

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PREHEARING CONFERENCE

before Mr. Gregory Price, Ms. Megan Addison, and  
Ms. Jacky St. John, Attorney Examiners, at the Public  
Utilities Commission of Ohio, conducted via Webex,  
called at 10:04 a.m. on Thursday, March 25, 2021.

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APPEARANCES:

FirstEnergy Service Company  
By Mr. Brian Knipe  
76 South Main Street  
Akron, Ohio 44308

Jones Day  
By Mr. Michael R. Gladman  
325 John H. McConnell Boulevard, Suite 600  
Columbus, Ohio 43215

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

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

Bruce J. Weston, Ohio Consumers' Counsel  
By Ms. Maureen R. Willis,  
Senior Counsel  
and Mr. John Finnigan,  
Assistant Consumers' Counsel  
65 East State Street, Suite 200  
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 Mr. Evan F. Betterton,  
6100 Emerald Parkway  
Dublin, Ohio 43016

On behalf of Interstate Gas Supply, Inc.

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APPEARANCES: (Continued)

Kegler, Brown, Hill & Ritter Co., LPA  
By Mr. Robert Dove  
65 East State Street, Suite 1800  
Columbus, Ohio 43215

On behalf of the Natural Resources  
Defense Council and Ohio Partners for  
Affordable Energy.

The Ohio Environmental Council  
By Ms. Miranda R. Leppla  
and Mr. Chris Tavenor  
1145 Chesapeake Avenue, Suite I  
Columbus, Ohio 43212

On behalf of The Ohio Environmental  
Council.

Carpenter Lipps & Leland LLP  
By Ms. Kimberly W. Bojko  
280 North High Street  
280 Plaza Suite 1300  
Columbus, Ohio 43215

On behalf of the Ohio Manufacturers'  
Association Energy Group.

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

On behalf of the Industrial Energy Users  
of Ohio.

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

On behalf of the Environmental Law &  
Policy Center.

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APPEARANCES: (Continued)

Boehm, Kurtz & Lowry  
By Mr. Kurt Boehm,  
Mr. Michael Kurtz,  
and Ms. Jody Kyler Cohn  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

Bricker & Eckler, LLP  
By Mr. Devin Parram,  
and Mr. Dylan Borchers  
100 South Third Street  
Columbus, Ohio 43215-4291

On behalf of the Ohio Hospital  
Association.

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

On behalf of the Staff of the PUCO.

Dickinson Wright, PLLC  
By Ms. Madeline Fleisher  
150 East Gay Street, Suite 2400  
Columbus, Ohio 43215

On behalf of the Citizens' Utility Review  
Board of Ohio.

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1 Thursday Morning Session,  
2 March 25, 2021.

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4 EXAMINER ST. JOHN: Good morning,  
5 everyone.

6 The Public Utilities Commission of Ohio  
7 calls for a prehearing conference at this time and  
8 place, Case No. 20-1502-EL-UNC, being In the Matter  
9 of the Review of the Political and Charitable  
10 Spending by Ohio Edison Company, The Cleveland  
11 Electric Illuminating Company, and The Toledo Edison  
12 Company.

13 My name is Jacky St. John, and with me  
14 are Gregory Price and Megan Addison, and we are the  
15 Attorney Examiners assigned to preside over this  
16 prehearing conference.

17 Let's begin by taking appearances,  
18 starting with the Companies.

19 MR. KNIPE: Good morning, Your Honors.  
20 Appearing on behalf of Ohio Edison Company, The  
21 Cleveland Electric Illuminating Company, and The  
22 Toledo Edison Company, I am Brian Knipe, FirstEnergy  
23 Service Company, 76 South Main Street, Akron, Ohio  
24 44308.

25 Also appearing with me on behalf of the

Companies, from the law firm of Jones Day, is Michael Gladman, 325 John H. McConnell Boulevard, Suite 600, Columbus, Ohio 43215; as well as Ryan Doringo, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114.

EXAMINER ST. JOHN: Thank you.

Next, I have the Ohio Manufacturers' Association Energy Group.

MS. BOJKO: Thank you, Your Honors. On behalf of the Ohio Manufacturers' Association Energy Group, Kimberly W. Bojko, with the law firm Carpenter Lipps & Leland, 280 North High Street, Suite 1300, Columbus, Ohio 43215.

EXAMINER ST. JOHN: Thank you.

Ohio Consumers' Counsel.

MS. WILLIS: Thank you, Your Honor. On behalf of the residential customers of the FirstEnergy Ohio utilities, the Office of Consumers' Counsel, Bruce Weston, Consumers' Counsel, by Maureen Willis and John Finnigan, 65 East State Street, Suite 700, Columbus, Ohio 43215. Thank you.

EXAMINER ST. JOHN: Thank you.

Next, I have Mr. Robert Dove.

MR. DOVE: Good morning, Your Honor.

This is Robert Dove on behalf of Ohio Partners for Affordable Energy and Natural Resources Defense

1 Council. I'm with the firm Kegler, Brown, Hill &  
2 Ritter at 65 East State Street, Suite 1800, Columbus,  
3 Ohio 43215.

4 EXAMINER ST. JOHN: Thank you.

5 Ohio Environmental Council.

6 I believe that you're muted.

7 I'm sorry. Is there --

8 MR. TAVENOR: Since Randi is having some  
9 audio issues, I'll do it. Thank you, Your Honor.  
10 This is Chris Tavenor and Randi Leppla on behalf of  
11 the Ohio Environmental Council, 1145 Chesapeake  
12 Avenue, Suite I, Columbus, Ohio 43212.

13 EXAMINER ST. JOHN: Thank you.

14 Environmental Law and Policy Center.

15 MR. KELTER: Robert Kelter and Caroline  
16 Cox on behalf of the Environmental Law and Policy  
17 Center, 21 West Broad, Suite 800, Columbus, Ohio  
18 43215.

19 EXAMINER ST. JOHN: Thank you.

20 Ohio Hospital Association.

21 MR. PARRAM: Good morning, Your Honor.  
22 On behalf of the Ohio Hospital Association, Devin  
23 Parram and Dylan Borchers from the law firm of  
24 Bricker & Eckler, 100 South Third Street, Columbus,  
25 Ohio 43215.

1 EXAMINER ST. JOHN: Thank you.

2 Interstate Gas Supply, Inc.

3 MR. BETTERTON: Good morning, Your Honor.  
4 This is Evan Betterton representing Interstate Gas  
5 Supply, Inc. We're located at 6100 Emerald Parkway,  
6 Dublin, Ohio 43016.

7 EXAMINER ST. JOHN: Thank you.

8 Industrial Energy Users-Ohio.

9 MS. GLOVER: Thank you, Your Honor. On  
10 behalf of the Industrial Energy Users of Ohio,  
11 Rebekah Glover and Matthew Pritchard from the law  
12 firm McNees, Wallace & Nurick, 21 East State Street,  
13 17th Floor, Columbus, Ohio 43215.

14 EXAMINER ST. JOHN: Thank you.

15 Lucas County.

16 I'm not hearing anything.

17 Northwest Aggregation Coalition.

18 And finally, City of Toledo, do we have  
19 anyone?

20 Okay. Ohio Energy Group.

21 MR. KURTZ: Good morning, Your Honors.  
22 Mike Kurtz, Kurt Boehm, and Jody Cohn for OEG. 1510  
23 URS Center, Cincinnati, 45022.

24 EXAMINER ST. JOHN: Thank you.

25 Next, I have Citizens' Utility Board of



1 Ohio.

2 MS. FLEISHER: Good morning, Your Honors.  
3 On behalf of the Citizens' Utility Board of Ohio,  
4 Madeline Fleisher, Dickinson Wright, 150 -- sorry,  
5 East Gay Street, Suite 2400, Columbus, Ohio 43215.

