

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON COMPANY’S MEMORANDUM CONTRA  
MOTION TO COMPEL RESPONSES TO THE FOURTH SET OF DISCOVERY BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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**I. INTRODUCTION**

The Office of the Ohio Consumers’ Counsel’s (“OCC”) motion to compel (“Motion”) should be denied. OCC claims it is forced to bring this Motion because Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) refused to respond to OCC’s requests in violation of the Attorney Examiners’ prior orders. To the contrary, and setting aside that there have, of course, been no rulings directed at OCC’s fourth set of discovery yet, the Companies *have* proactively agreed to supplement their responses to OCC’s discovery. And the Companies *have* adhered to the letter and spirit of the Attorney Examiners’ orders in doing so. OCC’s claims otherwise should be rejected.

The Companies have been working in good faith with OCC and have told OCC that they would supplement their responses to OCC’s fourth set of discovery—and nearly all the responses OCC seeks to compel in this Motion—by May 7. Still, OCC filed this Motion seeking to litigate now-moot issues. While OCC claims the Companies are “stringing out” the process, OCC entirely ignores the sheer volume of discovery it has propounded upon the Companies, in this proceeding and other related proceedings. To put things in perspective, OCC has served 212 discovery

requests—576 requests counting subparts—in this proceeding alone.<sup>1</sup> Resolving disputes and responding to 576 requests takes time. The Companies have been, and will continue to, work with OCC regarding these requests.

Further, to the extent the Companies continue to object to a handful of OCC's requests, they do so for good reason. Three of those requests improperly demand that the Companies speculate about entities identified only by aliases in criminal proceedings. Two others seek, in part, information that is plainly outside the scope of this proceeding.

For these reasons and those further explained below, the Motion should be denied.

## **II. ARGUMENT**

### **A. The Companies Have Already Agreed To Supplement Most Of The Responses OCC Seeks To Compel.**

OCC's Motion was largely moot before it was even filed, because the Companies have already agreed to supplement their responses to nearly all of the requests OCC has put at issue here. Specifically, the Companies have committed to supplement their responses to OCC INTs 4-02, 4-04, 4-05 through 4-015, and 4-020. Additionally, the Companies agreed to substantively respond to the majority of OCC RPDs 4-01 and 4-02, with one exception explained further below.

The Companies agreed to provide supplemental responses to these requests during the parties' first meet-and-confer discussion on April 12. The next week, on April 20, OCC requested that the Companies submit their supplemental responses by April 23—a mere three days later. (*See* Exhibit 1). April 23 was, however, also the agreed-upon deadline for the Companies to respond to OCC Set 6 in this case, and the Companies simply could not accommodate the requested three-day turnaround, on top of preparing their responses to OCC Set 6, as well as responses to

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<sup>1</sup> OCC has served 366 requests total—983 including subparts—in the four related proceedings.

OCC’s discovery in other Commission investigative proceedings. Accordingly, by email on April 22, the Companies agreed to supplement their responses to Sets 3 and 4 by May 7. (*See* Exhibit 2).

In short, OCC’s claim that it is “being left with no substantive answers to its Fourth Set of Discovery” is plainly wrong.<sup>2</sup> Instead, the Companies have collaborated in good faith with OCC to provide responses to reasonable requests in light of the Attorney Examiners’ guidance and within the bounds set by the Commission’s rules. Since the Companies have already agreed to supplement, no Commission intervention is required here, and the Motion should be denied as moot with respect to these requests.

#### **B. The Companies Continue To Object To Requests As Appropriate.**

The Companies continue to object to three of OCC’s requests—OCC INTs 4-16 through 4-18—in their entirety. These requests share a common issue: each asks the Companies to provide information about any payments made to entities identified by aliases in the criminal complaint in *U.S. v. Larry Householder, et al.* These requests for the Companies to provide information about entities identified only by alias in the criminal complaint are entirely improper. The Companies are in no position to speculate about the actual identities of those entities in interrogatory responses. Nor is it reasonable for OCC to demand that the Companies do so. And to the extent OCC is seeking to use this Commission proceeding as a vehicle to investigate the allegations of the criminal complaint, which contains no allegations of wrongdoing by the Companies, that, too, is improper, as the Attorney Examiners have expressly recognized.<sup>3</sup>

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<sup>2</sup> *See* Memo. in Supp. of OCC’s Mot. to Compel Resps. To Fourth Set of Disc. & Req. for Expedited Ruling, p. 4.

