

**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.)

**MEMORANDUM CONTRA
OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY'S
MOTION FOR PROTECTIVE ORDER
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

The Public Utilities Commission of Ohio (Commission) opened the above-captioned proceeding on September 15, 2020 to review the political and charitable spending in support of Am. Sub. H.B.6. (H.B. 6) and the subsequent referendum effort by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy Utilities).¹ Unfortunately, since the inception of the proceeding, the FirstEnergy Utilities have attempted to limit the scope of the Commission's review and the intervenors' participation in the proceeding, including opposing numerous interventions and attempting to limit the amount and methods of discovery available to intervenors.

More specifically, the FirstEnergy Utilities filed memoranda contra several stakeholders' interventions, including that of the Ohio Manufacturers' Association Energy Group (OMAEG).²

¹ See Entry at ¶ 5 (September 15, 2020).

² See, e.g., FirstEnergy Utilities' Memoranda Contra the Motions to Intervene of ELPC (October 5, 2020), NRDC (October 14, 2020), OEC (October 14, 2020), OPAE (October 14, 2020), OMAEG (October 15, 2020), NOAC (October 20, 2020), and OHA (October 20, 2020).

Then, on October 16, 2020, the FirstEnergy Utilities filed their Motion For Protective Order (Motion) to preclude the deposition of the FirstEnergy Utilities' affiant Santino L. Fanelli and limit the discovery in this proceeding to be conducted only by written discovery requests.³ At first blush, the Motion seems to be only seeking a protective order from the notice of deposition served on October 9, 2020 by the Office of the Ohio Consumers' Counsel (OCC), but the Motion is much broader. The FirstEnergy Utilities are asking the Commission to limit the amount and methods of discovery, prohibiting depositions in this case, by all intervenors, regardless of the procedural schedule ultimately established in the case.⁴ Simply stated, the FirstEnergy Utilities are asking the Commission to limit intervenors' discovery rights and impede each intervenor's ability to fully participate in the proceeding and protect its real and substantial interests.

In their Motion, the FirstEnergy Utilities assert that "Commission precedent does not anticipate discovery in every case, and the Commission's rules give the Commission discretion to limit the methods of discovery."⁵ Although the Commission enjoys broad discretion in structuring the discovery process,⁶ the FirstEnergy Utilities minimize the current proceeding, characterizing it as not a "proceeding" at all and incorrectly stating that a hearing must be "set or contemplated prior to engaging in discovery."⁷

First, the Commission has opened up a proceeding to investigate and review the political and charitable spending by the FirstEnergy Utilities in support of H.B. 6 and the subsequent

³ FirstEnergy Utilities' Motion at 1-2.

⁴ Id. at 1 ("Thus, any deposition under the circumstances presented would be needlessly redundant and unduly burdensome."). See also Id. at 5 ("Thus, given the current procedural posture of this case, the Commission should issue a protective order that discovery be had only via written requests.").

⁵ FirstEnergy Utilities' Motion at 1.

⁶ See, e.g., Ohio Adm. Code 4901-1-17(G).

⁷ FirstEnergy Utilities' Motion at 3.

referendum effort, specifically calling it a proceeding and establishing a comment period and subsequent procedural schedule, including a prehearing conference.⁸

Second, this proceeding is not a perfunctory proceeding where a utility files annual reports or tariff updates and no stakeholders intervene and/or provide comments or object to the filing. On the contrary, this proceeding is a unique proceeding where the Commission is investigating specific expenditures by three regulated utilities to ascertain whether the costs of any political or charitable spending in support of H.B. 6, or the subsequent referendum effort, were included, directly or indirectly, in any rates or charges paid by ratepayers in this state.⁹ In fact, the United States Attorney for the Southern District of Ohio has described the H.B. 6 scandal as “likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio.”¹⁰ Thus, it is imperative that the Commission allow stakeholders, including OMAEG, to intervene in the case to participate as parties, to conduct ample discovery to review the regulated utilities’ expenditures, and to fully participate in the proceeding to enable the Commission to determine that no customers have been or will be unlawfully charged costs related to H.B. 6 and that customers did not inadvertently support H.B. 6 through any rates or charges paid to the regulated FirstEnergy Utilities.