6 EXAMINER ST. JOHN: Thank you.

7 Last on my list here, I have the Attorney  
8 General.

9 MR. MARGARD: Thank you, Your Honor. On  
10 behalf of the Commission Staff, Dave Yost, Ohio  
11 Attorney General, John H. Johns, Section Chief,  
12 Public Utilities Section, by Assistant Attorney  
13 General Werner L. Margard, 30 East Broad Street,  
14 26th Floor, Columbus, Ohio.

15 EXAMINER ST. JOHN: Thank you.

16 EXAMINER PRICE: Okay. Thank you for  
17 that. I think I'll start here with just a brief  
18 overview. We have a lot of individual items under  
19 dispute. We have carefully read the motion to compel  
20 and the memo contra. I note for the record that we  
21 did not see a reply to the memo contra from OCC. I  
22 did not think it was an expedited ruling, but maybe I  
23 was wrong. Regardless, we'll dispense with any sort  
24 of opening arguments and get right to the individual  
25 items.

1 I guess I did have a couple of general  
2 principles or outside limits that will apply to all  
3 of the rulings.

4 The first one, of course, is just an easy  
5 one. The time period under dispute -- under which  
6 items are discoverable. I know when we last got  
7 together we talked about a beginning date of  
8 January 1, 2017, and we'll confirm that. But we also  
9 noticed there were some floating end dates in some of  
10 the discovery, so we want to make it clear the last  
11 day for appropriate discovery responses is December  
12 31, 2019, which should be -- by my recollection, it  
13 should be after the referendum effort collapse.

14 Second, we had quite a bit of discussion,  
15 when we last got together, about this. Labor and  
16 shared service employee expenses and capital related  
17 to labor and shared employee expenses -- shared  
18 service employees, should be addressed in the  
19 corporate separation investigation. So any question  
20 which is dealing with the external affairs group or  
21 government relations is best dealt with in the  
22 corporate separation case and will not be -- there  
23 will be no discovery permitted for that here today.

24 Lobbying expenses will be discoverable to  
25 the extent they're related to outside lobbyists

1 employed by the Companies or by the Service Company  
2 on behalf of the Companies. Inside lobbyists,  
3 Mr. Pine, Mr. Dowling, again, if you have issues  
4 related to their allocation of their time, that's  
5 left to the corporate separation case.

6 And I did have one question for the  
7 Companies under "Definitions." Not the Companies.  
8 I'm sorry. OCC. Under "Definitions," you've  
9 included, in the definition of "Spending,"  
10 contributions to low-income advocates or  
11 representatives of low-income customers. Can you  
12 explain to the Bench why that is reasonably  
13 calculated to lead to admissible information?

14 MS. WILLIS: Thank you, Your Honor. I  
15 think Your Honors are referring to the definitional  
16 section of our discovery.

17 EXAMINER PRICE: Yes.

18 MS. WILLIS: Is that correct?

19 EXAMINER PRICE: Yes.

20 MS. WILLIS: I believe the definitional  
21 section of discovery was intended to be a broad  
22 definition to the extent that payments were made to  
23 third parties associated with the H.B. 6 activities,  
24 including, potentially, parties who may have  
25 testified on H.B. 6 before the legislature.

1 EXAMINER PRICE: But can you explain why,  
2 in particular, you relate it to low-income or  
3 representatives of low-income customers? I mean,  
4 they're the only customer group that you relate it  
5 to. It just seems to stand out.

6 MS. WILLIS: I don't think it was meant  
7 to stand out other than to -- other than to address  
8 the parties who may have provided legislative  
9 testimony on H.B. 6 at numerous times and occasions.

10 EXAMINER PRICE: Mr. Gladman.

11 MR. GLADMAN: Thank you, Your Honor.

12 I guess I still don't understand the  
13 explanation for that definition, notwithstanding the  
14 fact that we also still have this vague reference to  
15 House Bill 6 activities, when, clearly, the Show  
16 Cause Entry is linked back to specific expenditures  
17 and spending, but I guess I'm still puzzled by that  
18 definition.

19 EXAMINER PRICE: Anybody else care to  
20 weigh in on this?

21 Okay. Okay. At this time we're going to  
22 exclude the phrase -- exclude discovery of any  
23 contributions to low-income advocates or  
24 representatives of low-income customers. You know,  
25 it seems like the Companies contributing to

1 low-income customers is probably a good thing, and  
2 does not seem to be reasonably calculated to lead to  
3 admissible evidence and, therefore, that will be a  
4 second -- or, another overarching issue.

5 With that, we'll skip to the specific  
6 discovery requests that are in dispute. I'm not  
7 infallible. If I skip one, please let me know.  
8 These things happen.

9 We have a number of things under dispute.  
10 There are a number that we are certain how we're  
11 going to rule and we don't need any additional  
12 discussion of them. There are a number that we have  
13 questions about. So we'll go through all of the  
14 list. We'll give the ones that we're certain of now.  
15 The ones that are under discussion, we'll take some  
16 arguments, some hopefully limited arguments because  
17 there's quite a few under discussion, and then my  
18 colleagues and I will probably take a brief period of  
19 time to caucus, and we'll get back to you as to the  
20 final set of rulings.

21 MS. WILLIS: Your Honor.

22 EXAMINER PRICE: Yes.

23 MS. WILLIS: If I may be slightly heard.

24 In terms of -- I just wanted to point out  
25 that we -- before we start going down the list, we

1 are wanting to withdraw certain items on the motion  
2 to compel. So that will limit the rulings.

3 The two requests that we are going to  
4 withdraw from our motion to compel are the Request  
5 for Admission 16 and Request for Production of  
6 Documents No. 13.

7 And as far as for procedure, on behalf of  
8 OCC, I will be addressing the motion to compel as  
9 related to Discovery Set 1, and Mr. Finnigan will be  
10 addressing the Discovery Set No. 2. Thank you.

11 EXAMINER PRICE: So it's RFA 16 and  
12 Request for Production of Documents 13; is that  
13 right?

14 MS. WILLIS: That's correct, Your Honor.

15 EXAMINER PRICE: And I guess that is a  
16 good reminder. Are there any issues that were in the  
17 motion to compel that the parties have resolved and  
18 don't need to be addressed today beyond these two?

19 MS. WILLIS: Not that I'm aware of, Your  
20 Honor.

21 MR. GLADMAN: No, Your Honor.

22 EXAMINER PRICE: Great. Okay.

23 The first item up, then, is Interrogatory  
24 INT-01-2. And for the time being, we'll assume the  
25 prefix "INT-01" for the next several discovery

1 requests. The motion to compel for this one will be  
2 granted.

3 The next one I have --

4 MR. GLADMAN: I'm sorry, Your Honor. I  
5 don't mean to interrupt. Just so I understand going  
6 forward, will we get any rationale for that?

7 EXAMINER PRICE: I think, absent any  
8 other rationale, it's -- I don't -- we did not find  
9 this to be vague. We did not find this to be  
10 ambiguous. We found it to be reasonably calculated  
11 to lead to discoverable -- to admissible evidence.  
12 There are a number that we think are vague or  
13 ambiguous. But absent that, no, I don't -- I don't  
14 want to spend time going through every single one,  
15 saying, "This one is not vague. This one is not  
16 vague." If we're granting it, it's reasonably  
17 calculated to lead to admissible evidence.

18 MR. GLADMAN: Okay. Thank you.

19 EXAMINER PRICE: But to be clear,  
20 Mr. Gladman, if there's a question that comes up on a  
21 granting or denying on a privilege objection and you  
22 care to speak to get a clarification, please let me  
23 know.

