

In the Matter of the Determination of the)
Existence of Significantly Excessive Earnings)
for 2017 Under the Electric Security Plans of) Case No. 18-0857-EL-UNC
Ohio Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo Edison)
Company.)

In the Matter of the Determination of the)
Existence of Significantly Excessive Earnings)
for 2018 Under the Electric Security Plans of) Case No. 19-1338-EL-UNC
Ohio Edison Company, The Cleveland Electric)
Illuminating Company, and the Toledo Edison)
Company.)

In the Matter of the Determination of the)
Existence of Significantly Excessive Earnings)
for 2019 Under the Electric Security Plans of) Case No. 20-1034-EL-UNC
Ohio Edison Company, The Cleveland Electric)
Illuminating Company, and the Toledo Edison)
Company.)

In the Matter of the Quadrennial Review)
 Required by R.C. 4928.143(E) for the Electric)
 Security Plans of Ohio Edison Company, The) Case No. 20-1476-EL-UNC
 Cleveland Electric Illuminating Company, and)
 The Toledo Edison Company.)

Presently, Senate Bill 10 is pending to protect consumers by repealing parts of House Bills 6 and 166. As background, House Bill 166 (state budget) allowed the FirstEnergy Utilities to likely avoid making a refund to consumers for “significantly excessive” profits for at least one of its three utilities (Ohio Edison) in 2019 and years

after that. This ploy was enabled by allowing the FirstEnergy Utilities to average the profits of the three utilities for determining their profit level, thereby reducing the especially high profits of one of its utilities.¹ Senate Bill 10 would repeal that FirstEnergy Utilities legislative gift.²

To protect consumers, the Ohio Consumers' Counsel ("OCC") moved the Public Utilities Commission of Ohio ("PUCO") on behalf of FirstEnergy Utilities' 1.9 million consumers for a continuance of the schedule in these consolidated cases, pending the Ohio General Assembly's consideration of S.B. 10. In its Memorandum Contra, FirstEnergy Utilities does not oppose the requested continuance, but asks that a continuance apply to discovery too.³

OCC does not oppose continuing *additional* discovery. But discovery *pending* at the time of the PUCO's ruling on OCC's motion should be answered.⁴

And discovery matters *pending* at the time of the PUCO's ruling on OCC's motion, including OCC's October 5, 2020 Motion to Compel, should be resolved.⁵ This would be keeping with the spirit of comments reported to have been made by FirstEnergy Utilities' President and Acting Chief Executive Officer, Steven Strah:

¹ Historically, each of FirstEnergy's operating companies' profits were analyzed individually. *See, e.g.*, PUCO Case No. 18-857-EL-UNC (OCC described how Ohio Edison had significantly excessive profits).

² *See* Exhibit A at 8, lines 214-218; 9, lines 245-250.

³ *See* FirstEnergy's Memorandum Contra.

⁴ In Case No. 18-0857-EL-UNC, OCC has very limited discovery pending. In Case No. 20-1034-EL-UNC, OCC has outstanding discovery pending that is the subject of a motion to compel that it filed. It should be noted that FirstEnergy's obligation to provide the discovery requested by OCC will not be impacted by S.B. 10. In Case No. 18-0857, OCC has asked for a spreadsheet underlying some data already provided. In Case No. 20-1034, OCC has asked for information specific to each of FirstEnergy's operating companies.

⁵ In Case No. 20-1034-EL-UNC, OCC has had a Motion to Compel pending since October 5, 2020.

Our commitment starts at the top and extends throughout the organization, . . . The utility is committed to creating a company-wide culture in which compliance is second nature and communication is open and transparent, . . .⁶

FirstEnergy Utilities in Case No. 20-1034-EL-UNC refused to respond to some of OCC's consumer protection discovery, which sought information that is relevant and reasonably calculated to lead to the discovery of admissible evidence.⁷ Accordingly, OCC was left with no choice but to file a motion to compel.⁸ Despite requesting expedited treatment for its motion to compel, over four months have passed without a ruling. Continuing *additional* discovery in this case should not impact the PUCO's ruling on this *pending* motion (or FirstEnergy Utilities' compliance with a ruling on the motion). To protect consumers, the PUCO should weigh-in on FirstEnergy Utilities' disregard (to consumers' detriment) of the broad discovery rules permitting ample discovery. It should rule on OCC's motion to compel now, and FirstEnergy Utilities should comply with that ruling post haste.⁹

The PUCO should continue these proceedings, including *additional* discovery, pending the outcome of S.B. 10. But discovery (and discovery matters) *pending* at the time of the PUCO's ruling on OCC's motion should be answered (and resolved).

⁶ Jim Mackinnon, *Akron Beacon Journal*, "FirstEnergy halts political contributions, limits lobbying as part of Householder investigation, utility says" (February 18, 2021).

⁷ See Case No. 20-1034-EL-UNC, Motion to Compel FirstEnergy to Respond to OCC's Second Set of Discovery and Request for Expedited Ruling by Office of the Ohio Consumer's Counsel (October 5, 2020).

⁸ See *id.*

⁹ See *id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply was served on the persons stated below
via electric transmission this 23rd day of February 2021.

/s/ Willian J. Michael
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The PUCO's e-filing system will electronically serve notice of the filing of this document
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This foregoing document was electronically filed with the Public Utilities

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2/23/2021 5:00:07 PM

in

Case No(s). 18-0857-EL-UNC, 19-1338-EL-UNC, 20-1034-EL-UNC, 20-1476-EL-UNC

Summary: Reply Reply in Support of Motion for a Continuance of the Procedural Schedule Involving What the FirstEnergy Utilities Charge Consumers for Profits by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.