

**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)	Case No. 20-1502-EL-UNC
Electric Illuminating Company, and)	
the Toledo Edison Company.)	

**THE ENVIRONMENTAL ADVOCATES’ AMENDED MOTION TO EXPAND
THE SCOPE OF THE COMMISSION’S REVIEW OF FIRSTENERGY’S POLITICAL
AND CHARITABLE SPENDING AND MEMORANDUM IN SUPPORT**

Pursuant to Ohio Revised Code §§ 4905.05 and 4906.06 and Ohio Administrative Code § 4901-1-12, the Environmental Law & Policy Center (“ELPC”) and Ohio Environmental Council (“OEC”) (collectively, the “Environmental Advocates”) file this amended motion to expand the scope of the Public Utilities Commission of Ohio’s review to a full investigation. In the months since the Commission launched this review into the political and charitable spending of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively the “FirstEnergy Utilities”) related to Amended Substitute House Bill 6 (“HB6”) and the subsequent referendum campaign, the alleged public corruption scandal has continued to grow. On November 19, 2020, FirstEnergy Corporation filed its 10-Q Report with the SEC, noting that:

[C]ertain former members of senior management violated certain FirstEnergy policies and its code of conduct related to a payment of approximately \$4 million made in early 2019 in connection with the termination of a purported consulting agreement, as amended, which had been in place since 2013. The counterparty to such agreement was an entity associated with an individual who subsequently was appointed to a full-time role as an Ohio government official directly involved in regulating the Ohio Companies, including with respect to distribution rates.¹

¹ FirstEnergy Corp., Quarterly Report (Form 10-Q) at 36 (Nov. 19, 2020).

FirstEnergy Corporation has also announced major personnel changes in connection with its internal investigation. On October 29, 2020, the Corporation terminated its Chief Executive Officer, Charles E. Jones, along with executives Michael J. Dowling and Dennis M. Chack.² The 10-Q Report also explained that on November 8, 2020, FirstEnergy removed Vice President, General Counsel, and Chief Ethics Officer Ebony Yeboah-Amankwah, who formerly represented the FirstEnergy Utilities in cases at the PUCO.³

The Environmental Advocates want to ensure the Commission considers these significant developments in determining the scope of this proceeding. When added to the issues outlined in the Environmental Advocates' September 30, 2020 initial motion, these events further support the Commission's duty to provide a robust investigation into the FirstEnergy Utilities' involvement in the passage of HB6.

In the final analysis, the Commission's proposed review remains too narrow. A robust investigation is necessary for the Commission to fulfill its statutory responsibilities and restore public confidence in utility oversight. The federal investigations have narrower focuses and do not substitute for the Commission's independent inquiry. Specifically, the Commission should direct the FirstEnergy Utilities and other involved parties to address additional issues related to corporate separation, corporate management, and the possibility that FirstEnergy entities improperly attempted to influence the utility regulators, including the Commission Chair. The Environmental Advocates set forth support for this motion in more detail in the attached Memorandum in Support.

² *Id.*

³ *Id.*; see, e.g., *In re Complaint of George Hoy et al.*, No. 09-0966-EL-CSS.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Since the Environmental Advocates filed their original motion on September 29, 2020, important new facts have come to light regarding the HB6 scandal. Most importantly, FirstEnergy Corporation disclosed in a 10-Q filing with the SEC “that certain former members of senior management violated certain FirstEnergy policies and its code of conduct related to a payment of approximately \$4 million made in early 2019” to an organization “associated with an individual who subsequently was appointed to a full-time role” as a government official tasked with regulating the FirstEnergy Utilities.¹ The reported timing of this payment and the proximity of Governor DeWine’s appointment of Sam Randazzo to the Public Utilities Commission raise serious questions regarding whether FirstEnergy Corporation unduly influenced a regulator.² FirstEnergy Corporation also fired CEO Charles Jones and removed General Counsel Ebony

¹ FirstEnergy Corp., Quarterly Report (Form 10-Q) [hereinafter “10-Q Form”] at 36 (Nov. 19, 2020).

