

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY’S
MOTION FOR PROTECTIVE ORDER**

Pursuant to Ohio Administrative Code (“O.A.C.”) 4901-1-24, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”) hereby move for a protective order from the Notice to Take Deposition of Santino Fanelli and Request for Production of Documents (“Notice”) served on October 9, 2020 by the Office of the Ohio Consumers’ Counsel (“OCC”). As more fully explained in the accompanying Memorandum in Support, discovery depositions are unnecessary and inappropriate under the circumstances of this proceeding.

Commission precedent does not anticipate discovery in every case, and the Commission’s rules give the Commission discretion to limit the methods of discovery. In this proceeding, the Companies’ Response to Show Cause Entry submitted on September 30, 2020 (“Response”) provided the affirmation the Commission directed in its September 15, 2020 Entry (“Entry”). OCC already has served voluminous written discovery, including 31 interrogatory requests (with 89 subparts), 26 requests for admissions and 21 requests for production of documents, and the question posed in the Entry can only be answered so many times before becoming oppressive. Thus, any deposition under the circumstances presented would be needlessly redundant and unduly burdensome. Moreover, the Notice expresses OCC’s intention to use the deposition to explore

subject matter well outside the scope of the Entry and the Commission's and OCC's own jurisdictional limits. Further, no hearing has been established. Given these circumstances, a deposition is designed only to cause annoyance, oppression and undue burden and expense. The Companies therefore seek an order pursuant to O.A.C. 4901-1-24(A)(3) that discovery only be had via written requests in this review proceeding.

As required by rule, the Notice and OCC's written discovery requests are attached hereto as Exhibit A, and an affidavit of counsel setting forth the efforts that have been undertaken to resolve this discovery issue with OCC is attached as Exhibit B. Nothing in this motion shall be construed as a waiver of the Companies' right to object and/or seek protection from any discovery request contained in OCC's Notice if and when the Commission determines that discovery should commence.

WHEREFORE, the Companies respectfully request that their Motion for a Protective Order be granted and that the Commission issue an order directing that discovery in this case be had only by written questions.

Respectfully submitted,

/s/ James F. Lang

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**MEMORANDUM IN SUPPORT OF OHIO EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY’S
MOTION FOR PROTECTIVE ORDER**

I. INTRODUCTION

The Companies already have affirmed in their Response that they have not included, directly or indirectly, any of the costs of political or charitable spending in support of Am. Sub. H.B. 6 (“H. B. 6”) or the referendum effort (“H.B. 6 costs”) in any rates or charges paid by ratepayers in Ohio. OCC can ask – as it has in its written discovery – whether H.B. 6 costs were included in electric security plan rates and charges, or in distribution rates and charges, or in riders, or in rates and charges generally, and any such questions were already answered by the Companies’ Response – no. By noticing the deposition of Mr. Fanelli, OCC would only be asking the same questions already asked in its voluminous written discovery in hopes of getting a different answer. OCC admits in the Notice that the “relevant topics” include all of OCC’s written discovery requests to the Companies.¹ Asking the same questions in a deposition that have already been asked in written requests easily satisfies the standard for a protective order of “annoyance, embarrassment, oppression, or undue burden or expense.”² To prevent further annoyance, oppression and undue

¹ Notice, p. 2.

² O.A.C. 4901-1-24(A).

burden and expense, and as authorized by O.A.C. 4901-1-24(A)(3), the Companies respectfully request that the Commission order that discovery be had only via written requests.

What is compounding the annoyance, oppression and undue burden and expense is that OCC is interested in much more than the subject of the September 15, 2020 Entry. As clearly telegraphed by OCC in its pleadings³ and discovery requests, it wants to explore in detail all of the Companies' political and charitable spending over the course of many years. Remarkably, OCC's written requests seek information from January 1, 2008 through the present, unless otherwise indicated, and attempt to delve into spending by the Companies and others that is wholly unrelated to H.B. 6.⁴ Because these questions are stated to be the focus of OCC's deposition, OCC's insistence on straying far beyond the scope of the Entry constitutes additional grounds for limiting discovery to only written requests so that relevance and jurisdictional issues can be more easily managed.

To prevent annoyance, oppression and undue burden and expense to the Companies, the Commission should grant this Motion.

II. ARGUMENT

Under O.A.C. 4901-1-24, a party may seek Commission protection from discovery requests that would impose annoyance, oppression, or undue burden or expense on that party.

Paragraph (A) of this rule provides:

(A) Upon motion of any party or person from whom discovery is sought, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any order that is necessary to protect a party or person from annoyance, embarrassment,

³ See, generally, Interlocutory Appeal, Request for Certification to The Commission, and Application for Review by the Office of the Ohio Consumers' Counsel (Sept. 21, 2020) (requesting expansive investigation of all spending and activities related to H.B. 6 by the Companies, their affiliates, and FirstEnergy Corp.).

⁴ See, e.g., OCC First Set, pp. 9, 13, 15-16.

oppression, or undue burden or expense. Such a protective order may provide that:

(1) Discovery not be had. . . .

(3) Discovery may be had only by a method of discovery other than that selected by the party seeking discovery.⁵

This rule gives the Commission ample authority to limit or deny discovery under the appropriate circumstances, and those circumstances are present here.

A. All forms of discovery are not guaranteed in all cases.

The Commission’s rules anticipate discovery only for a “proceeding” or a “hearing.” Specifically, O.A.C. 4901-1-17(A) allows for prehearing discovery to begin “after a proceeding is commenced” and states that such discovery “must be completed prior to the commencement of the hearing,” thus contemplating that a hearing is set or is contemplated prior to engaging in discovery.⁶ O.A.C. 4901-1-16(A) also supports this, as it notes that the purpose of rules 4901-1-16 to 4901-1-24 is “to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings.”⁷

Furthermore, the Commission has previously addressed whether discovery can be held in any matter. In *In re Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, the Commission addressed comments related to the Commission’s procedural rules contained in Chapter 4901-1. OCC requested that the Commission add the definition of “proceeding” to the rules and define it as “any filing, hearing, investigation, inquiry

⁵ O.A.C. 4901-1-24(A).

⁶ O.A.C. 4901-1-17(A).