As explained further below, the Commission should deny the FirstEnergy Utilities’ Motion and preclude the FirstEnergy Utilities from subverting or limiting the Commission’s review and intervenors’ participation therein. Any purported burden that the FirstEnergy Utilities may face from a deposition(s) is speculative and meritless. And, while the FirstEnergy Utilities improperly

⁸ See Entry at ¶ 5 (September 15, 2020); Entry at ¶ 4 (October 20, 2020).

⁹ Entry at ¶ 4 (October 20, 2020).

¹⁰ WSYX ABC 6, *U.S. Attorney Update on Arrest of Ohio House Speaker Larry Householder and Four Associates*, YouTube (Streamed live on July 21, 2020) (statement starting at 00:48), <https://www.youtube.com/watch?v=mYTY9GUnHMM>.

characterize the scope of the Commission’s review, the FirstEnergy Utilities fail to demonstrate how the notice of one deposition for one deponent rises to the level of oppression, harassment, or an undue burden. Any potential burden that the FirstEnergy Utilities may endure from the one deposition noticed would be negligible, particularly considering the magnitude of the H.B. 6 scandal which was the impetus for this investigation. A protective order is also unnecessary as the FirstEnergy Utilities have failed to demonstrate bad faith on behalf of any participating intervenor at this stage of the proceeding, and the FirstEnergy Utilities will be fully able to exercise their rights in the unlikely event that an abuse of the discovery process occurs subsequently during the deposition or through other discovery. Further, the FirstEnergy Utilities received adequate notice of the deposition, and, contrary to the claims of the FirstEnergy Utilities, a Commission order limiting the available methods of discovery at this stage of the proceeding would impair an intervenor’s ability to fully participate in the proceeding and protect its real and substantial interests.

In accordance with the Commission’s directive in its October 20, 2020 Entry, OMAEG hereby files its Memorandum Contra the FirstEnergy Utilities’ Motion.¹¹

II. ARGUMENT

A. The Commission should deny the FirstEnergy Utilities’ request to limit discovery in this proceeding inasmuch as the FirstEnergy Utilities’ Motion fails to satisfy Ohio Adm. Code 4901-1-24.

The goal of the discovery rules is to “encourage prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in [Commission] proceedings.”¹² That is exactly what the intervenors seek through a deposition of

¹¹ Entry at ¶ 13 (October 2020).

¹² Ohio Adm. Code 4901-1-16(A).

Mr. Fanelli: discovery during the prehearing phase of the proceeding in order to adequately participate in the proceeding (including the filing of comments). The rule does not require that a hearing be held; it only explains the timing of the discovery. Further, contrary to what the FirstEnergy Utilities imply, the Commission has not ruled that a hearing is unnecessary; it merely set a comment period first. Accordingly, the FirstEnergy Utilities' Motion is an unwarranted attempt to prevent the intervenors from thoroughly and adequately preparing their positions and arguments for the proceeding, regardless of the type of proceeding that is ultimately conducted. The Motion should be denied.

Parties¹³ “may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding [as long as] the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”¹⁴ Such discovery “may be obtained through interrogatories, requests for the production of documents and things or permission to enter upon land or other property, *depositions*, and requests for admission.”¹⁵ Notably, “[t]he frequency of using these discovery methods is not limited”¹⁶ unless the “party or person from whom discovery is sought” shows that a protective order is “necessary to protect [such] party or person from annoyance, embarrassment, oppression, or undue burden or expense.”¹⁷ The FirstEnergy Utilities have not met that burden here.

¹³ For purposes of discovery, Ohio Adm. Code 4901-1-16(H) defines party as any person who has filed a motion to intervene (“For purposes of rules 4901-1-16 to 4901-1-24 of the Administrative Code, the term ‘party’ includes any person who has filed a motion to intervene which is pending at the time a discovery request or motion is to be served or filed.”).

¹⁴ Ohio Adm. Code 4901-1-16(B).

¹⁵ Id. (emphasis added).

¹⁶ Id.

¹⁷ Ohio Adm. Code 4901-1-24.

The FirstEnergy Utilities mischaracterize the scope of the Commission’s review and fail to explain how one deposition of one person who submitted a sworn affidavit to the Commission in this proceeding would be unduly annoying, embarrassing, oppressive, burdensome, or expensive. Additionally, any potential burden that the FirstEnergy Utilities may face is de minimis when viewed in relation to the Commission’s review itself. Lastly, the FirstEnergy Utilities are more than capable of exercising their rights during the deposition to protect against any potential abuses of the discovery process. Consequently, the Commission should deny the FirstEnergy Utilities’ Motion, as it does not satisfy the requirements of Ohio Adm. Code 4901-1-24.