² See John Funk, *Governor DeWine Appoints Utility Lawyer Sam Randazzo to Chair PUCO*, CLEVELAND.COM (Feb. 4, 2019), <https://www.cleveland.com/business/2019/02/governor-dewine-appoints-utility-lawyer-sam-randazzo-to-chair-puco.html>; Letter from Sam C. Randazzo to Michael D. DeWine, Ohio Governor (Nov. 20, 2020), https://content.govdelivery.com/attachments/OHOOD/2020/11/20/file_attachments/1607093/Resignation.pdf; Julie Carr Smyth & Mark Gillispie, *FirstEnergy: Ohio Regulator’s Firm Got \$4M Consulting Fee*, AP (Nov. 19, 2020), <https://apnews.com/article/ohio-columbus-utilities-mike-dewine-9af2b3464cd053045378037d7b8ab063>.

Yeboah-Amankwah soon after “due to inaction and conduct that the Board determined was influenced by the improper tone at the top.”³

In order to protect the public—especially the FirstEnergy Utilities’ ratepayers—and restore public confidence in public utility regulation in light of the HB6 scandal, this docket must be an independent and thorough investigation by the Commission and/or a third-party entity. The Commission has broad supervisory and investigative authority, and the Commission should use that authority to examine how the FirstEnergy Utilities’ and FirstEnergy Corporation’s activities affected their customers. The need for an investigation into the FirstEnergy entities became obvious as soon as the federal government filed the July 2020 Criminal Complaint against Larry Householder and his associates. The Complaint alleges that “Company A”—widely understood to be FirstEnergy Corporation—was involved in a \$61 million public corruption scheme in order to pass and protect from public referendum House Bill 6.⁴ That law provided both a bailout for a former FirstEnergy Corporation affiliate’s nuclear power plants and a favorable decoupling mechanism for the FirstEnergy Utilities.⁵ As discussed above, more recent news from FirstEnergy Corporation and press reports underscore the connections between the FirstEnergy entities and the HB6 scandal.

The Environmental Advocates request that the Commission expand its investigation to look beyond the FirstEnergy Utilities’ possible political and charitable spending related to this scandal. The discussion below builds on Environmental Advocates’ previous motion, repeating those arguments and adding new arguments that support expanding the current investigation. A

³ 10-Q Form at 36.

⁴ *United States v. Householder et al.*, No. 1:20-MJ-00526, Criminal Complaint (S.D. Ohio July 17, 2020).

⁵ Jeremy Pelzer, *Here’s What HB6’s Controversial ‘Decoupling’ Policy Is and Why Ohio Lawmakers Are Trying to Repeal It*, CLEVELAND.COM (Dec. 2, 2020), <https://www.cleveland.com/open/2020/12/heres-what-hb6s-controversial-decoupling-policy-is-and-why-ohio-lawmakers-are-trying-to-repeal-it.html>; Jeremy Pelzer, *Nuclear Bailout Bill Passes Ohio Legislature, Signed by Gov. Mike DeWine*, CLEVELAND.COM (July 23, 2019), <https://www.cleveland.com/open/2019/07/nuclear-bailout-bill-passes-ohio-legislature.html>.

proper investigation must include: (1) how the FirstEnergy Utilities and their affiliates participated in the HB6 legislation process; (2) how the FirstEnergy Utilities' actions may have run afoul of either the letter or spirit of Ohio's corporate separation requirements; (3) whether and why the FirstEnergy Utilities or their parent corporation took positions to support a former unregulated affiliate, FirstEnergy Solutions, now known as Energy Harbor; and (4) whether the \$4 million payment the FirstEnergy Utilities and their parent company allegedly made to an entity associated with an individual who subsequently was appointed to a full-time role as an Ohio government official directly involved in regulating the Ohio Companies (appearing to be PUCO Chair Randazzo) violated the Ohio Revised Code and affected the outcome of Commission cases or improperly influenced his involvement in the drafting of HB6.⁶

The Environmental Advocates urge the Commission to carve a new path. Up to this point the Commission has divided reviews of the FirstEnergy Utilities' actions across multiple unconnected dockets, all of which have narrower focuses than needed for uncovering the truth about the allegedly years-long scandal. Moreover, waiting on federal action before diving into an investigation will only delay the important work the Commission must do, because the federal criminal investigation is narrowly focused on whether FirstEnergy Corporation broke federal criminal laws, not the impact of the FirstEnergy Utilities' actions on public utility customers. Hence, as outlined below, the Commission must take on a broader investigation.

