

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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**FIRSTENERGY CORP. AND FIRSTENERGY SERVICE COMPANY'S MOTION TO  
QUASH THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S SUBPOENAS**

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Pursuant to Ohio Administrative Code ("O.A.C.") 4901-1-25(C), FirstEnergy Corp. and FirstEnergy Service Company (collectively "FirstEnergy") move the Commission for an order quashing subpoenas from the Office of the Ohio Consumers' Counsel's ("OCC"), served June 25, 2021. As more fully explained in the accompanying Memorandum in Support, OCC's subpoenas are defective for several reasons. They demand information falling outside the scope of these proceedings and the bounds of the Commission's statutory authority to regulate Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies"), improperly seek to invade the privileged internal investigation of FirstEnergy Corp.'s Board of Directors, and impermissibly purport to impose extraordinary burdens on a non-party.<sup>1</sup> Accordingly, FirstEnergy respectfully requests that the Commission grant this Motion to Quash the subpoenas.

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<sup>1</sup> OCC's subpoenas are attached as Exhibit A to the Memorandum in Support.

Dated: July 19, 2021

Respectfully submitted,

/s/ Corey A. Lee

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*On behalf of FirstEnergy Corp. and FirstEnergy  
Service Company*

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**FIRSTENERGY CORP. AND FIRSTENERGY SERVICE COMPANY'S  
MEMORANDUM IN SUPPORT OF MOTION TO QUASH THE OFFICE OF THE  
OHIO CONSUMERS' COUNSEL'S SUBPOENAS**

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**I. INTRODUCTION**

OCC's subpoenas to FirstEnergy Corp. and FirstEnergy Service Company are identical. And, at bottom, they propose the wholesale disclosure of the privileged internal investigation by a committee of FirstEnergy Corp.'s Board of Directors. OCC, in fact, seeks *every document* concerning that investigation. Indeed, three of the subpoenas' four requests demand production of every record "related to" the internal investigation and specific subjects of it:<sup>2</sup>

- "All documents related to the internal investigation by a committee of independent members of the FirstEnergy Corp. Board of Directors, including but not limited to, its reported decisions to terminate certain executives for violations of FirstEnergy policies and its code of conduct associated with the 'purported consulting agreement;'"

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<sup>2</sup> As explained below, one of OCC's requests—seeking a copy of the "consulting agreement" and its amendments—has been rendered moot in its entirety because the Companies have already agreed to produce those materials to OCC in party discovery.

- “[A]ll documents related to FirstEnergy’s belief that ‘payments under [a] consulting agreement may have been for purposes other than those represented within the consulting agreement;’” and
- “All documents related to FirstEnergy’s identification of certain transactions” disclosed in FirstEnergy’s form 10-K dated February 18, 2021.<sup>3</sup>

There are numerous fundamental problems with OCC’s requests—all of which are fatal to the subpoenas. OCC asks the Commission to far exceed the limits of its statutory authority and demands production of a vast number of documents that have no bearing on the Commission’s review in these proceedings. Even more, OCC seeks a full-scale review of a privileged investigation that is protected from disclosure. And beyond all this, OCC has not, as it was required to do, made any attempt to tailor its requests in a way that would limit the burden of non-party discovery. OCC cannot use its subpoenas as a means to conduct a limitless investigation of FirstEnergy that disregards its privilege. And its requests ignore the limitations on discovery enumerated by civil and administrative rules and reinforced by Ohio case law and Commission precedent.

For these reasons and those explained below, the Commission should grant FirstEnergy’s Motion to Quash OCC’s subpoenas in their entirety.

## **II. APPLICABLE LAW**

Under Rule 4901-1-25, O.A.C., the Commission may quash a subpoena “if it is unreasonable or oppressive.”<sup>4</sup> For a subpoena to be valid, it must “designate with reasonable

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<sup>3</sup> See Ex. A.

<sup>4</sup> Ohio Adm. Code § 4901-1-25(C).

particularity the matter on which examination is requested”<sup>5</sup> and be “within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code.”<sup>6</sup> Rule 4901-1-16, O.A.C., limits the scope of discovery to non-privileged matters that are “relevant to the subject matter of the proceeding” or reasonably calculated to lead to the discovery of admissible evidence.<sup>7</sup> Ohio Civil Rule 26 similarly limits discovery to relevant, non-privileged matters and requires that all requests be “proportional to the needs of the case.”<sup>8</sup>

As the administrative and civil rules expressly recognize, a party has no right to the discovery of privileged information. And, of course, the sanctity of the attorney client privilege and the protections afforded by the work product doctrine are recognized and respected under settled Ohio law and Commission precedent.<sup>9</sup>

In addition, in the case of a subpoena, the party seeking discovery must make a showing of “substantial need” for the non-privileged information sought. For example, in *Lambda Research v. Jacobs*, 170 Ohio App. 3d 750, 756 (1st Dist. 2007), the appellate court reversed a trial court’s denial of a motion to quash a subpoena that sought information from a nonparty to a

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<sup>5</sup> Ohio Adm. Code 4901-1-21(F).

<sup>6</sup> Ohio Adm. Code 4901-1-25.

<sup>7</sup> Ohio Adm. Code 4901-1-16(B).

<sup>8</sup> Ohio Civ. R. 26(B)(1).

