusions, results, or recommendations. Indeed, this information is nowhere referenced in the Audit Report, and it is facially irrelevant to whether the Companies are in compliance with Ohio’s corporate separation rules.

Sage’s mandate was to confirm that: (1) the Companies’ competitive affiliates do not have unfair access to information about the Companies’ transmission or distribution systems; (2) no anticompetitive subsidies exist between the Companies and its competitive affiliates; (3) the Companies do not give preferential treatment to their competitive affiliates or their customers; and (4) shared employees of the Companies and their affiliates clearly disclose upon whose behalf public representations about the provision of electric services are being made.¹⁹ The hard financial data sought in the requests above simply does not inform any issue concerning the

¹⁹ Audit Report at 2-3.

interactions -- financial or otherwise -- between the Companies and their competitive affiliates or the customers of those affiliates.

B. The remaining requests are similarly irrelevant to this case.

The Companies' responses to the six remaining requests in dispute are similarly irrelevant to the parties' review of the Audit Report. None of the following requests seek any information that speaks to the Companies' compliance efforts or to their relationships with competitive affiliates.

Request 49 – Most Recent CAM audit report for Maryland. This request seeks information that does not relate to the Companies, their competitive affiliates, or Ohio's corporate separation rules. Rather, the information sought concerns only the costs allocated to FirstEnergy Corp.'s electric utility subsidiary in Maryland, The Potomac Edison Company, in accordance with Maryland law. This information is irrelevant here, and any information relevant to allocations to the Companies has already been given to OCC.²⁰

Request 104 – Latest Reliability Audit. The audit sought by this request relates to FirstEnergy utilities' compliance with the reliability standards of the North American Electric Reliability Corporation ("NERC"). During the audit, the Companies advised Sage that they viewed that information as irrelevant to any issue relating to corporate separation. Sage apparently agreed, and did not press the Companies to provide this information. Indeed, the reliability audit does not speak to or otherwise impact any interactions or exchanges of information between the Companies and their competitive affiliates. Thus, the reliability audit sought by Request 104 is irrelevant to the Companies' compliance with Ohio's corporate separation requirements.

²⁰ See *infra* at n.21.

Requests related to shared services budgeting. Two of Sage’s requests sought high-level information about FirstEnergy’s shared services budgeting process. The first, Request 128, asked for “[a]ctual results compared to budget for Shared Services departments for the past five years (2012-2016) and YTD 2017.” The second, Request 129, sought a “[d]escription of the budget process for the Shared Services process.” Neither request is relevant to this proceeding. To be sure, certain information regarding Shared Services costs is pertinent to the Audit Report, namely how those costs are allocated among the Companies and their affiliates. That information has been provided to OCC.²¹ But the high-level information—which is not specific either to the Companies or their competitive affiliates—about how FirstEnergy Corp. creates a budget for the Shared Services departments and how its aggregate budget figures compared to year-end actuals is entirely immaterial.

Requests related to insurance claims and premiums. Sage’s Request 196 asked for a list of “property insurance claims greater than \$10 million for the past five years (2012 – 2016) and YTD, 2017.” Request 197 sought a schedule of the Companies’ insurance premiums for the same period of time. Neither property insurance claims nor the premiums paid by the Companies is properly discoverable. That information is plainly irrelevant to anything in the Audit Report, and like the other requests at issue, is nowhere mentioned in the report. Similarly to the requests related to the Companies’ finances discussed above, this hard data does not speak to any relationship between the Companies and their competitive affiliates.

²¹ See, e.g., Attachment 1 hereto at Requests 106 (Amount of direct charges and allocated charges from affiliates to the three Ohio companies for the past five years and YTD, 2017), 107 (Amount of direct charges and allocated charges from affiliates to FES for the past five years and YTD, 2017), 144 (Schedule of all allocation factors used for the past five years), 145 (Schedule of transactions between the three Ohio companies and their affiliates by major account or department and categorized by direct charges and allocations for the past five years (2012-2016)), 183 (2017 Cost Allocation Master File).

IV. CONCLUSION

For these reasons, OCC is not entitled to discovery of the 14 disputed requests. These requests are plainly irrelevant to this case, and OCC has already been provided with voluminous data that will allow it to examine the conclusions, results, or recommendations of the Audit Report. The Commission should deny OCC's Motion.

