

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY TO FIRSTENERGY'S MEMORANDUM CONTRA  
OCC'S MOTION TO COMPEL ANSWERS TO DISCOVERY  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The burgeoning H.B. 6 scandal has fueled great public controversy over FirstEnergy's corporate governance and culture, both of which seem sorely lacking. In this regard, one of OCC's several focal points for recommending investigations was whether FirstEnergy complied with the state's so-called corporate separation requirements. Corporate separation is one of the ways regulators can keep the utility business (including monthly bills to two million electric consumers) separate and protected from subsidizing FirstEnergy's unregulated businesses such as its former, supposedly separate, power plant operations. Given the state's utility subsidy culture at the PUCO and the legislature, it would be understandable if the public has doubts about corporate separation.

This state of affairs brings us to this Reply. With the incredible revelations to date about the H.B. 6 scandal, one might think that OCC's rights for "prompt and

expeditious”<sup>1</sup> discovery about the scandal are assured, to learn information and develop evidence. Not so, as can be seen in OCC’s motion to compel discovery answers and the FirstEnergy Utilities’ memorandum contra.

In violation of law and rule, OCC is being thwarted by the FirstEnergy Utilities in our efforts to discover whether illegal H.B. 6 activities that benefited their now former generation affiliate, FirstEnergy Solutions, were subsidized with money collected from utility consumers.<sup>2</sup> If that subsidy occurred, then Ohio law and PUCO orders were violated. And the FirstEnergy Utilities should be held accountable for any such violations, and consumers should be protected.

Indeed, revelations from FirstEnergy Corp’s recent earnings call disclosed the possibility of a violation of corporate separation requirements.<sup>3</sup> And statements made by Mr. Santino Fanelli during questioning at OCC’s March 9, 2021 deposition, suggest that corporate separation violations are a distinct possibility.<sup>4</sup> (OCC has included as Attachment A the relevant excerpts from that deposition).

The Office of the Ohio Consumers’ Counsel (“OCC”) is the state’s utility consumer advocate for residential consumers, including for the FirstEnergy Utilities’ two million residential consumers.<sup>5</sup> OCC needs the PUCO to enforce law and rule to compel

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<sup>1</sup> Ohio Admin. Code 4901-1-16(A).

<sup>2</sup> OCC laid out the scandal’s background in its Motion for a PUCO Investigation, and OCC incorporates that discussion by reference. See In the Matter of the Review of the Review of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37, Case No. 17-974-EL-UNC, et al., Motion for a PUCO Investigation (Sept. 8, 2020).

<sup>3</sup> FirstEnergy Corp. Earnings Call (Feb. 16, 2021), Transcript at 21, 22. (Executive Director, Christopher Pappas).

<sup>4</sup> Deposition Transcript at 129-132.

<sup>5</sup> See R.C. Chapter 4911.

answers to our investigatory questions, which the FirstEnergy Utilities have refused to provide.

## **II. BACKGROUND**

In July of last year, the U.S. Attorney filed a Criminal Complaint alleging that “Company A” – identified merely as a public utility holding company – was involved with the former Ohio House Speaker whose activities for enacting H.B. 6 led to his arrest. According to the U.S. Attorney’s Criminal Complaint, over \$60 million was paid to pass tainted H.B. 6 and defeat the ensuing referendum efforts, with the payments funneled through a number of dark money groups including Generation Now.<sup>6</sup> U.S. Attorney David Devillers described that scandal as “likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio.”<sup>7</sup> Recently, it was reported in the news that “FirstEnergy’s filing confirms the business is Company A.”<sup>8</sup> The PUCO should require the FirstEnergy Utilities to identify the entities referenced in the U.S. Criminal Complaint: Company A Corp., Company A-1, and Company A Service Co.

Standard and Poor’s wrote about FirstEnergy, with a focus on a deficient corporate governance and culture:

We believe these violations at the highest level of the company are demonstrative of insufficient internal controls and a cultural weakness. We view the severity of these violations as significantly

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<sup>6</sup> United States of America v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes and Generation Now, Case No. 1:20-MJ-00526 (S.D. Ohio).

<sup>7</sup> Horn, D. “Ohio House Speaker Larry Householder arrested in \$60 million bribery case.” The Cincinnati Enquirer (July 31, 2020). <https://www.cincinnati.com/story/news/2020/07/21/ohio-bribery-case-state-official-charged-federal-prosecutors/5477862002/>.

<sup>8</sup> Balmert, J. and Borchardt, J. “Ohio bribery probe: FirstEnergy Corp. says subsidiary gave \$56.6 million to nonprofit that pleaded guilty.” The Cincinnati Enquirer (Mar. 12, 2021).

outside of industry norms and, in our view, they represent a material deficiency in the company's governance.<sup>9</sup>

OCC filed investigatory motions (including in this case) shortly after the federal government's filing of the Criminal Complaint. OCC sought a broad PUCO review of these matters, including a management audit of the FirstEnergy Utilities (which to date the PUCO has not granted).

In its partial response to OCC's motions, the PUCO opened a proceeding "to review the political and charitable spending by the FirstEnergy Utilities in support of Am. Sub. H.B.6 and the subsequent referendum effort."<sup>10</sup> It directed the FirstEnergy Utilities to show cause demonstrating that the costs of "any political or charitable spending in support of Am. Sub. H.B.6, or the subsequent referendum effort" were not included, directly or indirectly in any rate or charges paid by Ohioans.<sup>11</sup>

The FirstEnergy Utilities responded with an affidavit from Mr. Santino Fanelli, FirstEnergy Service Company's Director of Rates and Regulatory Affairs. Mr. Fanelli stated under oath in his affidavit that: "[t]he Companies have not included, directly or indirectly, any H.B. 6 costs in rates or charges paid by ratepayers in Ohio."<sup>12</sup>

OCC's long-awaited deposition of Mr. Fanelli, on March 9-10, delayed in part by the FirstEnergy Utilities' opposition, only served to underscore the need for OCC to be conducting discovery and for the PUCO to protect OCC's rights to do so. For example, at

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<sup>9</sup> See Khalid, U., "S&P downgrades FirstEnergy following \$1.95B draw on revolving credit facility," S&P Market Intelligence (Nov. 25, 2020).

<sup>10</sup> *In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 20-1502-EL-UNC Entry at ¶5 (Sept. 15, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Response to Show Cause Entry, Affidavit of Santino L. Fanelli at ¶ 6.

the deposition we learned a remarkable revelation from Mr. Fanelli that his affidavit, containing his assertion that no H.B.6 costs were charged to customers, is based largely on a “conceptual” review of rates and a limited definition of “H.B. 6 costs.”<sup>13</sup>

And we heard at deposition that, while he was preparing his affidavit, Mr. Fanelli learned that FirstEnergy Service Company had allocated \$500,000 to the FirstEnergy Utilities for payments made in 2017 to two dark money groups – Generation Now and Hardworking Ohioans.<sup>14</sup> Mr. Fanelli explained that these costs were recorded in account 923, an above-the-line account,<sup>15</sup> and were partially expensed and partially capitalized across the Ohio utilities’ capital projects.<sup>16</sup> Further, Mr. Fanelli did not mention this information in his affidavit filed on September 30, 2021.

On deposition, Mr. Fanelli admitted that the dark money payments were on the Ohio utilities’ books throughout 2018 and 2019.<sup>17</sup> During that period, the FirstEnergy Utilities were seeking PUCO approval to update charges to customers through numerous riders, including the Distribution Capital Recovery Rider. Given Mr. Fanelli’s admissions, it should be determined whether, through the updating of charges approved by the PUCO, any payments to Generation Now may have found their way onto the utility bills of FirstEnergy Utilities’ consumers.

And since Mr. Fanelli’s deposition, the potential for more corporate separation issues has come to light. FirstEnergy Corp. reportedly admitted in a court filing that

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<sup>13</sup> Deposition Transcript at 206.

<sup>14</sup> Deposition Transcript at 129-132, attached hereto as Attachment A.