⁶ Andrew J. Tobias, *Former Top Ohio Regulator Was Involved with Writing Tainted Nuclear Bill, Emails Show*, CLEVELAND.COM (Jan. 11, 2020), <https://www.cleveland.com/open/2021/01/former-top-ohio-utility-regulator-was-involved-with-writing-tainted-nuclear-bill-emails-show.html>.

II. ARGUMENT

A. The Commission Has an Obligation and the Authority to Conduct a Broader Review of the FirstEnergy Entities' Roles in the House Bill 6 Debate and Referendum Beyond the FirstEnergy Utilities' Financial Involvement.

Ohio law gives the Commission both the power and responsibility to oversee public utilities. The Commission recognizes its broad authority in paragraphs 2 and 3 of the investigation's September 15, 2020 Entry through its references to Ohio Revised Code §§ 4905.06 and 4905.05, respectively. Entry Order at 1 (Sept 15, 2020). The Commission has "general supervision over all public utilities," including the ability to investigate utilities for "their compliance with all laws, orders of the commission, franchises, and charter requirements." Ohio R.C. § 4905.06. Section 4905.05 provides an expansive list of entities, persons, and objects within this Commission's jurisdiction. "[T]he jurisdiction, supervision, powers, and duties of the public utilities commission extend to *every public utility* and railroad" and also encompass "persons or *companies owning*, leasing, or operating such public utilities" and "the records and accounts of the business thereof done with this state." *Id.* (emphasis added). These statutory powers give teeth to the Commission's central policy objectives: ensuring that all charges and services to customers are "just and reasonable," Ohio R.C. § 4905.22, and that there is "effective competition in the provision of retail electric service by avoiding anticompetitive subsidies," Ohio R.C. § 4928.02(H). As the Ohio Supreme Court decisions indicate, strong public utility regulation is necessary so that utilities "operate for the direct and primary benefit of consumers."⁷ Nothing in the Ohio Revised Code limits the Commission to investigating public

⁷ *City of Cleveland v. Pub. Utils. Comm'n of Ohio*, 63 Ohio St.2d 62, 75 (1980) (Locher, J., concurring in part, dissenting in part). Locher's concurrence and dissent was cited with approval in later decisions concerning the utility responsibilities and the Commission's oversight role. See *Cleveland Elec. Illuminating Co. v. Pub. Utils. Comm'n of Ohio*, 69 Ohio St. 258, 261 (1982). Indeed, the test for whether an entity is a public utility focuses on whether the entity "conducts its operations in such a manner as to be a matter of public concern," signaling that the public interest sits at the heart of the Commission's organizational mission. See *A&B Refuse Disposers, Inc. v. Ravenna Twp. Bd. of Trs.*, 64 Ohio St.3d 385, 388 (1992).

utilities on the basis of only their financial dealings. Therefore, the Commission can and should investigate the extent to which the FirstEnergy Utilities and their parent company used their money and influence to push for outcomes that could have harmed their customers or the competitive market.

Along the lines of the Environmental Advocates’ request, the Commission has a long history of much more thorough investigations on issues of much less significance than the current corruption scandal. This history shows that the Commission’s review unnecessarily limits its investigatory powers. In 2004, for example, the Commission opened an investigation into Dayton Power & Light (“DP&L”) based on recent reports that DP&L’s parent company had delayed filing required SEC forms and suffered challenges to its creditworthiness. *In re Commission Investigation of the Financial Condition of the Dayton Power & Light Co.*, No. 04-0486-EL-COI, Entry ¶ 5 (Apr. 7, 2004). Unlike this case, the Commission did not merely ask DP&L to respond to a narrow question about the troubling situation. Instead, it directed PUCO Staff to actively investigate DP&L’s financial condition and for DP&L to file a financial plan. *Id.* ¶ 7. The Commission’s inquiry into the FirstEnergy Utilities in 2017 was similarly broad. *In re Review of Ohio Edison Co., Cleveland Elec. Illuminating Co. & Toledo Edison Co.’s Compliance with R.C. 4928.17 & the Ohio Adm. Code Chapter 4901:1-37*, No. 17-0974-EL-UNC. The Commission launched an investigation into the “compliance of FirstEnergy [Utilities] with the Corporate Separation Rules,” approved the hiring of an independent auditor, and instructed the FirstEnergy Utilities to provide all documents and information relevant to the audit. No. 17-0974-EL-UNC, Entry ¶¶ 1, 5, 11 (May 17, 2017).

