

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PREHEARING CONFERENCE

before Mr. Gregory Price, Ms. Megan Addison, and Ms.
Jacky St. John Werman, Attorney Examiners, at the
Public Utilities Commission of Ohio, via Webex,
called at 10:00 a.m. on Wednesday, June 30, 2021.

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

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APPEARANCES:

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

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

On behalf of the 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 the Interstate Gas Supply,
Inc.

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, Ohio Partners for
Affordable Energy, and Calpine Energy
Solutions LLC.

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APPEARANCES: (Continued)

Carpenter Lipps & Leland LLP
By Ms. Kimberly W. Bojko
and Mr. Thomas V. Donadio
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 Mr. Todd A. Long
21 East State Street, 17th Floor
Columbus, Ohio 43215

On behalf of the Industrial Energy Users
of Ohio.

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

On behalf of the Environmental Law &
Policy Center.

Bricker & Eckler, LLP
By Mr. Dane Stinson
and Mr. Glenn Krassen
100 South Third Street
Columbus, Ohio 43215-4291

On behalf of Northeast Ohio Public Energy
Council.

Whitt Sturtevant LLP
By Mr. Mark A. Whitt
and Mr. Lucas A. Fykes
88 East Broad Street, Suite 1590
Columbus, Ohio 43215

On behalf of the Retail Energy Supply
Association, Direct Energy Business LLC,
and Direct Energy Services LLC.

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1 APPEARANCES: (Continued)

2 Dave Yost, Ohio Attorney General
3 Mr. John Jones, Section Chief
4 By Mr. Thomas Lindgren
5 and Mr. Werner L. Margard, III
6 Assistant Attorneys General
7 Public Utilities Section
8 30 East Broad Street, 26th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the PUCO.

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Ohio Manufacturers' Association Energy
Group.

MS. BOJKO: Thank you, your Honor. On
behalf of the Ohio Manufacturers' Association Energy
Group, Kimberly W. Bojko with the law firm Carpenter
Lipps & Leland.

EXAMINER ST. JOHN: Thank you.

Ohio Consumers' Counsel.

MR. FINNIGAN: Good morning, your Honor.
John Finnigan and Maureen Willis with the Office of
the Ohio Consumers' Counsel.

EXAMINER ST. JOHN: Thank you.

Next, I have Robert Dove.

MR. DOVE: Good morning, your Honor. On
behalf of Natural Resources Defense Council, Ohio
Partners for Affordable Energy, and Calpine Energy
Solutions, Robert Dove of the law firm Kegler, Brown,
Hill & Ritter, 65 East State Street, Suite 1800,
Columbus, Ohio 43215.

EXAMINER ST. JOHN: Thank you.

Environmental Law & Policy Center.

MS. COX: Good morning, your Honor.
Caroline Cox on behalf of the Environment Law &
Policy Center, 21 West Broad Street, Suite 800,
Columbus, Ohio 43215.

1 EXAMINER ST. JOHN: Thank you.

2 Industrial Energy Users - Ohio.

3 MR. LONG: Good morning, your Honor.

4 Todd A. Long with the law firm McNees, Wallace &
5 Nurick, 21 East State Street, Columbus, Ohio 43215,
6 on behalf of the Industrial Energy Users of Ohio.

7 EXAMINER ST. JOHN: Thank you.

8 Ohio Energy Group. I'm not hearing
9 anything, and I am not seeing any mouths moving that
10 might be on mute, so I'll move on to Citizens Utility
11 Board of Ohio.

12 Northeast Ohio Public Energy Council.

13 You're on mute, Mr. Stinson.

14 MR. STINSON: Thank you, your Honor. Can
15 you hear me?

16 EXAMINER ST. JOHN: Yes.

17 MR. STINSON: On behalf of the Northeast
18 Ohio Public Energy Council, the law firm of Bricker &
19 Eckler by Dane Stinson and Glenn Krassen, 100 South
20 Third Street, Columbus, Ohio 43215.