<sup>15</sup> An above-the-line account for public utilities includes revenues or expenses incurred in operating the utility that are included in consumers’ rates.

<sup>16</sup> Deposition Transcript at 129, 137.

<sup>17</sup> Deposition Transcript at 209-228

FirstEnergy Service Company made \$56 million in payments to dark money groups, including Generation Now, at the direction of FirstEnergy Solutions.<sup>18</sup> Whether any of these dark money payments made their way onto the utility bills of FirstEnergy utility consumers merits further investigation.

Mr. Fanelli stated in his affidavit that the FirstEnergy Utilities' rates do not include any political or charitable spending in support of H.B. 6. But, as noted above, we surprisingly learned at the deposition that Mr. Fanelli's conclusion was based on a review of rates that was "conceptual."<sup>19</sup> He made no actual review of the underlying accounting records from 2016-2020 to know whether his sworn statement was true. He simply conducted a "conceptual review" as to whether the political or charitable spending *should* ever be included in rates. He described his approach as follows:

The approach for the affidavit was conceptual and to review the Companies' calculations of their rates, riders, and charges compared to the accounts in which the costs of political and charitable spending are to be recorded. Concluded based on that conceptual review there shouldn't be new costs of political or charitable spending that is impacting customer rates.<sup>20</sup>

As the PUCO considers our filing to compel the FirstEnergy Utilities to answer our discovery requests, bear in mind that we learned significant information in the deposition that the FirstEnergy Utilities similarly tried to ensure OCC would never take.

OCC served its Fourth Set of Discovery on the FirstEnergy Utilities on December 29, 2020. The FirstEnergy Utilities refused to respond in nearly all respects, claiming that

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<sup>18</sup> Balmert, J. and Borchardt, J. "Ohio bribery probe: FirstEnergy Corp. says subsidiary gave \$56.6 million to nonprofit that pleaded guilty." The Cincinnati Enquirer (Mar. 12,2021).

<sup>19</sup> Deposition Transcript at 206.

<sup>20</sup> *Id.*



OCC's discovery was premature and need not be answered until the new PUCO-ordered audit report is filed. The FirstEnergy Utilities failed to seek a protective order asking for the discovery not to be had (their obligation under PUCO rules).<sup>21</sup> OCC was then forced to expend yet more resources to file a Motion to Compel on February 22, 2021. The FirstEnergy Utilities filed a Memorandum Contra on March 9, 2021.

OCC responds with this Reply Memorandum. After considering OCC's motion and the related pleadings, the PUCO should grant OCC's motion to compel and require the FirstEnergy Utilities to fully respond to OCC's discovery requests, *posthaste*.

### **III. ARGUMENT**

#### **A. Intervening parties have a right to ample discovery under law and prompt and expeditious discovery under the Administrative Code, and those rights are not dependent on the stage of the proceeding.**

OCC, as a party granted intervention in 2018, is entitled to begin discovery "immediately" after a proceeding is commenced under the PUCO rules of discovery.<sup>22</sup> This proceeding was commenced by the PUCO in 2017 (almost four years ago). The PUCO's stated reason for the proceeding is to confirm if FirstEnergy is in "compliance with R.C. 4928.17 and the Commission's corporate separation rules, as enumerated in Ohio Adm. Code Chapter 4901:1-37, as well as to further Ohio's policies pursuant to R.C. 4928.02."<sup>23</sup>

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<sup>21</sup> Ohio Admin. Code 4901:1-24.

<sup>22</sup> See Ohio Admin. Code 4901-1-17 (A).

<sup>23</sup> *In the Matter of the Review of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶4 (May 17, 2017).

OCC's right to discovery is assured by law, rule, and Supreme Court of Ohio ("Court") precedent.<sup>24</sup> OCC is entitled to obtain discovery from the FirstEnergy Utilities at all stages of the proceeding, beginning with when the proceeding is commenced.

But the FirstEnergy Utilities are denying OCC (and consumers) our legal rights by pursuing tactics to delay and distract. The Utilities hang their hat on a single, distinguishable case.<sup>25</sup> That ruling they cite is distinguishable largely because the audit report at issue was contingent upon two events, neither of which had occurred at the time OCC's discovery was served. The PUCO ruled there was no need for OCC's discovery to be responded to at that time because it was unknown whether either of these contingencies might occur. Here, there are no such contingencies to weigh, and no reason to allow the FirstEnergy Utilities to avoid responding to OCC's discovery.

In contrast, there are other PUCO rulings which have taken a more consistent and sensible approach to discovery. While mentioned briefly in OCC's Motion to Compel, these cases are further discussed here.

In 2012, in a similar discovery dispute over when OCC's rights to discovery begin, the PUCO denied Columbia Gas of Ohio, Inc.'s (Columbia) motion for a stay of discovery.<sup>26</sup> Columbia argued that OCC's discovery was "premature," given that the PUCO had not set a procedural schedule in the case.<sup>27</sup> Columbia claimed that without a procedural schedule it is impossible to know whether OCC's discovery requests are

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<sup>24</sup> *OCC v. PUC*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213.

<sup>25</sup> *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company*, Case No. 17-2474-EL-RDR, Entry (Nov. 1, 2018).

<sup>26</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Case No. 11-5351-GA-UNC, *et al.*, Entry at 2-4 (Jan. 27, 2012).

<sup>27</sup> *Id.*, Columbia Motion To Stay Discovery, Memorandum in Support at 3-4 (Dec. 19, 2011).

relevant or likely to lead to the discovery of admissible evidence.<sup>28</sup> Columbia's argument is strikingly familiar to the argument that the FirstEnergy Utilities now make where they claim that without the audit parties must "speculate entirely about the proper scope of discovery at this point."<sup>29</sup>

The PUCO summarily denied Columbia's motion. It noted that the discovery process is required under the law and PUCO rule and may begin immediately after a proceeding commences.<sup>30</sup> It observed that discovery is beneficial because it places the PUCO in a position of being informed of the matters in the case.<sup>31</sup> The PUCO ruled that even though it had not determined what further process to follow, parties should be permitted to continue the discovery process.<sup>32</sup>

And in 2017, the PUCO denied a similar utility motion that sought to preclude OCC from obtaining discovery before an audit report was filed.<sup>33</sup> The attorney examiner declared that "no statute or Commission rule prohibits OCC from engaging in discovery in these audit proceedings or otherwise limits OCC's right to conduct discovery before audit reports are filed."<sup>34</sup> Here, the PUCO should follow the rules, the law, and this PUCO precedent to allow discovery to go forward now, not months from now.

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<sup>28</sup> *Id.* at 5.

<sup>29</sup> FirstEnergy Utilities Memorandum Contra OCC Motion to Compel at 2.

<sup>30</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Case No. 11-5351-GA-UNC, at al., Entry at ¶8 (Jan. 27, 2012).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *In the Matter of the Audit of the Percentage of Income Payment Plan Rider of The East Ohio Gas Company D/B/A Dominion Energy Ohio*, Case No. 17-219-GA-EXR Entry (Sept. 28, 2017).

<sup>34</sup> *Id.* at ¶13.

Also, the FirstEnergy Utilities protest that OCC has not established any need for immediate discovery.<sup>35</sup> That is balderdash. First, the PUCO's Rule 16 encourages prompt and expeditious discovery, without the FirstEnergy Utilities' claimed condition precedent (need) for discovery. In any event, OCC has a need and a right to prepare its case. And preparing a case against the FirstEnergy Utilities' delay and distract tactics is a lengthy and drawn-out process.

Indeed, we've learned in the past that we must press discovery lest the PUCO decide a case before we can even fully pursue discovery, such as the PUCO's approach in the FirstEnergy Advisors case (which NOPEC and OCC both have appealed).<sup>36</sup> Another example is where the PUCO protected PALMco, an energy services marketer, from OCC discovery by denying OCC's motion to compel on the basis that OCC had not pursued discovery early enough.<sup>37</sup> So, contrary to the FirstEnergy Utilities' claims for delay, we are compliant with PUCO expectations – and with our rights under law.