The recent history of investigations also shows the importance of broad participation and discovery. In 2018, the Commission began looking into the financial impact of the Tax Cuts and

Jobs Act of 2017 (“TCJA”) on Ohio utilities. *In re Commission’s Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, No. 18-0047-AU-COI. Although that investigation focused only on how the Commission should reconcile utility rates with the TCJA, the case included discovery, hearings, and numerous opportunities for comments. *See id.*, Entry ¶ 9 (May 24, 2018). Even the Commission’s regular determinations of whether electric security plans (“ESPs”) have resulted in significantly excessive earnings include opportunities for testimony and participation in the docket. *See, e.g., In re Application of Duke Energy Ohio, Inc. for Administration of the Significantly Excessive Earnings Test*, No. 19-0460-EL-UNC, Entry ¶ 5 (Jan. 23, 2020).

Given the seriousness of the allegations, the Commission must go beyond merely requiring the FirstEnergy Utilities to self-report on financial aspects of their connections to the scandal and calling for comments. The Criminal Complaint and press reports⁸ suggest that the FirstEnergy Utilities and their parent company have, to the detriment of their customers, exploited their power arising from the FirstEnergy Utilities’ monopoly status as a distribution utility in Ohio. For example, HB6 created a decoupling mechanism highly favorable to the FirstEnergy Utilities that the Ohio Attorney General has described as having “the sole purpose of padding FirstEnergy’s bottom-line” at the expense of customers.⁹ Similarly, the Shared Services Agreement between FirstEnergy Corporation and FirstEnergy Solutions, through which FirstEnergy Service Company provided government affairs support to FirstEnergy Solutions,

⁸ *See, e.g.,* Mark Gillispie, *FBI: Multiple Groups Involved in Ohio’s \$60M Corruption Scheme*, WASH. POST (Aug. 5, 2020), https://www.washingtonpost.com/business/fbi-multiple-groups-involved-in-ohio-60m-corruption-scheme/2020/08/05/efe1dc16-d75e-11ea-a788-2ce86ce81129_story.html; Tom Henry, *FirstEnergy’s ‘Brazen Arrogance’ Seen in Householder Scandal Too, Critics Claim*, TOLEDO BLADE (July 30, 2020), <https://www.toledoblade.com/local/politics/2020/07/30/FirstEnergy-s-brazen-arrogance-seen-in-Householder-scandal-too-critics-claim/stories/20200729122>.

⁹ Motion by Plaintiff State of Ohio for Temporary Restraining Order & Preliminary Injunction Against FirstEnergy Defendants, *State of Ohio ex rel. David Yost v. FirstEnergy Corp.*, No. 20-CV-6281 (Ohio Ct. Com. Pl. Jan. 13, 2021).

created close ties between the FirstEnergy Utilities and an unregulated affiliate throughout the lobbying process.¹⁰ These close ties between the FirstEnergy entities, and the press reports linking the FirstEnergy Utilities' parent company to the scandal, have undermined public trust in both the Ohio energy market and the Ohio government.