⁷ O.A.C. 4901-1-16(A).

or rulemaking which the Commission is required or permitted to make, hold or rule upon.”⁸ The Commission rejected OCC’s request to define “proceeding” so broadly. The Commission held:

If OCC’s proposal were adopted, any interested person would have the right to intervene, conduct discovery and present evidence in any Commission case. The Commission does not believe that such rights exist. In addition, OCC’s proposed definition would eliminate the Commission’s discretion to conduct its proceedings in a manner it deems appropriate and would unduly delay the outcome of many cases. The request is denied.⁹

Similarly, in another matter, the Commission held:

[T]he Commission’s procedural rules and its governing statutes convey significant discretion and flexibility on the governance of its own proceedings. This is particularly so for proceedings where no hearing is required by law. There is no right to an evidentiary hearing in this proceeding or to the full discovery process normally reserved for cases where a hearing is required.¹⁰

These cases establish that discovery is not available as a matter of right in every Commission case. Instead, the Commission has discretion to distinguish between cases where an evidentiary hearing is scheduled and other types of cases. In the former, discovery generally is appropriate. In the latter set of cases, it may be impossible to determine what information, if any, is reasonably likely to lead to the discovery of admissible evidence or whether discovery requests—including depositions—would impose an undue burden. As a result, when no hearing has been established, there is no automatic right to discovery.

⁸ *In re Matter of the Review of Chapter 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, Finding and Order at ¶ 7 (Dec. 6, 2006).

⁹ *Id.* at ¶ 9 (emphasis added).

¹⁰ *In re Triennial Review Regarding Local Circuit Switching*, Case No. 03-2040-TP-COI, Entry on Rehearing at ¶ 8 (Oct. 28, 2003) (denying OCC and CLEC’s application for rehearing claiming that they have full discovery rights in a proceeding).

B. OCC is not entitled to depositions under the circumstances of this proceeding.

The Companies seek a protective order from the Commission ordering that discovery during this phase of the proceeding be limited to written requests. There is no evidentiary hearing scheduled and, given that the Companies have affirmed that H.B. 6 spending was not included in the Companies' rates and charges paid by retail customers, there is no basis for a hearing. Under the circumstances of this case, the only relevant issue is defined by the Entry: whether H.B. 6 costs were included in the Companies' rates and charges. Given that OCC has served page after page of written requests directed to that question (and others), depositions would be redundant, oppressive and cause undue burden and expense on the Companies.

This review proceeding is a textbook example of why the Commission has discretion to deny, delay or limit the scope of discovery in the appropriate case. The Entry initiating this proceeding authorized only two actions: (1) the Companies confirming that the costs of any political or charitable spending in support of H.B. 6 were not included in the rates and charges paid by their retail customers; and (2) interested parties filing comments and reply comments regarding the Companies' filing.¹¹ The Companies' Response clearly affirmed that the Companies have not included, directly or indirectly, any H.B. 6 costs in any rates or charges paid by ratepayers in Ohio. No further discovery is needed for interested parties to comment on the Companies' Response.

Thus, given the current procedural posture of this case, the Commission should issue a protective order that discovery be had only via written requests. Incredibly, OCC already has served 31 interrogatory requests (with 89 subparts), 26 requests for admissions and 21 requests for production of documents on the Companies. Many of these requests inquire into areas far outside

¹¹ Entry at ¶¶ 5, 6 (Sept. 15, 2020).

the scope of the Entry and OCC's jurisdiction. Others are variations on the same question asked in the Entry – whether H.B. 6 costs were included in the Companies' rates and charges paid by customers. OCC also asks, in various forms, whether political and charitable spending generally was included in the Companies' rates and charges paid by customers. To the extent these requests fall within the scope of the Entry, the Companies intend to respond to them consistent with the Commission's rules. Yet there should be a limit on how many ways and how many times OCC can ask the Companies the same question posed in the Entry.

Moreover, the Notice states that Mr. Fanelli will be questioned on subjects that are beyond the Commission's and OCC's jurisdiction. OCC intends to inquire into H.B. 6 spending by the Companies (and likely others) regardless of whether the cost of such spending was included in the Companies' rates and charges. However, any questions about the Companies' spending to fund political and charitable spending are irrelevant and outside the scope of this proceeding. In fact, the Commission has deemed political contributions or donations to be matters "outside of [its] jurisdiction."¹² OCC's desire to inquire into the Companies' political and charitable expenditures also exceeds OCC's own jurisdiction, which "extends to every case that he or another party brings before the public utilities commission involving the fixing of any rate, joint rate, fare, charge, toll, or rental charged for commodities or services by any public utility, the plant or property of which lies wholly within this state."¹³ OCC may represent residential consumers before the Commission

¹² *In re Chapter 4901:1-20, Ohio Adm. Code*, 2004 WL 1950732, Case No. 04-48-EL-ORD, Finding and Order at p. 14 (July 28, 2004). *See also Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.*, 69 Ohio St.2d 258, 431 N.E.2d 683 (1982), syllabus; *In re Complaint of Direct Energy Business, LLC v. Duke Energy Ohio, Inc.*, 2020-Ohio-4429, ¶ 25 (Sept. 17, 2020) (finding that General Assembly has confined the Commission's jurisdiction to the supervision of public utilities when acting as public utilities).

¹³ R.C. 4911.14. *See Tongren v. D&L Gas Marketing, Ltd.*, 149 Ohio App.3d 508, 2002-Ohio-5006, 778 N.E.2d 76, ¶ 15 (10th Dist.).

whenever a public utility applies to change its rates or a person files a complaint that a public utility's rates are unreasonable or unlawful.¹⁴ OCC has no jurisdiction to inquire into or complain about the Companies' spending. Therefore, a deposition on such matters would be futile, as the Commission simply cannot entertain the subject.

Additionally, engaging in any discovery prior to having a demonstrated factual issue is unduly burdensome because the Companies cannot be expected to provide the requested information until such time as the Commission considers comments and determines what, if any, issues are present in this case. Simply put, there is no need for discovery to resolve an issue of fact if no relevant issues have been identified by the Commission. This would conserve resources for all concerned by avoiding unnecessary discovery if no hearing is ever scheduled. As of now, there is no indication a hearing is needed and, thus, OCC would not be prejudiced by an order limiting discovery to written requests.

III. CONCLUSION

For the foregoing reasons, the Companies respectfully request that this Motion be granted and that the Commission issue an order limiting discovery to written requests only.

Respectfully submitted,

/s/ James F. Lang

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¹⁴ R.C. 4911.15. Similarly, OCC may "take appropriate action with respect to residential consumer complaints concerning quality of service, service charges, and the operation of the public utilities commission." R.C. 4911.02(B)(2)(b).

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 16th day of October, 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ James F. Lang

One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company

**NOTICE TO TAKE DEPOSITION
AND REQUEST FOR PRODUCTION OF DOCUMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Mr. Fanelli provided the sworn affidavit that was attached to FirstEnergy Utilities' Response to the PUCO's Show Cause Entry issued in this proceeding. Mr. Fanelli's deposition will be used to discover information related to FirstEnergy Utilities

Response to the PUCO's show cause order and matters including the use of funds collected from FirstEnergy Utility customers for political and charitable spending in support of tainted House Bill 6.