Further, we are pursuing discovery when the potential for preservation of evidence is greater than lesser. This need was highlighted in the recent deposition of Mr. Fanelli. The deposition revealed that FirstEnergy Service Company had misallocated Generation Now payments to the FirstEnergy Utilities—the very type of corporate

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<sup>35</sup> FirstEnergy Utilities Memorandum Contra at 5.

<sup>36</sup> *In the Matter of the Application of Suvon, LLC D/B/A FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Finding and Order at par. 25 (Apr. 22, 2020) (finding motions to compel discovery requests by OCC and NOPEC to be moot).

<sup>37</sup> *In the Matter of the Commission's Investigation into PALMco Power OH, LLC*, Case No. 19-957-GE-COI Entry at par. 30 (Sept. 3, 2019) (denying OCC's motion to compel in part finding that OCC had early opportunities for discovery that it did not pursue, and sought to "burden PALMco with numerous depositions on a broad array of topics in the limited time remaining before hearing.").

separation issues at the heart of this case.<sup>38</sup> In this regard, it has been reported that FirstEnergy officials, including officials who presumably have knowledge about issues OCC is raising, have been severed from the company. More may follow those exits. Delay can create challenges for OCC to later gain access to officials who no longer are employees of FirstEnergy but who may have knowledge of relevant events.

Of course, the FirstEnergy Utilities would be aware that delay can help it avoid accountability. The PUCO should not be accommodating for such delay tactics.

**B. The FirstEnergy Utilities' claim of "limiting principles" on discovery should be rejected.**

The FirstEnergy Utilities offer up an interpretation of PUCO discovery rules that conveniently suits their obstructionist tactics. The utilities argue that the PUCO's rules "anticipate at least two limiting principles on discovery."<sup>39</sup> The first limiting principle they identify is that "a hearing or some other opportunity to take evidence must be scheduled to occur. If there is no such opportunity, then it follows that there will be nothing to lead to the discovery of admissible evidence." The PUCO has never adopted this so called "principle." Enough said.

The second of the FirstEnergy Utilities' so-called discovery principles is that parties are "only entitled to discovery that is relevant and reasonably calculated to lead to 'admissible evidence,' and if neither party knows what issues the final audit report will cover, then they could not possibly determine what evidence would be relevant to those

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<sup>38</sup> Deposition Transcript at 29-137.

<sup>39</sup> FirstEnergy Utilities Memorandum Contra at 3.

issues.”<sup>40</sup> The FirstEnergy Utilities’ appear to believe that the findings of the auditor strictly control the scope of this proceeding. They are wrong.

The PUCO opened this proceeding by requiring an audit of FirstEnergy’s compliance with Ohio law, PUCO rules, and Ohio policies on corporate separation after concluding (in a separate case) there was a need for “vigilant monitoring of utility and affiliate activities.”<sup>41</sup> The second audit was ordered after FirstEnergy reported (to the SEC) the firings of certain executives and admitted that certain FirstEnergy Corp. policies and its code of conduct had been violated.<sup>42</sup>

There can be no dispute that the scope of the initial and secondary audit is known, established and are very broad.<sup>43</sup> The audit is “to assist the Commission with the review of the compliance of FirstEnergy with R.C. 4928.17, the corporate separation rules contained in Ohio Adm. Code 4901:1--37, and FirstEnergy’s corporate separation plan.”<sup>44</sup> OCC’s discovery is well within these bounds. The PUCO should see the FirstEnergy Utilities’ claims as the impermissible obstructionism that they are. The PUCO should reject the FirstEnergy Utilities’ stall tactics.

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<sup>40</sup> *Id.* at 4.

<sup>41</sup> *In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding and Order at ¶16 (Mar. 26, 2014).

<sup>42</sup> *In the Matter of the Review of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶16-17 (Nov. 4, 2020).

<sup>43</sup> *See In the Matter of the Review of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry, PUCO approved RFP at 1 (May 17, 2017) (The auditor is tasked with determining if “FirstEnergy” has complied with the Commission’s Corporate Separation Rules, as enumerated in Ohio Adm. Code 4901:1-37-04(D)(3), 4901:1-37-04(D)(6), 4901:1-37-04(D)(10)(c), 4901:1-37-04(D)(11), and 4901:1-37-08(C).”)

<sup>44</sup> *Id.*, Entry at ¶2 (Nov. 4, 2020).

**C. The FirstEnergy Utilities have waived their right to object to OCC's discovery on the basis of relevance.**

The FirstEnergy Utilities also argue that OCC's Motion to Compel should be denied because OCC failed to show that its discovery requests are relevant or will lead to the discovery of admissible evidence. Aside from the fact that this has not been shown to be true, this is the first time the utilities have raised this objection to OCC's discovery. True, the FirstEnergy Utilities' non-responses contained a slew of objections. But nowhere in the pages and pages of objections did they object on the grounds of relevance.

By failing to object, the FirstEnergy Utilities have waived any right to argue this now. As OCC discussed in its Motion to Compel, the FirstEnergy Utilities' piecemeal approach where they reserve the right to "make all further objections\*\*\* at the appropriate time" is contrary to the PUCO rules. (*See* 4901-1-19(A) requiring a party to "fully" answer interrogatories, "unless objected to, in which case the reason for the objection shall be stated in lieu of an answer.")). This would also interfere with the parties' right to enforce their discovery rights, through a motion to compel (under 4901-1-23 Ohio Admin. Code) and would also slow down discovery instead of allowing it to proceed expeditiously, as required by law and PUCO rule.

The FirstEnergy Utilities argue that they have not waived this objection because the discovery requests "are plainly improper and premature."<sup>45</sup> The PUCO's rules do not exempt a utility from its discovery obligations to object, on a theory that the discovery is improper. Such an approach would operate to even further extend the kind of delay that the FirstEnergy Utilities are imposing. The utilities are obliged to answer discovery,

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<sup>45</sup> FirstEnergy Utilities Memorandum Contra at 6.

unless objected to, in which case they must state the objection in lieu of an answer.<sup>46</sup>

They failed to do so. The Utilities should have sought a motion for protection asking that such discovery not be had.<sup>47</sup> They did not do that either, forcing OCC to file its motion to compel.

The FirstEnergy Utilities also claim that requiring them to immediately state all objections “would place the Companies in the impossible position of having to speculate about what the scope of this case will be when the audit report is issued in June.”<sup>48</sup> This argument should also fail as well. First, as described above, the scope of this case is known and set. No speculation is required.

Second, the utilities seem to have a quarrel with the rule itself. This is not the proceeding to resolve that. The FirstEnergy Utilities can raise that issue in the periodic rules review required by JCARR. Not here. Not now.

We are gathering from the H.B. 6 scandal the kind of influence and control FirstEnergy seems accustomed to exerting. But here the Ohio Administrative Code’s discovery rules control. And those rules operate in favor of OCC conducting its case preparation for consumer protection.

#### **IV. CONCLUSION**

For the reasons stated, the PUCO should require the FirstEnergy Utilities to fully respond to OCC’s discovery requests, *now*.

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<sup>46</sup> Ohio Admin. Code 4901-1-19(A).

<sup>47</sup> See Ohio Admin. Code 4901-1-24(A)(1).

<sup>48</sup> *Id.*



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**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

Attachment A

Excerpts from Deposition of Mr. Santino L. Fanelli

March 9-10, 2021

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

DEPOSITION

of Santino L. Fanelli, taken before me, Karen Sue  
Gibson, a Notary Public in and for the State of Ohio,  
via Microsoft Teams, on Tuesday, March 9, 2021, at  
10:04 a.m.