24 MR. GLADMAN: Thank you, Your Honor.  
25 This was not privilege, this was scope, and also

1     ambiguity, but thank you.

2                   EXAMINER PRICE:   Thank you.

3                   The next one we have up is Interrogatory  
4     No. 5 and this one will be granted.

5                   Next up is INT -- Interrogatory 11.   This  
6     one will also be granted.

7                   Next is Interrogatory No. 12.   We did  
8     have some questions regarding this one.   So  
9     Ms. Willis, why do you believe this is reasonably  
10    calculated to lead to admissible evidence?

11                   MS. WILLIS:   Well, Your Honor, I -- I --  
12    understanding your ruling that shared service  
13    employees, labor, and information about inside  
14    lobbyists, your ruling being that that discovery is  
15    not permitted in this proceeding, I would defer to  
16    that ruling and withdraw the motion to compel with  
17    respect to this item.

18                   EXAMINER PRICE:   Thank you.

19                   Item 13 will be grant -- the motion to  
20    compel will be granted, Interrogatory 13, subject to  
21    the time limitation that we discussed in the  
22    beginning.

23                   Item 14 will be granted in part.   Part A  
24    will be granted.   Part B will be granted to the  
25    extent that it relates to outside lobbying expenses



1 only. Part C will be granted. Part D will be denied  
2 based upon our previous ruling on things which relate  
3 to the corporate separation case. Same with part E.  
4 Same with part F.

5 And then that simply leaves us with  
6 FirstEnergy Foundation. If you care to explain,  
7 Ms. Willis, why FirstEnergy Foundation is reasonably  
8 calculated to lead to admissible evidence, that would  
9 be helpful.

10 MS. WILLIS: Yes. We understand that  
11 FirstEnergy Foundation is a PAC that accepts  
12 contributions, political and charitable  
13 contributions, and, therefore, could have been used  
14 for purposes of political and charitable  
15 contributions and spending in support of H.B. 6.

16 EXAMINER PRICE: Mr. Gladman, is  
17 FirstEnergy Foundation a political action committee?

18 MR. GLADMAN: I will be honest, I don't  
19 have that information at my fingertips. I guess the  
20 broader question, this is divorced from the Companies  
21 is -- is number one. And I guess the other thing  
22 with this, we already provided all of the account  
23 information for the political and charitable spending  
24 with respect to, I believe, all of the ones that were  
25 at issue, so I'm a little puzzled by this one.

1 EXAMINER PRICE: Mr. Knipe.

2 MR. KNIPE: Thank you, Your Honor. I --  
3 my understanding is it is not a political action  
4 committee.

5 EXAMINER PRICE: What is FirstEnergy  
6 Foundation? What is it?

7 MR. KNIPE: It -- it -- my understanding  
8 is it does charitable spending. I can't identify  
9 specifically -- I don't have the information to  
10 identify what type of legal entity it is exactly, but  
11 I understand that FE -- FirstEnergy PAC is the PAC,  
12 and FirstEnergy Foundation is charitable causes.

13 EXAMINER PRICE: Well, given we've  
14 allowed the (c)(4) and (c)(3) organizations, we'll go  
15 ahead and grant the motion to compel as to  
16 FirstEnergy Foundation.

17 MS. WILLIS: Thank you, Your Honor.

18 EXAMINER PRICE: Next up, we have  
19 Interrogatory 19. 19 will be granted in part.  
20 Specifically, it will be granted with respect to  
21 item A, subpart A. It will be granted with respect  
22 to subpart B. It will be granted with respect to  
23 subpart C and C(i). It will be granted, in part,  
24 with respect to D. It's -- I'll stress that the  
25 amounts charged need to be related to political or

1 charitable spending. D(i) and D(ii) will be denied  
2 given that those are related to the corporate  
3 separation case and best brought up there.

4 INT No. 20 will be denied as it relates  
5 to the corporate separation case.

6 INT 21 will be granted in part, denied in  
7 part. I'm going to allow A and B and C. We will  
8 deny D and all of its subparts. And we will grant E.

9 Have I missed any interrogatories in the  
10 First Set that were in dispute?

11 MS. WILLIS: No, Your Honor.

12 MR. GLADMAN: No, Your Honor.

13 EXAMINER PRICE: Okay. As to the  
14 Requests for Admissions.

15 We will grant the Request for Admission  
16 with RFA-01-05.

17 We will also grant the Request for  
18 Admission with respect to RFA-01-6.

19 The next one that I have up -- hold on a  
20 second -- is No. 18. The request for the motion to  
21 compel will be denied as this particular request for  
22 admission is vague and ambiguous.

23 That is all the Requests for Admissions  
24 that I have for Part 1, Set 1. Did I miss any?

25 MS. WILLIS: No, Your Honor.

1 MR. GLADMAN: No, Your Honor.

2 EXAMINER PRICE: The first -- well, for  
3 the Requests for Production of Documents, RPD-01-4  
4 should be granted with -- granted to the extent that  
5 the individual interrogatory motion to compel was  
6 granted.

7 RPD-01-5, we'll grant in part. Again,  
8 it's just simply subject to the time limitation, the  
9 RPD -- the request for production of documents as "to  
10 date" and the outside limit for this investigation is  
11 December 31, 2019.

12 Ms. Willis, the next one I have up is  
13 item 7. You withdrew the interrogatory, so should we  
14 show this one as withdrawn as well?

15 MS. WILLIS: That would be correct, Your  
16 Honor. Thank you.

17 EXAMINER PRICE: Thank you.

18 Okay. No. 8. Why don't we give you an  
19 opportunity to explain why this is relevant, why it's  
20 not harassment, why it does not result in annoyance  
21 or embarrassment to the Companies, and then we'll go  
22 from there.

23 MS. WILLIS: Thank you, Your Honor. We  
24 believe that the information related to the  
25 subpoena -- the records subpoenaed in the -- related

1 to the criminal complaint is relevant.

2 The relevance was most recently  
 3 established through the filings that FirstEnergy made  
 4 in the district court class action suit that was  
 5 filed by a number of customers of FE utilities. And  
 6 there, Your Honors, FE Corp and FE Service Company  
 7 and the officers admitted that they made  
 8 contributions to Generation Now during 2017. And we  
 9 now know that part of those payments that FirstEnergy  
 10 Service Company made were allocated to the  
 11 FirstEnergy utilities and that was through the  
 12 deposition of Mr. Fanelli. So it is a small part of  
 13 the criminal complaint but it is nonetheless related.

14 So we are interested in obtaining factual  
 15 documents that will help us tie down the payments we  
 16 now know that were made to Generation Now, admitted  
 17 to, and charged to FirstEnergy utilities.

18 EXAMINER PRICE: Mr. Gladman.

19 MR. GLADMAN: Yeah. Several responses,  
 20 Your Honor.

21 First off, the characterization of the  
 22 admission is erroneous and is off base in terms of  
 23 the scope of it. But setting that aside, that's not  
 24 really the key issue here.

25 Look, what's going on here is OCC's

1 motion to compel and arguments in support have  
2 conceded that the purpose of this discovery request  
3 is not to determine whether the costs of any  
4 political or charitable spending in support of House  
5 Bill 6 were actually charged to customers, but it's  
6 whether or not they can investigate, quote, the  
7 illegal activities alleged by federal prosecutors.

8 This goes directly to the issue that you  
9 were very firm about during Mr. Fanelli's deposition  
10 that said, essentially I'm paraphrasing, that the  
11 worst mistake that the Commission could make here  
12 would be to trample upon the investigation of the DOJ  
13 and the U.S. Attorney. And that's exactly what is  
14 going on here.

15 And finally, with all due respect, I'm  
16 not sure the DOJ would permit production of those  
17 materials at this point in time. I'm a couple steps  
18 away from that investigation, but I think this one is  
19 dead on your ruling during Mr. Fanelli's deposition.