Beyond the Shared Services Agreement, the very nature of how the FirstEnergy Utilities' parent company operates raises issues. FirstEnergy Corporation CEO Chuck Jones, who the Corporation terminated in October 2020 for violations of the Corporation's internal policies and code of conduct,¹¹ had ultimate authority over the FirstEnergy Utilities throughout the HB6 scandal. The Criminal Complaint alleges that the CEO of "Company A Corp." (allegedly FirstEnergy Corporation) spoke with former House Speaker Householder 84 times between early 2017 and July 2019, including 30 times during the first half of 2019 when the General Assembly was considering HB6.¹² FirstEnergy Corporation's November 19, 2020 SEC 10-Q filing suggested high-level executives were also involved in the early 2019 payment of \$4 million to an entity associated with a future utilities regulator.¹³ Commission Chair Sam Randazzo resigned following this revelation, and more recent reporting shows he was involved in the drafting of HB6.¹⁴

Given the severity of the allegations against FirstEnergy Corporation, the Utilities, and related FirstEnergy entities, the Commission must look beyond how the FirstEnergy Utilities

¹⁰ See FirstEnergy Sols. et al. Exhibit A, Amended Shared Services Agreement, *In re FirstEnergy Sols. Corp.*, No. 18-50757 (Bankr. N.D. Ohio Sept. 14, 2018), <https://www.documentcloud.org/documents/6469994-FirstEnergy-Solutions-Amended-Shared-Services.html>.

¹¹ Press Release, *FirstEnergy Announces Leadership Transition*, FIRSTENERGY CORP. (Oct. 29, 2020), <https://investors.firstenergycorp.com/investor-materials/news-releases/news-details/2020/FirstEnergy-Announces-Leadership-Transition/default.aspx>.

¹² *United States v. Larry Householder et al.*, No. 1:20-MJ-00526, Criminal Complaint ¶ 182 (S.D. Ohio July 17, 2020).

¹³ FirstEnergy Corp., Quarterly Report (Form 10-Q) at 36 (Nov. 19, 2020).

¹⁴ See Tobias, *supra* note 6.

spent ratepayer dollars. Money is fungible, and looking only for close ties between ratepayer funds and bad acts will miss other abuses of market power that the Commission has the authority to police. Once the Commission completes that analysis, it not only needs to determine whether the FirstEnergy Utilities violated their obligations to customers, but also whether Ohio needs more separation between FirstEnergy Corporation and the regulated utilities than it currently has.

B. The Commission Should Investigate the FirstEnergy Utilities’ Corporate Separation Policies and Practices Throughout the House Bill 6 Debate.

The allegations in the Criminal Complaint and press reports suggest that during the HB6 debate and subsequent referendum campaign individuals working for FirstEnergy Corporation and FirstEnergy Service Company acted to influence legislation beneficial to FirstEnergy Solutions, now Energy Harbor. Throughout that time, FirstEnergy Corporation was the parent company or creditor of FirstEnergy Solutions, which formally emerged from Chapter 11 bankruptcy proceedings as the reorganized and unaffiliated entity Energy Harbor on February 27, 2020.¹⁵ These close ties between FirstEnergy Corporation and its former affiliate weaken public confidence that the FirstEnergy Utilities did not use ratepayer resources, directly or indirectly, to subsidize nonregulated businesses.

The separation of regulated and unregulated utility businesses is central to Ohio’s competitive energy market. Utilities with noncompetitive businesses in the state must “implement[] and operate[] under a corporate separation plan” approved by the Commission. Ohio R.C. § 4928.17(A). Among other requirements, the plan must “satisfy[] the public interest in preventing unfair competitive advantage and preventing the abuse of market power.” *Id.* § 4928.17(A)(2). These corporate separation requirements apply to the organization of both the

¹⁵ See *In re Filing by FirstEnergy Sols. Corp. of a Petition for Reorganization Under Chapter 11 of the U.S. Bankruptcy Code*, No. 18-0569-EL-UNC, Final Update (Mar. 2, 2020).

utility and its affiliates and the actions that individual utility employees take. *See* Ohio Admin. Code § 4901-1-37-04.

Prior investigations into the FirstEnergy Utilities’ corporate separation practices have failed to answer fundamental questions and do not address the current situation facing the Commission. The Commission initiated a 2017 audit of the FirstEnergy Utilities’ corporate separation policies as a part of its larger initiative to review all electric utilities’ compliance with Ohio R.C. § 4928.17. *See In re Review of the Ohio Edison Co., the Cleveland Elec. Illuminating Co. & the Toledo Edison Co.’s Compliance with R.C. 4928.17 & the Ohio Adm. Code Chapter 4901:1-37*, No. 17-974-EL-UNC, Final Compliance Audit of the FirstEnergy Companies (May 17, 2017). The 2017 audit revealed that FirstEnergy Service Company had mixed competitive service employees with EDU employees. *Id.* But that review did not consider how the FirstEnergy Utilities and the competitive FirstEnergy entities worked together on political issues or how FirstEnergy Utilities took positions to the benefit of their unregulated affiliates. Those types of connections go to the heart of the HB6 scandal and the declining public trust in public utilities.