- - -

VOLUME I

- - -

ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481

- - -

## 1 APPEARANCES:

2 FirstEnergy Service Company  
3 By Mr. Brian Knipe  
4 and Ms. Erika Ostrowski  
5 76 South Main Street  
6 Akron, Ohio 44308

7 Jones Day  
8 By Mr. Michael R. Gladman  
9 and Ms. Molly M. Dengler  
10 325 John H. McConnell Boulevard, Suite 600  
11 Columbus, Ohio 43215

12 Jones Day  
13 By Mr. Ryan A. Doringo  
14 901 Lakeside Avenue East  
15 Cleveland, Ohio 44114

16 On behalf of the Ohio Edison Company, The  
17 Cleveland Electric Illuminating Company,  
18 and The Toledo Edison Company.

19 Bruce J. Weston, Ohio Consumers' Counsel  
20 By Ms. Maureen R. Willis,  
21 Senior Counsel  
22 and Mr. John Finnigan,  
23 Assistant Consumers' Counsel  
24 65 East State Street, Suite 200  
25 Columbus, Ohio 43215

On behalf of the Residential Customers of  
the Ohio Edison Company, The Cleveland  
Electric Illuminating Company, and The  
Toledo Edison Company.

Interstate Gas Supply, Inc.  
By Ms. Bethany Allen,  
6100 Emerald Parkway  
Dublin, Ohio 43016

On behalf of the Interstate Gas Supply,  
Inc.

- - -

## 1 APPEARANCES: (Continued)

2           Kegler, Brown, Hill & Ritter Co., LPA  
3           By Mr. Robert Dove  
4           65 East State Street, Suite 1800  
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6                   On behalf of the Natural Resources  
7                   Defense Council and Ohio Partners for  
8                   Affordable Energy.

9           The Ohio Environmental Council  
10          By Ms. Miranda R. Leppla  
11          and Mr. Chris Tavenor  
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13          Columbus, Ohio 43212

14                   On behalf of The Ohio Environmental  
15                   Council.

16          Carpenter Lipps & Leland LLP  
17          By Ms. Kimberly W. Bojko  
18          and Mr. Thomas Donadio  
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22                   On behalf of the Ohio Manufacturers'  
23                   Association Energy Group.

24          McNees, Wallace & Nurick LLC  
25          By Ms. Rebekah Glover  
26          and Mr. Matthew R. Pritchard  
27          21 East State Street, 17th Floor  
28          Columbus, Ohio 43215

29                   On behalf of the Industrial Energy Users  
30                   of Ohio.

31          Environmental Law & Policy Center  
32          By Mr. Robert Kelter  
33          and Ms. Caroline Cox  
34          21 West Broad Street, Suite 800  
35          Columbus, Ohio 43215

36                   On behalf of the Environmental Law &  
37                   Policy Center.

38                   - - -

## 1 APPEARANCES: (Continued)

2 Boehm, Kurtz & Lowry  
3 By Mr. Kurt Boehm  
4 and Mr. Michael Kurtz  
5 36 East Seventh Street, Suite 1510  
6 Cincinnati, Ohio 45202

7 On behalf of the Ohio Energy Group.

8 Dickerson Wright PLLC  
9 By Ms. Madeline Fleisher  
10 150 East Gay Street  
11 Columbus, Ohio 43215

12 On behalf of the Citizens Utility Board  
13 of Ohio.

14 Dave Yost, Ohio Attorney General  
15 Mr. John Jones, Section Chief  
16 By Mr. Werner L. Margard, III,  
17 Assistant Attorney General  
18 Public Utilities  
19 30 East Broad Street, 16th Floor  
20 Columbus, Ohio 43215

21 On behalf of the Staff of the PUCO.  
22 - - -

## 23 ALSO PRESENT:

24 Ms. Tammy Turkenton.  
25 Ms. Lindsey Molter.  
Mr. Mike Haugh.  
- - -

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SANTINO L. FANELLI

PAGE

Cross-Examination by Ms. Willis  
Cross-Examination by Mr. Finnigan

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DEPOSITION EXHIBIT

IDENTIFIED

1 Notice to Take Deposition  
Dated March 1, 2021

12

2 4Q 2020 Investor FactBook

33

3 Form 8-K February 16, 2021

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- - -



1 Tuesday Morning Session,  
2 March 9, 2021.

3 - - -

4 MS. WILLIS: I would like to begin the  
5 deposition by noting appearances. So I would ask  
6 that everyone that's on this telephonic connection to  
7 identify yourselves one by one. I know that might be  
8 an issue but state your name, your position, and the  
9 party you are associated with.

10 MR. GLADMAN: Maureen, it's Mike Gladman.  
11 I'll start, if that's okay.

12 MS. WILLIS: That would be great.

13 MR. GLADMAN: You've got Mike Gladman,  
14 Ryan Doringo, and Molly Dengler here for Mr. Fanelli  
15 and the Companies. Also with me are in-house counsel  
16 for FirstEnergy Erika Ostrowski and Brian Knipe.

17 MS. WILLIS: Thank you.

18 Why don't we go down -- I have got a list  
19 so why don't I just -- in order for this to work, why  
20 don't I just go down the list that I am seeing.  
21 We've got Bethany Allen.

22 MS. ALLEN: Yeah. Good morning. This is  
23 Bethany Allen on behalf of Interstate Gas Supply,  
24 Inc.

25 MS. WILLIS: Thank you.

1 We've got Caroline Cox.

2 MS. COX: Good morning. This is Caroline  
3 Cox on behalf of the ELPC along with Robert Kelter.

4 MS. WILLIS: Thank you.

5 We have got Chris Tavenor.

6 MR. TAVENOR: Good morning. Chris  
7 Tavenor on behalf of Ohio Environmental Council, and  
8 I have Randy Leppla is on as well.

9 MS. WILLIS: Thank you.

10 Rebekah Glover.

11 MS. GLOVER: Yes. Rebekah Glover on  
12 behalf of Industrial Energy Users of Ohio. Matt  
13 Pritchard is also on as well.

14 MS. WILLIS: Great. Thank you.

15 Kim Bojko.

16 MS. BOJKO: Thank you. On behalf of the  
17 Ohio Manufacturers' Association Energy Group,  
18 Kimberly W. Bojko and Thomas Donadio is on as well.

19 MS. WILLIS: Great.

20 Kurt Boehm.

21 MR. BOEHM: Good morning. Kurt Boehm on  
22 behalf of the Ohio Energy Group.

23 MS. WILLIS: Thank you.

24 Natalia Messenger.

25 MS. MESSENGER: Good morning. Natalia

1 Messenger with Staff.

2 MS. WILLIS: Mike Kurtz.

3 We'll move on to Lindsey Molter.

4 MS. MOLTER: Good morning. Lindsey  
5 Molter with Staff.

6 MS. WILLIS: Matt Pritchard.

7 MR. PRITCHARD: Good morning. Matt  
8 Pritchard with Industrial Energy Users of Ohio.

9 MS. WILLIS: Robert Dove.

10 MR. DOVE: Good morning. This is Robert  
11 Dove on behalf of Natural Resources Defense Council  
12 and Ohio Partners for Affordable Energy.

13 MS. WILLIS: Thank you.

14 Colleen Shutrump.

15 MS. SHUTRUMP: Hi. This is Colleen and I  
16 am with the OCC.

17 MS. WILLIS: Thank you.

18 Tamara Turkenton. Moving on to Vern  
19 Margard.

20 MR. MARGARD: Thank you. Werner L.  
21 Margard, Assistant Attorney General, on behalf of the  
22 Staff of the Commission.

23 MS. WILLIS: Thank you.

24 Mike Haugh.

25 I think we are at the bottom of the list.

1 Anyone that did not enter an appearance who is on the  
2 conference call?

3 MS. FLEISHER: Hey, this is Madeline  
4 Fleisher. Sorry. I was having technical issues.  
5 And I am appearing on behalf of the Citizens Utility  
6 Board of Ohio.

7 MS. WILLIS: Great. Thank you. Anyone  
8 else?

9 Okay. I would like to briefly go over  
10 the protocol for the examination of Mr. Fanelli.  
11 We've established a Teams meeting for purposes of the  
12 deposition. That Teams meeting is an open meeting  
13 set today from 10 -- 10 o'clock a.m. through 5:30  
14 p.m. We have a second Teams meeting set from 5:30 to  
15 6:30 today. That will be a closed session to discuss  
16 select confidential material. We will let all the  
17 parties know when that is concluded.