20 EXAMINER PRICE: Ms. Willis, if these are  
21 subpoenas, wouldn't they be grand jury subpoenas?  
22 And aren't grand jury materials supposed to -- law  
23 school was a long time ago, and I'm no criminal  
24 lawyer, but I seem to recall that grand jury  
25 materials are supposed to be secret.

1 MS. WILLIS: Your Honor, I -- I -- it has  
2 been a long time for me as well, so I can't respond  
3 to that. I do not know that.

4 EXAMINER PRICE: Okay. We're going to go  
5 ahead and deny the motion to compel based on  
6 relevance. I don't think we need to replicate in  
7 this proceeding the hard work of the United States  
8 Attorney's Office. If there are violations of  
9 criminal statutes, they will prosecute them to the  
10 fullest extent of the law, I am sure. Therefore,  
11 this one will be denied.

12 Next up is RPD 9. It relates to the  
13 shareholder lawsuits that Ms. Willis talked about  
14 earlier. Ms. Willis, are you asking for discovery  
15 responses they have provided in these shareholder  
16 lawsuits, or are you asking for anything, any  
17 documents related to the shareholder lawsuits?

18 MS. WILLIS: Your Honor, I think if we  
19 could limit it to discovery that's been produced.  
20 And I would say that this is a little different than  
21 the lawsuit that we were discussing earlier. The  
22 earlier lawsuit was with respect to customers. This  
23 is --

24 EXAMINER PRICE: Oh.

25 MS. WILLIS: This lawsuit is with respect

1 to shareholders.

2 EXAMINER PRICE: Thank you for the  
3 clarification.

4 MS. WILLIS: And in terms of the  
5 relevance -- well, I'll just leave it at that.

6 It is the shareholder lawsuit where an FE  
7 consultant/employee whistleblower was involved in  
8 auditing FirstEnergy for Sarbanes-Oxley compliance,  
9 and reportedly at issue are numerous payment records  
10 that are associated with contractors and vendors and  
11 documents pertaining to the review and approval of  
12 wire transfers. So, again, it's related to  
13 fact-finding regarding vendor payments and wire  
14 transfers that could potentially relate to H.B. 6  
15 activities and customers contributing to those H.B. 6  
16 activities.

17 EXAMINER PRICE: Mr. Gladman.

18 MR. GLADMAN: Thank you, Your Honor. A  
19 few things.

20 One, I appreciate the clarification  
21 because I didn't understand what it meant to be  
22 related to a lawsuit. Now that we know we're talking  
23 about discovery, I believe with complete certainty  
24 that the securities and shareholder cases are all  
25 subject to the automatic PSLRA stay and there has



1     been no documents produced in connection with that  
2     case.

3             Moreover, this strikes me as getting to  
4     the heart of what you referred to at least a couple  
5     of times on January 7th and again in Mr. Fanelli's  
6     deposition about whether or not this is something,  
7     under Allstate, that requires the Commission's  
8     expertise and whether it constitutes a practice  
9     normally engaged in.

10            I would -- I would put forth and propose  
11     that utility spending with respect to political and  
12     charitable matters that is related to government  
13     investigations and civil claims is not within that  
14     scope as defined by the Allstate proceeding. I think  
15     this is outside the box.

16            And I guess lastly, just for the record,  
17     Ms. Willis' characterization of a completely separate  
18     and different whistleblower lawsuit is completely off  
19     base and mischaracterizes what's at issue in that  
20     proceeding, but I don't think I need to get into that  
21     here.

22            EXAMINER PRICE: Well, if Ms. Willis is  
23     willing to limit this to discovery, and there has  
24     been no discovery and you can confirm that, then  
25     we'll go ahead and deny at this time. If it turns

1 out that the discovery has not been stayed, then  
2 we'll revisit that at a later point.

3 MR. GLADMAN: Thank you, Your Honor.

4 EXAMINER PRICE: Just -- I would ask that  
5 you follow up with the Bench and with Ms. Willis  
6 about the automatic-stay question and then we'll go  
7 from there.

8 MR. GLADMAN: I will, Your Honor. Thank  
9 you.

10 MS. WILLIS: Thank you, Your Honor. And  
11 I apologize. In my description I was actually  
12 describing the SEC investigation as opposed to the  
13 shareholder suits, so I apologize.

14 EXAMINER PRICE: Not an issue. Not a  
15 problem.

16 MR. GLADMAN: And I would -- and I would  
17 suggest that since that's the next issue, that's  
18 still a mischaracterization of the scope of that  
19 confidential proceeding.

20 EXAMINER PRICE: We are just going to  
21 stay away from the SEC -- the SEC investigation. I  
22 have no reason to believe, because I have not seen  
23 any actual document describing the extent of the SEC  
24 investigation, there's no good-faith reason to  
25 believe that this information will lead to admissible

1 evidence. Again, I don't know if this is a civil or  
2 a criminal SEC investigation, and the last thing  
3 we're going to do is screw up the federal government  
4 SEC's criminal investigation, so we will deny RPD 12.

5 RPD 13 has been withdrawn.

6 That leaves us with RPD 14. Ms. Willis,  
7 would you like to explain the relevance to this  
8 proceeding of OAG's -- the Attorney General's notice?

9 MS. WILLIS: Yes, Your Honor. I guess we  
10 would -- we were interested in making sure, or  
11 understanding, the order or the request that  
12 documents not be destroyed because we've not received  
13 any indication from the Utilities that records are  
14 not being destroyed in relation to the H.B. 6  
15 activities. That is our concern, it continues to be  
16 our concern, especially with firings and people  
17 leaving the Utilities. So we were interested in a  
18 copy of that letter so that we understand the terms  
19 of the "do not destroy."

20 EXAMINER PRICE: Isn't this record --  
21 this letter a public record?

22 MS. WILLIS: Your Honor, I do not know  
23 that. Perhaps that's something Mr. Gladman can  
24 address.

25 EXAMINER PRICE: Well, no, you don't have

1 to, Mr. Gladman.

2 If you obtain a letter from the Ohio  
3 Attorney General, saying that you can have this  
4 letter from FirstEnergy, then we'll revisit this  
5 issue at that time. I do not want to trample on  
6 Attorney General Yost's investigation or his civil  
7 RICO case. I don't really know why this would, but  
8 we better be safe than sorry. Let's make sure  
9 they'll authorize you to obtain this letter or give  
10 you the letter, either way. And then if you can  
11 obtain the letter from them saying you can have it,  
12 then we'll revisit this at that time.

13 The next one I have is No. 19. Not  
14 surprising, we're going to deny this based upon it  
15 can be obtained in the corporate separation case.

16 As well as the same ruling and rationale  
17 on RPD 20.

18 MS. WILLIS: Thank you, Your Honor.

19 EXAMINER PRICE: That is all of the  
20 Requests for Production of Documents in Set 1 that I  
21 had flagged. Did I miss anything?

22 MS. WILLIS: No, Your Honor.

23 EXAMINER PRICE: I'm sorry. I didn't  
24 hear you.

25 MS. WILLIS: No, Your Honor.

1 MR. GLADMAN: No, Your Honor.

2 EXAMINER PRICE: Thank you.

3 MR. GLADMAN: Your Honor, may I have a  
4 moment to shift notebooks around here, at least on my  
5 end, to kind of get the right materials out?

6 EXAMINER PRICE: Yes.

7 MR. GLADMAN: Thank you.

8 (Pause in proceedings.)