The deposition will be taken of the aforementioned deponent on relevant topics related to this proceeding, including but not limited to the deponent's filed affidavit, discovery requests by OCC and other parties and responses to such discovery provided by FirstEnergy Utilities. Mr. Fanelli will also be deposed on his knowledge and expertise with respect to the subject matter of this proceeding. The deposition will be taken upon oral examination (as upon cross-examination) before an officer authorized by law to take depositions.

Under Ohio Adm. Code Rules 4901-1-21(E), the deponent is requested to produce and make available to OCC, three hours prior to the deposition, the following documents:

1. The deponent's most recent C.V./resume.
2. Any documents referred to or relied upon with respect to the deponent's filed affidavit in this case.
3. All discovery responses that have been provided to OCC or any other party to this proceeding, including the PUCO Staff, and any discovery response that is due to parties on or prior to the scheduled deposition.

Respectfully submitted,

Bruce Weston (#0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis

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Attorneys for the Ohio Consumers' Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice to Take Deposition was provided electronically to the persons listed below this 9th day of October 2020.

/s/Maureen R. Willis

Senior Counsel

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

FIRST SET
(DATED SEPTEMBER 28, 2020)

The Office of the Ohio Consumers' Counsel, in the above-captioned proceedings before the Public Utilities Commission of Ohio, submits the following Interrogatories, Requests for Admissions and Requests for Production of Documents under sections 4901-1-19, 4901-1-20, 4901-1-22 of the Ohio Administrative Code for response from Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy Utilities" or the "Utilities") within 20 days or any shorter period of time subsequently established by PUCO Entry or Order. An electronic, non-pdf (*e.g.* Microsoft Excel) response should be provided to the Office of the Ohio Consumers' Counsel at the following addresses:

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Because of the coronavirus pandemic, OCC employees are continuing to work from home for the foreseeable future. If FirstEnergy Utilities intend to send any discovery responses by mail (USPS, FedEx, UPS, courier, etc.) as opposed to email, OCC asks that FirstEnergy Utilities to contact OCC's counsel in advance of mailing to potentially arrange for delivery to a different mailing address.

Additionally, FirstEnergy Utilities must follow the instructions provided herein in responding to the inquiries. Definitions are provided below 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, orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, 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, but 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, electronic, or otherwise perceptible means, including, but not limited to, telephone conversations, emails, 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" and "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "You," "Your," and "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 and vice versa. Words expressing the past tense shall be deemed to express the present tense and vice versa.
8. "Person" includes any firm, corporation, partnership, joint venture, association, committee, board, 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," "the identity of," and "identified" mean as follows:
 - A. When used in reference to an individual, to state his full name, his 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, (i) to state the type of communication (*e.g.*, letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto; and (ii) 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 (*e.g.*, 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. "FirstEnergy Utilities," and the "Companies" mean, collectively, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company. Each of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company may individually be referred to as a "Company" or "Utility."
 13. "FirstEnergy Service Co.." means the company that provides services to FirstEnergy Utilities and is an affiliate of FirstEnergy Utilities and is controlled by the Board of Directors of FirstEnergy Corp.
 14. "Political and Charitable Spending" means any expenditures (whether expensed or capitalized) to support the enactment or repeal of legislation, including but not limited to: lobbying expenses, payments to legislators, campaign contributions, attendance at fund-raising events, payments made to political action committees, or other organizations (including 501(C)(3) and (C)(4) organizations), payments to political parties, payments to

persons or organizations submitting testimony on regulatory or legislative matters, contributions to organizations affiliated with sponsors of legislation, contributions to persons and organizations submitting communications to government officials on legislation or regulatory proposals, and - contributions to low-income advocates or representatives of low income customers.

15. “Proceeding” means the above-captioned proceeding, Case No. 20-1502-EL-UNC.
16. “Criminal Complaint” means the criminal complaint and supporting affidavits filed in *United States of America v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes, and Generation Now*, Case No. 1:20-MJ-00526 (U.S. Dist. S.D.) (July 17, 2020).
17. “Generation Now” means the 501(C)(4) corporation identified in the Criminal Complaint.
18. “House Bill 6 activities” include but are not limited to those described in the Criminal Complaint that were undertaken to pass House Bill 6 and defeat the referendum effort.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged that 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 is requested to produce responsive materials and information within its physical control or custody, as well as materials and information 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;
 - 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, 2008 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.

11. To the extent that any interrogatory requests the production of documents, such interrogatory shall be treated as a request for the production of documents, and such documents shall be produced as if the interrogatory were designated a request for the production of documents.
12. To the extent that any request the production of documents seeks an interrogatory response (in addition to, or in place of, a request for a document), such request for the production of a documents shall be treated as an interrogatory, and such request shall be responded to as if it were designated an interrogatory.
13. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Application.

INTERROGATORIES

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

Please see and respond to these discovery requests consistent with the OCC definitions of various discovery terms, including definitions of “communications” “House Bill 6 activities” “political and charitable spending” “Commission”, etc. Thank you.

INT-01-001. Please identify each person that FirstEnergy Utilities expect to call as a witness at any hearing conducted in this proceeding.

RESPONSE:

INT-01-002. Please identify all payments made by FirstEnergy Utilities to Generation Now.

For each payment, identify:

- a. The date the payment was made;
- b. The amount of the payment(s);
- c. The name and position of the person(s) that authorized the payment;
- d. The person the individual(s) identified in (c) directly reports to;
- e. All persons, committees, departments, boards that approved each of the payments;
- f. All persons within FirstEnergy Utilities that had knowledge of each payment;
- g. Identify the account(s) including any FERC sub-account(s) with description(s) of account(s) sub-account(s) the payment(s) were booked to; and

- h. Whether any of these payments were included, either directly or indirectly, in rates or charges paid by Ohio electric utility customers. And if so, how was that payment charged to Ohio electric utility customers?

RESPONSE:

INT-01-003. Please identify all payments made by FirstEnergy Service Co. to Generation Now.

For each payment, identify:

- a. The date(s) the payment(s) was/were made;
- b. The amount of the payment(s);
- c. The name and position of the person(s) that authorized the payment(s);
- d. The person(s) the individual(s) identified in (c) directly reports to;
- e. All persons, committees, departments, boards that approved each of the payments;
- f. All persons within FirstEnergy Service Co. that had knowledge of each payment;
- g. Identify the account(s) including any FERC sub-account(s) with description(s) of account(s) or sub-account(s) the payment(s) were booked to;
- h. Whether those payments (or portions thereof) were charged to FirstEnergy 7Utilities either directly or indirectly;
- i. Whether those payments (or portions thereof) were allocated to FirstEnergy Utilities; and

- j. Whether those payments (expensed or capitalized) were included either directly or indirectly in rates or charges paid by Ohio electric utility consumers.