1. The FirstEnergy Utilities’ attempt to limit the scope of the Commission’s review should be rejected.

The Commission stated, “that this proceeding should be opened to review the political and charitable spending by the FirstEnergy Utilities in support of Am. Sub. H.B.6 and the subsequent referendum effort.”¹⁸ Despite this clear language, the FirstEnergy Utilities claim that they will be subjected to an undue burden should their one affiant be deposed about the FirstEnergy Utilities’ political and charitable spending in support of H.B. 6—the very item that the Commission has opened up a proceeding to review.¹⁹ Again, Ohio Adm. Code 4901-1-16(B) provides that “any party to a commission proceeding may obtain discovery of *any matter*, not privileged, which is *relevant* to the subject matter of the proceeding.” (emphasis added). The rule further permits the discovery of information reasonably calculated to lead to the discovery of admissible evidence.²⁰ In essence, the FirstEnergy Utilities seek a protective order to prevent their one affiant from

¹⁸ See Entry at ¶ 5 (September 15, 2020); see also, Entry at ¶ 4 (October 20, 2020).

¹⁹ FirstEnergy Utilities’ Motion at 6.

²⁰ Ohio Adm. Code 4901-1-16(B).

answering questions directly related to the purpose of this proceeding and expressly authorized by the Ohio Administrative Code.

The FirstEnergy Utilities also incorrectly argue that the Commission lacks authority to review political and charitable spending of revenue collected pursuant to Commission-authorized rates and charges.²¹ R.C. 4905.05 vests the Commission with jurisdiction over every public utility, the plant or property of which lies wholly within Ohio, its owners or operators, and its records and accounts. The Ohio Revised Code further grants the Commission general supervision over all public utilities within its jurisdiction and authorizes the Commission to examine public utilities' compliance with all laws and Commission orders, including laws that require customers to be charged only just and reasonable rates and costs that are prudently incurred.²² The Supreme Court of Ohio has also held that once a situation develops that is inimical to the public interest, utilities cannot shield their internal affairs from the Commission's review.²³ While Ohio law guarantees the FirstEnergy Utilities a reasonable rate of return for rendering necessary services to customers, regulated utilities are not permitted to abuse this regulatory compact. Therefore, the Commission has jurisdiction to ensure that the FirstEnergy Utilities did not unlawfully contribute to political or charitable spending in support of H.B. 6 via rates or charges collected from customers.

The Commission should deny the FirstEnergy Utilities' Motion for a protective order to impede the discovery of information directly related to the purpose of the review. Nonetheless, even if the FirstEnergy Utilities' political and charitable spending were beyond the scope of the

²¹ FirstEnergy Utilities' Motion at 6.

²² See R.C. 4905.06; R.C. 4905.22.

²³ *Elyria Tel. Co. v. Pub. Util. Comm.*, 158 Ohio St. 441, 447, 110 N.E.2d 59 (1953) (referencing *City of Cleveland v. Pub. Util. Comm.*, 102 Ohio St. 341, 131 N.E. 714).

Commission's review (which it is not), the Motion fails to explain why a protective order is necessary to protect the FirstEnergy Utilities from *all* depositions, let alone one deposition, regardless of the topic.

2. The FirstEnergy Utilities failed to establish that one deposition is harassing or unduly burdensome merely by identifying the possibility that a deponent will be asked questions relevant to prior written discovery requests.

The FirstEnergy Utilities argue that they will face an undue burden and require a protective order because they anticipate that their affiant will be deposed on the same questions that OCC has already asked in interrogatories.²⁴ The FirstEnergy Utilities' sole support for this argument is that OCC stated that the deposition would consist of "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."²⁵

From this one statement, the FirstEnergy Utilities fail to establish that they are being subjected to "annoyance, embarrassment, oppression, undue burden or expense" necessitating a protective order by their mere assertion that OCC intends to depose the FirstEnergy Utilities' affiant on a range of topics, including topics that may relate to OCC's earlier discovery requests. To the contrary, the Commission has held that "depositions are not necessarily improper because substantial information (such as written testimony) is already available to a party and that the use of oral depositions in such a situation need not be precluded."²⁶ While the facts of each case are

²⁴ FirstEnergy Utilities' Motion at 1.