21 EXAMINER ST. JOHN: Thank you.

22 Retail Energy Supply Association.

23 ALJ ST. JOHN: Good morning, your Honor.

24 Mark Whitt and Lucas Fykes from the law firm of Whitt
25 Sturtevant, 88 East Broad Street, Suite 1590,

1 Columbus, Ohio 43215. We are also representing
2 Direct Energy Business who has filed a Motion to
3 Intervene. I am not sure if there has been a ruling
4 yet, but I will enter their appearance nonetheless.

5 EXAMINER ST. JOHN: Okay. Thank you.
6 And I can confirm that that has already been granted.

7 MR. WHITT: Thank you.

8 EXAMINER ST. JOHN: Next on my list I
9 have Interstate Gas Supply.

10 MR. BETTERTON: Good morning, your Honor.
11 Evan Betterton on behalf of Interstate Gas Supply,
12 Inc., located at 6100 Emerald Parkway, Dublin, Ohio
13 43016.

14 EXAMINER ST. JOHN: Thank you.

15 Ohio Environmental Council. And I'm not
16 seeing anyone who might be trying to speak who is on
17 mute, so I will move on. Next on behalf of Staff.

18 MR. LINDGREN: Thank you. On behalf of
19 the Staff, Ohio Attorney General Dave Yost by Thomas
20 Lindgren and Werner Margard, Assistant Attorneys
21 General. The address is 30 East Broad Street, 26th
22 Floor, Columbus, Ohio 43215.

23 EXAMINER ST. JOHN: Thank you.

24 And at this point I will go ahead and
25 turn it over to Judge Price, and we can get started

1 talking about the motion to compel.

2 EXAMINER PRICE: Thank you very much.

3 One housekeeping matter. It's ironic
4 Ohio Environmental Council is not here. We
5 inadvertently left them off the list of the
6 Intervenor for who intervention would be granted in
7 our most recent entry, so we will at this time go
8 ahead and grant intervention to Ohio Environmental
9 Council.

10 Just as a brief note today in case I mess
11 up, we are not ruling on a motion to compel today.
12 We will be ruling on a motion for protective order,
13 so when we grant the motion, it means that the issue
14 will be not disclosed. The information will not be
15 disclosed. When we deny the motion, it will be
16 disclosed. If I mess this up over the course of this
17 morning, please feel free to seek clarification.

18 Likewise, we have two prehearing
19 conferences today, one in corporate separation and
20 one in the political and charitable contribution
21 case. If I happen to lose my place and start talking
22 about the wrong case this morning, please feel free
23 to put me back on the correct track.

24 With that, I think we have a number of
25 pending items for which protective order is sought.

1 I think we should just go ahead and jump into it.
 2 The first one I have is Interrogatory 4-003.
 3 Ms. Willis, I can understand that OCC has a theory --
 4 may have a theory that contributions made by the
 5 utilities on behalf of legislation may benefit a
 6 competitive affiliate and could be an improper
 7 subsidy. Is that potentially one of your theories of
 8 the case?

9 MR. FINNIGAN: Your Honor, that is one of
 10 our theories. However, an additional theory we have
 11 is that there were code of conduct violations, and we
 12 developed this theory from SEC disclosures that
 13 FirstEnergy Corp. made. They reported I think it was
 14 beginning in February that they fired their CEO of
 15 Chuck Jones and some other top executives as a result
 16 of an ongoing governmental investigation.

17 Now, we know the ongoing governmental
 18 investigation -- or one we do know of is the United
 19 States versus Larry Householder complaint that is
 20 centered on payments of about \$60 million by
 21 FirstEnergy Corp. and FirstEnergy Service Company to
 22 Generation Now that made the funds available to Larry
 23 Householder per the complaint.

24 So with that SEC disclosure that these
 25 executives were fired for the code of conduct

1 violations, what we're trying to investigate here is
2 to what extent these payments for Generation Now by
3 the two other entities, FirstEnergy Service Company
4 and FirstEnergy Corp., were the basis for the code of
5 conduct violation and --

6 EXAMINER PRICE: Mr. Finnigan, what would
7 be the -- the corporate separation proceeding, which
8 this is, we are attempting to ensure that the
9 utilities are not improperly subsidizing a
10 competitive affiliate. What would the relevance of
11 payments by FirstEnergy Service Corp. or FirstEnergy
12 Corp. to Generation Now be?