Respectfully submitted,

/s/ David A. Kutik

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CERTIFICATE OF SERVICE

I certify that this Supplemental Memorandum Contra was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on October 1, 2018. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record.

/s/ David A. Kutik

*Attorney for Ohio Edison Company, The
Cleveland Electric Illuminating Company and
The Toledo Edison Company*

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ATTACHMENT 1

I. Companies' Audit Responses in Dispute

Request Number	Request
49	Most recent CAM audit report for Maryland
53	Schedule of long-term debt for all three Ohio companies as of December 31, 2016 and June 30, 2017
104	Latest reliability audit
128	Actual results compared to budget for Shared Services departments for the past five years (2012–2016) and YTD 2017
129	Description of the budget process for the Shared Services departments
151	Most recent Earnings Driver Report for the three Ohio companies
152	Most recent O&M Analysis for the three Ohio companies
153	Most recent Earnings Report for the same period as the two previous documents
154	Power Point presentation of actual vs budget and forecast for the same period as above
164	Sample Daily Cash Position report for September 27, 2017
165	Sample SAP “Net Cash Position by Entity” report for September 27, 2017
166	Quarterly Cash Position/Transaction reports sent to PUCO for 2016 and YTD 2017
196	List of property insurance claims greater than \$10 million for the past five years (2012 – 2016) and YTD, 2017
197	Schedule of insurance premiums for the past five years (2012 – 2016) and YTD, 2017

II. Companies' Audit Responses Provided to OCC

Request Number	Request
1	Detailed current organization charts of the three Ohio operating companies (Companies) and each affiliate with which the Companies had transactions over the past five years (2012–2016) and YTD June 30, 2017 (their affiliates), showing all positions, the reporting relationships (superior and subordinates), the title of the position, department or unit name, the cost center, and the current incumbent (or indicate that the position is vacant)
2	Current legal entity organization chart (sometimes called the tax entity chart) showing all FirstEnergy subsidiaries and investments including percentages owned and the relationships of each entity to one another
3	Accounting policies and procedures manuals for the Companies and their affiliates
4	List of all internal audit reports issued in the past five years (2012–2016) and YTD June 30, 2017 for the Companies and each of their affiliates
5	Most recent audited financial statements for the Companies and each of their affiliates
6	Most recent external audit letters regarding any material weaknesses or significant deficiencies identified during the audits of the Companies and each of their affiliates
7	Policies and procedures concerning information technology security and physical separation of data for the Companies and each of their affiliates
8	Description of financial computer system access controls (identification, authorization, authentication, and access approvals) and access monitoring procedures in place for the Companies and each of their affiliates
9	Copies of attestations of effectiveness of financial system access controls issued for the past five years (2012 – 2016) and YTD June 30, 2017 for the Companies and each of their affiliates
10	Procedures for testing protections for the Companies' and each of their affiliates' information systems
11	Most recent audits or tests of safeguard practices and procedures for information systems for the Companies and each of their affiliates
12	Policies and procedures regarding joint purchases by the Companies and affiliated entities
13	List of all Companies' joint purchases with their affiliates for the past five years
14	Policies and procedures regarding accounting and billing for any joint purchases by the Companies and affiliates
15	Schedule detailing tariff electric services provided by the Companies to affiliates over the past five years (2012–2016) and YTD June 30, 2017
16	Schedule detailing non-tariff electric services provided by the Companies to affiliates over the past five years (2012–2016) and YTD June 30, 2017

