

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

In the Matter of the 2020 Review of the) Case No. 20-1629-EL-RDR
Delivery Capital Recovery Rider of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo Edison)
Company.)

**MOTION FOR SUBPOENA DUCES TECUM FOR FIRSTENERGY CORP. AND
FIRSTENERGY SERVICE COMPANY TO PRODUCE A "PURPORTED
CONSULTING AGREEMENT" AND ALL DOCUMENTS RELATED TO THE
COMMITTEE OF INDEPENDENT MEMBERS OF THE BOARD OF DIRECTORS'
INTERNAL INVESTIGATION**

AND

**MOTION FOR SUBPOENA DUCES TECUM FOR FIRSTENERGY FOUNDATION TO
PRODUCE IRS FORM 990'S INCLUDING ATTACHMENTS FOR 2018 AND 2019**

BY

OFFICE OF THE OHIO CONSUMERS' COUNSEL

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June 25, 2021

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BY
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") is moving for subpoenas of papers and documents from FirstEnergy Corp., FirstEnergy Service Company and the FirstEnergy Foundation because the FirstEnergy Utilities have claimed (among other things) that the records are not in their possession.¹ (We do not concede that point.)

One issue involves the “purported consulting agreement” that FirstEnergy’s Chief Executive Officer and five of its other executives have apparently been fired over and the

¹ See, e.g., Case No. 20-1502-EL-UNC, FirstEnergy Utilities’ Responses to OCC’s Fifth Set of Discovery Requests at 14 (Mar. 18, 2021).

Public Utilities Commission of Ohio's ("PUCO") former Chair apparently resigned over.

Why, in the name of transparency, has that document involving state government and a too-influential utility (FirstEnergy) not been made public already? It should be posted on the PUCO's website.

OCC's Motion should be granted by the Public Utilities Commission of Ohio ("PUCO") to compel FirstEnergy Corp. and FirstEnergy Service Company to produce, by 3 p.m. July 19, 2021, the following documents at OCC's office at 65 East State Street, 7th Floor, Columbus, Ohio 43215 consistent with O.A.C. 4901-1-25(A) and (D).

- A. Any and all versions of what was described in the most recent FirstEnergy Form 10-K as a "purported consulting agreement, as amended, which had been in effect since 2013" between a FirstEnergy entity and a "counterparty" that was "an entity associated with an individual who subsequently was appointed to a full-time role as an Ohio government official directly involved in regulating the Ohio Companies, including with respect to distribution rates." (*See* FirstEnergy Corp. Form 10-K at p. 28 (Feb. 18, 2021)).
- B. All documents related to what was described in the most recent FirstEnergy Form 10-K as an internal investigation by a committee of independent members of the Board of Directors, including documents relating to:
 - i. The committee's conclusion that "payments under the consulting agreement may have been for purposes other than those represented within the consulting agreement." (*See* FirstEnergy Corp. Form 10-K at p. 28 (Feb. 18, 2021)); and
 - ii. The committee's finding that "certain transactions, which, in some instances, extended back ten years or more, including vendor services, that were either improperly classified, misallocated to certain of the Utilities and Transmission Companies, or lacked proper supporting documentation" that "resulted in amounts collected from customers.***" (*See* FirstEnergy Corp. Form 10-K at p. 28 (Feb. 18, 2021)).

OCC also respectfully moves the PUCO, any commissioner, the legal director, the deputy legal director, or an attorney examiner to issue a subpoena compelling the FirstEnergy

Foundation to produce, by July 19, 2021, the following information/documents at the OCC's office at 65 East State Street, 7th Floor, Columbus, Ohio 43215 consistent with O.A.C. 4901-1-25(A) and (D):

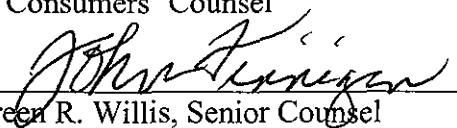
- iii. For any grant or contribution of \$100,000 or above made by the FirstEnergy Foundation during 2018 or 2019: the name of the recipient of each grant or contribution; the purpose of the grant or contribution, and the amount of the grant or contribution.