9 MR. GLADMAN: Thank you, Your Honor.

10 EXAMINER PRICE: Thank you.

11 Ms. Willis, if you could explain why the  
12 Company -- why the response is inadequate.

13 MS. WILLIS: I'm sorry, Your Honor. With  
14 respect to the Second Set, Mr. Finnigan will be  
15 addressing those.

16 EXAMINER PRICE: Oh. I'm sorry. That's  
17 correct. My mistake. And I didn't even say which  
18 one we're on.

19 Mr. Finnigan, we're on Interrogatory  
20 No. 1, Second Set, No. 1. If you can explain why the  
21 Companies' answer is inadequate.

22 MR. GLADMAN: It looks like John may be  
23 having an issue, Examiner Price.

24 EXAMINER PRICE: Yes. Let's assume we're  
25 having technical difficulties here.

1 MR. SCHMIDT: Mr. Finnigan, can you hear  
2 us?

3 MR. FINNIGAN: I can hear you, but can  
4 you hear me?

5 EXAMINER PRICE: Yes, we can.

6 MR. FINNIGAN: Your Honor, going to the  
7 one question, Item No. 1, we'll just withdraw that  
8 because, based on your ruling from earlier this  
9 morning, it appears that this is something that is  
10 more appropriate for the corporate separation case.  
11 It simply goes to the labor costs for Mr. Jones.

12 EXAMINER PRICE: Thank you.

13 Okay. Next is INT No. 2. And it's  
14 interesting, I'm struggling with this one,  
15 Mr. Finnigan, because, you know, we live in a highly  
16 technical field. Jargon is our worst enemy, and this  
17 is mercifully free of jargon. Unfortunately, the  
18 jargon usually comes with some sort of precision; we  
19 use accounting terms or economics terms. I'm just --  
20 I'm struggling with how they're supposed to answer  
21 this and what exactly -- what exactly you mean by  
22 this one.

23 MR. FINNIGAN: We --

24 EXAMINER PRICE: Go ahead.

25 MR. FINNIGAN: I'm sorry.

1 EXAMINER PRICE: Please go ahead.

2 MR. FINNIGAN: Well, Your Honor, we were  
3 challenged by the affidavit that Mr. Fanelli  
4 submitted and his explanation of the affidavit at his  
5 deposition. But as we understand it, he took an  
6 approach that basically says, you know, the question  
7 of this case is did the Company have any political or  
8 charitable spending in support of House Bill 6, and  
9 the answer we've gotten to date seems to be no,  
10 that's not even possible because our rates were set  
11 based on a test year that ended in 2008, so in no  
12 event could we have spent money for House Bill 6  
13 because House Bill 6 was not introduced in the  
14 legislature until 2019. So, you know, game, set, and  
15 match, that's the end of the story.

16 So we've had to try to develop these  
17 interrogatories to kind of dig into that a little bit  
18 and so these are questions designed to find out, with  
19 any of the monies or revenues that you've collected  
20 from customers in your rates or riders, did you use  
21 any of that for political and charitable spending at  
22 the present time. So that's what these next series  
23 of interrogatories is designed to get at.

24 EXAMINER PRICE: Right.

25 MR. FINNIGAN: And we submit that it

1 would be a simple answer, yes or no. We collect  
2 revenues from customers, and we do or do not use  
3 those for political and charitable spending at  
4 present. Yes or no.

5 EXAMINER PRICE: I don't know why that  
6 would be a simple question at all, Mr. Finnigan.  
7 When they collect money from distribution rates, the  
8 dollars are not colored blue as opposed to green.  
9 Money comes in. Money is fungible. And they have  
10 multiple sources of revenue. Every dime that the  
11 Companies have is not coming from money collected  
12 from distribution rates or any customer rates.

13 For example, I don't think it happened in  
14 this case but you would agree with me that  
15 FirstEnergy Corporation could have made an equity  
16 infusion into any one of the companies and that would  
17 be cash not derived from customers; is that right?

18 MR. FINNIGAN: Yes, Your Honor. I agree  
19 with that.

20 EXAMINER PRICE: Likewise, if they bought  
21 property for investment, okay, they bought a piece of  
22 property that they intended to put a substation up in  
23 Geauga County because of rapid growth and then chose  
24 to go another way and sold that property at a profit.  
25 Obviously that money would have never been in rate



1 base. The property was never used or useful or  
2 providing utility service. Well, that profit they  
3 made, that's not money derived from customers,  
4 correct?

5 MR. FINNIGAN: Yes, Your Honor, I agree.

6 EXAMINER PRICE: And your definition of  
7 "money derived from customers," would that include  
8 retained earnings? If they had a 9 percent return on  
9 equity one year and they retained some of those  
10 earnings and don't dividend them up, is, in your  
11 mind, that derived from customers?

12 MR. FINNIGAN: No, Your Honor, it would  
13 not be.

14 EXAMINER PRICE: And then last, just, you  
15 know, they can borrow money. If -- I'll use myself  
16 as an example. If I get paid a thousand dollars one  
17 week and the next day borrow a thousand dollars and  
18 put it in my checking account and buy a widget for  
19 \$50, well, did that money come from my paycheck or  
20 did that money come from borrowing? Eh. It came  
21 from both; it came from neither.

22 So how could the Company ever, in your  
23 mind, how could the Company ever track back whether,  
24 unless it was specifically included in distribution  
25 rates as Mr. Fanelli explained, how could they ever

1 track back the precise source of these funds?

2 MR. FINNIGAN: Your Honor, I would think  
3 that, as a preliminary matter, the question for us is  
4 did they engage in political and charitable spending  
5 and in what amounts and in what years and that's the  
6 gist of what we're going after here. And then,  
7 beyond that, the question would be, well, if you did  
8 do this political and charitable spending, to what  
9 extent was it related to House Bill 6.

10 So these questions are foundational in  
11 the sense that we're trying to get a baseline of what  
12 was the amount of that political and charitable  
13 spending and, you know, then to what extent is it  
14 related to House Bill 6.

15 The scope of the Entry that the  
16 Commission entered on September 15th of last year to  
17 open this case indicated that the scope of the case  
18 was spending, so that's really what we're going after  
19 here.

20 And I agree with your analysis that, you  
21 know, it's difficult to tie the source of funds to a  
22 particular use of funds, but I think that what we're  
23 really going after here is the broader case of what  
24 spending was there in furtherance of these political  
25 and charitable activities and then, in particular,

1 what spending was there to support House Bill 6 or  
2 the referendum.

3 EXAMINER PRICE: Much to Mr. Gladman's  
4 dismay, Ms. Willis did very well on the motion to  
5 compel on those questions. I granted virtually all  
6 of her requests on the contribution-spending side.  
7 If that -- if those -- if the responses to the First  
8 Set of Interrogatories, if they're satisfactory, then  
9 we need not spend a lot more time on this. But --

10 MR. FINNIGAN: Well --

11 EXAMINER PRICE: -- let's let  
12 Mr. Gladman have -- I'll come back to you,  
13 Mr. Finnigan. Let's let Mr. Gladman engage and we'll  
14 go from there. But I will come back to you.

15 MR. GLADMAN: Thank you, Your Honor.  
16 Just very briefly.

17 You anticipated and echoed the arguments  
18 we made in our response to the motion to compel in  
19 terms of the source of funds. And it sounds to me  
20 like Mr. Finnigan is pivoting, essentially abandoning  
21 these requests, these next several requests, to go  
22 back to what you just referenced about the  
23 interrogatory discussions we had already.

24 And look, I guess one observation. OCC  
25 is picking and choosing the elements of the

1 September 15th Show Cause Entry as it suits their  
2 purposes. Mr. Finnigan just said, well, they're  
3 entitled to look into political and charitable  
4 spending in general and then drill down. That's not  
5 what it says. Political and charitable spending  
6 limited to House Bill 6 that resulted in customer  
7 charges. Thank you.