<sup>3</sup> *See In the Matter of the Review of the Political and Charitable Spending by Ohio Edison, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 20-1502-EL-UNC, Tr. of Mar. 25, 2021 Prehearing Conf., p. 23 (denying “based on relevance” one of OCC’s requests related to the criminal proceeding because the Commission does not “need to replicate in this proceeding the hard work of the United States Attorney’s Office”).

**C. The Companies Also Object To OCC's Requests For Information Outside The Scope Of This Proceeding.**

Two of the requests subject to OCC's Motion—RPDs 4-01 and 4-02—seek documents for a two-year period relating to “expenditures recorded in” FERC Accounts 426.4 (Expenditures for certain civic, political and related activities) and 426.1 (Donations) by the Companies and, separately, by FirstEnergy Service Company, “related to H.B. 6 activities.” The Companies have agreed to substantively respond to the subparts of these requests that are directed at them. But the Companies object to OCC's demand to produce any documents relating to any expenditures recorded by FirstEnergy Service Company in these two FERC Accounts. That portion of these requests—requesting information regarding expenditures by FirstEnergy Service Company which were not allocated to any of the Ohio Companies—seeks information regardless of whether it is relevant to political and charitable spending by the Companies or to costs incurred by the Companies for external political or charitable contributions. Accordingly, that portion of the request is overly broad, outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence.<sup>4</sup>

It follows that, as to RPDs 4-01 and 4-02, OCC's Motion should be denied. The Motion is moot to the extent it deals with subparts of these requests that the Companies have already agreed to answer. And the portions of the requests to which the Companies continue to object are not within the scope of this proceeding.

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<sup>4</sup> See Case No. 20-1502, Hr'g Tr., at 37:19–22 (Jan. 7, 2021); Hr'g Tr., at 10:24–11:2 (Mar. 25, 2021).

### **III. CONCLUSION**

OCC's Motion should be denied in its entirety. Most of the requests subject to the Motion will be answered in short order by the Companies, rendering them moot here. And the remaining requests fall outside the bounds of permissible discovery.

Dated: May 5, 2021

Respectfully submitted,

/s/ Ryan A. Doringo

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Brian J. Knipe (0090299)  
Counsel of Record  
FirstEnergy Service Company  
76 S. Main St.  
Akron, Ohio 44308  
Tel: (330) 384-5795  
bknipe@firstenergycorp.com

Michael R. Gladman (0059797)  
Margaret M. Dengler (0097819)  
Jones Day  
325 John H. McConnell Blvd  
Suite 600  
Columbus, Ohio 43215  
Tel: (614) 469-3939  
Fax: (614) 461-4198  
mrgladman@jonesday.com  
mdengler@jonesday.com

Ryan A. Doringo (0091144)  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Tel: (216) 586-3939  
Fax: (216) 579-0212  
radoringo@jonesday.com

*On behalf of the Companies*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on May 5, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Ryan A. Doringo  
*Attorney for the Companies*

# **EXHIBIT 1**





## Office of the Ohio Consumers' Counsel

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April 20, 2021

Ryan Doringo

Associate

**JONES DAY® - One Firm Worldwide<sup>SM</sup>**

North Point 901 Lakeside Avenue

Cleveland, OH 44114-1190

**Via E-Mail**

**Re: Case No. 20-1502, OCC Third and Fourth Sets of Discovery**

Dear Ryan:

I wanted to follow up with you regarding our recent informal discovery conference.

You may recall that on March 31<sup>st</sup> and April 1<sup>st</sup> we sent you written proposals attempting to resolve discovery disputes that have arisen regarding OCC's third and fourth set of discovery in Case No. 20-1502. We then spoke on April 12<sup>th</sup> to discuss the matters further. During the call, you stated that FirstEnergy would respond to certain items.

We didn't discuss a date for you to provide us this information. We would like to establish a response date now. We ask that you provide us with this information by April 23<sup>rd</sup>. This will enable us to assess your response and determine whether another motion to compel is needed.

If you have any questions or concerns, please let me know. Thanks for your clients' willingness to reconsider their responses to our discovery requests.

Very truly yours,

/s/ John Finnigan

John Finnigan

Assistant Consumers' Counsel

# **EXHIBIT 2**

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**From:** John.Finnigan@occ.ohio.gov  
**Sent:** Thursday, April 22, 2021 4:25 PM  
**To:** Doringo, Ryan A.; Maureen.Willis@occ.ohio.gov; Gladman, Michael R.; Knipe, Brian J  
**Cc:** Dengler, Molly M.; Starek, Stephanie A.  
**Subject:** RE: Discovery Matters

**\*\* External mail \*\***

Ryan,

Thanks for your time and consideration on today's call. We look forward to hearing from you tomorrow regarding your approach for the upcoming prehearing conference.