18 We would ask now that the court reporter  
19 swear the witness in and that Mr. Fanelli turn on his  
20 video camera. Thank you.

21 - - -  
22  
23  
24  
25

1 SANTINO L. FANELLI

2 being by me first duly sworn, as hereinafter  
3 certified, deposes and says as follows:

4 CROSS-EXAMINATION

5 Q. Mr. Fanelli, can you state your name and  
6 spell your name for the record.

7 A. Yes. Good morning. Santino Fanelli,  
8 S-A-N-T-I-N-O F-A-N-E-L-L-I.

9 MS. WILLIS: And for the record this  
10 deposition is being taken by notice issued October 9,  
11 2020. The notice was subsequently modified on  
12 January 27, 2021, and modified again on March 1,  
13 2021. OCC notes that it currently has a motion to  
14 compel pending in this proceeding which addresses the  
15 discovery sought from the Companies in OCC's first  
16 and second set of discovery. It's OCC's expectation  
17 that the PUCO will issue a ruling on its motion to  
18 compel, and we expressly reserve our right to  
19 continue this noticed deposition based on the PUCO's  
20 ruling on OCC's motion to compel.

21 MR. GLADMAN: Maureen, we reserve all of  
22 our rights on behalf of the Companies to object to  
23 any such proceeding. We had a discussion about  
24 whether this should be deferred until that motion to  
25 compel was ruled upon, and you chose to go forward.

1 A. No.

2 Q. What other accounts did you check?

3 A. In the course of my review, I learned of  
4 costs originally recorded as A&G expense, some of  
5 which was capitalized. Those costs were later  
6 determined to be for political or charitable spending  
7 and so there were accounting adjustments made to  
8 reclassify them to the appropriate accounts below the  
9 line.

10 Q. Well, tell me the background of that.

11 A. Could you please rephrase the question?

12 Q. Well, yeah. You just said you learned of  
13 some expense -- expense -- A&G administrative in  
14 general, was that the acronym you used?

15 A. That is the acronym I used, yes. I  
16 apologize for not spelling that out.

17 Q. No, that's okay. But just tell me all  
18 the background of that. You just summed up that, you  
19 know, you found these A&G expenses. They were  
20 capitalized. They had to be reclassified. Just give  
21 me the whole story of the -- from the beginning when  
22 you learned of that and who you learned it from.

23 A. I learned about those costs in  
24 preparation of my affidavit. Once I did learn about  
25 them, we reviewed more closely. My understanding was

1 that there had been no determination that those costs  
2 were determined to be political and charitable  
3 spending in support of House Bill 6, so they did not  
4 impact the conclusions that I was reaching in my  
5 affidavit.

6 Q. What was that spending for?

7 A. They were costs allocated to the Ohio  
8 companies for political or charitable spending.

9 Q. What kind of political or charitable  
10 spending? In other words, what was it spent on?

11 A. My understanding is that the costs were  
12 spent on contributions to external entities.

13 Q. What was the amount of those  
14 contributions?

15 A. The cost allocated to the Ohio companies  
16 for those contributions were approximately \$500,000.

17 Q. Those were contributions to whom?

18 A. They were costs allocated to the Ohio  
19 companies for contributions to -- to outside  
20 political entities.

21 Q. Give me their names.

22 A. Two entities were Hard Working Ohioans  
23 and Generation Now.

24 Q. What was the total amount of the  
25 contribution to Generation Now?

1           A.    The total amount allocated to the Ohio  
2 companies for that payment was approximately  
3 \$300,000.

4           Q.    What was the date of that contribution?

5           A.    2017.

6           Q.    When in 2017?

7           A.    I'm sorry, Mr. Finnigan. I didn't hear  
8 that last question.

9           Q.    I apologize. I was just trying to get  
10 the date of that contribution to Generation Now. I  
11 think I heard you say it was in 2017. I was trying  
12 to get a more precise date.

13          A.    I don't recall the precise dates.

14          Q.    What records did you see that informed  
15 you of this contribution?

16          A.    The information I saw was part of the  
17 information that I reviewed in preparation for my  
18 affidavit with our Accounting group.

19          Q.    Is this the information you got from  
20 Mr. Richards that we were talking about earlier?

21          A.    I learned about it in that information,  
22 yes.

23          Q.    Were there other sources you had besides  
24 Mr. Richards for this information?

25          A.    I don't recall any other source for that



1 information.

2 Q. What underlying documentation did you see  
3 for that contribution to Generation Now?

4 A. I saw the accounting details how those  
5 costs were allocated or a portion of those costs were  
6 allocated to the Ohio companies and what account --  
7 accounts they were recorded in.

8 Q. Did you see any underlying documentation  
9 besides accounting entries, in other words, did you  
10 see like a check or a memorandum explaining what the  
11 check was for?

12 A. No.

13 Q. Did you ask for it?

14 MR. GLADMAN: Objection, vague.

15 A. Can I please have the question reread?

16 Q. Did you ask for a check or a memorandum  
17 or correspondence or any underlying documentation  
18 from the Accounting department to support this  
19 contribution from Generation Now or to Generation  
20 Now?

21 A. I don't recall asking for that type of  
22 information.

23 Q. Why didn't you ask for that?

24 A. I didn't think it was necessary.

25 Q. Well, if you are -- who made the decision

1 Q. You've never seen it.

2 A. I don't recall seeing it.

3 Q. You don't have a copy of it, do you?

4 A. I have copies of the exhibits -- exhibits  
5 that OCC sent over yesterday evening.

6 Q. Okay. And let's go back to this payment  
7 to Generation Now. So what account -- what FERC  
8 account was it originally classified to?

9 A. 923.

10 Q. Is that an above the line account?

11 A. Yes.

12 Q. And if the payment was made in 2017 and  
13 it wasn't reclassified until 2019, were there any  
14 riders that were submitted to the Commission during  
15 that 2017-2019 time frame where this administrative  
16 and general expense would have been reflected?

17 A. Could you please help me understand what  
18 you mean by reflected?

19 Q. Yes. Where it would have been included  
20 in the calculation of the rider.

21 A. The costs associated with the payment  
22 incurred by the Ohio companies did not have any  
23 impact on customer rates.

24 Q. Well, I know -- I know you've said that.  
25 But when you -- were there any riders that you

1 as we discussed yesterday, I learned of these  
2 instances where costs had been misallocated and later  
3 determined to be costs of political and charitable  
4 spending and those occurred in 2017 and 2018 so I did  
5 take those into consideration in my affidavit.

6 Q. I didn't see where you mentioned those in  
7 your affidavit.

8 A. Those are not explicitly mentioned in the  
9 affidavit. The approach was --

10 Q. Why not?

11 A. I'm sorry, Mr. Finnigan. I think we were  
12 speaking over each other. Was there a question  
13 pending, or would you like me to return to finishing  
14 my prior answer?

15 Q. Yes. I apologize for interrupting.

16 A. The approach for the affidavit was  
17 conceptual and to review the Companies' calculations  
18 of their rates, riders, and charges compared to the  
19 accounts in which the costs of political and  
20 charitable spending are to be recorded. Concluded  
21 based on that conceptual review there shouldn't be  
22 new costs of political or charitable spending that is  
23 impacting customer rates.

24 In the course of my review, I was made  
25 aware of these payments that we were discussing

1 Companies as being within the scope of my review.

2 Q. Okay. And why would that not include  
3 executive compensation and employees' salaries?

4 A. The Companies' interpretation of costs of  
5 political and charitable spending in the entry was  
6 payments or contributions to external parties either  
7 directly incurred by the Companies or allocated to  
8 the Companies.

9 Q. Okay. Now I want to change the subject  
10 and go to some of the Companies' riders. So you're  
11 in charge of the Rates and Regulatory Affairs. I  
12 take it that you're generally familiar with all the  
13 different riders that the Company has in its Ohio  
14 rates; would that be fair?