Additionally, in 2012, a Commission audit revealed that the FirstEnergy Utilities made “seriously flawed” decisions regarding the unreasonable costs it incurred for its non-solar renewable energy credits (“RECS”).¹⁶ Specifically, the audit found that, at times, the FirstEnergy Utilities had paid more than \$675 for its RECS, while the market rate determined from U.S. Department of Energy reports put the expected price at the relevant times at no more than \$45.¹⁷

¹⁶ *In re Review of the Alternative Energy Resource Rider Contained in the Tariffs of Ohio Edison Co., the Cleveland Elec. Illuminating Co., and the Toledo Edison Co.*, No. 11-5201-EL-RDR, Redacted Final Management/Performance Audit Report at 28 (Aug. 15, 2012).

¹⁷ *Id.* (stating that the Companies at times paid more than 15 times the price of the applicable \$45 Alternative Compliance Payment for RECs); *id.* at 26.

Most importantly, in regards to the FirstEnergy Utilities’ affiliate—FirstEnergy Solutions—the auditor concluded that the FirstEnergy Utilities should have known “that the prices bid by FirstEnergy Solutions reflected significant economic rents and were excessive by any reasonable measure.”¹⁸ This previous abuse demonstrates the FirstEnergy family of companies’ willingness to use their regulated monopoly utilities to benefit their unregulated companies and the need for a more comprehensive and centralized investigation.

C. The Investigation Should Include a Review of Whether and Why the FirstEnergy Entities Took Positions Contrary to Utility Customers’ Best Interests.

Related to the corporate separation issue is the question of why FirstEnergy entities would support HB6 to begin with. Although the parties may debate the merits of the policy underlying HB6, it is clear the key winner under HB6 is the former FirstEnergy affiliate FirstEnergy Solutions, now known as Energy Harbor, which supposedly has no relationship or ties to FirstEnergy Corporation. The nuclear bailout funds would not go to FirstEnergy Corporation or its remaining affiliates, yet the Criminal Complaint indicates that “Company A Corp.” and its service company actively supported the legislation.

Additionally, the decoupling provision in HB6 raises questions about the FirstEnergy Utilities’ involvement. HB6’s decoupling provisions allow the FirstEnergy Utilities to charge ratepayers approximately \$355 million through 2024, using a baseline of the unusually hot 2018 summer which artificially inflated the FirstEnergy Utilities’ revenues.¹⁹

While FirstEnergy Utilities never testified in support of HB6, a Commission investigation into the FirstEnergy Utilities’ actions and involvement should look at whether FirstEnergy Utilities nevertheless influenced the legislation. Certainly, someone at the FirstEnergy Utilities

¹⁸ *Id.* at iv.

¹⁹ See Pelzer, *supra* note 5.

or Corporation made sure legislators put the decoupling provision in the legislation. Additionally, FirstEnergy Corporation and the FirstEnergy Utilities both use the name “FirstEnergy” when discussed publicly, creating the impression they operate as one company. The arrangement allows the FirstEnergy Utilities to blur lines with legislators, regulators, and the public. The auditor in the corporate separation investigation reached a similar conclusion: “using ‘FirstEnergy’ in the Ohio Companies’ CRES affiliate’s name, ‘FirstEnergy Solutions’ implies an endorsement by the FirstEnergy Ohio Companies.” *In re Review of the Ohio Edison Co. et al.*, No. 17-0974-EL-UNC, Final Report at 98 (May 14, 2018). Therefore, the Commission should examine whether the FirstEnergy Utilities or their parent company failed to distinguish themselves from one another and whether such conflation of the two entities harmed utility customers and requires Commission action.