13 MR. FINNIGAN: Well, I agree, your Honor,
14 that one element would be whether there is any
15 improper cross-subsidization, but the code of conduct
16 is broader than that. It can include things like
17 creating an unfair competitive advantage for
18 FirstEnergy Solutions and market manipulation, things
19 of that nature.

20 EXAMINER PRICE: By the utilities, by the
21 utilities the Commission regulates. There is
22 certainly nothing wrong with FirstEnergy Corp.
23 attempting to create a competitive advantage as long
24 as they are not using their utilities for a
25 competitive affiliate. That's their job. They are a

1 holding company.

2 MR. FINNIGAN: Well, if the matters were
3 completely separate, I would agree, your Honor, but
4 one of the things we are trying to investigate is to
5 what extent the utilities were involved in any scheme
6 relating to these Generation Now payments. So as a
7 foundational matter, we are trying to find out, you
8 know, what the payments were, the dates of the
9 payments, and then build from there.

10 We've tried to do this from the other
11 direction of, you know, tell us what House Bill 6
12 activities the utilities were engaged in, and we've
13 kind of got shut down there because the Companies
14 took the position that any payments to Generation Now
15 are not House Bill 6 activities because that hasn't
16 been proven in a court of law yet.

17 So we are trying to take a different tack
18 here and establish, first, what were the payments to
19 Generation Now; and then once we know what those
20 payments were, we'll then want to investigate who
21 directed the payments, to what extent were they
22 acting on behalf of the utility, and then to what
23 extent were utility lobbyists involved in, you know,
24 facilitating those payments, setting up this scheme,
25 advocating for House Bill 6. But the payments

1 themselves are a basic foundational item which we
2 think is important to get into the record of this
3 case.

4 The allegations are in the criminal
5 complaint as to the date and the amount of every
6 payment, but FirstEnergy has not admitted that it's
7 the Company A described in the criminal complaint.
8 There is also a civil lawsuit where FirstEnergy has
9 admitted it in that context that they made payments
10 on the same dates --

11 EXAMINER PRICE: But let's stay focused
12 on this particular interrogatory and this particular
13 case. I understand there is a civil case, and we'll
14 have some discussion about that at some point today
15 because Ms. Willis has helpfully informed us that the
16 discovery stay has been lifted in that case, and so
17 we will have a chance to talk about that today. But
18 let's try to stay focused on this interrogatory. And
19 again, let's not try to duplicate the criminal
20 investigation engaged in by the F.B.I. and U.S.
21 Attorney's Office.

22 When you say you want to rely upon that
23 or you want to investigate those same issues, we
24 become perilously close to making a mistake and
25 disclosing something publicly or requiring the

1 Company to disclose something publicly that could
2 taint the evidence in that case and that is the worst
3 case scenario that we are facing in this matter. So
4 let's try to stick within the bounds of the
5 investigations that the Commission has begun and we
6 will go from there.

7 FirstEnergy, care to respond to
8 Mr. Finnigan's Interrogatory 4-3 -- 04-003?

9 MR. DORINGO: Yes. Thank you, your
10 Honor. Good to see everyone.

11 A few things on that one. We
12 respectfully disagree with Mr. Finnigan's I guess
13 fundamental theory that payments by FirstEnergy
14 Service Company or FirstEnergy Corp. to, you know, a
15 political and charitable entity implicate the
16 corporate separation rules. So that's point 1.

17 A couple of other clarifications. On
18 this, the references to the code of conduct, as we
19 explained in our reply brief, those are references to
20 the internal business code of conduct of FirstEnergy
21 Corp. governing workplace conduct, not in corporate
22 separation code of conduct.

23 EXAMINER PRICE: I appreciate that
24 clarification, but the question is have you ever -- I
25 mean, that's your reply brief. It's a pleading.