Request Number	Request
17	Schedule detailing any tariff services provided by the Companies' affiliates to the Companies over the past five years (2012–2016) and YTD June 30, 2017
18	Schedule detailing any non-tariff services provided by the Companies' affiliates to the Companies over the past five years (2012–2016) and YTD June 30, 2017
19	Customer Service policies and procedures governing the treatment of the Companies' customers regarding discounts and any types of fee waivers
20	Report of discounts and waivers provided to the Companies' affiliates or customers of affiliates in the past five years (2012–2016) and YTD, June 30, 2017
21	List of all the Companies' tariffs with instructions for normal and any special customer treatment
22	Description of the Companies training of employee or contractor representatives regarding customer discount provisions
23	Policies and procedures of the Companies and their affiliates governing public statements on who they are representing concerning the provision of electric services
24	List of all shared representatives or shared employees between the Companies and any of their affiliates, their titles, duties, and locations
25	Schedule of all public representations concerning the provision of electric services given by shared representatives or shared employees in the past five years (2012 – 2016) and YTD June 30, 2017
26	The Companies and their affiliates cost allocation manuals (CAMs) and/or other documented policies and procedures governing the charging, assigning, and allocation of prices and costs of inter-affiliate transactions
27	Schedule of distribution of the Companies and their affiliates CAM(s)
28	Schedule of all internal audits conducted on the CAM(s) over the past five years (2012–2016) and YTD, June 30, 2017
29	Schedule of goods, services, asset transfers, and any other exchanges of value provided by the Companies to each of its affiliates in the past five years (2012–2016) and YTD June 30, 2017.
30	Schedule of goods, services, asset transfers, and any other exchanges of value provided to the Companies by each of their affiliates in the past five years (2012–2016) and YTD June 30, 2017
31	Documentation of any fair market value (FMV) calculations made and used to price transfers of goods, services, asset transfers, and any other exchanges of value between the Companies and their affiliates in the past five years 2012–2016) and YTD June 30, 2017
32	Documentation of other valuation used if FMV was not used
33	Describe in detail the process utilized to enter into agreements to purchase wholesale power from other utilities, independent providers or aggregators

Request Number	Request
34	For each purchase of wholesale capacity and/or energy from an affiliate in the past five years (2012-2016) and YTD, June 30, 2017, please provide the following: a. The name of the affiliate and relationship to the Companies b. The resulting agreement c. The price paid for capacity and energy d. The total annual costs of energy and capacity received e. The energy supplied by year (in MWh) f. The capacity provided by year (in MW-Year) g. The process used to select the affiliate as provider of capacity and/or energy h. The cost/benefit analysis supporting the purchase
35	For each sale of wholesale capacity and/or energy to an affiliate in the past five years (2012-2016) and YTD June 30, 2017, please provide the following: a. The name of the affiliate and relationship to the Companies b. The resulting agreement c. The price received for capacity and energy d. The total annual costs of energy and capacity received e. The energy provided by year (in MWh) f. The capacity provided by year (in MW-Year) g. The process used to select the affiliate as provider of capacity and/or energy h. The cost/benefit analysis supporting the sale
36	Corporate Separation Plan
37	Please provide access to the Regulated Commodity Sourcing sharepoint site
38	Please provide the documents that define ESP IV
39	For each SSO auction that occurred in the years 2012 through 2016, please provide a list of the bidders in each auction, a list of the winning bidders in each auction and the number of tranches won by each winning bidder
40	Please provide all communications between the consultant and FES in the years 2012 through 2016
41	Please provide all communications between ED Regulated Commodity Sourcing and FES in the years 2012 through 2016
42	2014/2015 Corporate Separation Rules Internal Audit
43	Description of scoring system used to rank proposed areas that were included in the 2017 Audit Plan
44	2017 Internal Audit Plan
45	List and description of SOX controls and reports
46	Identification of the SOX controls and reports relevant to compliance with the Ohio corporate separation rules
47	List, description, and resolution of all calls received on the FE hotline in for the last five years and YTD 2017
48	Most recent Internal Audit report to the Audit Committee
50	List of all SOX control or audit failures for the past five years and YTD
51	FirstEnergy Credit Facility
52	FirstEnergy Money Pool agreement