<sup>9</sup> See e.g., *Cherryhill Mgmt., Inc. v. Branham*, 1st Dist. Montgomery No. 28438, 2020 WL 864919 at \*3 (February 21, 2020) (affirming trial court’s decision to grant motion to quash on the basis that the subpoena sought information that was privileged and work product); *Burnham v. Cleveland Clinic*, 151 Ohio St. 3d 356, 363 (2016) (“[e]xposure of the information that is to be protected by attorney-client privilege destroys the confidentiality of possibly highly personal or sensitive information that must be presumed to be unreachable.”); *Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.*, 127 Ohio St. 3d 161, 165 (2010) (discussing the necessity of “full and frank communication between attorneys and their clients” safeguarded by privilege); See also, *In the Matter of the Complaint of Cameron Creek Apartments, Complainant*, No. 08-1091-GA-CSS, 2009 WL 2138514, Entry, at \*2 (July 8, 2009) (denying in part motion to compel based on attorney-client privilege and work production protections); *In the Matter of the Complaint of Toledo Premium Yogurt, Inc., DBA Freshens Yogurt, Complainant*, No. 91-1528-EL-CSS, 1993 WL 13744538, Entry, at \*1 (Sept. 22, 1993) (protections afforded by attorney-client privilege and work product doctrine applied to utility’s internal investigation).

lawsuit involving a breach of a supplier agreement. The appellate court held that “the trial court’s laissez-faire approach to discovery was at direct odds with...Civ.R. 45(C)...which provide[s] protection for nonparties.”<sup>10</sup> Specifically, “Civ. R. 45 provides that when a nonparty moves to quash a subpoena on the ground that it imposes an undue burden, the party seeking the discovery must demonstrate a substantial need for the materials that cannot be met through alternate means.” Additionally: “[t]he rule further provides that the court shall quash the subpoena unless the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship.”<sup>11</sup>

Ohio courts also look with disfavor on discovery requests that amount to mere “fishing expeditions” that go beyond the scope of reasonable or otherwise limited discovery.<sup>12</sup> Moreover, a subpoenaed party (or any other party) to a legal proceeding has no obligation to respond to discovery requests that are duplicative of prior requests to which responses have been provided.<sup>13</sup>

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<sup>10</sup> *Lambda Research*, 170 Ohio App. 3d at 756-757.

<sup>11</sup> *Id.* See also *Kaplan v. Tuennerman-Kaplan*, 9th Dist. Wayne No. 11CA0011, 2012 WL 256562, at \*4 (Jan. 30, 2012) (affirming the trial court’s decision to grant a motion to quash because the appellant failed to show substantial need for the discovery sought); *Martin v. Budd*, 128 Ohio App. 3d 115, 120 (9th Dist. 1998) (holding that trial court’s failure to grant a motion to quash a subpoena duces tecum was an abuse of discretion because the subpoena created an undue burden and the subpoenaing party failed to show a substantial need for the requested information); *Eitel v. Eitel*, 4th Dist. Pickaway No. 95CA11, 1996 WL 482703 at \*4-6 (Aug. 23, 1996) (affirming trial court’s decision to quash subpoenas that were unreasonable, oppressive, and unduly burdensome, and for failure of subpoenaing party to show substantial need).

<sup>12</sup> See, e.g., *Martin*, 128 Ohio App. 3d at 119 (“[D]iscovery proceedings may not be used to conduct a mere fishing expedition.”); *Bland v. Graves*, 85 Ohio App. 3d 644, 659 (9th Dist. 1993) (“The court may permissibly limit discovery so as to prevent mere ‘fishing expeditions’ in an effort to locate incriminating evidence.”).

<sup>13</sup> See *In re Gerber Children*, 5th Dist. Stark No. 2007CA00219, 2008 WL 638218, at \*5 (Mar. 10, 2008), (finding no “error in the trial court’s quashing of [a] subpoena which would have been duplicative of the discovery [previously] provided.”); see also *Carrier v. Weisheimer Cos.*, 10th Dist. Franklin No. 95APE04-488, 1996 WL 76317, \*2-3 (Feb. 22, 1996) (affirming trial court’s denial of motion to compel discovery because several of the discovery requests at issue “were duplicative of prior requests” and appellants had already “completed considerable discovery”); *State ex rel Doe v. Register*, 12th Dist. Clermont No. CA2008-08-081, 2009 WL 1456485, at \*5 (May 26, 2009) (“The trial court did not abuse its discretion by denying Relator’s motion to compel discovery.... The court’s decision to not compel these duplicate discovery requests was not unreasonable, arbitrary, or capricious.”).

Well-settled Commission precedent is consistent with this Ohio case law. In the context of denying motions to compel, the Commission has recognized that a party has no obligation to respond to discovery requests that are duplicative of prior discovery or in instances where the requested information has already been provided to the propounding party.<sup>14</sup> Further, the Commission quashes subpoenas that are overbroad, unduly burdensome or otherwise unreasonable.<sup>15</sup>

### III. ARGUMENT

#### **A. OCC's Subpoenas Ask The Commission To Exceed The Limits Of Its Statutory Authority And Seek Irrelevant Information.**

There is ample reason for the Commission to quash OCC's subpoenas here. To begin, the Commission regulates matters concerning the Companies' provision of retail electric service, yet OCC's request for a wholesale investigation of FirstEnergy is an invitation for the Commission to act outside the limits of its statutory authority. R.C. 4905.05 defines the Commission's jurisdiction

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<sup>14</sup> See, e.g., *In the Matter of the Complaint of Brenda Fitzgerald v. Duke Energy Ohio*, Case No. 10-791-EL-CSS, 2011 Ohio PUC LEXIS 415, Entry at \*5-13 (April 4, 2011) (denying in part motion to compel where respondent had already provided responses to several discovery requests at issue and the requests otherwise sought irrelevant information); *In the Matter of the Complaint of Ruth L. Wellman v. Ameritech Ohio*, Case No. 99-768-TP-CSS, 2002 Ohio PUC LEXIS 554, Entry at \*2-19 (June 21, 2002) (denying motion to compel where discovery requested was vague, "not imperative in a final determination of [the] matter," overly broad, and because the respondent had already responded to several of the discovery requests at issue).