1 Have you ever provided an interrogatory or discovery
2 response with that -- I think that clarification is
3 very important, and it's not clear from the SEC
4 filings that Mr. Finnigan referenced that that's the
5 case. But have you ever provided an interrogatory or
6 discovery response to the parties explaining that --
7 that distinction?

8 MR. DORINGO: I do not believe we have in
9 this case, your Honor.

10 EXAMINER PRICE: Okay.

11 MR. DORINGO: I'm sorry. Just for the
12 record, I just wanted to make the point again, I know
13 we do it in our briefs, but the references to, you
14 know, the Companies' involvement in anything alleged
15 in the criminal case are, you know, we respectfully
16 believe unfounded. That complaint again does not
17 implicate the Companies in any of those allegations.

18 And with that I can take your ruling.

19 EXAMINER PRICE: Okay. At this time we
20 are going to grant the protective order with respect
21 to Interrogatory 3.

22 Moving on to Interrogatory 10, it's my
23 understanding the Company is only seeking protective
24 order vis-a-vis 10E, the state affairs support.

25 MR. DORINGO: Yes. And I'll respond to

1 this one. We will withdraw that one from this --
 2 this motion. We've actually supplemented that
 3 response already and so none of -- and the other
 4 subparts were withdrawn by OCC, so I don't think
 5 there is anything further at issue there.

6 EXAMINER PRICE: Okay. Thank you.
 7 That's very helpful.

8 Moving along to Interrogatory 16,
 9 Mr. Finnigan, would you care to speak to this one
 10 first?

11 MR. FINNIGAN: Yes, your Honor. And let
 12 me just ask that on 10E, we'll go back and review the
 13 supplemental responses that we received from
 14 FirstEnergy in May just to make sure that this item
 15 was covered, and we'll notify you if we believe
 16 there's still any open issue there but, you know.

17 EXAMINER PRICE: That would be helpful.
 18 Thank you.

19 MR. FINNIGAN: We accept Mr. Doringo's
 20 statement there. And, I'm sorry, which one, your
 21 Honor, did you mention was the next one?

22 EXAMINER PRICE: 16.

23 MR. FINNIGAN: Okay. At this time OCC
 24 will not be pursuing a motion to compel on 16 or 17.

25 EXAMINER PRICE: Thank you very much.

1 And that brings us to 19. Mr. Doringo,
2 can you explain -- can you -- can you explain why you
3 can't simply make the representation here that you
4 made in your brief, that the violations regarding
5 Mr. Jones were the internal code of conduct and not
6 the corporate separation plan code of conduct?

7 MR. DORINGO: Yeah, your Honor. So
8 this -- and, you know, we are getting to the series
9 of these questions now about the internal
10 investigation. And at bottom the questions about
11 that investigation going to the conclusions or
12 determinations made do not involve the Companies.
13 That was a -- that is a matter being handled by the
14 independent committee of the Board and counsel for
15 that committee, and the Companies are simply not in a
16 position to comment on the findings or have that
17 information, all that information, within their
18 possession, custody, or control for these and other
19 requests that are coming up.

20 And I would also say that I think
21 endeavoring to, you know, get into those sort of
22 topics runs the risk that your Honor pointed out
23 today and before of stepping on -- treading on ground
24 that other regulators of FirstEnergy Corp. are
25 covering.

Now, if -- if we could resolve this question with a representation to the effect that's made in our brief, I think that is something that the Companies would be happy to clarify in a written response. But this question is -- is broader than that.

EXAMINER PRICE: I understand that. I understand that. But it gets back to the relevance issue. If it's -- if they were terminated due to violations of the corporate separation code of conduct, it certainly would be relevant to this case. If it's not, then it may not be relevant to this case. So if you can reach out to OCC and make that clarification and as well as the other parties.

Mr. Finnigan, the -- according to the SEC filing -- the SEC filings, these were related to -- the terminations were related to a purported consulting agreement; is that correct?

MR. FINNIGAN: Is that -- as I understand the language of the SEC disclosure, it references an ongoing governmental investigation, and our position on this would be just the fact that the Company made the -- these disclosures, that allows us to do discovery into the issue of whether the policies that these executives violated would constitute a code of

1 conduct violation for purposes of the Ohio corporate
2 separation laws.