RESPONSE:

INT-01-004. Please identify all political and charitable spending¹ by or on behalf of FirstEnergy Utilities since January 1, 2017. For each instance of political and charitable spending, please identify:

- a. The date of the political or charitable spending;
- b. The payor and payee;
- c. The name and position of the person who authorized the spending;
- d. The amount of money spent;
- e. The person(s) the individual identified in (c) directly reports to;
- f. All persons within FirstEnergy Utilities that had knowledge of each political and charitable spending;
- g. The FERC sub-account(s) with sub-account(s) description(s) the political/charitable spending was charged to;
- h. All persons, committees, departments, boards that approved each of the instances of political and charitable spending; and

¹ See definition of political and charitable spending.

- i. Whether this spending was reflected in expenses or capitalized and charged either directly or indirectly in the rates and charges paid by Ohio electric utility consumers.

RESPONSE:

INT-01-005. Please identify all political and charitable spending by or behalf of FirstEnergy Utilities, regarding House Bill 6 activities. For each act of political and charitable spending, please identify:

- a. The payee and payor;
- b. The date the spending occurred;
- c. The account(s) and sub accounts the political/charitable spending was charged to;
- d. The name and position of the person(s) who authorized the spending;
- e. The amount of money paid per instance of spending;
- f. The person(s) the individual(s) identified in (d) directly reports to;
- g. All persons within FirstEnergy Utilities that had knowledge of each instance of political and charitable spending identified above; and
- h. Whether the spending was reflected in expenses or capitalized and charged either directly or indirectly in the rates and charges paid by Ohio electric utility consumers.

RESPONSE:

INT-01-006. Please identify all political and charitable spending by or on behalf of the FirstEnergy Foundation since January 1, 2017 associated with regulatory and legislative activities that affect the FirstEnergy Utilities. For each instance of political and charitable spending, please identify:

- a. The date the spending occurred;
- b. The payor and the payee and whether the payee was involved with a communication to a government official of a position on a regulatory or legislative matter that affected FirstEnergy Utilities;
- c. The organization the payee was associated with;
- d. Whether the payee was affiliated with a government official or a sponsor of legislation affecting FirstEnergy Utilities;
- e. The name and position of the person(s) who authorized the spending;
- f. The amount of money paid;
- g. The person(s) the individual(s) identified in (c) directly reports to;
- h. All persons within FirstEnergy Utilities that had knowledge of each instance of political and charitable spending;
- i. The sub-account(s) including description(s) of the political/charitable spending was charged to;
- j. All persons, committees, departments, boards that approved each of the instances of spending;
- k. Whether these expenses or capitalized amounts were charged either directly or indirectly in the rates and charges paid by Ohio electric utility consumers; and

1. Contributions made to FirstEnergy Foundation by each of the FirstEnergy Utilities since January 1, 2017, identified on a yearly basis.

RESPONSE:

INT-01-007. Please identify all charitable contributions made by or on behalf of FirstEnergy Utilities since January 1, 2017. Please segregate the contributions by year, by month, by FERC sub-account(s) with sub-account(s) description(s) by utility, and recipient, including but not limited to contributions made to persons, organizations, charitable foundations and grantees. For each charitable contribution, please identify:

- a. The date the contribution was made;
- b. The payor and payee and whether the payee was involved with a communication to a government official of a position on a regulatory or legislative matter that affected FirstEnergy Utilities;
- c. The organization the payee was associated with;
- d. Whether the payee was affiliated with a government official or a sponsor of legislation affecting FirstEnergy Utilities;
- e. The name and position of the person(s) who authorized the contribution;
- f. The amount of the contribution;
- g. The person(s) the individual(s) identified in (e) directly reports to;
- h. All persons within FirstEnergy Utilities that had knowledge of each charitable contribution;

- i. The FERC sub-account(s) and sub-account(s) description(s) the charitable contribution(s) was charged to;
- j. All persons, committees, departments, boards that approved each of the charitable contributions; and
- k. Whether these charitable contributions were charged to expenses or capitalized either directly or indirectly in the rates and charges paid by Ohio electric utility consumers.

RESPONSE:

INT-01-008. Please identify “Company A” as referred to in the Criminal Complaint.

RESPONSE:

INT-01-009. Please identify “Company A-1” as referred to in the Criminal Complaint.

RESPONSE:

INT-01-010. Please identify “Company A Service Co.” as referred to in the Criminal Complaint.

RESPONSE:

INT-01-011. For the period January 1, 2017 through present, please identify the actual monthly amounts by FERC sub-account with sub-account descriptions attributed to House Bill 6 activities and every political action organization which FirstEnergy Utilities made contributions to related to House Bill 6 activities, broken down by date of payment, payee, political action organization and each specific contribution to that political action organization.

RESPONSE:

INT-01-012. Please identify all travel and entertainment expenses incurred by or on behalf of FirstEnergy Utilities, related to House Bill 6 activities. Please identify these expenses by FERC sub-account(s) with sub-account(s) descriptions and amounts, and describe the person involved, job title, and reason/explanation for the expense. Were these expenses or capitalized amounts charged either directly or indirectly in the rates and charges paid by Ohio electric utility customers?

RESPONSE:

INT-01-013. For the period January 1, 2017 through present, please identify for FirstEnergy Utilities, the actual monthly amounts by year booked to FERC sub-account(s) with sub-account(s) description(s) attributed to contributions and payments related to House Bill 6 activities to:

- a. Any 501(c)3 non-profit religious, charitable, or educational organization;
- b. Any 501(c)4 social welfare group that can engage in advocacy and lobbying activities; and
- c. Any 527 organization.

Please identify and describe each organization (by type a-c), and include a description of each contribution, identifying each specific amount attributed to that organization, the date of the payment and the payor.

RESPONSE:

INT-01-014. Please identify all expense and capital accounts and cost code elements with cost code element descriptions associated with providing electric service to FirstEnergy Utilities' customers in Ohio that contain expenses or capitalized items pertaining to:

- a. Charitable contributions;
- b. Lobbying expenses;
- c. Charitable and political spending;
- d. Governmental affairs;
- e. State affairs support;
- f. Economic development support; and
- g. FirstEnergy Foundation

RESPONSE:

INT-01-015. Please identify whether, for the period of January 1, 2017, through present, FirstEnergy Utilities were charged (or are being charged) for political and charitable spending undertaken by or on behalf FirstEnergy Solutions (or its successor Energy Harbor), including but not limited to charges from FirstEnergy Solutions/Energy Harbor for POLR and default services. If so, please identify the

amount(s), by month, by FERC sub-account(s) with sub-account(s) description(s), by cost code element(s), the charges are found in, and identify the mechanism for collecting these charges from FirstEnergy Utilities' Ohio electric customers.