The subpoenas sought are reasonably calculated to lead to the discovery of admissible evidence.

The grounds for these Motions are set forth in the accompanying Memorandum in Support.

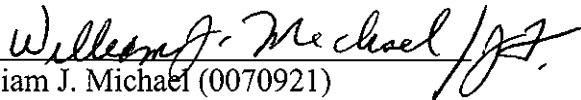
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

These cases are important for consumer protection. One case (Case No. 20-1629-EL-RDR) involves the annual audit of the FirstEnergy Utilities' Delivery Capital Recover Rider ("DCR Charge"). Under the DCR Charge, the FirstEnergy Utilities charge consumers hundreds of millions of dollars, including a return on and of their distribution-related capital investments. The other case (Case No. 17-974-EL-UNC) involves reviewing the FirstEnergy Utilities' compliance with the corporate separation law and rules. Corporate separation is important to utility customers because without adequate corporate separation, the markets consumers rely on for producing lower prices and greater innovation will not properly function.

The need for consumer protection in these cases is heightened, given recent FirstEnergy Corp. disclosures in SEC filings that a committee of independent members of the Board of Directors is directing an internal investigation related to ongoing government investigations. We learned that the internal investigation has unearthed findings that caused at least six top executives of

FirstEnergy Corp. to be fired or “separated,” including for violations of FirstEnergy policies and its code of conduct.² We learned of a “purported consulting agreement” between a FirstEnergy entity and counterparty to the agreement believed to be connected to the former PUCO Chair.³ We learned that under the purported consulting agreement \$4.3 million paid in early 2019 “may have been for purposes other than those represented within the consulting agreement.”⁴ We learned of certain transactions, including vendor payments, charged to the FirstEnergy Utilities (and potentially their customers) that were improper.⁵

And we learned of large, unprecedented increases in contributions in 2018 by the FirstEnergy Utilities to the FirstEnergy Foundation, as summarized by an investigative reporter:

Reports filed with the Federal Energy Regulatory Commission show a huge jump in donations from FirstEnergy’s Ohio utilities last year.

‘In 2018, we found a massive uptick in total ‘donations’ reported by FirstEnergy subsidiaries in Ohio, during the same year that a wave of dark money political spending by murky social welfare 501(c)(4) groups crashed over the state,’ Anderson said. ‘Where exactly did those donations go? We asked, and so far FirstEnergy won’t say.’

The largest jump among those utilities’ donations is shown on Ohio Edison’s 2018 annual report to FERC. That year’s donations of approximately \$15 million in 2018 were more than 250 times the amount reported for 2017. The FERC forms don’t provide details on who gets such donations.⁶

² FirstEnergy Corp.. Form 8-K (Oct. 29, 2020).

³ FirstEnergy Corp., Form 8-K (Feb. 16, 2021).

⁴ *Id.*

⁵ See Case No. 20-1629-EL-RDR, PUCO Staff’s Request to Expand Audit Scope in the Matter of the 2020 Review of the Delivery Capital Recovery Rider of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (Mar. 8, 2021) (“Staff Request”).

⁶ Kowalski, K.M., *Report links utilities’ charitable giving to organizations’ political support* Energy News Network (Dec. 10, 2019).

FirstEnergy Corp. made these revelations in the midst of what former U.S. Attorney Devillers described as “likely the largest bribery, money-laundering scheme ever perpetrated against the people in the state of Ohio.”⁷ Under these unusual circumstances, the need for transparency is paramount. The PUCO should do everything possible to facilitate broad discovery so that consumers can obtain answers about whether FirstEnergy’s role in tainted H.B. 6 has adversely affected them and so the PUCO can dispel the “black cloud over the PUCO based upon the HB6 scandal.”⁸

OCC attempted to obtain this information from the FirstEnergy Utilities in discovery. The FirstEnergy Utilities objected, among other reasons, because the requests “seek[s] the production of information that is not within the Companies’ possession, custody, or control.”⁹ While not conceding the FirstEnergy Utilities’ objections, OCC seeks these subpoenas to obtain the documents from the other corporate entities that also have “possession, custody, or control” of the information. OCC’s intention is to obtain this key information as quickly as possible for consumer protection.