15 A. Yes.

16 Q. Okay. Is there a rider NMB in the Ohio  
17 utilities' rates, Nancy Mary Ben?

18 A. Yes, there is a rider by that acronym.

19 Q. Does that rider include collection of any  
20 costs for capital costs?

21 A. No.

22 Q. Let me ask you to turn your attention to  
23 Rider DMR, David Mary Robert. Are you familiar with  
24 that one?

25 A. I'm familiar with that rider, yes.

1 Q. Does that rider include any capital  
2 accounts?

3 A. Could you please clarify, Mr. Finnigan,  
4 when you say include capital accounts what you mean  
5 by that?

6 Q. Well, I'll let you tell -- I will let you  
7 ask -- I'm sorry. I will let you explain. What  
8 types of accounts are included in Rider DMR? Is it  
9 only expense accounts or only capital accounts or  
10 some of both?

11 A. Rider DMR is no longer in effect. When  
12 it was in effect, the rates were based on amounts  
13 authorized by the Commission in the ESP IV case.

14 Q. Did those authorized amounts include  
15 capital accounts?

16 A. The authorized amounts were dollar  
17 amounts.

18 Q. Okay. Were they based on the amount of  
19 capital on the Companies' books?

20 A. Can you please clarify what you mean by  
21 the amount of capital on the Companies' books,  
22 please?

23 Q. How were the dollar amounts determined  
24 that were authorized for collection in Rider DMR?

25 A. They were determined based upon an

1 analysis prepared by Staff in the ESP IV case.

2 Q. Okay. And what was included in that  
3 analysis?

4 A. I don't recall the specifics around that  
5 calculation.

6 Q. Was that rider updated in 2018?

7 A. The prices would have been updated in  
8 2018.

9 Q. Was that 2018 update impacted by the fact  
10 that the Ohio utilities had Generation Now costs on  
11 their books at that time?

12 MR. GLADMAN: Objection, foundation,  
13 misstates prior testimony. You may answer.

14 A. Could you please rephrase the question,  
15 Mr. Finnigan?

16 Q. Yes. Was the amount of the update of the  
17 DMR Rider in 2018 impacted by the fact that the Ohio  
18 utilities had Generation Now costs on their books at  
19 that time?

20 MR. GLADMAN: Same objection.

21 A. The Rider DMR pricing updates were made  
22 consistent with the Commission orders in the ESP IV  
23 case.

24 Q. Were the Rider DMR updates in 2018  
25 impacted by the fact that the Company had Generation

1 Now costs on their books in 2018? In other words,  
2 did that change the amount that the updates would  
3 have been as compared to if those costs were not on  
4 the Companies' books?

5 MR. GLADMAN: Same objection.

6 A. There was no adjustment in the Rider DMR  
7 rate calculation for the costs you identified.

8 Q. Okay. So the fact that Generation Now  
9 costs have been capitalized on the Ohio utility books  
10 did not impact the amount of the DMR adjustment that  
11 included -- that occurred in 2018?

12 MR. GLADMAN: Same objection.

13 A. The Rider DMR updates were made  
14 consistent with the terms and conditions of ESP IV.

15 Q. Okay. And when they were done consistent  
16 with those terms and conditions, were they impacted  
17 in any way by the fact that Generation Now costs were  
18 on the books of the utilities?

19 MR. GLADMAN: Same objection.

20 A. No.

21 Q. Okay. Let me ask you to turn your  
22 attention to Rider DSE, David Sam Edward. Does that  
23 rider include any capital accounts?

24 A. Rider DSE does not include any capital  
25 costs.

1 Q. Was that rider updated in 2018?

2 A. There were pricing updates in 2018.

3 Q. Was the fact that there were amounts from  
4 Generation Now on the Companies' books in both  
5 capital and expense accounts, did that impact the  
6 amount of the adjustment to Rider DSE that occurred  
7 in 2018?

8 MR. GLADMAN: Objection, foundation.

9 A. Could you please clarify what you mean by  
10 impact in this context, Mr. Finnigan?

11 Q. Yes. What I am getting at is that -- is  
12 the amount of the adjustment that occurred to Rider  
13 DSE in 2018, is that the same amount that would have  
14 occurred if no Generation Now costs had been on the  
15 Companies' books?

16 A. Yes.

17 Q. Okay. Then please turn your attention to  
18 Rider DCR, David Charlie Robert. Are you familiar  
19 with that one?

20 A. Yes.

21 Q. That stands for Delivery Capital  
22 Recovery, does it not?

23 A. That's right.

24 Q. And so does that include any capital  
25 accounts?



1           A.    The calculation of the revenue  
2 requirement includes capital accounts. The rates are  
3 subject to revenue caps authorized in the ESP case.

4           Q.    Okay. And how did the fact that there  
5 were Generation Now costs on the Companies' books  
6 impact the adjustment of Rider DCR that occurred in  
7 2018?

8           MR. GLADMAN: Objection, foundation,  
9 argumentative. You may answer.

10          A.    By adjustment, Mr. Finnigan, are you  
11 referring to pricing updates?

12          Q.    Yes.

13          A.    Thank you for the clarification. Could  
14 you please restate the question? I apologize.

15          Q.    Sure. You testified earlier that in  
16 2018, the Company had Generation Now costs on its  
17 books and various expense and capital accounts, and I  
18 am just trying to find out how that factored into the  
19 update of Rider DCR that occurred in 2018.

20          A.    It would not have impacted the Rider DCR  
21 aggregate rates across the Companies.

22          Q.    Why not?

23          A.    Because the rates for Rider DCR are based  
24 on the revenue caps in that time period.

25          Q.    Did the fact that the generation --

1 strike that.

2 Did the Company exceed the revenue caps  
3 in terms of its -- the amounts that could otherwise  
4 have been collected under Rider DCR in 2018?

5 A. The Companies' Rider DCR revenue  
6 requirements were in excess of the revenue caps.

7 Q. So that's why you say that the Generation  
8 Now costs didn't impact the calculation because you  
9 exceeded the caps.

10 A. Those capitalized dollars for those  
11 payments did not impact the overall Rider DCR rates  
12 because the revenue requirements were in excess of  
13 the revenue caps.

14 Q. Okay. Now, please turn your attention to  
15 Rider GEN, Gary Edward Nancy. Are you familiar with  
16 that one?

17 A. Yes.

18 Q. Does that rider include any capital  
19 accounts?

20 A. No.

21 Q. Was that rider updated in 2018?

22 A. There was a pricing update in 2018.

23 Q. Was the amount of that pricing update in  
24 2018 impacted by the fact that the Ohio utilities had  
25 Generation Now costs on their books at that time?

1           A.    No.  There was no impact on the Rider GEN  
2 prices.

3           Q.    Why not?

4           A.    Because the costs for those payments  
5 incurred by the Companies are not included in Rider  
6 GEN.

7           Q.    Okay.  So Rider GEN only includes certain  
8 accounts and not the Companies that these Generation  
9 Now costs would have been recorded in, correct?

10          A.    Yes.  Yes.

11          Q.    Now, please turn your attention to Rider  
12 DUN, David, Ulysses, Nancy.  Are you familiar with  
13 that one?

14          A.    Yes.

15          Q.    Does that rider include any capital  
16 accounts?

17          A.    No.

18          Q.    Was that rider updated in 2018?

19          A.    There were pricing updates in 2018.

20          Q.    Was that update in 2018 of Rider DUN  
21 impacted by the fact that Generation Now costs were  
22 on the books of the Ohio utilities?

23          A.    No, there was no impact on Rider DUN  
24 prices.

25          Q.    Why not?

1           A.    Rider DUN recovers distribution-related  
2           uncollectible expenses.  So the costs of the payments  
3           that you asked about would not have been included in  
4           Rider DUN.

5           Q.    Okay.  Now, please turn your attention to  
6           Rider NDU, Nancy David, Ulysses.  Are you familiar  
7           with that one?