Request Number	Request
54	Charter or policies and standards governing the Pension & Investments Committee
55	Description of the Operating and Capital Budgeting Processes
56	Current credit ratings of all FirstEnergy companies
57	Please provide a copy of the August 22, 2017 Kick-Off Meeting presentation
58	Please provide copies of all press releases, presentations, SEC filings, and other publicly available information relevant to exiting competitive generation
59	Please provide the Code of Conduct
60	Please provide the Code of Conduct training materials
61	Please provide the FERC independent functioning requirements, information sharing restrictions, and the No Conduit Rule
62	Please list the number of employees by legal entity and department in each FERC classification
63	Please list the number of contractors in each FERC classification by company
64	Please describe the physical access rights for each FERC classification in as much detail as possible
65	Please describe the electronic (information) access rights for each FERC classification in as much detail as possible
66	Please provide the Affiliate Restrictions training materials
67	Please provide a list of the names, titles, and physical location by legal entity and department of the employees who successfully completed Affiliate Restrictions training in the last 12 months (through August 2017)
68	Please describe how the “other employees” regularly interact with Marketing Function Employees
69	How can we verify which employees completed the Affiliate Restrictions training in the last 12 months?
70	Please provide a list of the names and titles by department of the employees who have not successfully completed FERC Standards of Conduct training in the last 12 months (through August 2017)
71	Please provide a copy of the latest internal audit of compliance with the FERC Standards of Conduct
72	Please provide a copy of the latest external audit of compliance with the FERC Standards of Conduct
73	How can we verify that the other employees not listed in the previous request completed the FERC Standards of Conduct training in the last 12 months?
74	Please provide the FERC requirement for annual refresher training on FERC Standards of Conduct (SOC)
75	Please provide a list of all of the TFE employee work spaces with full addresses and a description of each facility

Request Number	Request
76	Please provide all monthly and annual reports referenced as sub-bullet points under the “Compliance Monitoring of Corporate TFE Workshops” bullet
77	Please provide a detailed description of each of the sub-bullet points (SAP Privileged Access, Segregation of Duties, etc.) with a reference to the formal system and procedural controls for each
78	Please provide a copy of the latest Quarterly Review of Separations & Transfers
79	Please describe the process for allowing CRES providers with access to the Customer Information List
80	Please provide a sample of the Customer Information List data to which the registered CRES providers have access. Please disguise any actual customer information.
81	Please provide a list of all of the CRES providers’ requests for additional information not on the Customer Information List for the last five years and year-to-date 2017 including the CRES provider, the information requested, and whether or not the requested information was provided.
82	For each customer service level (e.g., CSR, supervisor, and manager), please provide the degree of discretion each level has for approving discounts and fee waivers by type (late payment charges, return check charges, etc.)
83	Please describe in detail the “weeks of additional training for new skills” and the employee categories that receive the training.
84	Does FES pay royalties to the Ohio companies for use of the FirstEnergy name? If so, please list the payments for the last five years and the expected payments for 2017. If FES does not pay name royalties to the Ohio companies, please explain the rationale on why not
85	Please provide the results of the periodic reviews of compliance efforts for the last five years and year-to-date
86	We understand that the FirstEnergy Solutions Retail Sales & Marketing function has been transferred out of FES to the Marketing & Branding group. However, the FES page on the FirstEnergy web site promotes retail sales. a. How are retail sales in Ohio to be handled going forward? b. Which employees (legal entity and department) handle FES retail sales and service? c. Which legal entity will sell retail services? d. Which legal entity will hold the retail sales book? e. Which legal entity will provide the retail services?
87	For each PIPP auction that occurred in the years 2012 through 2016 and year-to-date, please provide a list of the bidders in each auction, a list of the winning bidders in each auction and the number of tranches won by each winning bidder.
88	Please provide all communications between PIPP bidders and ED Regulated Commodity Sourcing in the years 2012 through 2016.
89	Please provide all communications between SSO bidders and ED Regulated Commodity Sourcing in the years 2012 through 2016 and year-to-date.

Request Number	Request
90	For each REC auction that occurred in the years 2012 through 2016 and year-to-date, please provide a list of the bidders in each auction, a list of the winning bidders in each auction, and the number of RECs won by each winning bidder.
91	Please provide all communications between the consultant and FES in the years 2012 through 2016 and year-to-date.
92	Please provide all communications between REC auction bidders and ED Regulated Commodity Sourcing in the years 2012 through 2016 and year-to-date.
93	Please describe the processes and limitations in place to restrict communications between select employees.
94	Please provide all communications in the years 2012 through 2016 and year-to-date between the strategy department and FirstEnergy Solutions.
95	Please provide all communications in the years 2012 through 2016 and year-to-date between the strategy department and ED Regulated Commodity Sourcing.
96	Please provide all communications in the years 2012 through 2016 and year-to-date between the strategy department and any FirstEnergy transmission functions.
97	Please confirm that there are no technological limitations on contacts between FE employees for Company email, land lines, and cell phones. Please describe any technological limitations in effect.
98	Please describe how the FE e-mail system is linked to the Code of Conduct
99	List of goods and services that can be acquired that do not have to go through Supply Chain and the organizational unit that can acquire each
100	List of goods and services provided to the Ohio utilities contracted and supplied through FirstEnergy's Supply Chain
101	List of goods and services provided to the Ohio utilities not contracted and supplied through FirstEnergy's Supply Chain
102	Most recent proxy statement
103	List of Compliance Champions for each of the Ohio utility companies
105	FirstEnergy FERC Form 60's for the last five years (2012-2016)
106	Amount of direct charges and allocated charges from affiliates to the three Ohio companies for the past five years and YTD, 2017
107	Amount of direct charges and allocated charges from affiliates to FES for the past five years and YTD, 2017
108	List of SOX controls in the Assistant Controller – Corporate area
109	List of SOX controls related to CAM issues
110	Description of training provided to service representatives