The PUCO should therefore order the production of documents that OCC requests through these Motions for Subpoenas.

⁷ PELZER, J., OHIO HOUSE SPEAKER LARRY HOUSEHOLDER, ALLIES GOT MORE THAN \$60 MILLION IN FIRSTENERGY BRIBES TO PASS HB6, FEDS CLAIM CLEVELAND.COM (JULY 21, 2020).

⁸ Pelzer, J., *New PUCO Chair Jenifer French: more transparency needed to lift the ‘black cloud’ of HB6 scandal* Cleveland.com (May 18, 2021).

⁹ See, e.g., Case No. 20-1502-EL-UNC, FirstEnergy Utilities’ Responses to OCC’s Fifth Set of Discovery Requests at 14 (Mar. 18, 2021).

II. ARGUMENT

A. Issuing subpoenas to facilitate parties' discovery is within the PUCO's authority where, as here, the subpoenas seek information reasonably calculated to lead to the discovery of admissible evidence.

The PUCO's subpoena power, which facilitates parties' ability to conduct discovery, is grounded in Ohio law and rules. Attorney examiners are authorized to issue subpoenas.¹⁰ "A party may *** in a subpoena name a corporation, partnership, association, government agency, or municipal corporation and designate with reasonable particularity the matters on which examination is requested"¹¹ and "[a] subpoena may require a person, other than a member of the commission staff, to attend and give testimony at a deposition, and to produce designated books, papers, documents, or other tangible things within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code."¹²

The scope of discovery is defined as follows:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence.¹³

The PUCO rule is similar to Ohio Civ. R. 26 (B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.¹⁴

¹⁰ R.C. 4901.18.

¹¹ O.A.C. 4901-1-21(F).

¹² O.A.C. 4901-1-25.

¹³ O.A.C. 4901-1-16(B) (Emphasis added).

¹⁴ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St.3d 1479.

Under this standard, there are more than adequate grounds for granting OCC's Motions in the interest of consumer protection. The documents OCC seeks relate to the Board's internal investigation, the purported consulting agreement, and information about the grantees receiving funding from FirstEnergy Foundation. All of these documents are reasonably calculated to lead to the discovery of admissible evidence, as explained below.

Further, subpoenas directed at FirstEnergy Corp., FirstEnergy Service Company and the FirstEnergy Foundation are necessary to obtain the information sought because the FirstEnergy Utilities have asserted in discovery that the information is not in their possession, custody, or control.¹⁵ The PUCO should exercise its jurisdiction over FirstEnergy affiliates to require them to produce the information in their possession.

B. OCC's request for all documents related to FirstEnergy Corp.'s internal investigation is reasonably calculated to lead to the discovery of admissible evidence on code of conduct violations between the utilities and their affiliates.

The internal investigation and related documents that OCC seeks are reasonably calculated to lead to the discovery of admissible evidence because the internal investigation led to findings that: FirstEnergy policies and its code of conduct were violated by executives who served both FirstEnergy Corp. and the FirstEnergy Utilities. These findings may point to violations of corporate separation law and rules.

Ohio corporate separation law and rules require the FirstEnergy Utilities to follow a code of conduct between affiliates that, among other things, prohibits "anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or

¹⁵ Case No. 20-1502-EL-UNC, FirstEnergy Utilities' Responses to OCC's Seventh Set of Discovery Requests at 7 (Apr. 22, 2021).

service other than retail electric service, and vice versa.”¹⁶ And the corporate separation rules provide for adherence to a cost allocation manual to ensure that no cross-subsidization is occurring between the electric utility and its affiliates.¹⁷ The internal investigation documents will presumably identify what conduct these fired executives engaged in and how their conduct violated FirstEnergy policies and its code of conduct, and perhaps the cost allocation manual.