3 So we would -- we would claim that we're
4 not required to accept FirstEnergy's representation
5 that, you know, trust us, we didn't violate the Ohio
6 corporate separation laws. We take the position that
7 the fact that these company policies were violated --
8 and some of these executives like Chuck Jones were
9 executives of the utilities and we claim that
10 that's -- entitled us to discover --

11 EXAMINER PRICE: What was Mr. --

12 MR. FINNIGAN: -- so we can make our own
13 judgment and make the argument as to whether that
14 would also constitute an Ohio corporate separation
15 law violation.

16 EXAMINER PRICE: What was Mr. Jones'
17 position vis-a-vis the utilities at the time he was
18 terminated?

19 MR. FINNIGAN: He was the CEO of the
20 three FirstEnergy utilities as well as a director per
21 the FERC Form 1s.

22 EXAMINER PRICE: Thank you. We are now
23 right on the edge of interfering with the U.S.
24 Attorney's investigation. We will defer ruling on
25 19, 21, 23, 24, and 25 pending OCC producing a letter

1 or other document from the United States Attorney for
2 the Southern District of Ohio indicating that they do
3 not object to the discovery of these matters.

4 MR. FINNIGAN: Thank you, your Honor. We
5 will endeavor to obtain that letter.

6 EXAMINER PRICE: Thank you.

7 Okay. There was some discussion as to
8 whether Interrogatory 8 was still in play. Is this
9 something the Company -- OCC is still pursuing? Is
10 this something the Companies are still objecting to?

11 MR. FINNIGAN: No, your Honor. That's
12 not one that we are pursuing at this time.

13 EXAMINER PRICE: Thank you. Okay.
14 That's all the interrogatories I have flagged. Have
15 I missed any?

16 MR. FINNIGAN: No, your Honor.

17 EXAMINER PRICE: Seeing none, the first I
18 have is Request for Admission 04-003. Mr. Doringo,
19 can you explain the Companies' position on this?

20 MR. DORINGO: Yes, your Honor. And the
21 view simply is it is not within the scope of the
22 proceeding whether the utilities made payments in
23 support of the enactment of House Bill 6. Going back
24 to what I said earlier, we don't believe that
25 payments made to support political causes or

1 charitable initiatives are -- implicate a corporate
2 separation issue, implicate, you know, some
3 cross-subsidy issue, or an unfair market advantage
4 for the Companies' affiliates.

5 EXAMINER PRICE: I'm not going to speak
6 for OCC in their theory but just bear with me for a
7 second. If the Companies bought a chair on behalf of
8 the FirstEnergy Solutions and gave them -- not
9 FirstEnergy Solutions, I'm sorry. Well, we'll use
10 Solutions because they are -- all right. While they
11 were the affiliate, the Company bought a chair or
12 some other piece of property on behalf of FirstEnergy
13 Solutions, simply gave it to Solutions, that would be
14 an unfair subsidy, would it not?

15 MR. DORINGO: Yes. I actually think
16 office equipment is called out in the rule.

17 EXAMINER PRICE: Right. So isn't it at
18 least hypothetically possible that the Companies
19 expending funds on behalf of their competitive
20 affiliate to obtain some sort of political result
21 could also be an improper subsidy? If they could
22 prove it. If they could prove it.

23 MR. DORINGO: I guess I had a -- I guess
24 I disagree because if the -- what you are relying on
25 is an eventual enactment of legislation, right, House

1 Bill 6. There are a lot more steps to go through to
2 get to that -- that, you know, law going into effect
3 and then providing any benefit to -- to an
4 affiliation.

5 So in terms of the subsidy, I think, you
6 know, if you call it a subsidy, the subsidy doesn't
7 come until years down the road. And in this case,
8 you know, it never came due to the civil cases. So I
9 do think there is a difference there rather than this
10 is not some direct subsidy that would be provided to
11 the affiliate.