Request Number	Request
111	Number of personnel trained by type of training
112	Training curriculum for service representatives
113	Training material for the PUC's Apples to Apples, specific state requirements, SSO options, how to explain competitive shopping, price to compare, how to refer customers to the Web site, and other customer choice topics
114	Training material for supplier service training
115	Annual Quality Score for 2016 for each customer contact center
116	Monthly and annual statistics concerning customer calls by state
117	Current contract with the customer service contractor
118	Current contract with the customer service contractor
119	Current contract with the customer service contractor
120	Number and percentage of total calls that are listened to for quality assurance at each of the Customer Contact Centers for the past five years (2012–2016) and YTD 2017
121	Monthly and annual statistics concerning customer calls by state
122	Five year and year-to-date statistics on Ohio shopping statistics including the number of customers by class (residential, commercial, and industrial) choosing affiliated suppliers versus the total number of shopping customers
123	Example of a completed 1039 form for J&C work performed by CEI or FirstEnergy
124	Description of the Customer Support Training program
125	Supplier training materials for customer support reps
126	Shopping customer training materials for customer support reps
127	Attendees, agenda, and minutes for the September meeting of the Customer Support and National Accounts personnel
130	Overview of the financial planning system and description of how it is used for the FirstEnergy Shared Services departments
131	Overview of the report writer and description of how it is used for the FirstEnergy Shared Services departments
132	Confirmation that the Customer Support Representatives for the three Ohio Companies have all received Affiliate Restrictions training for the last five years. Identify any exceptions.
133	All metrics for Customer Self-Service for 2016 and YTD 2017, identifying customer interaction by state
134	Overview description of the customer service system

Request Number	Request
135	Backlog report as of August 31, 2017
136	Quarterly Quality Assurance Review for August 2017
137	Blank screen shot of “Contact Us.”
138	Sample customer service report of inquiry from customer and Customer Self-Service reply
139	Statistics re: training provided to the three Ohio utility companies in 2016 and YTD 2017, broken out by hard-copy training vs on-line training
140	Presentation re: Code of Conduct given at the September 18, 2017 Audit Committee meeting
141	Description of the Annual Audit Plan Risk Scoring process.
142	Overview description of the risk tracking system
143	Most current Open Issues Report
144	Schedule of all allocation factors used for the past five years (2012-2013)
145	Schedule of transactions between the three Ohio companies and their affiliates by major account or department and categorized by direct charges and allocations for the past five years (2012-2016)
146	Sample of the Service Company Cost Center Review document for the last annual update
147	Sample of a completed SOX control test
148	Refresher time charging training documentation (Webinar)
149	Policies and Procedures concerning the refresher training on Sharepoint
150	Schedule of all refresher training specific to utilities
155	Sample documentation of the annual review of the cost center allocations
156	Report of number of inquiries and resolutions for 2016 and YTD 2017
157	Most recent Dashboard
158	Description, purpose, and membership of the Corporate Compliance Training Governance Committee
159	Overview and description of the risk system
160	Most recent Risk presentation to the Audit Committee
161	Anti-market manipulation training policy
162	Anti-market manipulation reference case