8 EXAMINER PRICE: Mr. Finnigan.

9 MR. FINNIGAN: Well, Your Honor, my  
10 response to that would be that if there was any  
11 spending in support of House Bill 6, House Bill 6 is  
12 something that's the subject of this criminal action  
13 that two of the defendants have already entered  
14 guilty pleas to. And if there's -- if FirstEnergy  
15 was the company, A, identified in that criminal  
16 complaint and was spending in furtherance of an  
17 illegal racketeering scheme, then I think that's  
18 something that would be part of the Commission  
19 investigation in this case. And that's the other  
20 thing, too, we're trying to get at, is whether there  
21 was any of that spending.

22 So I think there are two questions  
23 involved: A, was there any spending in support of  
24 House Bill 6; and then, B, to what extent was that  
25 collected in rates.

1 MR. GLADMAN: May I respond, Your Honor?

2 EXAMINER PRICE: You may.

3 MR. GLADMAN: I just think this  
4 ever-changing view of what the scope of this  
5 proceeding is is troubling.

6 But more to the point, Mr. Finnigan's  
7 justification for seeking this discovery is that it's  
8 at issue in the criminal proceeding. That's where it  
9 belongs.

10 This is about whether or not political or  
11 charitable spending was charged back to customers;  
12 not whether non-FirstEnergy parties have pled guilty,  
13 notwithstanding his speculation about what may or may  
14 not happen in that proceeding.

15 EXAMINER PRICE: Okay. Well, I have a  
16 question --

17 MR. FINNIGAN: Do you want me to --

18 EXAMINER PRICE: -- for you, Mr. Gladman.  
19 Hold on a second, Mr. Finnigan.

20 My question is, Why can't you just answer  
21 this question with the response that -- apparently  
22 you're all privy to what Mr. Fanelli said, and I'm  
23 not, so I don't know what happened in the deposition,  
24 but why can't you just simply respond "There's no way  
25 we can track these dollars," or "There is a way we

1 can track the dollars, and we clearly did not use  
2 this money"?

3 MR. GLADMAN: And I would -- I'd be happy  
4 to provide you a copy of the two-day deposition if  
5 Your Honor would care to go through it. That's a bit  
6 tongue-in-cheek.

7 And look, Mr. Fanelli did answer the  
8 question in that regard to the extent that those  
9 questions came up. And I suppose if you want to  
10 compel us to answer, that's -- that's likely where  
11 the answer will be. It's just I think it's futile  
12 for the reasons that you've pointed out. It's vague.  
13 It's not answerable in the manner that it's done. We  
14 can essentially echo what you have said today if we  
15 needed to, but it seems futile.

16 EXAMINER PRICE: Okay. Let's move on to  
17 the -- we'll defer ruling on that discovery request  
18 at this time.

19 Let's move on to No. 3. Is there  
20 anything anybody cares to add to distinguish -- all  
21 these seem to be really very similar requests; and  
22 the rationale and arguments on both sides, I'm sure,  
23 are very similar. But is there anything special  
24 about this particular interrogatory that you would  
25 like to add to the discussion? Other than I will say

1 that this interrogatory, to the extent it's granted,  
2 will be subject to the same time limitations that  
3 we've been discussing all along.

4 Mr. Finnigan.

5 MR. FINNIGAN: Your Honor, no, there's  
6 nothing special about this. In fact, I would say  
7 that Interrogatories 2 through 8 are structured very  
8 much the same way so that Your Honor's ruling as to  
9 2, you know, we would present the same arguments as  
10 to why the motion to compel should be granted for the  
11 entirety of those 2 through 8. And we'll be guided  
12 by your ruling on 2 for the others as well.

13 EXAMINER PRICE: Mr. Gladman,  
14 Mr. Finnigan is cutting through the Gordian knot here  
15 quite well. Do you have anything that you would like  
16 to add with respect to 3 through 8 that we've not  
17 already addressed?

18 MR. GLADMAN: No, no. John -- or,  
19 Mr. Finnigan beat me to it. I echo what he said. We  
20 would make the same arguments.

21 EXAMINER PRICE: Okay. Then we'll go on  
22 to Interrogatory 9, after which my colleagues and I  
23 will have a short recess while we caucus about the  
24 remaining interrogatories.

25 Sorry. I got to catch my notes up.

1                   How do I put this. Mr. Gladman, before I  
2 grant this, is there anything you would like to add  
3 to Interrogatory 9 to cause me to change my mind  
4 before I grant this?

5                   MR. GLADMAN: I mean, as I look at this,  
6 it's fairly close to a summation of 2 through 8,  
7 which we've agreed to disagree about and defer on.  
8 It really gets to the same exact issue just in a  
9 backwards way. So I would suggest this goes -- now I  
10 think it's 2 through 9 fit in the same category.

11                  EXAMINER PRICE: Mr. Finnigan, any reason  
12 why I should not follow Mr. Gladman's suggestion?

13                  MR. FINNIGAN: Your Honor, we intended  
14 this one to be different. So if you would -- we'd be  
15 willing to strike the second sentence of that one,  
16 "Please identify the...source of the funding," based  
17 on your rulings from earlier this morning.

18                  However, the initial part of that, we  
19 believe, is very important. How did the Companies  
20 fund political and charitable spending. And the  
21 information we would like to obtain from the  
22 Companies is what's the planning process; how do they  
23 budget for this; how do they, you know, develop the  
24 plans for how much they'll spend every year and what  
25 the spending is needed for; and, you know, in



1 particular, was there any spike during the years when  
2 House Bill 6 was under consideration. So this  
3 entire -- this question goes to the issue of planning  
4 and budgeting for this type of spending which we  
5 believe is relevant to the case.

6 EXAMINER PRICE: I will take your edit  
7 and remove the second sentence. I think you're going  
8 beyond -- you're expanding the scope a bit, but we  
9 can deal with that later, but we'll go ahead and we  
10 will grant Interrogatory No. 9. The Companies can  
11 answer as best they can. And then if you'll follow  
12 up, you'll have an opportunity, I'm sure, in  
13 discovery, to follow up that answer.

14 MR. FINNIGAN: Thank you, Your Honor.

15 MR. GLADMAN: Thank you, Your Honor.

16 EXAMINER PRICE: At this time we're going  
17 to take a short break. Let's come back at 11:20. I  
18 believe that it's best that you leave your Webex  
19 sessions open, and mute and stop your video. Mute  
20 your mics. Stop your video.

21 One housekeeping matter. You know, where  
22 does this all lead. As we indicated at one point,  
23 after we are done today, we will be setting -- and  
24 after the Companies have had a chance to respond  
25 where we've granted the motion to compel, we will, by

1     separate AE Entry, be setting new comment and reply  
2     comment dates in order to continue with this case.

3             MR. FINNIGAN: Your Honor, this is John  
4     Finnigan. Very quickly. You mentioned that I was  
5     doing a good job of cutting through these Gordian  
6     knots, so I'm going to keep that up a little bit  
7     here.

8             The only thing we have left is Requests  
9     for Production of Documents, which, where they  
10    produced the documents, it's not an issue.

11            And then the only remaining item is some  
12    Requests for Admissions, 1 through 7, that track the  
13    interrogatories that you've deferred ruling on. So,  
14    given that those are deferred, it seems like our  
15    Requests for Admissions would be deferred as well,  
16    and we're content with that outcome and that would  
17    conclude our Second Set of discovery.