The purpose of the corporate separation investigation is to determine whether FirstEnergy (including the Utilities, FirstEnergy Corp., and the FirstEnergy Service Company) complied with Ohio corporate separation law and rules, including utility policies and procedures related to code of conduct rules between affiliates. The fired executives’ code of conduct violations; therefore, are directly at issue in this proceeding and the internal investigation and related documents are directly probative of such violations of Ohio corporate separation law and rules.

In fact, less than a week after FirstEnergy Corp. announced the firing of its Chief Executive Officer (and others), the PUCO expanded its corporate separation audit to include examination of the time period leading up to the passage of Am. Sub. H.B. 6 and the subsequent referendum.¹⁸ The PUCO explained that the information provided by FirstEnergy Corp. pertaining to its terminated executives required that it “take additional action to ensure compliance by the Companies and its affiliates with the corporate separation provision of R.C. 4928.17 and with the Companies’ Commission-approved corporate separation plans.”¹⁹ We agree.

¹⁶ O.A.C. 4901:1-37-04(D)(4).

¹⁷ O.A.C. 4901:12-37-08(C).

¹⁸ *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 ¶4-5 (Nov. 4, 2020).

¹⁹ *Id.*, Entry at ¶17 (Nov. 4, 2020).

The PUCO has, thus, recognized and admitted the importance and relevance of the internal investigation finding violations of FirstEnergy policies and code of conduct. The information OCC seeks through this subpoena is directly connected to the FirstEnergy Utilities' policies and code of conduct and are necessary for the OCC to investigate the issues presented by the PUCO's expanded scope of this proceeding. The subpoena should be granted.

C. OCC's request for the purported consulting agreement and related documents, including the ten years of misallocated costs, is reasonably calculated to lead to the discovery of admissible evidence.

FirstEnergy's disclosures relating to the "purported consulting agreement" state that the \$4.3 million payment was in exchange for the individual taking action "for the benefit of [FirstEnergy*** during the time period *after* such payment during which the Individual was acting in any governmental or regulatory capacity."²⁰ The "individual" in question may be the preceding PUCO Chair.

FirstEnergy also disclosed that there were a number of transactions, dating back ten years or more, that were improperly classified, misallocated, or lacking supporting documentation that were charged to FirstEnergy Utilities, including the Ohio utilities.²¹ FirstEnergy admitted that the transactions included payments for "vendor services." In this regard, Santino Fanelli is an employee of FirstEnergy Service Company and is responsible for the FirstEnergy Utilities' regulatory matters in Ohio. At OCC's deposition of Mr. Fanelli,²² counsel for the FirstEnergy Utilities asserted that the

²⁰ FirstEnergy Corp., Waiver and Amendment No. 2 to Credit Agreement dated as of November 17, 2020 among FirstEnergy Corp., *et al.*, as Borrowers, the Lenders Named Herein, as Lenders, Mizuho Bank, Ltd., as Administrative Agent, the Fronting Banks Named Herein, as Fronting Banks and the Swing Line Lenders Named Herein, as Swing Line Lenders, and MUFG Bank, Ltd. as Joint Lead Arranger, Schedule 1 (Nov. 17, 2020) (Emphasis added).

²¹ FirstEnergy Corp., Form 10-K (Feb. 18, 2021).

²² *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, Deposition

transactions that were either improperly classified, misallocated, or lacked supporting documentation are “one and the same” as the payments made to the former Ohio government official.²³

These disclosures raise important issues for the PUCO to consider within the context of both the corporate separation case and the audit of the FirstEnergy Utilities’ delivery capital recovery rider. In the corporate separation case, misallocations of costs implicate the cost allocation manual, which is supposed to ensure that no cross-subsidization is occurring between the electric utility and its affiliates. Questions that should be answered include, but are not limited to, how did the misallocations happen, what was the effect of the misallocations, was the cost allocation manual being followed, and is the cost allocation manual sufficient to prevent what occurred.