²⁵ OCC's Notice to Take Deposition at 3 (October 9, 2020).

²⁶ *In the Matter of the Application of the Ohio Bell Telephone Company for Authority to Increase and Adjust its Rates and Charges and to Change Regulations and Practices Affecting the Same*, Case No. 79-1184-TP-AIR, 1980 WL 625298, Entry at ¶ 5 (August 4, 1980).

unique, the Commission has denied protective orders in cases where movants have alleged significantly greater burdens than those referenced by the FirstEnergy Utilities.²⁷

Even if the FirstEnergy Utilities were correct (which they are not) that asking an undetermined amount of questions related to prior discovery requests imposes an undue burden, the deposing intervenors still maintain a substantial interest in asking questions not covered by or not directly related to the prior discovery.²⁸ Lastly, adopting a minimal standard of proof for a protective order, such as the standard the FirstEnergy Utilities advocate for, would theoretically eliminate depositions in Commission proceedings. There is often a possibility or likelihood that deposing intervenors may ask questions or follow-up questions related to questions already posed in interrogatories. But, Ohio Adm. Code 4901-1-24 protects deponents against *undue* burdens, not minimal or speculative burdens such as those that the FirstEnergy Utilities cite. A notice of one deposition of an affiant does not rise to that level.

3. Any potential burden that the FirstEnergy Utilities may face from depositions is minimal when viewed in relation to the proceeding.

The FirstEnergy Utilities further claim that a deposition would subject them to an undue burden because OCC has already served the FirstEnergy Utilities with 31 interrogatory requests.²⁹ In determining the standard movants must meet to satisfy Ohio Adm. 4901-1-24, the Commission concluded that, “the question is not the number of interrogatories, or the fact that the interrogating party is using successive methods of discovery,... but whether or not the demands are unduly

²⁷ See, e.g., *In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and to Increase Certain of its Filed Schedules Fixing Rates and Charges for Electric Service*, Case No. 88-170-EL-AIR, 1988 WL 1617999, at ¶ 4 (June 10, 1988) (denying The Cleveland Electric Illuminating Company and The Toledo Edison’s Motion for Protective Order against the second deposition of a witness already deposed).

²⁸ See, e.g., *Dominion Retail, Inc. v. Dayton Power and Light Company*, Case No. 03-2405-EL-CSS, 2004 WL 1922982, Entry at ¶ 6 (June 29, 2004) (determining that despite self-explanatory evidence, deposing parties retained an interest in deposing witnesses about matters not covered by the evidence or not directly related to the evidence).

²⁹ FirstEnergy Utilities’ Motion at 5.

burdensome or oppressive when viewed with relation to the case itself.”³⁰ The Commission’s review of the FirstEnergy Utilities’ political and charitable spending in support of H.B. 6 is related to the H.B. 6 scandal, perhaps the largest public corruption scandal in Ohio history.³¹ H.B. 6 has already had a substantial impact on OMAEG’s members, including those who are customers of the FirstEnergy Utilities, and it has had or will have a substantial impact on Ohio’s economy, energy efficiency laws, and public utilities. The FirstEnergy Utilities’ customers, including OMAEG’s members, have a substantial interest in ensuring that they were not unlawfully assessed rates or charges to support H.B. 6 and that they did not indirectly fund political or charitable efforts to support H.B. 6. Thus, any burden the FirstEnergy Utilities may face in participating in a deposition(s) is minimal in comparison to the overarching context of the Commission’s review and the substantial interests of the FirstEnergy Utilities’ customers. Therefore, the Commission should deny the FirstEnergy Utilities’ Motion as it has failed to satisfy the standard set forth in Ohio Adm. Code 4901-1-24.

4. A protective order is unnecessary because the FirstEnergy Utilities have failed to demonstrate that they are incapable of exercising their rights to protect against any potential abuses of the discovery process during depositions.

There is no reason to believe that any abuse of the discovery process would occur during a deposition in the above-captioned proceeding and the FirstEnergy Utilities did not demonstrate bad faith on behalf of any intervenors. Parties, including the FirstEnergy Utilities, participating in the deposition are more than capable of exercising their rights and ensuring that discovery is

³⁰ *In the Matter of the Application of Columbus and Southern Ohio Electric Company for Authority to Amend & Increase Certain of Its Rates & Charges for Electric Service, Amend Certain Terms and Conditions of Service and Revise its Depreciation Accrual Rates and Reserve.*, Case No. 81-1058-EL-AIR, 1982 WL 974263, Entry at ¶ 6 (June 7, 1982).