RESPONSE:

INT-01-016. Please identify whether, for the period of January 1, 2017, through present, FirstEnergy Utilities were charged (or are being charged) for political and charitable spending undertaken by or on behalf FirstEnergy Corp. If so, please identify the amount(s), by month, by sub-account(s) or FERC sub-account(s) with account(s) or FERC sub-account(s) description(s), the charges are found in, and identify the mechanism for collecting these charges from FirstEnergy Utilities' Ohio electric customers.

RESPONSE:

INT-01-017. Please identify whether, for the period of January 1, 2017, through present, FirstEnergy Utilities were charged (or are being charged) for political and charitable spending undertaken by or on behalf FirstEnergy Service Company. If so, please identify the amount(s), by month, by sub-account(s) or FERC sub-account(s) with sub-account(s) or FERC sub-account(s) description(s), the charges are found in, and identify the mechanism for collecting these charges from FirstEnergy Utilities' Ohio electric customers.

RESPONSE:

INT-01-018. Please identify whether, for the period of January 1, 2017, through present, FirstEnergy Utilities were charged (or are being charged) for political and charitable spending associated with House Bill 6. If so, please identify the source of the charges, the amount(s), by month, by sub-account(s) or FERC sub-account(s) with sub-account(s) or FERC sub-account(s) description(s), the charges are found in, and identify the mechanism for collecting these charges from FirstEnergy Utilities' Ohio electric customers.

RESPONSE:

INT-01-019. Referring to Ohio Edison's 2018 FERC Form 1,

- a. Please describe the "charitable contribution carryforward" that is shown on Schedule Page 261, line 10 as \$15,000,000. Is that amount incorporated into the rates Ohio electric customers paid or will pay for electric service from Ohio Edison?
- b. Please describe the "charitable contribution carryforward" that is shown on Schedule Page 234 with a beginning balance of \$71,177 and an end of year balance of \$3,312,220. Is that amount incorporated into the rates Ohio electric customers paid or will pay for electric service from Ohio Edison?
- c. Please identify if any of the amounts listed in FERC Sub-Account 930.2 "miscellaneous general" on page 335 relate to political and charitable spending? If so, which if any of the line items are incorporated into the

rates Ohio electric customers paid or will pay for electric service from Ohio Edison?

- i. please describe “economic development” shown on line 14 and identify the charges that make up the \$-661,217 amount shown there.
- d. Referring to the “Transactions with Associated (Affiliated Companies)” shown on page 429 and 429.1, please identify if any of the amounts charged or credited relate to political or charitable spending? If so, which if any of the line items are incorporated into the rates Ohio electric customers paid or will pay for electric service from Ohio Edison?
 - i. Please describe the nature of the services provided by FirstEnergy Service Co. to Ohio Edison described as “Provide Local Affairs & Economic Development Support.”
 - ii. Please describe the nature of services FirstEnergy Service Co. provided to Ohio Edison described as “Provide State Affairs Support.”

RESPONSE:

INT-01-020. Referring to Toledo Edison’s 2018 FERC Form 1 and the “Transactions with Associated (Affiliated Companies)” shown on page 429 and 429.1, please identify if any of the amounts charged or credited relate to political or charitable spending. If so, which if any of these amounts related to political or charitable spending are incorporated into the rates Ohio electric customers paid or will pay for electric service from Toledo Edison?

- a. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison and listed as “Provide Environmental Support.”;
- b. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison listed as “Provide Compliance and Regulated Service Support”;
- c. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison listed as “Provide Rates & Regulatory Affairs Support”;
- d. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison listed as “Provide Local Affairs & Economic Development Support”;
- e. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison listed as “Provide State Affairs Support”; and
- f. Describe the nature of services provided by FirstEnergy Service Co. to Toledo Edison listed as “Provide FE Generation Support”.

RESPONSE:

INT-01-021. Referring to Cleveland Electric Illuminating Company's 2018 FERC Form 1,

- a. Please describe the nature of the item listed on page 450.2 as "Ohio Economic Development.";
- b. Please describe the nature of the "Ohio Economic Development Contribution" listed on line 5-6 of page 269 and explain the debit to the account shown to "Contra Account 242.";
- c. Please identify all items that make up the "Charitable Contribution State & Local RTA" listed on page 450.1;
- d. Referring to page 429.1, "Transaction with Associated (Affiliated) Companies" please describe the nature of the services provided by FirstEnergy Service Co. to CEI that make up the "Non-Power Good or Service" Line items labelled:
 - i. "Provide Rates & Regulatory Affairs Support" \$784,904;
 - ii. "Provide State Affairs Support" \$115,638; and
 - iii. "Provide Local Affairs & Economic Development Support" \$1,479,989.
- e. Please explain what caused the difference between 4th Quarter 2017 "Miscellaneous and General Expenses" (930.2) of \$22,891,423 to the "current year" amount for that item of \$680,078.

RESPONSE:

INT-01-022. Please identify the monthly Regulated Money Pool balances in 2017 through 2020.

RESPONSE:

REQUESTS FOR ADMISSIONS

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

RFA-01-001. Please admit or deny the following. If the response is anything but an unqualified admission, please explain in detail.

FirstEnergy Corp. is the “Company A” identified in the Criminal Complaint.

ADMIT/DENY:

RFA-01-002. Please admit or deny the following. If the response is anything but an unqualified admission, please explain in detail.

FirstEnergy Solutions is the “Company A-1” identified in the Criminal Complaint.

ADMIT/DENY:

RFA-01-003. Please admit or deny the following. If the response is anything but an unqualified admission, please explain in detail.

FirstEnergy Service Co. is the “Company A Service Co.” identified in the Criminal Complaint.

ADMIT/DENY:

RFA-01-004. Please admit or deny the following. If the response is anything but an unqualified admission, please explain in detail.

FirstEnergy Service Co. made money payments to Generation Now.

ADMIT/DENY:

RFA-01-005. Please admit or deny the following. If the response is anything but an unqualified admission, please explain in detail.

FirstEnergy Utilities made money payments to Generation Now.

ADMIT/DENY:

RFA-01-006. Please admit or deny that FirstEnergy Utilities engaged in political and charitable spending to support the enactment of House Bill 6.

ADMIT/DENY:

RFA-01-007. Please admit or deny that FirstEnergy Service Co. engaged in political and charitable spending on behalf of FirstEnergy Utilities to support the enactment of House Bill 6.

ADMIT/DENY:

RFA-01-008. Please admit or deny that FirstEnergy Utilities included in the electric security plan rates and charges to Ohio customers expenses (actual and/or budgeted) associated with political and charitable spending.

ADMIT/DENY:

RFA-01-009. Please admit or deny that FirstEnergy Utilities included in the current distribution rates charged to Ohio customers expenses (actual and/or budgeted) associated with charitable and political spending.