8           A.    Yes.

9           Q.    Does that include any capital accounts?

10          A.    No.

11          Q.    Was that rider updated in 2018?

12          A.    There were pricing updates in 2018.

13          Q.    Were those 2018 updates to Rider NDU  
14           impacted by the fact that the Ohio utilities had  
15           Generation Now costs on their books?

16          A.    No.

17          Q.    Please turn your attention to Rider PUR,  
18           Patrick Ulysses Robert.  Are you familiar with that  
19           one?

20          A.    Yes.

21          Q.    Was that rider updated in 2018?

22          A.    There were pricing updates in 2018.

23          Q.    Were those 2018 pricing updates impacted  
24           by the fact that the Companies had Generation Now  
25           costs on their books?

1 A. No, there was no impact on Rider PUR.

2 Q. Okay. Let me ask you to turn your  
3 attention to Rider EDR, Edward David Robert. Was  
4 that rider updated in 2018?

5 A. There were pricing updates in 2018.

6 Q. Does that rider include collection of any  
7 costs that are in capital accounts?

8 A. No.

9 Q. Was the 2018 update to Rider EDR impacted  
10 by the fact that the Ohio utilities had Generation  
11 Now costs on their books at that time?

12 A. No, there were no impacts on Rider EDR  
13 prices.

14 Q. Please turn your attention to Rider GCR,  
15 Gary Charlie Robert. Are you familiar with that?

16 A. Yes.

17 Q. Was that rider updated in 2018?

18 A. There were pricing updates to Rider GCR.

19 Q. Were those pricing updates to Rider GCR  
20 in 2018 impacted by the fact that the utilities had  
21 Generation Now costs on their books at that time?

22 A. No, there was no impact on Rider GCR  
23 rates.

24 Q. Please turn your attention to Rider AMI,  
25 Albert Mary Irene. Are you familiar with that one?

1 A. Yes.

2 Q. Was that rider updated in 2018?

3 A. There were pricing updates in 2018.

4 Q. Did those updates include amounts that  
5 are in capital accounts?

6 A. For certain projects, yes.

7 Q. Now, does the update that occurred in  
8 2018 reflect the fact that there were Generation Now  
9 costs on the books of the Ohio companies at that  
10 time?

11 A. The Rider AMI prices were not impacted by  
12 those costs.

13 Q. Why not?

14 A. Because those costs aren't part of the  
15 Rider AMI revenue requirement calculation.

16 Q. Well, I thought the revenue requirement  
17 calculation included certain capital accounts; is  
18 that not correct?

19 A. Revenue requirement calculation includes  
20 capital costs for certain projects.

21 Q. Okay. And you testified yesterday that  
22 the Generation Now costs were capitalized across all  
23 capital accounts of the utilities. Do you recall  
24 that?

25 A. I believe I said all capital projects

1 excluding grid modernization projects.

2 Q. No, you didn't say that, but is that  
3 true?

4 MR. GLADMAN: Move to strike. You're  
5 misremembering his testimony, but you may go on.

6 A. Could you please rephrase the question,  
7 Mr. Finnigan?

8 Q. Okay. I understood you to say yesterday  
9 that these Generation Now costs that you discovered  
10 in September of 2020 had been broken out into both  
11 capital and expense accounts for the Ohio utilities,  
12 and the capitalization portion was capitalized across  
13 all Ohio accounts. Am I misremembering that or is  
14 that, in fact, what occurred?

15 A. I apologize if there was any  
16 miscommunication. The capitalized portion of those  
17 costs, as I understand it, were spread across the  
18 Ohio Companies' capital projects excluding grid  
19 modernization projects that are recovered through  
20 Rider AMI.

21 Q. Why were those AMI projects excluded from  
22 the capitalization of the Generation Now costs?

23 A. Because the Rider AMI costs are charged  
24 to specific cost collectors.

25 Q. You mean to specific FERC accounts?

1           A.    No.

2           Q.    Okay.  You mean -- what do you mean by  
3 different cost collectors?  Please explain that.

4           A.    Rider AMI recovers capital costs  
5 associated with specific projects, and those projects  
6 have their own specific identification to charge  
7 costs to.

8           Q.    And when you were reviewing the  
9 underlying documentation for these Generation Now  
10 costs in 2020, what did you review that led you to  
11 conclude that these AMI projects were excluded from  
12 the capitalization of the Generation Now costs?

13          A.    We reviewed the process that's used to  
14 account for Rider AMI costs.

15          Q.    Did you review actual accounts to see if  
16 Generation Now costs got allocated where someone may  
17 have not followed the right process?

18          A.    I have reviewed a breakdown of the Rider  
19 AMI costs by vendor or outside party and those -- the  
20 entity that you mentioned did not appear in that  
21 list.

22          Q.    Okay.  And did you go through each  
23 project that's included in the body of AMI?

24          A.    I understood the costs that I reviewed to  
25 be inclusive.



1           Q.    Okay.  When you did that review of AMI  
2 projects, is what you were looking for the name  
3 Generation Now as a vendor on one of those projects?

4           A.    I was relying initially on the companies'  
5 process for charging specific projects or cost  
6 collectors for Rider AMI costs.  I subsequently  
7 reviewed a list of the vendors that had costs  
8 included in Rider AMI.

9           Q.    Okay.  But Generation Now wouldn't appear  
10 as a vendor because these costs came through an  
11 allocation through FirstEnergy Service Company,  
12 right?

13          A.    Not necessarily.

14          Q.    How else could they have appeared on the  
15 books of the Ohio utilities?

16          A.    I'm not sure I understand the question,  
17 Mr. Finnigan.

18          Q.    Well, I am just asking how these  
19 Generation Now costs arrived on the books of the Ohio  
20 utilities.  My understanding of your testimony  
21 yesterday was that that occurred because those costs  
22 were allocated from FirstEnergy Service Company and  
23 that's what I was trying to confirm, but I understood  
24 your answer to say not necessarily, that those costs  
25 could have reached the utilities' books through some

1 other way. The costs of these payments were  
2 allocated from Service Company to the Ohio companies.  
3 I understood your last question to be asking about  
4 whether the name of the party is still identifiable  
5 once the costs are allocated to the Ohio companies.

6 Is it, Mr. Fanelli?

7 MR. GLADMAN: I believe that the witness  
8 is contemplating his answer, if you could give him a  
9 moment.

10 MR. FINNIGAN: Oh.

11 MR. GLADMAN: He's still here.

12 A. I'm sorry, Mr. Finnigan. Could you  
13 please rephrase the question? I think you said is  
14 it, and I am not sure I understand what you were  
15 asking.

16 Q. I apologize. I was just asking that when  
17 amounts are allocated to the Ohio utilities from  
18 FirstEnergy Service Company, is the vendor of each  
19 person represented in those costs identifiable in the  
20 utilities' records for all of those allocations?

21 A. For these costs, yes.

22 Q. Did the Rider AMI update that occurred in  
23 2018 include any allocations on the utilities' books  
24 from FirstEnergy Service Company?

25 A. I don't recall.

1 Q. How could we determine that?

2 A. Through the details supporting the rate  
3 calculation.

4 Q. Who's in charge of those details?

5 A. Could you please rephrase the question?

6 Q. Yes. Who's in charge of keeping the  
7 records of the details of the rate calculation for  
8 Rider AMI? Would that be you?

9 A. The Rates group manages the process for  
10 calculating the rate. The source information is  
11 provided by other groups.

12 Q. Okay. And which person would have the  
13 records to show whether there were any cost  
14 allocations from FirstEnergy Service Company included  
15 in the calculation of the Rider AMI update that  
16 occurred in 2018?

17 A. To clarify, Mr. Finnigan, are you asking  
18 generally about Service Company allocated costs or  
19 specific Service Company allocated costs?