<sup>15</sup> See, e.g., *In the Matter of the Complaint of the Ohio Consumers' Counsel, Stand Energy Corporation, Incorporated, Northeast Ohio Public Energy Council, and Ohio Farm Bureau Federation v. Interstate Gas Supply, Inc.*, Case No. 10-2395-GA-CSS, 2011 Ohio PUC LEXIS 1202, Entry at \*4-5 (Nov. 2, 2011) (granting motion to quash because subpoena was unreasonable); *In the Matter of the Complaint of Buckeye Energy Brokers, Inc., v. Palmer Energy Company*, Case No. 10-693-EL-CSS, 2011 Ohio PUC LEXIS 406, Entry at \*6 (Mar. 30, 2011) (granting motion to quash); see also *In the Matter of the Application of Champaign Wind, LLC, for a Certificate to Construct a Wind-Powered Electric Generating Facility in Champaign County, Ohio*, Case No. 12-160-EL-BGN, 2013 Ohio PUC LEXIS 110, Opinion, Order, and Certificate at \*19-20 (May 28, 2013) (quashing "extraordinarily overbroad" subpoenas directed at nonparties, finding there was no showing by the subpoenaing party as to how it would suffer an "undue hardship" in the absence of the subpoenaed information and holding "it would be unreasonable to force a nonparty to expend its time and resources toward a request that is unlimited in scope"). While *Champaign Wind* is a decision from the Power Siting Board, the Board follows the same procedures as the Commission. See R.C. 4906.12 ("Procedures of the public utilities commission to be followed: Sections 4903.02 to 4903.16 and 4903.20 to 4903.23 of the Revised Code shall apply to any proceeding or order of the power siting board under Chapter 4906 of the Revised Code, in the same manner as if the board were the public utilities commission under such sections.").

as extending primarily to public utilities operating in Ohio as defined in R.C. 4905.03.<sup>16</sup> The Companies are public utilities. But the FirstEnergy entities named in OCC's subpoenas are not. They do not charge for or provide utility services as specified in R.C. 4905.05. And as the Ohio Supreme Court recently reaffirmed, the Commission's statutory mandate is to regulate and supervise a *public utility* when it "act[s] as a *public utility*."<sup>17</sup>

OCC's subpoenas flout limits on the Commission's authority and instead make sweeping demands for (1) "[a]ll documents related to the internal investigation" conducted by a committee of FirstEnergy Corp.'s Board of Directors; (2) "all documents related to FirstEnergy's belief that 'payments under [a] consulting agreement may have been for purposes other than those represented' within the agreement; and (3) "all documents related to FirstEnergy's identification" of certain vendor transactions as part of the internal investigation.<sup>18</sup> All of these requests seek, without a statutory basis, to invade FirstEnergy Corp.'s internal investigation, with no attempt by OCC to tailor the subpoenas' demands to documents that are relevant to or appropriate for the Commission's consideration in either the Rider DCR or the corporate separation proceedings.

The scope of the expanded Rider DCR audit extends to whether "funds collected from ratepayers were used to pay certain vendors and if so, whether the funds associated with those payments should be returned to ratepayers through Rider DCR or through an alternative

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<sup>16</sup> R.C. 4905.05; R.C. 4905.03(C) ("As used in this chapter, any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:... (C) An electric light company, when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state, including supplying electric transmission service for electricity delivered to consumers in this state, but excluding a regional transmission organization approved by the federal energy regulatory commission.").

<sup>17</sup> *In re Complaint of Direct Energy Business, LLC v. Duke Energy Ohio, Inc.*, 161 Ohio St. 3d 271, 276 (2020).

<sup>18</sup> Case Nos. 17-974-EL-UNC and 20-1629-EL-RDR, Subpoena Duces Tecum Issued to FirstEnergy Service Company (June 25, 2021); Case Nos. 17-974-EL-UNC and 20-1629-EL-RDR, Subpoena Duces Tecum Issued to FirstEnergy Corp. (June 25, 2021).



proceeding.”<sup>19</sup> That scope does not—and could not—permit inquiry into FirstEnergy Corp.’s Board’s internal investigation, its decision-making related to the termination or separation of certain executives, or the underlying basis for certain of the conclusions reached during the investigation.

Similarly, R.C. 4928.17 does not grant unlimited authority to investigate all aspects of the Companies’ and their affiliates’ business operations. Instead, that statute is directed at ensuring that no affiliate “in the business of providing *competitive* retail electric service” is unfairly advantaged by its corporate relationship to a regulated utility.<sup>20</sup> OCC’s subpoenas have nothing to do with any unfair competitive advantage in the provision of retail electric service or to any other legitimate corporate separation issue. While OCC speculates that the internal investigation may somehow point to a violation of corporate separation law and rules, that speculation cannot be grounds for ignoring the limits of the Commission’s enabling statutes.

OCC cannot use its subpoenas as a vehicle for the Commission to exercise regulatory powers over FirstEnergy that are not granted by statute. And the boundless scope of the subpoenas’ requests cause them to seek information that is not relevant to the Commission’s proceedings. The fact is that OCC attempts, through its unfettered requests for literally every document relating to FirstEnergy’s internal investigation, to have the Commission assume the role of the United States Attorney—which, as the Attorney Examiners have noted more than once, the Commission is not.<sup>21</sup> And the very same types of requests OCC now brings via subpoena have already been ruled out of bounds even in party discovery.<sup>22</sup>

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<sup>19</sup> Case No. 20-1629-EL-RDR, Entry (March 10, 2021).