ADMIT/DENY:

RFA-01-010. Please admit or deny that FirstEnergy Utilities included in rider rates charged Ohio customers for the period January 1, 2017 to present, expenses (actual and/or budgeted) associated with charitable and political spending.

ADMIT/DENY:

RFA-01-011. Please admit or deny that the costs of any political and charitable spending in support of House Bill 6 activities were included, either directly or indirectly, in rates or charges paid by FirstEnergy's Utilities' customers.

ADMIT/DENY:

RFA-01-012. Please admit or deny that all funds the FirstEnergy Utilities received from Rider DMR were placed into the Regulated Utility Money Pool.

ADMIT/DENY:

RFA-01-013. Please admit or deny that non-OHIO regulated subsidiaries of FirstEnergy Corp.
have borrowing access to Rider DMR funds through the Regulated Money pool.

ADMIT/DENY:

RFA-01-014. Please admit or deny that FirstEnergy utilities can borrow from the Regulated
Money Pool to fund their expenditures.

ADMIT/DENY:

RFA-01-015. Please admit or deny that from January 1, 2017 forward, funds in the Regulated
Money Pool have been used to pay dividends to FirstEnergy Corp.

ADMIT/DENY:

RFA-01-016. Please admit or deny that FirstEnergy Utilities borrowed from the Regulated
Money Pool to fund House Bill 6 activities.

ADMIT/DENY:

RFA-01-017. Please admit or deny that FirstEnergy Utilities from January 1, 2017 forward,
borrowed from the Regulated Money Pool to fund charitable and political
spending.

ADMIT/DENY:

RFA-01-018. Please admit or deny that no FirstEnergy affiliate borrowed from the Regulated Money Pool to fund House Bill 6 activities.

ADMIT/DENY:

RFA-01-019. Please admit or deny that non-OHIO regulated subsidiaries borrowed money from the Regulated Money Pool from January 1, 2017 forward.

ADMIT/DENY:

REQUESTS FOR PRODUCTION OF DOCUMENTS

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

RPD-01-001. Please provide a copy of all formal and informal requests (e.g., interrogatories, requests for production of documents, data requests) made to the FirstEnergy Utilities by the Commission in this proceeding and the FirstEnergy Utilities' response to those requests.

RPD-01-002. Please provide a copy of all formal and informal requests (e.g., interrogatories, requests for production of documents, data requests) made to the FirstEnergy Utilities by any other party in this proceeding and the FirstEnergy Utilities' responses to those requests.

RPD-01-003. Please provide a copy of all communications made by or on behalf of FirstEnergy Utilities with the Commission regarding this proceeding and the political and charitable spending for House Bill 6 activities undertaken by or on behalf of the FirstEnergy Utilities. This would include, but not be limited to, communications that occurred before the docket was opened on September 15, 2020.

RPD-01-004. Provide any documents that you relied upon or that otherwise support your responses to OCC INT-01-002 through 01-007, and 01-011 through 01-022.

- RPD-01-005. Provide a complete copy of all documents reflecting payments made by or on behalf of FirstEnergy Utilities to any political action committee or organization since January 1, 2017 to date, related to House Bill 6 activities.
- RPD-01-006. Provide a complete copy of all invoices in the custody and control of FirstEnergy Utilities that are associated with Ohio lobbying efforts on matters affecting FirstEnergy Utilities for years 2017 through present.
- RPD-01-007. Provide a copy of employee time and expense reports and invoices documenting expenses that were asked to be identified in OCC Interrogatory 01-012.
- RPD-01-008. Please provide a copy of all records produced by FirstEnergy Utilities and FirstEnergy Service Co. in response to the subpoenas issued by the U.S. Attorney's Office for the Southern District of Ohio (as reported in FirstEnergy's Form 10Q (June 30, 2020)).
- RPD-01-009. Please provide a copy of all documents related to the shareholder lawsuits against FirstEnergy and current and former directors, officers and other employees (as identified in FirstEnergy's Form 10Q at 32 (June 30, 2020)) relating to House Bill 6 activities.
- RPD-01-010. Please provide a copy of all documents related to the internal investigation into the matters raised in the Criminal Complaint that has been undertaken at the direction of the independent members of the FirstEnergy Board of Directors.

- RPD-01-011. Please provide a copy of all documents relating to the internal investigation into the matters raised in the Criminal Complaint that has been undertaken at the direction of the independent members of the FirstEnergy Board of Directors.
- RPD-01-012. Please provide a copy of all documents related to the Securities Exchange Commission investigation into matters related to House Bill 6 activities.
- RPD-01-013. Please provide a copy of all documents related to the Attorney General's lawsuit, filed in the Franklin County Court of Common Pleas related to House Bill 6 activities.
- RPD-01-014. Please provide a copy of the letter dated July 24, 2020 from the Ohio Attorney General notifying FE of its duty to not destroy documents in its custody or control regarding Ohio House Bill 6. (as reported in FirstEnergy's Form 10Q at 32).
- RPD-01-015. Please provide a copy of the regulated money pool agreement between FirstEnergy Corp. and its regulated subsidiaries, including FirstEnergy Utilities.
- RPD-01-016. Please provide copies of reports submitted to the Commission regarding the FirstEnergy Ohio utilities participation in the FirstEnergy Regulated Money Pool for the period of January 1, 2017 through present.
- RPD-01-017. Please provide copies of PUCO documents approving or disapproving FirstEnergy Utilities' participation and lending limits in the FirstEnergy Regulated Money Pool since January 1, 2017.

- RPD-01-018. Please provide for 2017 through 2020, copies of IRS Form 990s related to FirstEnergy Utilities' charitable contributions and the FirstEnergy Foundation.
- RPD-01-019. Please provide a copy of 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.
- RPD-01-020. Please provide the current organization chart for the FirstEnergy "External Affairs" organization" structure, showing all positions, the reporting relationships (superior and subordinates), the titles of the positions, department or unit name, and the person in those positions from January 1, 2017 to date. Please identify as part of this response, persons who provide external affairs services (in whole or part) for the FirstEnergy Ohio utilities.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Interrogatories, Requests for Admissions and Requests for Production of Documents Propounded Upon FirstEnergy Utilities by the Office of the Ohio Consumers' Counsel, First Set, was served upon the persons listed below via electronic transmission this 28th day of September 2020.