Request Number	Request
163	Description of the purpose and operations of the following subsidiary companies to the three Ohio utility companies: · OE Funding, LLC · OES Ventures, Inc. · Pennsylvania Power Company · CEI Funding, LLC · Toledo Edison Capital Corporation · TE Funding, LLC
167	Description of the Money Pool interest rate calculation
168	Current and 2018 planned FES CRES related Ohio employee staffing, sales agents, and advertising budgets
169	Any policy, procedure, job description, or other document that states that the Director of State Affairs for Ohio does not represent FirstEnergy Solutions and/or only represents the three FirstEnergy Ohio utilities
170	Please confirm that FirstEnergy is exiting the competitive retail electric “commodity exposed” business in Ohio in conjunction with its exit of the “commodity exposed” generation business
171	In conjunction with the exiting of the “commodity exposed” businesses, has FirstEnergy identified a need to reduce its FirstEnergy Service Company costs and/or staffing level going forward? If so, by how much and when?
172	Please provide the current strategic plan(s) covering FirstEnergy Solutions, FirstEnergy Utilities, and FirstEnergy Service Company
173	List of all “transmission and distribution systems (e.g., system operations, capability, price, curtailments, and ancillary services)” and for each system provide: · A detailed description of the system · The title and organization of the principal system user/owner · The titles and organizations of administrative rights holders · Do any competitive retail electric service providers have access to the system? If so, which ones and how? · How are FES CRES related personnel prevented from accessing the system · A detailed description of the authorization authentication levels and procedures for the system, e.g. user names, passwords, and RSA token fobs
174	List and copies of all Critical Infrastructure Protection related transmission and distribution system rules and descriptions of how FirstEnergy complies with or exceeds each rule
175	Updated organization chart shown during the interview
176	List of categories of skill sets for contact center employees
177	Number of employees (including contractors) at each contact center categorized by the skill sets for which they are qualified
178	Most recent available documentation of the FERC Standards of Conduct and Affiliate Restriction training received by contractor CSRs
179	Attestation and most recent available documentation of the quality assurance reviews conducted by the contractor on its CSRs that answer FE customer calls.
180	Percentage of FirstEnergy Credit Calls handled by the contractor for the past five years (2012 -2016) and YTD, 2017

Request Number	Request
181	Most recent customer service benchmarking report that includes FirstEnergy customers
182	Description and numerical code structure of FE's Cost Collectors
183	2017 Cost Allocation Master File
184	Details and results of the latest testing performed for SOX control ANR-CTL1088
185	Draft of Internal Audit report of CAM or cost allocation audit of New Jersey and Pennsylvania
186	Please verify that all new CSR employees and contractors receive the same "On-Boarding" training
187	Please verify that contractor CSRs receive the same training as their comparable FE CSRs.
188	Please verify that contractor CSRs forward all customer questions regarding suppliers of retail power to the Customer Contact Centers
189	Training Plan for 2017
190	Call Forecast for 2017
191	Staffing Master for 2017
192	Most recent monthly QA Report from the customer service system
193	Most recent Daily ASA report for Ohio
194	Please verify that there is a record of all FE employees' FERC Standards of Conduct training and Affiliate Restrictions training in the Map My Learning data base.
195	Schedule of direct charges and allocations from the Insurance & Operational Risk department to operating units or companies in 2016 and YTD, 2017
198	Schedule of risks concerning the three Ohio companies from the ERM data base
199	Description of framework for assigning risk levels and velocity
200	Most recent annual risk presentation given to the ELT
201	Most recent audit regarding access to the ERM data base
202	Referring to the responses to DR 036, Attachment 1 and DR 059, please reconcile each of the 11 articles and sub articles in the Corporate Separation Plan Code of Conduct starting on page 7 with the specific section in the DR 007 response (page and section number) that reflects the compliance program for each element of the Corporate Separation Plan Code of Conduct.