<sup>20</sup> R.C. 4928.17 (emphasis added).

<sup>21</sup> Case No. 20-1502-EL-UNC, Hr’g Tr., at 23: 4–11 (March 25, 2021).

<sup>22</sup> See Case No. 20-1502-EL-UNC, Hr’g Tr., 18:20-19:10, 23:14-18 (June 30, 2021) (limiting production to information about the Companies).

**B. OCC's Subpoenas Impermissibly Seek To Invade The Privileged Internal Investigation.**

OCC's subpoenas are defective for another independent reason: they directly seek the indiscriminate production of privileged materials. FirstEnergy's internal investigation is a comprehensive review led by counsel for FirstEnergy Corp. and its Board, and most of the records relating to it are protected from disclosure by the attorney-client privilege and work product doctrines.<sup>23</sup> OCC has no entitlement to privileged materials.<sup>24</sup> And its request for all documents relating to the investigation necessarily implicates thousands upon thousands of protected records and communications with counsel.

While OCC would likely argue that FirstEnergy should log the privileged materials, that only underscores the enormous burden, discussed further below, that OCC seeks to impose—logging every record related to a comprehensive, year-long investigation would be a massive and unnecessary undertaking. Nor is FirstEnergy under any obligation to log privileged materials in response to OCC's requests that fall far outside the bounds of permissible non-party discovery.<sup>25</sup>

In short, OCC has no right to intrude upon FirstEnergy's privilege. The subpoenas can and should be quashed for this reason alone.

**C. OCC's Subpoenas Are Unduly Burdensome And The Only Relevant, Non-Privileged Information Sought By OCC Is Already Being Provided By The Companies In Party Discovery.**

OCC's subpoenas must also be quashed because they attempt to impose extraordinary and undue burdens on non-party FirstEnergy. For starters, *any* burden imposed by OCC's extensive

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<sup>23</sup> See *In re Dayco Corp. Derivative Sec. Litig.*, 99 F.R.D. 616, 619 (S.D. Ohio 1983) (applying attorney-client privilege and work product protections to the report and related documents prepared by counsel retained by the Board of Directors to conduct an internal investigation).

<sup>24</sup> See Ohio Adm. Code 4901-1-16(B).

<sup>25</sup> *Piatt v. Miller*, 6th Dist. Lucas No. L-09-1202, 2010 WL 1223915, at \*4-5 (March 31, 2010).

requests for irrelevant information is by definition “undue.”<sup>26</sup> But even ignoring that, the subpoenas must be quashed for OCC’s failure to “take reasonable steps to avoid imposing undue burden or expense on a person subject to [a] subpoena” as required by the civil rules, which expressly provide protections for non-parties.<sup>27</sup> Far from making any attempt to limit the burden of its requests, OCC demanded that FirstEnergy produce (in three weeks) every single document “related to” FirstEnergy’s internal investigation and specific subjects of that investigation. That investigation has been ongoing for nearly a year and has been expansive in scope. OCC’s requests are the type of fishing expedition that Ohio courts and the Commission will not sanction, especially when directed at a non-party.<sup>28</sup> OCC cannot show, as it must, any “substantial need” for documents that are irrelevant to the Rider DCR and corporate separation proceedings.<sup>29</sup>

Setting all these issues aside, portions of OCC’s subpoenas have been rendered moot by party discovery. Specifically, the Companies agreed—prior to OCC’s filing of these subpoenas—to produce in the Rider DCR proceeding the “consulting agreement” and its amendments

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<sup>26</sup> See, e.g., *Lister v. Hyatt Corp.*, No. C18-0961JLR, 2020 WL 419454, at \*3 (W.D. Wash. Jan. 24, 2020) (quoting *Compaq Computer Corp. v. Packard Bell Elecs., Inc.*, 163 F.R.D. 329, 335 (N.D. Cal. 1995) (“[I]f the sought-after documents are not relevant nor calculated to lead to the discovery of admissible evidence, then any burden whatsoever imposed would be by definition ‘undue.’”); *Arrowpac Inc. v. Sea Star Line, LLC*, No. 3:12-CV-1180-J-32JBT, 2014 WL 12618327, at \*2 (M.D. Fla. Jan. 31, 2014) (quoting same); *Toto, Inc. v. Sony Music Ent.*, No. C13MC80168MISCJSTDMR, 2014 WL 793558, at \*2 (N.D. Cal. Feb. 26, 2014) (quoting same); *Builders Ass’n of Greater Chicago v. City of Chicago*, No. 96 C 1122, 2001 WL 664453, at \*8 (N.D. Ill. June 12, 2001) (quoting same).

<sup>27</sup> Ohio Civ. R. 45(C)(1).

<sup>28</sup> See e.g., *Hanick v. Ferrara*, 2020-Ohio-5019, ¶¶ 51-68, 161 N.E.3d 1 (7th Dist. 2020) (affirming the trial court’s decision to quash the subpoena directed at a non-party in part because it was overbroad and irrelevant); *Byrd v. Lindsay Corp.*, 9th Dist. Summit No. 29491, 2020 WL 4342786, at \*4 (July 29, 2020) (affirming the decision to quash a subpoena on the basis that it was a “mere fishing expedition” levied against a nonparty); *Martin v. The Budd Co.*, 128 Ohio App. 3d 115, 119, 713 N.E.2d 1128 (9th Dist. 1998) (reversing the trial court’s denial of Goodyear’s motion to quash in light of its nonparty status and because “discovery proceedings may not be used to conduct a mere fishing expedition for incriminating evidence”).