Thanks,  
John

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**From:** Doringo, Ryan A. <radoringo@jonesday.com>  
**Sent:** Thursday, April 22, 2021 4:08 PM  
**To:** Willis, Maureen <Maureen.Willis@occ.ohio.gov>; Gladman, Michael R. <mrgladman@JonesDay.com>; Knipe, Brian J <bknipe@firstenergycorp.com>  
**Cc:** Finnigan, John <John.Finnigan@occ.ohio.gov>; Dengler, Molly M. <mdengler@jonesday.com>; Starek, Stephanie A. <sstarek@jonesday.com>  
**Subject:** RE: Discovery Matters

Maureen and John,

Thank you for this afternoon's call. I think it was another productive effort at resolving some of our differences. To reiterate, OCC has agreed that the Companies will have until **April 28** to provide supplemental responses to OCC's second set of discovery in Case No. 17-2474, and I confirmed that the Companies do not intend to move for a protective order on that set of discovery, as amended by OCC's April 8 letter. Further, I agreed that the Companies would also accommodate OCC's reasonable extension requests in the future, should the need arise.

In addition, for the reasons we discussed, the Companies request an extension until **April 30** to respond to OCC's sixth set of discovery in Case No. 20-1502. The Companies likewise request that their supplemental responses to OCC Sets 3 and 4 in Case No. 20-1502 be served by **May 7**. Please let us know if you agree to those dates.

Finally, I will get back to you by the end of the day tomorrow concerning whether the Companies are willing to identify which requests they are willing to respond to and which requests they would move for a protective order on in OCC's 4<sup>th</sup> set of discovery in Case No. 17-0974, which is subject to OCC's motion to compel that is scheduled to be heard at the prehearing conference on April 29. And I understand that OCC will likewise be reviewing those requests in advance of the prehearing conference to determine which requests, if any, OCC is willing to withdraw.

Best,  
Ryan

Ryan Doringo  
Associate  
[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)  
North Point 901 Lakeside Avenue

Cleveland, OH 44114-1190  
Office +1.216.586.7273

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**From:** Doringo, Ryan A.  
**Sent:** Thursday, April 22, 2021 2:07 PM  
**To:** 'Maureen.Willis@occ.ohio.gov' <[Maureen.Willis@occ.ohio.gov](mailto:Maureen.Willis@occ.ohio.gov)>; Gladman, Michael R. <[mrgladman@jonesday.com](mailto:mrgladman@jonesday.com)>; Knipe, Brian J <[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)>  
**Cc:** [John.Finnigan@occ.ohio.gov](mailto:John.Finnigan@occ.ohio.gov); Dengler, Molly M. <[mdengler@jonesday.com](mailto:mdengler@jonesday.com)>  
**Subject:** RE: Discovery Matters

Maureen and John,

Thank you for following up. We would like to have a call today to discuss a number of the discovery issues across these matters. I am available at your convenience.

Best,  
Ryan

Ryan Doringo  
Associate  
[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)  
North Point 901 Lakeside Avenue  
Cleveland, OH 44114-1190  
Office +1.216.586.7273

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**From:** [Maureen.Willis@occ.ohio.gov](mailto:Maureen.Willis@occ.ohio.gov) <[Maureen.Willis@occ.ohio.gov](mailto:Maureen.Willis@occ.ohio.gov)>  
**Sent:** Wednesday, April 21, 2021 11:12 AM  
**To:** Gladman, Michael R. <[mrgladman@JonesDay.com](mailto:mrgladman@JonesDay.com)>; Doringo, Ryan A. <[radoringo@jonesday.com](mailto:radoringo@jonesday.com)>; Knipe, Brian J <[bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com)>  
**Cc:** [John.Finnigan@occ.ohio.gov](mailto:John.Finnigan@occ.ohio.gov)  
**Subject:** Discovery Matters

**\*\* External mail \*\***

Please see attached.

Thank you.



Maureen R. Willis  
Senior Counsel

Office of the Ohio Consumers' Counsel  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
(614) 466-9567  
[Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)

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**Case No(s). 20-1502-EL-UNC**

Summary: Memorandum Contra the Office of the Ohio Consumers' Counsel's Motion to Compel Responses to Fourth Set of Discovery electronically filed by Ryan A Doringo on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company