20 Q. Both.

21 A. We would have to reach back out to the  
22 folks that provided us the information.

23 Q. Okay. And if you don't have that  
24 information, how can you say that there were no  
25 Generation Now costs allocated from FirstEnergy

1 Service Company to the utilities that were included  
2 in the Rider AMI update in 2018?

3 A. The costs included in Rider AMI again are  
4 charged to specific projects or specific cost  
5 collectors, and the costs that you are asking about  
6 were not charged to those cost collectors.

7 Q. But are there general allocations for  
8 FirstEnergy Service Company charged to the AMI  
9 accounts?

10 A. Could you please clarify what you mean?

11 Q. Yes. I'm just trying to figure out are  
12 there any allocations from FirstEnergy Service  
13 Company to the FirstEnergy utilities, are there any  
14 cost allocations that are included in the Rider AMI  
15 update that occurred in 2018? That's all I am trying  
16 to figure out.

17 A. I don't recall.

18 Q. How could we figure that out?

19 A. By reviewing the underlying details that  
20 supported the rate calculation.

21 Q. Who has those underlying details?

22 A. The Rates group has the support for the  
23 rate calculation. As I mentioned, we rely on other  
24 groups to help provide the supporting documentation.

25 Q. And who within the Rate group was on

1 point for doing the Rider AMI update calculation in  
2 2018?

3 A. One of the analysts on our team would be  
4 responsible for that.

5 Q. And what's that person's name?

6 A. Brandon McMillen.

7 Q. Are you familiar with Rider RER, Robert  
8 Edward Robert?

9 MR. GLADMAN: Let me just get in here for  
10 a second, John. I don't mean to interrupt the flow.  
11 We've been going a little over an hour and 15. Can  
12 you let us know when there is a good time in the near  
13 future when we can take a break?

14 MR. FINNIGAN: You know, this would be  
15 fine. I apologize. I lost track of time. 11:15,  
16 say resume at 11:30?

17 MR. GLADMAN: Sounds good. Thank you.

18 MR. FINNIGAN: Thank you.

19 (Recess taken.)

20 Q. Let's go back on the record.

21 Mr. Fanelli, we talked earlier about  
22 Rider DCR, David Charlie Robert. And we talked about  
23 the 2018 update to that. Was that rider also updated  
24 in 2019?

25 A. There were pricing updates in 2019.

1           Q.    In 2019, did the Company also exceed the  
2 revenue cap?

3           A.    The Companies' DCR requirements has  
4 continued to exceed the revenue caps over that time  
5 period.

6           Q.    Now, let me ask you about a collection of  
7 other riders. And I'll just mention them all by  
8 name, RER, Robert Edward Robert; HLF, Harry Larry  
9 Frank; CPP, Charlie Patrick Patrick; DRR, David  
10 Robert Robert; and AER, Albert Edward Robert. Are  
11 you familiar with those?

12          A.    Yes.

13               MR. GLADMAN: John, are you there?

14               MR. KELTER: John appears to be frozen.

15               MR. GLADMAN: Okay. I wanted to make  
16 sure we hadn't been completely disconnected.

17               (Discussion off the record.)

18          Q.    (By Mr. Finnigan) I had asked you the  
19 question about whether or not a collection of riders  
20 included any capital account costs. And what was  
21 your answer to that?

22          A.    I'm sorry, Mr. Finnigan. I think we may  
23 have gotten disconnected before you asked that  
24 question. The last one I recall you asked me if I  
25 was familiar with a list of riders.

1 Q. Okay. My next question was going to be  
2 do any of those riders include any capital accounts.

3 A. I'm sorry to ask, but could you list the  
4 riders again? I lost track of them.

5 Q. Sure. RER, HLF, CPP, DRR, and AER.

6 A. Those riders do not include capital  
7 costs.

8 Q. Okay. Would the amount of those updates  
9 in 2018 have been impacted by the fact that the  
10 utilities had Generation Now costs on their books at  
11 that time?

12 A. No.

13 Q. Okay. Let me switch topics now and I  
14 want to go back to a topic we were talking about  
15 yesterday and that's that fourth quarter earnings  
16 call that happened last month. We started to get  
17 into the idea that Mr. Papas listed a number of  
18 vendors where the costs were misclassified or didn't  
19 have supporting documentation. And I'm wondering  
20 have you ever seen a written list of who those  
21 vendors were?

22 A. I have seen the vendors where costs were  
23 incurred by the Ohio companies.

24 Q. Okay. So you only saw a limited list of  
25 costs for Ohio companies, not the complete list that


## 1 CERTIFICATE

2 State of Ohio :  
3 County of Franklin : SS:

4 I, Karen Sue Gibson, Notary Public in and for  
5 the State of Ohio, duly commissioned and qualified,  
6 certify that the within named Santino L. Fanelli was  
7 by me duly sworn to testify to the whole truth in the  
8 cause aforesaid; that the testimony was taken down by  
9 me in stenotypy in the presence of said witness,  
afterwards transcribed upon a computer; that the  
foregoing is a true and correct transcript of the  
testimony given by said witness taken at the time and  
place in the foregoing caption specified and  
completed without adjournment.

10 I certify that I am not a relative, employee,  
11 or attorney of any of the parties hereto, or of any  
12 attorney or counsel employed by the parties, or  
financially interested in the action.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand and affixed my seal of office at Columbus, Ohio,  
15 on this 12th day of March, 2021.

16   
17 Karen Sue Gibson, Registered  
18 Merit Reporter and Notary Public  
in and for the State of Ohio.

19 My commission expires August 14, 2025.

20 (KSG-7049)

21 - - -



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**Columbus, Ohio 43215**  
**614/224-9481**

March 12, 2021

Mr. Santino L. Fanelli  
% Mr. Michael R. Gladman  
mrgladman@jonesday.com

Re: In the Matter of the Review of the Political and Charitable Spending by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

Dear Mr. Santino L. Fanelli:

Enclosed is the transcript of your deposition taken on March 9 and 10, 2021, for examination pursuant to 4901-1-21(K) of the Ohio Rules of Practice before the Public Utilities Commission of Ohio.

The rule requires that your deposition be read by or to you. Any changes in form or substance which you desire to make shall be entered by me with a statement of the reasons given for making them.

If your deposition is not signed within 10 days of its submission to you, I am required to sign it and state the fact of the refusal to sign with the reason, if any, given therefor; and the deposition may then be used as though signed, unless on a motion to suppress the Commission holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. By copy of this letter I am advising the attorneys in the case of the submission of your deposition.

Please have your deposition signed in the presence of a Notary Public and return to us by certified mail.

Thank you for your promptness in this matter.

Sincerely,

ARMSTRONG & OKEY, INC.

Cc: Ms. Grady/Mr. Finnigan

KG

### ERRATA SHEET

Please do not write on the transcript. Any changes in form or substance you desire to make should be entered upon this sheet.

#### TO THE REPORTER:

I have read the entire transcript of my deposition taken on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the same to the original transcript.

Page	Line	Change	Reason

Date \_\_\_\_\_ Signature \_\_\_\_\_

1 State of Ohio :  
2 County of \_\_\_\_\_ : SS:

3 I, Santino L. Fanelli, do hereby certify that  
4 I have read the foregoing transcript of my deposition  
5 given on Tuesday, March 9, 2021, and Wednesday, March  
6 10, 2021; that together with the correction page  
7 attached hereto noting changes in form or substance,  
8 if any, it is true and correct.

9 \_\_\_\_\_  
10 Santino L. Fanelli

11 I do hereby certify that the foregoing  
12 transcript of the deposition of Santino L. Fanelli  
13 was submitted to the witness for reading and signing;  
14 that after he had stated to the undersigned Notary  
15 Public that he had read and examined his deposition,  
16 he signed the same in my presence on the \_\_\_\_\_ day  
17 of \_\_\_\_\_, 2021.

18 \_\_\_\_\_  
19 Notary Public

20 My commission expires \_\_\_\_\_, \_\_\_\_\_.  
21 - - -  
22  
23  
24  
25

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Summary: Reply Reply to FirstEnergy's Memorandum Contra OCC's Motion to Compel Answers to Discovery by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Finnigan, John