<sup>29</sup> *In the Matter of the Application of Champaign Wind, LLC, for A Certificate to Construct A Wind-Powered Elec. Generating Facility in Champaign Cty., Ohio.*, No. 12-160-EL-BGN, 2013 WL 2446463, Opinion, Order, and Certificate at \*7 (May 28, 2013) (finding there was no “substantial need or undue hardship that would occur absent the subpoenas being enforced to overcome the burden that would be imposed on entities that were not parties in this proceeding.”).

referenced in paragraph (1) of OCC's subpoenas. *See* Ex. B.<sup>30</sup> The Companies have likewise agreed to produce information regarding the vendor payments referenced in paragraph (4) of the subpoenas, including the underlying contracts, invoices, and purchase orders and a spreadsheet detailing payment information and whether the payments were included in rates.<sup>31</sup> OCC cannot seek these same documents from non-party FirstEnergy.<sup>32</sup> And this is the only relevant, non-privileged information sought by OCC's subpoenas at all. It follows that the information being provided by the Companies has rendered OCC's subpoenas—when viewed in their proper scope in light of the relevant issues and the limits on the Commission's statutory mandate—moot.

#### IV. CONCLUSION

OCC's subpoenas seek an investigation that is outside the bounds of the Commission's statutory authority, call for the production of a vast amount of privileged information that is irrelevant to the Commission's review in these cases, and purport to impose extraordinary, undue burdens on FirstEnergy. Any one of these reasons is sufficient grounds to quash the subpoenas. But taken together, they put in stark focus that OCC has ignored the limits placed on non-party discovery in Commission proceedings. For these reasons, FirstEnergy respectfully requests that this Motion be granted and that the Commission quash OCC's subpoenas.

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<sup>30</sup> As set out in supplemental responses, per a June 16, 2021 meet-and-confer discussion between the Companies' and OCC, the Companies agreed, subject to and without waiving any objections, to produce OCC INT-02-002-Attachments 001-339 – Confidential.

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

<sup>32</sup> *See Musarra v. Digital Dish, Inc.*, No. CIVA 2:05-CV-545, 2008 WL 4758699, at \*4 (S.D. Ohio Oct. 30, 2008) (“...the Court will not impose on this non-party the burden of producing documents presumably available to plaintiffs from a party to this litigation.”); *see also Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (upholding refusal to enforce subpoena issued to non-party where same documents were available from party opponent).

Dated: July 19, 2021

Respectfully submitted,

/s/ Corey A. Lee

Corey Lee (0099866)

Jones Day

North Point

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Cleveland, Ohio 44114

Tel: (216) 586-3939

Fax: (216) 579-0212

calee@jonesday.com

*On behalf of FirstEnergy Corp. and FirstEnergy  
Service Company*

**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 July 19, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Corey A. Lee  
*Attorney for FirstEnergy Corp. and  
FirstEnergy Service Company*

# Exhibit A

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17.474 EL UNC

FILE

STATE OF OHIO  
PUBLIC UTILITIES COMMISSION  
180 E. EAST BROAD STREET  
COLUMBUS OHIO 43266-0573

Michael DeWine  
GOVERNOR



PUCO

2021 JUN 25 AM 11:24

RECEIVED - BOOKING DIV

PUBLIC UTILITIES COMMISSION OF OHIO  
SUBPOENA DUCES TECUM

TO: FirstEnergy Corp.  
c/o Statutory Agent  
CT Corporation System  
4400 Easton Commons Way  
Suite 125  
Columbus OH 43219

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"),  
FirstEnergy Corp. is hereby required to produce by July 19, 2021, the following  
documents/information at the Offices of the Ohio Consumers' Counsel, 65 East State Street, 7<sup>th</sup>  
Floor, Columbus, Ohio 43215:

- (1) The "purported consulting agreement" including all amendments and versions, between a FirstEnergy entity and a "counterparty" to the agreement 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" (as reported in FirstEnergy Corp. Form 10-K at 28 (Feb. 18, 2021)).
- (2) All documents related to the internal investigation by a committee of independent members of the FirstEnergy Corp. Board of Directors, including but not limited to, its reported decisions to terminate certain executives for violations of FirstEnergy policies and its code of conduct associated with the "purported consulting agreement" (as reported in FirstEnergy Corp. Form 10-K at 28 (Feb. 18, 2021)).


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- (3) Regarding the “purported consulting agreement” referred to in (1), above, all documents related to FirstEnergy’s belief that “payments under the consulting agreement may have been for purposes other than those represented within the consulting agreement \*\*\*” (as reported in FirstEnergy Corp. Form 10-K at 28 (Feb. 18, 2021)).
- (4) All documents related to FirstEnergy’s identification of “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.\*\*\*” (as reported in FirstEnergy Corp. Form 10-K at 28 (Feb. 18, 2021)).

The documents will be produced in connection with the proceedings entitled "In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company"(Case No. 20-1629-EL-RDR ) and “In the Matter of the Review of The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37 (Case No. 17-0974-EL-UNC ).”

Dated at Columbus, Ohio, this 25<sup>th</sup> day of June 2021.

