

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of The Ohio Edison     )  
Company, The Cleveland Electric Illuminating     ) Case No. 17-974-EL-UNC  
Company, and The Toledo Edison Company's     )  
Compliance with R.C. 4928.17 and the Ohio     )  
Adm. Code Chapter 4901:1-37.     )

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**SUPPLEMENTAL REPLY COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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This case is about whether FirstEnergy is complying with Ohio law and rules pertaining to corporate separation. Without corporate separation (and possibly even with corporate separation), there is the potential for utilities and their affiliates to use competitively sensitive information unfairly. The results can be for the utility and its affiliate to competitively disadvantage other competitors and to obtain cross-subsidies from the utility's monopoly customers. The former result can impair the benefits of competition for consumers (such as lowering prices) and the latter result can increase what consumers pay to their utilities.<sup>1</sup>

OCC and other parties recently filed supplemental comments (as invited by the Attorney Examiner Entry on April 29, 2020). The supplemental comments filed by energy marketers, Northeast Ohio Public Energy Council ("NOPEC"), and OCC were consistent in warning that corporate separation issues involving FirstEnergy companies are of concern and should be addressed by the PUCO for consumer protection. These issues include use of the name "FirstEnergy" by FirstEnergy Advisors and the sharing of executives between FirstEnergy

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<sup>1</sup> *Id.*, PUCO Staff Report at 12 (Jan. 16, 2014).

Advisors and FirstEnergy Service Corp. FirstEnergy, in its supplemental comments, argues these issues are moot. FirstEnergy is wrong.

FirstEnergy alone argues that its corporate separation plan complies with Ohio law and rules.<sup>2</sup> And FirstEnergy alone argues that the Auditor's findings with respect to FirstEnergy Solutions are "moot" and inapplicable to FirstEnergy Advisors. FirstEnergy's broad-brush remarks fail to adequately address the numerous recommendations the auditor made to bring FirstEnergy's plan into compliance with Ohio rules and law.

Contrary to FirstEnergy's assertions that they (FirstEnergy and its affiliates) are in compliance with Ohio law and rules, the Auditor found that FirstEnergy was relying on its FERC rule compliance for compliance with Ohio laws and rules. However, FERC's compliance program does not cover all of Ohio's corporate separation rules. Audit report at 29, 31, 32, 33, 39. Accordingly, the Auditor recommended that FirstEnergy develop an addendum to the FERC compliance program that incorporates Ohio-specific corporate separation rule requirements. *Id.* at 39. OCC concurs.

FirstEnergy's claims about the mootness of the Auditor's findings with respect to FirstEnergy Solutions are another example of FirstEnergy avoiding the issues. True, FirstEnergy Solutions emerged from bankruptcy and is no longer affiliated with FirstEnergy. And it is true the Auditor's recommendations were directed at improper activities being undertaken between FirstEnergy and FirstEnergy Solutions. But the Auditor's recommendations are just as applicable to FirstEnergy Advisors, which has recently become a power broker and aggregator of retail electric service in Ohio.

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<sup>2</sup> FirstEnergy cites "generally" to the Audit Report pages 38-48, where there are no findings that FirstEnergy complies with Ohio rules and laws regarding corporate separation. FirstEnergy Supplemental Comments at 1, 2.

Obviously, the issue of an affiliate using the name “FirstEnergy” is still live. The Auditor concluded that use of the name FirstEnergy by an affiliate could create affiliate bias and is not in the best interests of Ohioans<sup>3</sup>. The Auditor went on to recommend that FirstEnergy should remove “FirstEnergy” from the name of the affiliate (FirstEnergy Solutions) to eliminate affiliate bias. The same recommendation is applicable to FirstEnergy Advisors. Its use of the name “FirstEnergy” should be prohibited as well.

And to the extent that FirstEnergy Advisors is using FirstEnergy Service Corp. for competitive retail sales efforts (like FirstEnergy Solutions was) the Auditor’s recommendations to transfer those services to the affiliate are not moot but should be applicable to FirstEnergy Advisors. Equally applicable are the Auditor’s findings that it is inappropriate to comingle management from the competitive energy sales affiliate with the senior leadership team of FirstEnergy Service Corp.

The Auditor made reasonable recommendations to change the way FirstEnergy and its affiliates (FirstEnergy Solutions at that time) operate. Those recommendations are equally applicable to FirstEnergy Advisors. The PUCO should adopt the recommendations as OCC, NOPEC, and other intervenors have urged.

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<sup>3</sup> Compliance Audit Report at 98.

Respectfully submitted,

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/s/ Maureen R. Willis

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Supplemental Reply Comments was served via electronic transmission, to the persons listed below, on this 15th day of June 2020.

/s/ Maureen R. Willis

Maureen R. Willis

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Comments Supplemental Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.