/s/ Maureen R. Willis
Maureen R. Willis
Senior Counsel

SERVICE LIST

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED UPON FIRSTENERGY UTILITIES
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**SECOND SET
(October 2, 2020)**

The Office of the Ohio Consumers' Counsel, in the above-captioned proceedings before the Public Utilities Commission of Ohio, submits the following Interrogatories, Requests for Admissions and Requests for Production of Documents under sections 4901-1-19, 4901-1-20, 4901-1-22 of the Ohio Administrative Code for response from Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy Utilities" or the "Utilities") within 20 days or any shorter period of time subsequently established by PUCO Entry or Order. An electronic, non-pdf (*e.g.* Microsoft Excel) response should be provided to the Office of the Ohio Consumers' Counsel at the following addresses:

Maureen R. Willis, Senior Counsel
Counsel of Record (# 0020847)
Angela D. O'Brien (#0097579)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Willis]: (614) 466-9567
Telephone [Obrien]: (614) 466-9531
Maureen.willis@occ.ohio.gov
Angela.obrien@occ.ohio.gov
(willing to accept service by e-mail)

Because of the coronavirus pandemic, OCC employees are continuing to work from home for the foreseeable future. If FirstEnergy Utilities intend to send any discovery responses by mail (USPS, FedEx, UPS, courier, etc.) as opposed to email, OCC asks that FirstEnergy Utilities to contact OCC's counsel in advance of mailing to potentially arrange for delivery to a different mailing address.

Additionally, FirstEnergy Utilities must follow the instructions provided herein in responding to the inquiries. Definitions are provided below 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, orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, 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, but 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, electronic, or otherwise perceptible means, including, but not limited to, telephone conversations, emails, 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" and "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. "You," "Your," and "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 and vice versa. Words expressing the past tense shall be deemed to express the present tense and vice versa.
8. "Person" includes any firm, corporation, partnership, joint venture, association, committee, board, 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," "the identity of," and "identified" mean as follows:
 - A. When used in reference to an individual, to state his full name, his 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, (i) to state the type of communication (*e.g.*, letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto; and (ii) 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 (*e.g.*, 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. "FirstEnergy Utilities," and the "Companies" mean, collectively, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company. Each of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company may individually be referred to as a "Company" or "Utility."
 13. "FirstEnergy Service Co.." means the company that provides services to FirstEnergy Utilities and is an affiliate of FirstEnergy Utilities and is controlled by the Board of Directors of FirstEnergy Corp.
 14. "Political and Charitable Spending" means any expenditures (whether expensed or capitalized) to support the enactment or repeal of legislation, including but not limited to: lobbying expenses, payments to legislators, campaign contributions, attendance at fund-raising events, payments made to political action committees, or other organizations (including 501(C)(3) and (C)(4) organizations), payments to political parties, payments to

persons or organizations submitting testimony on regulatory or legislative matters, contributions to organizations affiliated with sponsors of legislation, contributions to persons and organizations submitting communications to government officials on legislation or regulatory proposals, and - contributions to low-income advocates or representatives of low income customers.

15. “Proceeding” means the above-captioned proceeding, Case No. 20-1502-EL-UNC.
16. “Criminal Complaint” means the criminal complaint and supporting affidavits filed in *United States of America v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes, and Generation Now*, Case No. 1:20-MJ-00526 (U.S. Dist. S.D.) (July 17, 2020).
17. “Generation Now” means the 501(C)(4) corporation identified in the Criminal Complaint.
18. “House Bill 6 activities” include but are not limited to those described in the Criminal Complaint that were undertaken to pass House Bill 6 and defeat the referendum effort.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged that 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 is requested to produce responsive materials and information within its physical control or custody, as well as materials and information 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;
 - 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, 2008 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.

11. To the extent that any interrogatory requests the production of documents, such interrogatory shall be treated as a request for the production of documents, and such documents shall be produced as if the interrogatory were designated a request for the production of documents.
12. To the extent that any request the production of documents seeks an interrogatory response (in addition to, or in place of, a request for a document), such request for the production of a documents shall be treated as an interrogatory, and such request shall be responded to as if it were designated an interrogatory.
13. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Application.

INTERROGATORIES

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

Please see and respond to these discovery requests consistent with the OCC definitions of various discovery terms, including definitions of “communications” “House Bill 6 activities” “political and charitable spending” “Commission”, etc. Thank you.

INT-02-001. In 2007, Charles E. Jones (the current CEO) was the president of FirstEnergy Solution and his salary was not part of the 2007 test year expenses. Does this mean the current base distribution rates of the three EDUs, set in 2007, do not include the millions of compensation dollars earned by Charles E. Jones?

RESPONSE:

INT-02-002. Did the FirstEnergy Utilities (or any FirstEnergy Utilities’ affiliates) use any of the money collected from Ohio electric customers under distribution rates set in the FirstEnergy Utilities’ last base rate case for political and charitable spending? If so, please identify on a yearly basis how much was used for that purpose since the approval of base rates.

RESPONSE:

INT-02-003. Did the FirstEnergy Utilities (or any FirstEnergy Utilities’ affiliates) use any of the money collected from Ohioans under FirstEnergy Utilities’ “riders or other charges in their approved tariffs” (see affidavit of Santino Fanelli) for political and charitable spending? If so, please identify on a yearly basis how much was used for that purpose, and which riders and charges were the source of the political and charitable spending?

RESPONSE:

INT-02-004. Did the FirstEnergy Utilities (or any FirstEnergy Utilities’ affiliates) use any of the money collected from Ohio electric customers under FirstEnergy Utilities’ distribution rates set in their last base rate case for House Bill 6 activities? If so, please identify on a yearly basis how much was used for that purpose since the approval of base rates.

RESPONSE:

INT-02-005. Did the FirstEnergy Utilities (or any FirstEnergy Utilities affiliates’) use any of the money collected from Ohioans under “riders and charges” (see affidavit of Santino Fanelli) under FirstEnergy Utilities’ tariffs for House Bill 6 activities? If so, please identify on a yearly basis how much was used for that purpose, and which riders and charges were the source of the House Bill 6 activities funds?

RESPONSE:

INT-02-006. Did the FirstEnergy Utilities (or any FirstEnergy Utilities' affiliates) use any of the money collected from Ohioans under "riders and charges" (see affidavit of Santino Fanelli) under FirstEnergy Utilities' tariffs for House Bill 6 activities? If so, please identify on a yearly basis how much was used for that purpose, and which riders and charges were the source of the House Bill 6 activities funds?

RESPONSE:

INT-02-007. Did the FirstEnergy Utilities (or any FirstEnergy Utilities' affiliates) use any of the money collected from Ohioans under "riders and charges" (see affidavit of Santino Fanelli) approved in FirstEnergy Utilities latest electric security plan in PUCO Case No. 14-1297-EL-SSO, et al. for House Bill 6 activities? If so, please identify on a yearly basis how much was used for that purpose, and which electric security plan riders and charges were the source of the House Bill 6 activities funds?

RESPONSE:

INT-02-008. Did the FirstEnergy Utilities (or any FirstEnergy Utilities' affiliates) use any of the money collected from Ohioans under FirstEnergy Utilities' "riders and charges" (see affidavit of Santino Fanelli) approved in FirstEnergy's latest electric security plan, in PUCO Case No. 14-1297-EL-SSO, et al, for political and charitable spending? If so, please identify on a yearly basis how much was used for that purpose, and which electric security plan riders and charges were the source of the political and charitable spending?