18            MR. GLADMAN: May I respond, Your Honor?

19            EXAMINER PRICE: Yes, please.

20            MR. GLADMAN: There are no RFAs in the  
21    Second Set subject to your motion to compel.

22            EXAMINER PRICE: I didn't flag anything.

23            MR. FINNIGAN: I'm sorry. I missed that.  
24    I apologize.

25            EXAMINER PRICE: No problem. Anything

1 that helps keep us on track here -- any suggestion to  
2 help us keep on track and keep us moving is a welcome  
3 suggestion. Let's --

4 MS. WILLIS: Your Honor.

5 EXAMINER PRICE: Yes.

6 MS. WILLIS: I apologize. I didn't mean  
7 to interrupt. But while you are having your  
8 discussion offline, I'm wondering whether you might  
9 consider a deadline in terms of responses to  
10 discovery. I know we were talking -- you had  
11 mentioned setting new deadlines for comments. It  
12 would be helpful, if there is a deadline set for  
13 comments, that there be a deadline set for responses.  
14 You know, our luck has not been so great in getting  
15 things fully responded to and responded to on time,  
16 so I would ask that the Commission or that you set a  
17 deadline for responses to our discovery.

18 EXAMINER PRICE: We'll have that  
19 discussion when we're done.

20 I would ask Mr. Gladman, while we're on  
21 break, if you can give some thought to a reasonable  
22 period to respond in light of the rulings, but, you  
23 know, we will certainly not short your time on  
24 comments. You know, I -- I promise you that you'll  
25 get 30 days to draft your comments from the time the

1 discovery is due. We're not going to -- it's not  
2 going to be it will hang out there and then you get  
3 three days to draft your comments.

4 MR. GLADMAN: May I respond just briefly,  
5 Your Honor?

6 EXAMINER PRICE: Yes, please.

7 MR. GLADMAN: And I appreciate that. We  
8 will give some thought to a reasonable time to  
9 respond to the requests that Your Honor has decided  
10 to grant the motions to compel.

11 But I've got to respond, very briefly, to  
12 Ms. Willis' comment.

13 We have responded to all discovery in a  
14 timely fashion. We have not been late on anything.

15 More to the point, here's our concern.  
16 The discovery requests keep coming and coming and  
17 coming. They are superfluous. They are outside the  
18 scope. They are redundant. We took a look at this.  
19 We have six sets of discovery so far, and counting,  
20 from OCC. And we have 506 separate requests to date,  
21 347 interrogatories or subparts, 125 document  
22 requests, and 34 RFAs. And when we look at the  
23 discovery that's pending in the other cases, we are  
24 approaching 1,000 sets of discovery here.

25 I would suggest that at worst -- or, at

1 best, this demonstrates a misunderstanding of the  
2 scope of this case and an unwillingness to abide by  
3 that; and, at worst, I'm very concerned about, and I  
4 don't throw around the term "bad faith" but this may  
5 be a bad faith attempt to oppress and burden the  
6 Companies in a way that is really starting to get to  
7 a point that we think is inappropriate. And we're  
8 close to asking Your Honor to require OCC to seek and  
9 obtain leave before serving any additional discovery  
10 requests. There has to be an end to this at some  
11 point.

12 MS. WILLIS: Your Honor, may I briefly  
13 respond?

14 EXAMINER PRICE: Yes.

15 MS. WILLIS: I think part of the issue,  
16 Your Honor, has been that we've had discovery that  
17 started in this proceeding back four or five months  
18 ago. And yes, we have served a lot of discovery, but  
19 we've received no responses to the discovery. And so  
20 of course there's going to be more discovery if  
21 there's no responses and no substantive responses  
22 have been made.

23 So we do appreciate the direction that  
24 Your Honors gave at this prehearing, and I do think  
25 that will go a long way toward tailoring and

1 determining whether or not the additional discovery  
2 is needed.

3 When you get zero, you keep going forward  
4 to try to ask it in a different way so that maybe you  
5 might hit upon whatever the Company -- whatever, you  
6 know, the problem is with the discovery.

7 I think we -- we have continued. We are  
8 trying to get to the answers. We've gotten no  
9 answers. We're six months into this process. We're  
10 being asked to -- to, you know, defer issues to other  
11 proceedings. We're not in proceedings, the other two  
12 proceedings, where they're saying we have no right to  
13 discovery until the audit reports are issued. That's  
14 six months, another four or five months down the  
15 road.

16 So, yes, we have been diligently pursuing  
17 discovery. And I think it's out of place and it  
18 would be highly inappropriate for an order to come  
19 down that says that OCC is pursuing these matters in  
20 bad faith or that they shouldn't be allowed any more.  
21 If we'd had gotten answers, we probably would have  
22 stopped asking for discovery. But we've gotten no  
23 answers. It's been six months.

24 MR. GLADMAN: May I respond?

25 EXAMINER PRICE: Wait, wait.

1 I do want this to be clear on the record.  
2 Are you saying that you received no answers to the  
3 discovery requests in Set 1, to any of the discovery  
4 responses, even the ones that you did not seek  
5 motions to compel?

6 MS. WILLIS: Largely, Your Honor, the  
7 response --

8 EXAMINER PRICE: "No" is zero. "No" is  
9 zero.

10 MS. WILLIS: Your Honor --

11 EXAMINER PRICE: Did they respond or  
12 didn't they?

13 MS. WILLIS: The objections. Yes,  
14 they've objected. And every one of them has been  
15 objected to. There is not a single discovery  
16 response in that set that was not objected to. And I  
17 think that that is largely 85, 90 percent. We've  
18 received, I think, some FERC Form 1 documents that  
19 we've asked for in six sets so far. That's it.

20 MR. GLADMAN: May I respond?

21 EXAMINER PRICE: You may.

22 MR. GLADMAN: Ms. Willis is backtracking  
23 from her absolute statement that zero is zero; we've  
24 provided nothing substantive. That's just false.  
25 That's a reckless mischaracterization which I think

1 she now realizes and she is backtracking from. And  
2 it's just not true. It's just not true.

3 MS. WILLIS: If Mr. Gladman could tell us  
4 which responses we've received substantive responses  
5 to, I would love to hear it, because I don't -- I  
6 didn't find any.

7 EXAMINER PRICE: I don't -- I mean, it's  
8 typical gamesmanship whether you like it or not.  
9 It's typical gamesmanship for people to make  
10 objections and then respond. It happens every case.  
11 It happens on both sides of every case. People make  
12 objections and then respond. People make objections  
13 so they can preserve their rights to object to  
14 subsequent admissibility.

15 Saying that a response which is  
16 responsive but has a prefatory objection is a  
17 nonresponse is -- is -- I just think it's instigating  
18 trouble. We don't need to get into this right now.  
19 Things were going very well up until just now.

20 If you have motions to compel on the  
21 remaining sets of discovery, you should make them,  
22 but, you know, we will try to be consistent in  
23 subsequent motions to compel with our rulings today.

24 Likewise, for the Companies, if you feel,  
25 at a concern point, it is burdensome. Ms. Willis



1 helpfully included Civil Rule 26 in our packet that  
2 she sent around yesterday. Well, one of the  
3 provisions in Civil Rule 26 says that the Bench can  
4 limit the amount of interrogatories. So we -- and --  
5 and I have done it. Rarely. I can think of only one  
6 time but I have limited discovery. And, you know, we  
7 will -- I'm in no hurry to do that.

8 We are very early in this proceeding. I  
9 know this proceeding has been around for a number of  
10 months, but we -- the Commission, as we have said  
11 repeatedly, the Commission will go where the facts  
12 take us. We don't even have -- we have right now, so  
13 far in the record, an affidavit, no comments, no  
14 reply comments. No decision has been made whether  
15 this will be set for hearing. No decision has been  
16 made as to what the steps will be in this proceeding  
17 after the reply comments come in.

18 So I would beseech all of the parties to  
19 try to work together, to try to follow the rulings of  
20 the Bench, and let's try to avoid having the  
21 Examiners intervene in discovery to the extent  
22 possible. And certainly, again, we will seek to be  
23 consistent in our rulings and we'll go from there.