  
\_\_\_\_\_  
Attorney Examiner

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

20.1629 EL AIR  
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STATE OF OHIO  
PUBLIC UTILITIES COMMISSION  
180 E. EAST BROAD STREET  
COLUMBUS OHIO 43266-0573

Michael DeWine  
GOVERNOR

HE



PUCO

2021 JUN 25 AM 11:25

RECEIVED-REGULATIONS DIV

PUBLIC UTILITIES COMMISSION OF OHIO  
SUBPOENA DUCES TECUM

TO: FirstEnergy Service Company  
c/o Statutory Agent  
CT Corporation System  
4400 Easton Commons Way  
Suite 125  
Columbus OH 43219

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"),  
FirstEnergy Service Company is hereby required to produce, by July 19, 2021, the  
following documents/information at the Offices of the Ohio Consumers' Counsel, 65 East  
State Street, 7<sup>th</sup> Floor, Columbus, Ohio 43215:

- (1) The "purported consulting agreement" including all amendments and versions, between a FirstEnergy entity and a "counterparty" to the agreement 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" (as reported in FirstEnergy Corp. Form 10-K at 28 (Feb. 18, 2021)).
- (2) All documents related to the internal investigation by a committee of independent members of the FirstEnergy Corp. Board of Directors, including but not limited to, its reported decisions to terminate certain executives for violations of FirstEnergy policies and its code of conduct associated with the "purported consulting agreement" (as reported in FirstEnergy Corp. Form 10-K at 28 (Feb. 18, 2021)).

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.  
Technician AK Date Processed 6.25.21

- (3) Regarding the “purported consulting agreement” referred to in (1), above, all documents related to FirstEnergy’s belief that “payments under the consulting agreement may have been for purposes other than those represented within the consulting agreement \*\*\*\*” (as reported in FirstEnergy Corp. Form 10-K at 28 (Feb. 18, 2021)).
- (4) All documents related to FirstEnergy’s identification of “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.\*\*\*\*” (as reported in FirstEnergy Corp. Form 10-K at 28 (Feb. 18, 2021)).

The documents will be produced in connection with the proceedings entitled "In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (Case No 20-1629-EL-RDR) " and “In the Matter of the Review of The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37. (Case No.17-0974-EL-UNC )”

Dated at Columbus, Ohio, this 25<sup>th</sup> day of June 2021.



Attorney Examiner

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

# Exhibit B

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

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

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON COMPANY’S  
SUPPLEMENTAL RESPONSES AND OBJECTIONS TO THE SECOND SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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Pursuant to Rules 4901-1-16 through 4901-1-22 of the Ohio Administrative Code and in accordance with Ohio Rules of Civil Procedure 26, 33, and 34, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”), hereby submit these Supplemental Objections and Responses to the Second Set of Interrogatories and Requests for Production of Documents (collectively, the “Discovery Requests”) served by the Office of the Ohio Consumers’ Counsel.

**GENERAL OBJECTIONS**

As used herein, the following definitions apply:

1. The Companies object to OCC’s attempt to provide definitions and “instructions for answering” that are broader than, or inconsistent with, the rules of the Ohio Administrative Code or the Ohio Rules of Civil Procedure. The Companies will respond in accordance with their obligations under those rules.
2. The Companies object to the definition of “Documents” and “Documentation” to the extent it seeks to impose obligations on the Companies that are broader than, or inconsistent with, those imposed by the rules of the Ohio Administrative Code and the

Ohio Rules of Civil Procedure. The Companies construe the term “documents” to be synonymous in meaning and equal in scope to the usage of the term “documents” in Rule 34(A) of the Ohio Rules of Civil Procedure.

3. The Companies object to the definition of “Communication” as overbroad, unduly burdensome, and vague and ambiguous, and the Companies further object to the extent that the definition seeks to impose obligations on the Companies that are broader than, or inconsistent with, those imposed by the rules of the Ohio Administrative Code and the Ohio Rules of Civil Procedure. For example, OCC defines “Communication(s)” to include the transmission of information by “oral” or “otherwise perceptible means” and therefore unreasonably purports to require the Companies to describe in detail communications that are not contained in any document. Further, the definition states that a request “seeking the identity of a communication . . . encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication” and therefore unreasonably purports to place an undue burden on the Companies to identify any documents or communications having any “nexus” or containing any “explicit or implicit” reference to the subject matter of a communication.
4. The Companies object to the definition of “You,” and “Your,” or “Yourself” as overbroad, unduly burdensome, vague, and ambiguous because it unreasonably purports to require the Companies to provide information on behalf of any “present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or

joint venturer” and is unlimited as to time. The Companies construe the terms “You,” “Your,” and “Yourself” to refer only to the Companies.

5. The Companies object to the definition of “Identify,” or “the identity of,” or “identified” as overbroad, unduly burdensome, vague, and ambiguous. For example, this definition unreasonably purports to obligate the Companies to provide information outside of their personal knowledge, to identify all persons “in the presence” of parties to communications, and to describe an “act” and the persons in the presence of the “actor.”
6. The Companies object to the instruction “to produce responsive materials and information” in the possession of persons “purporting to act on [the Companies’] behalf” because this instruction on its face calls for the production of materials that are not within the Companies’ possession, custody, or control.
7. The Companies object to the instruction in numbered paragraph 8 of the “Instructions for Answering” as overbroad, unduly burdensome, vague, and ambiguous. For example, this instruction unreasonably purports to require the Companies to search for and produce “information and tangible materials” over a twenty-year period of time.
8. The Companies object to the “instructions” for invoking privilege to the extent they seek to impose requirements on the Companies that are broader than, or inconsistent with, those imposed by the Ohio Administrative Code or by the Ohio Rules of Civil Procedure. Should the Companies withhold any document on the basis of any applicable privilege, immunity, or protection, the Companies will provide the information required by Ohio Rule of Civil Procedure 26(B)(8)(a).