12 EXAMINER PRICE: But you would also agree
13 we are talking low bar here. We are just talking
14 about reasonably calculated to lead to admissible
15 evidence so it's -- it's -- there certainly is
16 demonstration issues and I understand. But the
17 theory certainly is plausible and is relevant to this
18 case, and they just have to get over that low bar of
19 reasonably calculated to lead to admissible material;
20 isn't that correct?

21 MR. DORINGO: I agree, yes, that's the
22 standard. This -- another point on this that I guess
23 if the -- if that's the bar of relevance and OCC's
24 theory is that payments, you know, political
25 contributions we will call them, can violate the

1 corporate separation rules, I don't know what the
2 Commission can do to prohibit that. I think -- I
3 think is the -- is the answer to prohibit spending,
4 political spending, I think raises first amendment
5 issues.

6 EXAMINER PRICE: And statutory authority
7 issues.

8 MR. DORINGO: And statutory authority
9 issues and I think the Commission in a case from 2004
10 spoke to that issue in Case No. 04-48-EL-ORD which is
11 a review of corporate separation rules, not the same
12 ones, I understand, that we are dealing with today,
13 but the Commission noted there as for prohibiting and
14 restricting political distributions and donations,
15 that issue is a matter outside of our jurisdiction.

16 So I think that's ultimately where these
17 sort of -- this sort of discovery leads and why it's
18 not relevant to this case.

19 EXAMINER PRICE: Thank you. First, I
20 want to hasten to clarify I was not intending to
21 imply that the burden of proof is on OCC in this
22 proceeding. And so I don't want anybody to take that
23 away from -- that was at all the intent of my prior
24 comments.

25 Second, we are going to go ahead and deny

1 the motion to compel. I think that they meet the
2 relevance -- the standard for discovery. All the
3 issues you raise are issues that could be -- could be
4 addressed at an evidentiary hearing or in the
5 comments when we have those.

6 MR. FINNIGAN: Your Honor, may I ask a
7 clarifying question at this point?

8 EXAMINER PRICE: Yes.

9 MR. FINNIGAN: You said you would deny
10 the motion to compel.

11 EXAMINER PRICE: We are on a motion for
12 protective order.

13 MR. FINNIGAN: Okay.

14 EXAMINER PRICE: We are denying the
15 protective order. They will need to respond to this
16 discovery.

17 MR. FINNIGAN: Thank you.

18 EXAMINER PRICE: We are a little
19 backwards in this case, Mr. Finnigan.

20 The next one I have is Request for
21 Admission 13. Mr. Doringo, again getting back to
22 your clarification on reply, can you respond to this,
23 respond to the Request for Admission?

24 MR. DORINGO: I think -- I think I
25 would -- I'm sorry. Am I muted?

1 EXAMINER PRICE: No.

2 MR. DORINGO: I think we can -- what I
3 can say is that the Companies -- again reiterate that
4 the Companies are not in a position to have the --
5 the knowledge of the determinations, all the
6 determinations reached in the internal investigation.
7 They've not seen those -- those findings. They are
8 not involved in it.

9 But what -- you know, if we could limit
10 it to the companies' awareness, are they aware of any
11 finding that their corporate separation plan had been
12 violated, you know, I think that's something we
13 could -- we could work with. That would be
14 acceptable.

15 EXAMINER PRICE: Mr. Finnigan.

16 MR. FINNIGAN: Yeah, I'm not sure about
17 that nuance regarding they'll respond only to the
18 extent they are aware of any corporate separation
19 violations. But, you know, we'll accept that
20 modification. I think they can only respond to the
21 extent of the ones that they are aware of. So if
22 that's -- if that's the proposal, we'll accept that
23 and, you know, accept answers to this one.

24 And then I think the next few are similar
25 to this, item No. 14 and 15. And if the Company can

1 represent in their answers or wants to qualify their
2 answers that they're only responding to the extent
3 that they are aware of any violations, we'll accept
4 that.