In the DCR case, as recognized by the PUCO Staff,²⁴ and the PUCO itself;²⁵ the annual audit of the DCR should include an examination of the transactions to determine whether funds collected from customers were used to pay for the vendor services. And the PUCO ruled that it would also examine if funds should be returned to customers.²⁶

OCC’s Motions for Subpoenas seek documents related to the vendor payments including the payments to an entity believed to be affiliated with the former PUCO chair and documents related to misallocated expenses (vendor payments) that customers of the FirstEnergy Utilities

Transcript of Santino Fanelli (Mar. 9, 2021) (“Fanelli Transcript”) at 195:25-196:2 (cited portions are attached hereto as Attachment A).

²³ *Id.* at 252:25-253:7.

²⁴ In *the Matter of the 2020 Review of the Delivery Capital Recovery Rider of FirstEnergy*, Case No. 20-1629-EL-RDR, Request to Expand Audit Scope (Mar. 8, 2021).

²⁵ *Id.*, Entry at ¶8 (Mar. 10, 2021)

²⁶ *Id.*

may have been charged for. These documents are reasonably calculated to lead to the discovery of admissible evidence.

D. Documents related to the FirstEnergy Foundation grantees are reasonably calculated to lead to the discovery of admissible evidence related to whether the FirstEnergy Utilities' charitable contributions to the FirstEnergy Foundation were used to provide cross-subsidies to affiliates.

Under IRS regulations for tax-exempt organizations such as the FirstEnergy Foundation, the identity of each grantee, as well as the amount and purpose for each grant, is required to be public record information.²⁷ Unfortunately, the FirstEnergy Foundation apparently failed to file this information with the IRS. In 2018, the FirstEnergy Utilities gave an unprecedented level of contributions to the FirstEnergy Foundation.²⁸ A utility watchdog reported that FirstEnergy has used charitable contributions to influence public policy decisions.²⁹

If the FirstEnergy Foundation used charitable contributions from the FirstEnergy Utilities for payments to pass H.B. 6 or to defeat the referendum that sought to eliminate H.B. 6, then this could be considered an improper cross-subsidy by the utilities for the benefit of an affiliate (FirstEnergy Solutions), potentially violating O.A.C. 4901:1-37-04(A)(3). The identity of the grantees and the amount of the grants is highly relevant to prove whether such improper cross-subsidies occurred. The documents are reasonably calculated to lead to the discovery of admissible evidence. and OCC's Motions for Subpoenas should be granted.

²⁷ 26 CFR § 301.6104(d)-1, *Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.*

²⁸ See discussion at p. 2, *supra*.


²⁹ Energy and Policy Institute, *Strings attached: How utilities use charitable giving to influence politics and increase investor profits* (Dec. 10, 2019).

III. CONCLUSION

The PUCO has emphasized its “commitment to act in a reasoned and methodical manner, based upon facts rather than speculation, in light of the recent allegations surrounding FirstEnergy Corp.” related to H.B. 6.³⁰ As such, developing the facts is of paramount importance. And developing the facts requires broad discovery as permitted by the rules, so long as a party can show that the discovery is reasonably calculated to lead to the discovery of admissible evidence. OCC’s Motions seeking to subpoena documents from FirstEnergy affiliates should be granted as consistent with the scope of discovery and necessitated by the FirstEnergy Utilities’ claims that the information is not within their possession, custody, or control. The PUCO should grant OCC’s Motions.

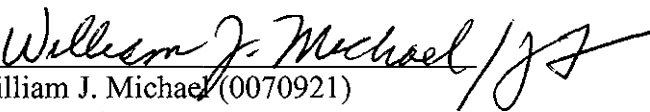
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³⁰ Case No. 20-1629-EL-RDR, Entry at ¶ 8 (Mar. 10, 2021).


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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Motions for Subpoena Duces Tecum was served upon the persons listed below by electronic transmission this 25th day of June 2021.



John Finnigan
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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1 Wednesday Morning Session,
2 March 10, 2021.