³¹ WSYX ABC 6, *U.S. Attorney Update on Arrest of Ohio House Speaker Larry Householder and Four Associates*, YouTube (Streamed live on July 21, 2020) (statement starting at 00:48), <https://www.youtube.com/watch?v=mYTY9GUnHMM>.

conducted in accordance with the Commission's rules.³² Accordingly, the Commission should reject the FirstEnergy Utilities' Motion because it fails to articulate why existing rights would be insufficient to protect their interests in the unlikely event that any abuse of the discovery process occurs during a deposition.

5. The FirstEnergy Utilities cannot establish that a deposition would be harassing or unduly burdensome when the FirstEnergy Utilities received adequate notice.

In evaluating whether discovery requests subject a party or individual to harassment or an undue burden, the Commission has previously evaluated the adequacy of the notice provided.³³ On October 9, 2020, OCC provided the FirstEnergy Utilities with notice to take the deposition of Mr. Fanelli via teleconference on October 22, 2020 at 10:00 AM or upon a mutually agreeable date.³⁴ The notice further described the relevant topics that the deposition would cover. The FirstEnergy Utilities have not demonstrated how a virtual deposition would be harassing or unduly burdensome after receiving at least two weeks' notice to prepare. The notice was especially reasonable in light of the Commission's previously established deadline of October 29, 2020 to provide initial comments on the FirstEnergy Utilities' response to the order to show cause.³⁵

³² See, e.g. *In the Matter of the Application of the Ohio Edison Company for Authority to Change Certain of its Filed Schedules Fixing Rates and Charges for Electric Service*, Case No. 77-553-EL-AIR, 1977 WL 424255, Entry at ¶¶ 12 -13 (December 7, 1977) (denying a Motion for Protective Order against the use of depositions because movant failed to demonstrate bad faith of the deposing parties and the Commission determined counsel for participating parties would be aware of and capable of exercising their rights should any abuse of the discovery process occur in a deposition).

³³ *In the Matter of the Application of the Ohio Bell Telephone Company for Authority to Increase and Adjust its Rates and Charges and to Change Regulations and Practices Affecting the Same*, Case No. 79-1184-TP-AIR, 1980 WL 625298, Entry at ¶ 5 (August 4, 1980) (denying a Motion for Protective Order to preclude a deposition because the deposing party provided notice within 25 days of the deposition and listed the specific time, place, and topics of the deposition).

³⁴ OCC's Notice to Take Deposition at 3 (October 9, 2020).

³⁵ See Entry at ¶ 5 (September 15, 2020).

OMAEG respectfully requests that the Commission deny the FirstEnergy Utilities' Motion as there is no reasonable basis for granting a protective order to the FirstEnergy Utilities.

B. The Commission should deny the FirstEnergy Utilities' Motion because the FirstEnergy Utilities erroneously argue that depositions are unnecessary in the above-captioned proceeding.

The FirstEnergy Utilities have not demonstrated that an undue burden would result from participating in one or more depositions, and similarly fail in their attempt to explain why all depositions are unnecessary in this proceeding to further the Commission's review. The FirstEnergy Utilities contend that the Commission should only allow written discovery in the above-captioned proceeding and depositions are unnecessary because there will be no hearing.³⁶ However, the extent of the Commission's review and the procedural posture and schedule are yet to be determined. Ohio Adm. Code 4901-1-17(A) authorizes discovery to begin "immediately after a proceeding is commenced" and further provides that under the Commission's rules, discovery "should be completed as expeditiously as possible." Accordingly, intervenors typically are afforded full discovery rights, even in proceedings without scheduled hearings.³⁷

Contrary to the FirstEnergy Utilities' claim, the scope of the Commission's review is still developing and it remains to be determined whether the proceeding will extend beyond the filing of comments. Multiple intervenors have requested that the Commission expand the scope of its

³⁶ FirstEnergy Utilities' Motion at 7.