5 EXAMINER PRICE: Okay. What we will do
6 at this time is we will defer ruling on 13, 14, and
7 15 pending the Companies and OCC working this out.
8 If the actual language the Companies presented is not
9 acceptable or you cannot work this out, then we will
10 take this up the next time we have an opportunity to.

11 If you can, I would appreciate it if you
12 could just alert the Bench, an e-mail is fine, that
13 this issue has been resolved, and we can file that
14 one away.

15 MR. FINNIGAN: Thank you, your Honor.

16 EXAMINER PRICE: Thank you. And that
17 takes us -- that is all the requests for admission
18 that I have flagged. Have I missed any?

19 MR. FINNIGAN: No, your Honor. That's
20 all.

21 MR. DORINGO: I don't believe so.

22 EXAMINER PRICE: Okay.

23 MR. DORINGO: And, your Honor, on this
24 next RPD we are about to talk about, 4, RPD 004, we
25 are willing to provide this. I think this was a

1 mistake and, you know, a mistake in inclusion in our
2 motion for protective order.

3 EXAMINER PRICE: Okay. We will consider
4 it withdrawn.

5 MR. DORINGO: Yes. We will supplement
6 that response.

7 EXAMINER PRICE: Thank you. And then
8 that takes us to 16. Mr. Finnigan, acknowledging, as
9 we discussed earlier with Mr. Doringo, it's a low bar
10 for discovery, you are asking for documents related
11 to another state and another utility that's not in
12 front of us. Can you explain how this is even part
13 of our jur -- the Commission's jurisdiction?

14 MR. FINNIGAN: Well, we don't -- we don't
15 claim that the New Jersey matter is within the
16 Commission's jurisdiction, but the way this came up
17 in our mind was that the Company made a disclosure in
18 one of its investor calls and then later SEC filings
19 there were 10 years of misallocated costs that were
20 improperly charged to the utilities or that there was
21 a lack of proper support for the charges.

22 And then the Company said that as a
23 subsequence of that, they were going to be engaging
24 with stakeholders to try to resolve these matters.
25 And so what we are trying to do, we haven't received

1 any information about what those 10 years of
2 misallocated costs were, we are trying to explore
3 that. We think that to the extent that did occur
4 with the Ohio utilities, then that would -- that
5 would constitute a corporate separation violation
6 because it would be improper subsidization where the
7 utility companies are paying for charges that
8 properly should have been borne by the nonregulated
9 entities.

10 So what we are asking for in this
11 particular Request for Production of Documents is we
12 are just asking for what were the copies of the
13 documents you sent to the New Jersey Board of Public
14 Utilities which to our understanding is investigating
15 the same thing, these 10 years of misallocated costs,
16 and then what we are wanting to find out will that
17 lead to admissible evidence about what were the 10
18 years of misallocated costs to the Ohio utilities.
19 So that's what we are after in that one.

20 EXAMINER PRICE: Thank you for the
21 clarification because I think it makes the ruling on
22 this one easy. This is the specific -- a specific
23 topic in the current DCR audit proceeding. I believe
24 the audit report is about to come out in the next
25 couple, three weeks. So let's deal with this issue.

1 These misallocated costs in that DCR proceeding,
2 audit proceeding, which is specifically part of that
3 and everything you desire to address can be addressed
4 there.

5 MR. FINNIGAN: Okay. Thank you, your
6 Honor.

7 EXAMINER PRICE: Thank you. That's the
8 last discovery response -- or issue I had. Have I
9 missed any?

10 MR. FINNIGAN: No. I think that covers
11 everything. Thank you very much for taking the time
12 to resolve all of these for us.

13 EXAMINER PRICE: Thank you.

14 MR. DORINGO: I agree, your Honor.

15 EXAMINER PRICE: Thank you for your
16 cooperation and we will see you all -- most of you or
17 many of you at 2 o'clock. We will address a
18 different case but a similar topic.

19 Thank you all. We're adjourned. Off the
20 record.

21 (Thereupon, at 10:36 a.m., the hearing
22 was adjourned.)

23 - - -

24

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, June 30,
2021, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7102)

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Summary: Transcript in the Ohio Edison Company hearing held on 06/30/21 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.