The Commission needs greater understanding of the FirstEnergy entities’ activities during this period. Customers now face nuclear bailout and the reason that a soon-to-be unaffiliated parent company would support those charges is unclear. Also unclear is how involved the FirstEnergy Utilities were in securing decoupling as part of a bill that included the nuclear bailout. The Commission’s responsibility includes investigating whether this decoupling provision was the result of the FirstEnergy Utilities’ involvement in the HB6 scandal—which given the facts to date seems highly likely. Such an investigation will help the Commission make informed judgments about how the regulated companies’ actions impacted captive customers and how to avoid such impacts in the future.

D. The Commission Should Expand the Investigation to Include Whether the FirstEnergy Utilities or Their Parent Company Improperly Attempted to Influence Former PUCO Chair Randazzo.

The Commission should also expand the scope of this investigation to address recent press reports and federal filings suggesting a connection between former PUCO Chair Sam

Randazzo and the FirstEnergy Corporation. On November 20, 2020, Chair Randazzo resigned as Chair of the Commission, citing a FBI raid on his home and FirstEnergy Corporation's November 19, 2020 10-Q filing with the SEC as reasons for his resignation.²⁰ That SEC filing publicly revealed that FirstEnergy Corporation had discovered that several of its executives had participated in "a payment of approximately \$4 million made in early 2019 in connection with the termination of a purported consulting agreement."²¹ The recipient of that \$4 million "was an entity associated with an individual who subsequently was appointed to a full-time role as an Ohio government official directly involved in regulating the Ohio Companies, including with respect to distribution rates."²² Chair Randazzo applied to the Commission in January 2019 and became Commission Chair on February 4, 2019.²³ By any reasonable definition of "early 2019," FirstEnergy Corporation would have made the payment very close in time to when Chair Randazzo received his appointment. These facts indicate FirstEnergy Corporation may have improperly influenced former Chair Randazzo's appointment and tenure on Commission, influencing his decision-making while PUCO Chair. More recently, public records requests have revealed emails showing that Chair Randazzo participated in drafting HB6 while acting as Commission Chair.²⁴ These reports raise questions about whether, and how, FirstEnergy entities influenced Chair Randazzo during his time as Commissioner. The current limits on the

²⁰ Letter from Samuel C. Randazzo to the Hon. Michael D. DeWine, Governor of the State of Ohio (Nov. 20, 2020), https://content.govdelivery.com/attachments/OHOOD/2020/11/20/file_attachments/1607093/Resignation.pdf; see also Mark Williams, *Powerful Ohio Utilities Regulator Steps Down Following FBI Search of His Home*, COLUMBUS DISPATCH (Nov. 20, 2020), <https://www.dispatch.com/story/business/2020/11/20/ohio-utilities-regulator-resigns-following-fbi-search-his-home/6355499002/>.

²¹ FirstEnergy Corp., Quarterly Report (Form 10-Q) at 36 (Nov. 19, 2020).

²² *Id.*

²³ See Letter from Samuel C. Randazzo to Public Utilities Commission Nominating Council (Jan. 17, 2019), <https://www.documentcloud.org/documents/5700521-Samuel-Randazzo-PUCO-application-2019.html>; Funk, *supra* note 2

²⁴ See Kathiann M. Kowalski, *FirstEnergy Faces Another Audit as Advocates and Others Press for Broader Investigations*, ENERGY NEWS NETWORK (Jan. 6, 2021), <https://energynews.us/2021/01/06/midwest/firstenergy-faces-another-audit-as-advocates-and-others-press-for-broader-investigations/>; see also, Tobias, *supra* note 6.

investigation ignore this critical relationship between FirstEnergy Corporation and Chair Randazzo.