RESPONSE:

INT-02-009. How do FirstEnergy Utilities fund political and charitable spending? Please identify the specific source of the funding.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

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

RPD-02-001. Referencing 2020 Proxy Statement and Notice of Annual Shareholder Meeting

May 19, 2020, Section 1. Corporate Governance and Board of Directors: Under

Section 1 Corporate Governance it states: “Based on feedback from our

shareholder engagement and outreach, we expanded our website disclosure to

include reports on federal and state level lobbying, as well as, the lobbying

portion of certain trade association dues.”

- a. please provide all reports on federal and state level lobbying for the period 2017 through 2020.
- b. please provide all reports on lobbying pertaining to trade association dues for the period 2017 through 2020.

REQUESTS FOR ADMISSIONS

RFA-02-001. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities' affiliates) used any of the money collected from Ohio electric customers under distribution rates set in the FirstEnergy Utilities' last base rate case for political and charitable spending.

ADMIT/DENY:

RFA-02-002. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities affiliates) used any of the money collected from Ohioans under FirstEnergy Utilities' "riders and charges" (see Santino Fanelli affidavit) in their tariffs for political and charitable spending.

ADMIT/DENY:

RFA-02-003. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities affiliates) used any of the money collected from Ohio electric customers under FirstEnergy Utilities' distribution rates set in their last base rate case for House Bill 6 activities.

ADMIT/DENY:

RFA-02-004. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities affiliates) used any of the money collected from Ohioans under “riders and charges” (see affidavit of Santino Fanelli) under FirstEnergy Utilities’ tariffs for House Bill 6 activities.

ADMIT/DENY:

RFA-02-005. Admit or deny that FirstEnergy Utilities (or any of the FirstEnergy Utilities affiliates) used any of the money collected from Ohioans under “riders and charges” (see affidavit of Santino Fanelli) under FirstEnergy Utilities’ tariffs for House Bill 6 activities.

ADMIT/DENY:

RFA-02-006. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities affiliates) used any of the money collected from Ohioans under “riders and charges” (see affidavit of Santino Fanelli) approved in FirstEnergy Utilities latest electric security plan (Case No. 14-1297-EL-SSO) for House Bill 6 activities.

ADMIT/DENY:

RFA-02-007. Admit or deny that FirstEnergy Utilities (or any FirstEnergy Utilities affiliates) used any of the money collected from Ohioans under FirstEnergy Utilities' "riders and charges" (see affidavit of Santino Fanelli) approved in FirstEnergy's latest electric security plan (Case No. 1401297-EL-SSO) for political and charitable spending.

ADMIT/DENY:

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Interrogatories, Requests for Admissions and Requests for Production of Documents Propounded Upon FirstEnergy Utilities by the Office of the Ohio Consumers' Counsel, Second Set, was served upon the persons listed below via electronic transmission this 2nd day of October 2020.

/s/ Maureen R. Willis

Maureen R. Willis
Senior Counsel

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

AFFIDAVIT OF COUNSEL

State of Ohio)
) SS
County of Cuyahoga)

I, James F. Lang, being first duly sworn, hereby state and aver as follows:

1. I am counsel for Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") in the above-captioned proceeding. I have personal knowledge of the facts stated herein.
2. On Friday, October 9, 2020, the Office of the Ohio Consumers' Counsel ("OCC") served a Notice to Take Deposition and Request for Production of Documents ("Notice") upon the Companies. A true and accurate copy of the Notice is attached hereto.
4. On Thursday, October 15, 2020, I conferred with OCC's counsel regarding both the lack of need and the overbreadth of the Notice, while stating the Companies' intention to respond to OCC's written discovery requests that are focused on the question presented in the Commission's September 15, 2020 Entry and the Companies' September 30, 2020 Response. We agreed that the Companies and OCC have a fundamental disagreement on the scope of this proceeding that could not be resolved.
6. I have prepared this affidavit for submission with the foregoing motion for protective order as required by Ohio Administrative Code Rule 4901-1-24(B)(3).


James F. Lang

Sworn to and subscribed before me on this 16th day of October 2020.


Notary Public
DONNA J. MICHALSKI, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires March 15, 2022

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

Please take notice that the Office of the Ohio Consumers' Counsel ("OCC") will take the oral deposition of Santino Fanelli, Director of the Rates and Regulatory Affairs Department, FirstEnergy Service Company, consistent with OCC's rights under Ohio Adm. Code Rule 4901-1-21.

OCC seeks to conduct the deposition upon oral examination of this FirstEnergy Service Company employee related to, among other things, his sworn affidavit attached to the FirstEnergy Utilities' Response to the PUCO's Show Cause Entry of September 15, 2012. The deposition will take place via teleconference on October 22, 2020, at 10:00 a.m., or a date that is mutually agreeable between OCC and the deponent. The deposition will continue day-to-day thereafter until complete., The deponent will appear at that time and make himself available for telephonic deposition and will remain present until the deposition is completed.

Mr. Fanelli provided the sworn affidavit that was attached to FirstEnergy Utilities' Response to the PUCO's Show Cause Entry issued in this proceeding. Mr. Fanelli's deposition will be used to discover information related to FirstEnergy Utilities

Response to the PUCO's show cause order and matters including the use of funds collected from FirstEnergy Utility customers for political and charitable spending in support of tainted House Bill 6.

The deposition will be taken of the aforementioned deponent on relevant topics related to this proceeding, including but not limited to the deponent's filed affidavit, discovery requests by OCC and other parties and responses to such discovery provided by FirstEnergy Utilities. Mr. Fanelli will also be deposed on his knowledge and expertise with respect to the subject matter of this proceeding. The deposition will be taken upon oral examination (as upon cross-examination) before an officer authorized by law to take depositions.

Under Ohio Adm. Code Rules 4901-1-21(E), the deponent is requested to produce and make available to OCC, three hours prior to the deposition, the following documents:

1. The deponent's most recent C.V./resume.
2. Any documents referred to or relied upon with respect to the deponent's filed affidavit in this case.
3. All discovery responses that have been provided to OCC or any other party to this proceeding, including the PUCO Staff, and any discovery response that is due to parties on or prior to the scheduled deposition.

Respectfully submitted,

Bruce Weston (#0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis

Maureen R. Willis, Senior Counsel
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Attorneys for the Ohio Consumers' Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice to Take Deposition was provided electronically to the persons listed below this 9th day of October 2020.

/s/Maureen R. Willis

Senior Counsel

Assistant Consumers' Counsel

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

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Case No(s). 20-1502-EL-UNC

Summary: Motion for Protective Order electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company