Request Number	Request
203	Referring to the responses to DR 036, Attachment 1 and DR 059, please identify and detail any compliance program other than the FERC compliance program relevant to the 11 articles and sub articles in the Corporate Separation Plan Code of Conduct starting on page 7.
204	Please provide the number of customers of The Waverly Electric Light and Power Company and describe its state(s) of operation and its service territory.
205	Please explain in detail how each organizational unit in the FE Service Company Retail Sales & Marketing Group supports the FirstEnergy Solutions competitive retail electric services sales and support in Ohio.
206	Please list each Ohio related FirstEnergy Solutions and FirstEnergy Service Company competitive retail electric services sales employee (by legal entity) and sales agent by sales territory and market segment (industrial, commercial, government, residential, etc.).
207	Please explain in detail how each organizational unit in the FE Service Company Marketing & Product Development group supports FirstEnergy Solutions competitive retail electric services sales and support in Ohio.
208	Which organizational units operate and support the Ohio Distribution Control Centers?
209	List of all SOX controls for FEG Business Services, Fossil Generation, and Fleet Support
210	Overview of risk system
211	Sample of January 29, 2018 POLR supplier agreement
212	Sample of ISDA counter-party master agreement
213	List of SOX controls in the Risk Control area
214	Overview of IWD system (with flow charts depicting process, if available)
215	Schedule of customer discounts given by Ohio company for the past six years (2012–2017)
216	Number of Power Billing contracts and amount of revenue from contracts for each of the Ohio companies for the past six years (2012 – 2017)
217	Number of suppliers and amount of revenue per supplier for each of the Ohio companies for the past six years (2012 – 2017)
218	List of all SOX controls in Customer Management
219	Overview of C-Net
220	Control report of goodwill credits granted for the past six years (2012–2017)
221	Payment posting priority

Request Number	Request
222	Overview of the customer service system.
223	Overview of the customer service system.
224	Average number of calls with video
225	Number of CSRs graded in 2017
226	Average number of calls handled per CSR in 2017
227	Please provide the calculation documentation that indicates that reviewing four calls per month for each customer service representative yields a 90% confidence level.
228	Overview of the customer service system.
229	One month forecast by type of call for each of the three operating companies in Ohio – Ohio Edison, Toledo Edison, and the Illuminating Company
230	Average handling time (AHT) by type of call that is used in a recent forecast
231	Copy of recent report provided to the ELT concerning performance reporting for the three Ohio operating companies
232	Breakout of document request # 190 by Ohio operating company.
233	Please verify that contractor service representatives receive the same quality assurance review as the FE CSRs.
234	Please provide a schedule showing all costs direct charged or allocated out of the T&D Warehousing and Material Management department by cost type (labor, materials, etc.) and ultimate recipient (operating company) of costs for the last five years (2013 through 2017). Please indicate whether the costs are direct charged or allocated using FE's CAM.
235	Overview of the document management system
236	Estimate of percentage of documents that are maintained in the document management system vs in the departments
237	Estimate of percentage of documents that are maintained in the document management system vs maintained in hardcopy
238	Description of the training performed, the units or types of personnel that are trained for each type of training, the number of personnel receiving each type of training in 2016 and 2017
239	Description of the security protecting access to the document management system
240	Please confirm that training is done by the Information Compliance work group
241	Please provide an updated organization chart showing all current Retail Operations positions, their company (FES or Shared Services), their FERC classifications, and their physical work locations (e.g., WAC B1 or B3).

Request Number	Request
242	Please prepare a table with columns for the following topics (first column) and how Retail Operations supports FES Retail Sales (second column) and FirstEnergy Products (third column) · Which positions support each organization unit? Please identify all positions that support both units. · Information systems used · Contract and transactional management support provided · Customer management support provided · Revenue and cash management support provided · System operations support provided · Contractor utilized for each function (call center, revenue, mailings, credit cards, etc.) · Any other topics that cover the physical and IT separation between FEP and FES support
243	Description of the process used to develop 2017 cost allocations to FES by the Customer Communications group (e.g., estimates, time studies, direct charges).
244	Detailed budget for Customer Communications group charges to FES in 2017
245	Detailed schedule of actual Customer Communications group year-to-date 2017 charges by individual employee and all other line item charges to FES
246	Please provide the name of the affiliate(s) from whom Ohio Edison, CEI, and Toledo Edison purchased the REC's in 2014
247	Please describe the transaction and provide the name of the affiliate(s) involved in the "Regulatory Asset Securitization" for Ohio Edison, CEI, and Toledo Edison in 2013
248	Please describe the transaction and provide the name of the affiliate(s) involved in the "Net Sale-Leaseback Transfers" for Ohio Edison in 2015, 2016, and 2017 and Toledo Edison in 2017.
249	Please provide the amount of Direct Charges for each company and year listed on DN 106, separate from Allocated Charges for each company and year listed on DN 106. For each company and year, the total of the new amounts provided should equal the amounts provided on DN 106. Please expedite this response
250	Please: · Provide a description or explanation of the "Sale of Power to Nuclear Genco" for Ohio Edison and Toledo Edison for the 2012 - 2016 time period. · Explain why the sale of power has decreased over the 2012 - 2016 time period. · Explain the source of the power that was sold. · Describe or summarize "Service Agreement No. 100, FirstEnergy Corp. Electric Power Supply Agreement."