24 And yes, Ms. Willis, we are trying to  
25 keep these investigations focused. Some topics are

1 appropriate for this case. Some topics will go in  
2 the corporate separation case, for example, where we  
3 are hiring an auditor. And already in that case is a  
4 voluminous record of comments and reply comments and  
5 surcomments and surreplies and as well as one audit  
6 report. And as to the issue, I know there's a  
7 discovery dispute in that case and we will deal with  
8 that in due course. In fact, I thought that we had  
9 already set the prehearing conference for that case.

10 MS. WILLIS: Yes, Your Honor, you have.  
11 It is set for April 8th. And certainly, there, we  
12 will be discussing, you know, does a party like OCC  
13 have rights to discovery before an audit report is  
14 issued. And that issue, of course, applies not only  
15 to that case but also to the DMR case. So, yes, we  
16 look forward to that.

17 And we do appreciate the guidance from  
18 the Bench from this morning's rulings, and I think  
19 that will help us tailor our discovery and perhaps  
20 alleviate some future motions to compel that are  
21 currently under consideration.

22 EXAMINER PRICE: Okay. Well, we've blown  
23 through our 11:20 break time, so let's come back at  
24 11:30 and we'll go from there. We are off the  
25 record.

1 (Recess taken.)

2 EXAMINER PRICE: Let's go back on the  
3 record.

4 At this time we're going to go ahead and  
5 grant the motion to compel for the remaining  
6 interrogatories; Interrogatories, Second Set, 2  
7 through 8. I respect Mr. Gladman's observation that  
8 it's a futile act. However, "futility" I'm not sure  
9 is one of the defined reasons to deny a motion to  
10 compel. And hopefully the Company will give a  
11 thorough answer which will fully satisfy the parties  
12 and we can put this issue to bed.

13 With that, are there any discovery  
14 responses in the Second Set that are in dispute that  
15 we have missed?

16 Hearing none, Mr. Gladman, I asked you to  
17 give some thought to an appropriate deadline to  
18 respond to these rulings.

19 MR. GLADMAN: Yes, Your Honor. You know,  
20 I'd like to ask for 21 days. While I would normally  
21 do something a little quicker than that, 7 or 10;  
22 with sort of the never-ending wave of discovery  
23 coming, I would ask for a little bit more latitude to  
24 provide these supplemental responses.

25 EXAMINER PRICE: Ms. Willis.

1 MS. WILLIS: At the risk of ending on a  
2 sour note here, I think 21 days is a bit much. I  
3 would like to see a shorter time frame, given that  
4 this has been out here since October or November, and  
5 we don't -- we don't, again, have -- we have very  
6 little, if any, substantive responses.

7 And I did check, you know, at the risk of  
8 not wanting to be incorrect as Mr. Gladman accused  
9 OCC of, but with respect to the set -- the First Set,  
10 we had substantive responses --

11 MR. GLADMAN: No, no. Are we going to go  
12 -- if we are going to go into this, I'll be happy to  
13 circulate our chart of 500 requests and the responses  
14 we provided. But I thought we were just talking  
15 about a deadline for a supplement at this point,  
16 instead of revisiting this ground.

17 EXAMINER PRICE: We will --

18 MS. WILLIS: I --

19 EXAMINER PRICE: No. Wait, Ms. Willis.  
20 I'll let Ms. Willis finish her thought and then we'll  
21 move on.

22 MS. WILLIS: Thank you.

23 There were sub -- there were responses to  
24 five subparts and there were responses to four  
25 Requests for Admissions, so that was what was in the

1 set. Certainly the set is available for review and  
2 attached to our motion to compel. Thank you.

3 EXAMINER PRICE: Okay. You know, I'm  
4 torn here. I do think 21 days is a long time, but I  
5 also observe that nobody is being prejudiced by this,  
6 of course. The reply -- the comment periods are on  
7 hold, pending this discovery.

8 So I -- I think that what I will go with  
9 is discovery responses will be due April 12th, which  
10 will give Mr. Gladman two weeks and a weekend. I had  
11 a friend that used to be a Jones Day associate. I  
12 know that you have them stacked up like cordwood over  
13 there, so.

14 (Laughter.)

15 MR. GLADMAN: Thank you, Your Honor. We  
16 will -- we will -- we will make that work.

17 EXAMINER PRICE: She actually left the  
18 second inning of an Indians opening game because she  
19 had to go back to Jones Day to work.

20 MR. GLADMAN: I'm not familiar with a  
21 Jones Day lawyer having to miss something that was  
22 for personal fun.

23 (Laughter.)

24 EXAMINER PRICE: So we'll go with  
25 April 12th which gives you 18 days.

1                   And then, as I had previously promised,  
2                   we will memorialize this in an entry, but we'll be  
3                   looking at, then, reply -- initial comments will be  
4                   about 30 days after that, and reply about 15 days  
5                   after the initials. So that should give everybody a  
6                   good sense of where we're going from here.

7                   MS. BOJKO: Your -- Your Honor, may I  
8                   raise one issue? This is Kim.

9                   EXAMINER PRICE: Is it related?

10                  MS. BOJKO: It is, Your Honor. If you  
11                  are contemplating setting the comment period, I just  
12                  want to point out that OMAEG also has outstanding  
13                  discovery. We had an agreement with the Company to  
14                  stay that, pending the Attorney Examiner's rulings of  
15                  scope. And so I just want to ensure that our  
16                  discovery is going to be responded to in that same  
17                  time period in order for us also to have the 30-day  
18                  period before filing initial comments.

19                  EXAMINER PRICE: Mr. Gladman.

20                  MR. GLADMAN: We will make that work.  
21                  And we do appreciate Ms. Bojko working with us, as we  
22                  agreed, jointly, rather than, you know, fighting  
23                  about some of these discovery requests until we had  
24                  further guidance. This was the better approach. So  
25                  yes, we will make that work.

1 MS. BOJKO: Thank you.

2 EXAMINER PRICE: You don't need my  
3 intervention at all. Perfect.

4 MR. KELTER: Your Honor, this is Rob  
5 Kelter on behalf of the Environmental Law and Policy  
6 Center. I just have a question about that 30 days  
7 and 15 days. Are you saying that you're setting that  
8 schedule now, or are you saying that's what we should  
9 bear in mind? Because it seems to assume that those  
10 responses due April 12th will all be satisfactory.

11 EXAMINER PRICE: I assume that  
12 Mr. Gladman will adhere to my rulings and I'm quite  
13 confident that he will.

14 If there's an issue with the responses,  
15 I'm sure people will bring it up. But I was actually  
16 not even setting those. I was trying to give  
17 everybody an idea, for planning purposes, what they  
18 are very likely to be. If the response to my ruling  
19 is so deficient it materially impacts OCC's ability  
20 to file comments, I'm sure Ms. Willis will bring that  
21 up to the Bench at that time. Let's presume good  
22 faith.

23 MR. GLADMAN: Thank you, Your Honor.

24 EXAMINER PRICE: Do we have any other  
25 issues for us? I don't hear anybody. I assume it's

going to be a similar group on April 8th in the  
corporate separation where we will get back after  
these discovery issues. And, with that, we are  
adjourned.

(Thereupon, the proceedings concluded at  
11:48 a.m.)

- - -



CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, March 25, 2021, and carefully compared with my original stenographic notes.

---

Carolyn M. Burke, Registered  
Professional Reporter, and  
Notary Public in and for the  
State of Ohio.

My commission expires July 17, 2023.

- - -

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Summary: Transcript in the matter of the Ohio Edison Company hearing held on 03/25/21.  
electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke,  
Carolyn