³⁷ See, e.g., *In the Matter of the Commission's Investigation into PALMco Power OH, LLC DBA Indra Energy and PALMco Energy OH, LLC DBA Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-2153-GE-COI Entry at ¶ 15 (March 9, 2020) (scheduling a discovery conference in a Commission investigation prior to granting any stakeholder intervention or determining that a hearing would be held); *In the Matter of the Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Electric Service Supplier*, Case Nos. 11-5886-EL-CRS, et al., Entry at ¶ 11 (March 3, 2020) (establishing a deadline to respond to discovery requests in a Commission investigation before granting any stakeholder intervention or determining that a hearing would be held).

review.³⁸ On October 20, 2020, the Commission recognized these requests in its Entry and has allowed the issues to be fully briefed prior to comments being filed. The Commission vacated the existing deadlines to submit comments on the FirstEnergy Utilities' response to the Commission's show cause order.³⁹ Additionally, the Commission established a deadline of November 2, 2020 for the filing of memoranda contra the FirstEnergy Utilities' motion for a protective order to preclude the deposition of Mr. Fanelli.⁴⁰ Lastly, the Commission ordered that a prehearing conference will be held, on the record, to address the motion for protective order.⁴¹

Based on the foregoing actions, the scope of this proceeding is still developing and the procedural posture may extend beyond the filing of comments. The purpose of depositions is to allow intervenors to gather relevant information in preparation of their case⁴², which holds true regardless of the procedural posture of the case. While the FirstEnergy Utilities characterize interrogatories and depositions as interchangeable discovery methods,⁴³ this is simply untrue. Each method has distinct advantages and disadvantages. For example, depositions provide intervenors with an opportunity for spontaneous, direct contact with the deponent and the immediate ability to ask clarifying or follow up questions.⁴⁴ Limiting the methods of discovery

³⁸ See Motion of the Environmental Advocates to Expand the Scope of the Commission's Review (September 29, 2020); Entry at ¶¶ 13, 14 (October 20, 2020) (directing parties to file memoranda contra FirstEnergy Utilities' Motion for a Protective Order and stating that a subsequent Entry will establish the date of a prehearing conference); also see OCC's Interlocutory Appeal (September 21, 2020).

³⁹ Entry at ¶ 15 (October 20, 2020).

⁴⁰ Id. at ¶ 13.

⁴¹ Id. at ¶ 14.

⁴² *In the Matter of the Complaint of Randustrial Corp.*, Case No. 81-1507-TP-CSS, 1982 WL 973394, Entry at ¶ 5 (May 12, 1982).

⁴³ See, e.g., FirstEnergy Utilities' Motion at 5 (asserting that because OCC has served multiple written requests for discovery, depositions would be redundant and unnecessary).

⁴⁴ § 38:2. Advantages and disadvantages of depositions, 5 Ohio Jur. Pl. & Pr. Forms § 38:2 (2018 ed.).

available in this case would thwart a full and complete development of the record and impair the ability of intervenors to protect their real and substantial interests in this proceeding.

Additionally, even if the Commission elects not to hold a hearing, the FirstEnergy Utilities' request to limit discovery to written questions conflicts with Commission precedent. In proceedings where the Commission solicits comments, parties generally have discovery rights, including the right to depose any other party or person,⁴⁵ and the Commission has previously allowed parties full discovery rights in investigation proceedings.⁴⁶ The Commission should reject the FirstEnergy Utilities' Motion as it conflicts with Commission precedent of affording parties full discovery rights.

⁴⁵ See Ohio Adm. Code 4901-1-16(H); Ohio Adm. Code 4901-1-21(A).

⁴⁶ *In the Matter of the Commission's Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-2153-GE-COI, Entry at ¶ 20 (April 6, 2020); *In the Matter of the Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Electric Supplier*, Case Nos. 11-5886-EL-CRS, et al., Entry at ¶ 10 (March 24, 2020); *In the Matter of the Commission's Investigation into SFE Energy Ohio, Inc. and Statewise Energy Ohio, LLC's Compliance with the Ohio Revised Code and Ohio Administrative Code and Potential Remedial Action*, Case No. 20-1216-GE-COI, Entry at ¶ 15 (September 28, 2020); also see the Chairman's statement regarding discovery in this proceeding: <https://ohiochannel.org/video/ohio-house-select-committee-on-energy-policy-and-oversight-9-16-2020>, questions beginning at 1:11:00.

III. CONCLUSION

For the above-mentioned reasons, the Commission should deny the FirstEnergy Utilities' Motion.

Respectfully Submitted,

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