ATTACHMENT 2

Doringo, Ryan A.

From: Bryce.McKenney@occ.ohio.gov
Sent: Friday, September 28, 2018 2:37 PM
To: Doringo, Ryan A.
Cc: Casto, Scott J; Kutik, David A.; Maureen.Willis@occ.ohio.gov
Subject: Re: Case No. 17-974 Discovery Status

Thanks Ryan, let's touch base early next week. I think you and I will have a more productive conversation if we push our call to Monday or Tuesday. We're still deciding how we want to proceed. Thanks.

Bryce

From: Doringo, Ryan A. <radoringo@jonesday.com>
Sent: Friday, September 28, 2018 1:46:34 PM
To: Mckenney, Bryce
Cc: Casto, Scott J; Kutik, David A.; Willis, Maureen
Subject: RE: Case No. 17-974 Discovery Status

Bryce – Just following up on yesterday's email. I now have a call at 2:00, but I should free up around 3:00 for the rest of the day.

Best,
Ryan

Ryan Doringo
Associate
[JONES DAY® - One Firm WorldwideSM](#)
North Point 901 Lakeside Avenue
Cleveland, OH 44114-1190
Office +1.216.586.7273

From: Doringo, Ryan A.
Sent: Thursday, September 27, 2018 4:16 PM
To: 'Bryce.McKenney@occ.ohio.gov' <Bryce.McKenney@occ.ohio.gov>
Cc: Casto, Scott J <scasto@firstenergycorp.com>; Kutik, David A. <dakutik@jonesday.com>; 'Maureen.Willis@occ.ohio.gov' <Maureen.Willis@occ.ohio.gov>
Subject: Case No. 17-974 Discovery Status

Bryce,

We are preparing a production of additional responses provided by the Companies to Sage during the audit period. With that production, we will have produced the Companies' responses to 232 of Sage's 250 documents requests. In addition, we will be supplementing our written responses to OCC's RPDs, and in those responses, we will, in accordance with Rule 4901-1-20 (D), direct OCC to the location of publicly available documents responsive to four of Sage's other requests.

This will leave only 14 of the Companies' responses to Sage that the Companies object to producing to OCC. These requests are:

- 49 – Most recent CAM audit report for Maryland

- 53 – Schedule of long-term debt for all three Ohio companies as of December 31, 2016 and June 30, 2017
- 104 – Latest reliability audit
- 128 - Actual results compared to budget for Shared Services departments for the past five years (2012–2016) and YTD 2017
- 129 - Description of the budget process for the Shared Services departments
- 151 – Most recent Earnings Driver Report for the three Ohio companies
- 152 – Most recent O&M Analysis for the three Ohio companies
- 153 – Most recent Earnings Report for the same period as the two previous documents
- 154 – Power Point presentation of actual vs budget and forecast for the same period as above
- 164 – Sample Daily Cash Position report for September 27, 2017
- 165 – Sample SAP “Net Cash Position by Entity” report for September 27, 2017
- 166 – Quarterly Cash Position/Transaction reports sent to PUCO for 2016 and YTD 2017.
- 196 – List of property insurance claims greater than \$10 million for the past five years (2012 – 2016) and YTD, 2017
- 197 - Schedule of insurance premiums for the past five years (2012 – 2016) and YTD, 2017

These requests seek information that is not relevant to either the audit report’s conclusions, results, or recommendations or to Ohio’s corporate separation requirements, and we are prepared to brief these 14 requests in accordance with the Attorney Examiner’s procedural schedule. Please let me know, however, if OCC is willing to reconsider its position as to these requests and if you are willing participate in a meet-and-confer call to discuss them. I am available most of tomorrow for a call.

Best regards,
Ryan

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in

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

Summary: Memorandum Supplemental Memorandum Contra the Motion to Compel of the Office of the Ohio Consumers' Counsel electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company