9. The Companies object to each request to the extent that it seeks production of information that is confidential business, commercial, financial, or proprietary information belonging to the Companies or third parties.
10. The Companies object to OCC's Discovery Requests to the extent they seek information or documents protected from disclosure by the attorney-client privilege, attorney work product doctrine, or any other applicable doctrine.
11. The Companies object to OCC's Discovery Requests to the extent any request seeks confidential information that is protected from disclosure to third parties under Ohio R.C. 4901.16. To the extent any request calls for information that is the subject of an ongoing audit, that request functions as an end-run around Ohio R.C. 4901.16.
12. A statement that documents will be produced is not intended to suggest that responsive documents exist within the Companies' possession, custody, or control; nor is it intended to suggest that the Companies will search every electronic and paper file within their possession, custody, or control, because that exercise would be unduly burdensome and prohibitively expensive and is not required under the rules. A statement that documents will be produced means that the Companies will search for documents in those places where the Companies reasonably anticipate they may be located and, if located and not subject to any privilege, the Companies will make them available for inspection and copying at a mutually agreeable time and place. Where applicable, the Companies will designate documents as confidential or competitively sensitive confidential and will release such documents only to parties with properly executed protective agreements.



## **SUPPLEMENTAL RESPONSES AND OBJECTIONS TO INTERROGATORIES**

**INT-02-002.** On FirstEnergy's Fourth Quarter earnings call on February 18, 2021, FirstEnergy executives disclosed that they had uncovered various charges relating to consulting agreements, political advocacy and/or other matters that were improperly charged to FirstEnergy Utilities or improperly substantiated over a period of several years.

Regarding this statement, please provide the following information:

- a. The date, amount and description of each charge;
- b. The amount of each charge that was included in customer rates, including but not limited to, the Delivery Capital Recovery Rider, for the FirstEnergy Utilities;
- c. The persons who authorized each charge;
- d. The supporting documentation for each charge; and
- e. Please explain how FirstEnergy determined each charge was improper.

**RESPONSE:** The Companies object to the term "FirstEnergy," as used in this Request, because it is vague and ambiguous, given ¶ 13 of OCC's general definitions. The Companies further object to this Request on the grounds that OCC's requests are premature, given the audit is ongoing and the final audit report has yet to issue. Case No. 17-2474-EL-RDR, Hearing Tr., at 24:23-25:4 (April 8, 2021). The Companies also object to the extent OCC seeks information that is (1) confidential business, commercial, financial, or proprietary information belonging to the

Companies or third parties or (2) protected from disclosure by the attorney client privilege or attorney work product doctrines.

**SUPPLEMENTAL RESPONSE (DATED JULY 6, 2021):** Per the parties' June 16 meet-and-confer discussion and subject to and without waiving any objections, in response to subparts (a), (b), and (d), see OCC INT-02-002-Attachments 001–339 – Confidential.

**SUPPLEMENTAL RESPONSES AND OBJECTIONS TO  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

**RPD-02-002:** On February 16, 2021, FirstEnergy filed a Form 8-K with the SEC describing “a payment of approximately \$4 million made in early 2019 in connection with the termination of a purported consulting agreement, as amended, which had been in place since 2013. The counterparty to such agreement 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. FirstEnergy believes that payments under the consulting agreement may have been for purposes other than those represented within the consulting agreement. The matter is a subject of the ongoing internal investigation related to the government investigations.”

- a. Please produce a copy of the consulting agreement, as amended.
- b. Please provide a copy of all documents relating to communications with the counterparty referred to in this statement.
- c. Please produce all documents relating to payments made to the counterparty pursuant to this agreement.

- d. Please produce all documents relating to actions FirstEnergy took to help the individual referenced become appointed to his or her position as a regulator of the Ohio companies.
- e. Please produce all documents relating FirstEnergy's belief that the payments under the consulting agreement may have been for purposes other than those represented within the consulting agreement.
- f. Please produce all documents relating to what FirstEnergy believes may have been the true purpose of the payments related to the consulting agreement.
- g. Please provide all documents relating to the consulting agreement in the form of books of account, and all other books, records, and memoranda which support the entries in such books of account.

**RESPONSE:** The Companies object to the term "FirstEnergy," as used in this Request, because it is vague and ambiguous, given ¶ 13 of OCC's general definitions. The Companies object because this Request calls for information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. The Companies also object to this Request because OCC has no jurisdiction to investigate the communications of FirstEnergy Corp. or other affiliates of the Companies, and the Companies object to the extent this Request calls for information that is not within the Companies' possession, custody, or control. Additionally, OCC's requests are premature, given the audit is ongoing and the final audit report has yet to issue. Case No. 17-2474-EL-RDR, Hearing Tr., at 24:23-25:4 (April 8, 2021). The Companies also object to the extent OCC seeks information that is (1) confidential business, commercial, financial, or proprietary information belonging to the Companies or third parties or (2) protected from disclosure by the attorney client privilege or attorney work product doctrines. In subparts (b) through (f), the Companies object to the phrase

“relating to,” as it is overbroad and ambiguous, making it impossible for the Companies to determine the scope of documents requested.

**SUPPLEMENTAL RESPONSE (DATED JULY 6, 2021):** Per the parties’ June 16 meet-and-confer discussion and subject to and without waiving any objections, in response to subparts (a), (c), and (g), see OCC INT-02-002-Attachments 001–339 – Confidential.