3 - - -

4 SANTINO L. FANELLI

5 being by me previously duly sworn, as hereinafter
6 certified, deposes and says further as follows:

7 CROSS-EXAMINATION (Continued)

8 By Mr. Finnigan:

9 Q. Mr. Fanelli, do you understand you are
10 still under oath from yesterday?

11 A. Yes.

12 Q. And, Mr. Fanelli, is there anything that
13 you would like to change from the testimony that you
14 gave yesterday?

15 A. Nothing that comes to mind at this time.

16 Q. Okay. Now, who at the Ohio utilities is
17 responsible for managing the relationship with the
18 Chair of the Public Utilities Commission?

19 A. Could you please rephrase the question,
20 Mr. Finnigan?

21 Q. Yes. Who at the Ohio utilities is
22 responsible for managing the relationship with the
23 Chair of the Public Utilities Commission?

24 A. I don't know.

25 Q. Now, you are responsible for regulatory

1 matters in Ohio, isn't that right?

2 A. Yes.

3 Q. And who do you deal with at the
4 Commission?

5 A. Commission Staff.

6 Q. Okay. And do you ever have the need to
7 contact Commissioners?

8 A. That's not part of my job duties.

9 MR. GLADMAN: John, sorry to interrupt.
10 Someone is typing, and we're getting a lot of noise.
11 If you could go on mute, that would be great.

12 MS. WILLIS: If I could interrupt real
13 quick, Mike, we do -- I cannot see you on the video.
14 I would love to see your video and see you -- see
15 your appearance on the video.

16 MR. GLADMAN: Yeah. I am not going to do
17 that because I can't see John. I can't see you, so I
18 am left with a giant image of my own face, so I'm
19 just going to go -- to go video off.

20 MR. KELTER: Can everybody else see
21 Sonny.

22 MR. FINNIGAN: I can't see him either.

23 MS. WILLIS: I can see him if you pin
24 him.

25 I would rather have us try to work this

1 know.

2 EXAMINER PRICE: What questions would you
3 ask regarding payments to a regulator?

4 MR. FINNIGAN: What I had intended to ask
5 was, you know, some background information of -- all
6 we know is what's in the SEC disclosure but what was
7 the entity that those payments were made to, what
8 FERC account they were classified to, what was the
9 FirstEnergy entity that made those payments, were any
10 of those costs allocated to the Ohio utilities.
11 There's a statement in the SEC filing that the
12 Company has reason to believe that the payments were
13 for purposes other than stated in the consulting
14 agreement.

15 I have a number of questions as to why
16 the Company believes that and what it believes the
17 payments were really for and so that's something we
18 did want to ask during the deposition. And, you
19 know, if this witness doesn't have information, then
20 we would try to find out who the appropriate witness
21 would be.

22 MR. GLADMAN: May I respond very briefly,
23 Examiner Price?

24 EXAMINER PRICE: You may.

25 MR. GLADMAN: Statements that you just

253

1 ruled on, these vendor payments, subsume the second
2 issue. This is one and the same. This is part of
3 the same series of payments that were discussed in
4 the SEC filings, that were discussed on the earnings
5 call, and are the subject of Staff's recommendations.
6 So to me the ruling that you have already made I
7 think should cover this as well.

8 EXAMINER PRICE: I don't have any
9 information to confirm that representation,
10 Mr. Gladman, but I definitely do not believe that
11 payments to the regulator were in any part considered
12 by the Commission to be political or charitable
13 contributions or spending as part of House Bill 6 nor
14 do I believe they are reasonably calculated to lead
15 to admissible information regarding those and so that
16 line of questioning would not be appropriate for this
17 proceeding.

18 MR. FINNIGAN: Okay. Thank you.

19 MS. BOJKO: Your Honor, may I ask what
20 that conclusion is based on? Because if we don't ask
21 the questions, how do we know that it wasn't related
22 to HB6 spending?

23 EXAMINER PRICE: Well, it was relate --
24 it was not related to political or charitable
25 contributions so certainly unless you have a good