E. A Comprehensive Investigation in a Single Proceeding Is Necessary.

The Environmental Advocates are aware of the Commission’s statement in Case No. 17-2474-EL-RDR that the Commission is “determined to act in a deliberate manner, based upon facts rather than speculation.”²⁵ However, the Commission has a critical role to play here. Given the evidence presented in this motion about the various connections between FirstEnergy Corporation and the Utilities to both HB6 and the former PUCO Chair, the Commission must address the extent of these connections and whether any of the FirstEnergy entities acted improperly. The Commission has so far divided facets of its investigation into the FirstEnergy Utilities’ involvement in the HB6 scandal across several dockets.²⁶ Even viewed collectively, the Commission’s current proceedings do not reach the breadth and depth required for it to fulfill its oversight obligations. Dividing Commission investigations across different dockets also undermines the ability of the public to participate and understand the Commission’s efforts. The separate proceedings may create schedule conflicts, discovery challenges, and confusion about where the Commission is addressing particular aspects of the HB6 scandal.

The Environmental Advocates are not alone in calling for a centralized and in-depth investigation into the FirstEnergy Utilities and affiliated companies. On December 21, 2020, three former PUCO Commissioners—Ashley C. Brown, J. Michael Biddison, and Todd Snitchler—wrote to Governor DeWine to “strongly urge the Commission to undertake a major

²⁵ *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Co., the Cleveland Electric Illuminating Company, and the Toledo Edison Co.*, No. 17-2474-EL-RDR, Entry ¶ 20 (Dec. 30, 2020).

²⁶ *See, e.g., In re Review of the Distribution Modernization Rider of Ohio Edison Co., the Cleveland Elec. Illuminating Co., and the Toledo Edison Co.*, No. 17-2474-EL-RDR; *In re Application of the Ohio Edison Co., the Cleveland Elec. Illuminating Co., and the Toledo Edison Co.’s Compliance with R.C. 4928.17 and Ohio Admin. Code Chapter 4901:1-37*, No. 17-0974-EL-UNC; *see also Citizens’ Utility Bd. of Ohio v. Ohio Edison Co., the Cleveland Elec. Illuminating Co., and the Toledo Edison Co.*, No. 20-1756-EL-CSS.

effort to reassure the public that the Commission takes these allegations [about the FirstEnergy entities' involvement in the HB6 scandal] very seriously, and will use those powers granted to it, by law to fully engage on the matter.”²⁷ The former Commissioners warn that failure to conduct more thorough proceedings could undermine trust in the Commission.

The Environmental Advocates' amended motion responds to these issues by asking the Commission to create a *centralized* investigation. The Environmental Advocates are not asking for changes to the dockets already opened. We request that the Commission conduct the broader investigation needed into the HB6 scandal in this docket. The auditing processes in other dockets may help inform these proceedings, but they need not, and should not, limit the Commission's own review and parties' ability to seek answers here.

III. CONCLUSION

The Commission needs to conduct a thorough investigation to fulfill its statutory obligations to oversee the FirstEnergy Utilities and protect the public interest. The current scope of the review/investigation, which is limited to consideration only of the FirstEnergy Utilities' financial involvement in the HB6 and referendum schemes through political and charitable contributions, does not go far enough. The Commission has the authority and obligation to conduct a broader investigation into FirstEnergy Corporation and the FirstEnergy Utilities, targeting not only financial issues but also answering questions about corporate separation, management, and the effect of FirstEnergy Corporation's actions on its regulated utility customers. Moreover, the federal agencies investigating the scandal do not have the broad authority the Commission has, and their investigations do not substitute for the Commission's

²⁷ Letter from Ashley C. Brown, J. Michael Biddison, Todd Snitchler to the Hon. Michael DeWine, Governor of the State of Ohio (Dec. 21, 2020), <https://beta.documentcloud.org/documents/20433198-brownsnitchlerfirstenergyletter122120>.

need to protect the FirstEnergy Utilities' customers. Thus, Environmental Advocates request the Commission expand the scope of its review and clarify that it intends to conduct a comprehensive investigation into how FirstEnergy Utilities' actions affected their regulated monopoly customers.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *The Environmental Advocates' Amended Motion to Expand the Scope of the Commission's Review into the FirstEnergy's Political and Charitable Spending and Memorandum in Support* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on January 25, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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Summary: Motion (Amended) of the Environmental Advocates to Expand the Scope of the Commission's Review of FirstEnergy's Political and Charitable Spending and Memorandum in Support electronically filed by Mr. Robert Kelter on behalf of Environmental Law & Policy Center and Ohio Environmental Council