**RPD-02-003:** On FirstEnergy’s Fourth Quarter earnings call on February 18, 2021, FirstEnergy executives disclosed that they had uncovered various charges relating to consulting agreements, political advocacy and/or other matters that were improperly charged to FirstEnergy Utilities or improperly substantiated over a period of several years. Regarding this statement, please provide the following documents:

- a. All documents relating to the improper charges;
- b. All documents relating to information that FirstEnergy has provided to third parties outside FirstEnergy regarding these charges.
- c. All documents relating to FirstEnergy’s efforts to reverse these charges.
- d. All documents relating to the amount of these charges that were assigned, allocated or distributed to the FirstEnergy Utilities.
- e. All documents relating to the amount of these charges that were placed in customer rates for the FirstEnergy Utilities.

**RESPONSE:** The Companies object to the term “FirstEnergy,” as used in this Request, because it is vague and ambiguous, given ¶ 13 of OCC’s general definitions. The Companies further object to this Request on the grounds that OCC’s requests are premature, given the audit is ongoing and the final audit report has yet to issue. Case No. 17-2474-EL-RDR, Hearing Tr., at 24:23-25:4

(April 8, 2021). The Companies also object to the extent OCC seeks information that is (1) confidential business, commercial, financial, or proprietary information belonging to the Companies or third parties or (2) protected from disclosure by the attorney client privilege or attorney work product doctrines. In each of the subparts, the Companies object to the phrase “relating to,” as it is overbroad and ambiguous, making it impossible for the Companies to determine the scope of the documents requested. More specifically, as to subparts (a) and (b), FirstEnergy objects on the grounds those subparts call for information that is overbroad, unduly burdensome, and not limited in time.

**SUPPLEMENTAL RESPONSE (DATED JULY 6, 2021):** Per the parties’ June 16 meet-and-confer discussion and subject to and without waiving any objections, in response to subparts (a), (d), and (e), see OCC INT-02-002-Attachments 001–339 – Confidential.

Dated: July 6, 2021

Respectfully submitted,

/s/ Ryan A. Doringo

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*On behalf of the Companies*

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served on counsel for all parties by email on  
July 6, 2021:

/s/ Margaret M. Dengler  
*Attorney for the Companies*

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON COMPANY’S  
SUPPLEMENTAL RESPONSES AND OBJECTIONS TO  
THE THIRD SET OF INTERROGATORIES  
BY THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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Pursuant to Rules 4901-1-16 through 4901-1-22 of the Ohio Administrative Code and in accordance with Ohio Rules of Civil Procedure 26, 33, and 34, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”), hereby submit these Supplemental Objections and Responses to the Third Set of Interrogatories (collectively, the “Discovery Requests”) served by the Office of the Ohio Consumers’ Counsel.

**GENERAL OBJECTIONS**

As used herein, the following definitions apply:

1. The Companies object to OCC’s attempt to provide definitions and “instructions for answering” that are broader than, or inconsistent with, the rules of the Ohio Administrative Code or the Ohio Rules of Civil Procedure. The Companies will respond in accordance with their obligations under those rules.
2. The Companies object to the definition of “Documents” and “Documentation” to the extent it seeks to impose obligations on the Companies that are broader than, or inconsistent with, those imposed by the rules of the Ohio Administrative Code and the Ohio Rules of Civil Procedure. The Companies construe the term “documents” to be



synonymous in meaning and equal in scope to the usage of the term “documents” in Rule 34(A) of the Ohio Rules of Civil Procedure.

3. The Companies object to the definition of “Communication” as overbroad, unduly burdensome, and vague and ambiguous, and the Companies further object to the extent that the definition seeks to impose obligations on the Companies that are broader than, or inconsistent with, those imposed by the rules of the Ohio Administrative Code and the Ohio Rules of Civil Procedure. For example, OCC defines “Communication(s)” to include the transmission of information by “oral” or “otherwise perceptible means” and therefore unreasonably purports to require the Companies to describe in detail communications that are not contained in any document. Further, the definition states that a request “seeking the identity of a communication . . . encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication” and therefore unreasonably purports to place an undue burden on the Companies to identify any documents or communications having any “nexus” or containing any “explicit or implicit” reference to the subject matter of a communication.
4. The Companies object to the definition of “You,” and “Your,” or “Yourself” as overbroad, unduly burdensome, vague, and ambiguous because it unreasonably purports to require the Companies to provide information on behalf of any “present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer” and is unlimited as to time. The Companies construe the terms “You,” “Your,” and “Yourself” to refer only to the Companies.

5. The Companies object to the definition of “Identify,” or “the identity of”, or “identified” as overbroad, unduly burdensome, vague, and ambiguous. For example, this definition unreasonably purports to obligate the Companies to provide information outside of their personal knowledge, to identify all persons “in the presence” of parties to communications, and to describe an “act” and the persons in the presence of the “actor.”
6. The Companies object to the instruction “to produce responsive materials and information” in the possession of persons “purporting to act on [the Companies’] behalf” because this instruction on its face calls for the production of materials that are not within the Companies’ possession, custody, or control.
7. The Companies object to the instruction in numbered paragraph 8 of the “Instructions for Answering” as overbroad, unduly burdensome, vague, and ambiguous. For example, this instruction unreasonably purports to require the Companies to search for and produce “information and tangible materials” over a twenty-year period of time.
8. The Companies object to the “instructions” for invoking privilege to the extent they seek to impose requirements on the Companies that are broader than, or inconsistent with, those imposed by the Ohio Administrative Code or by the Ohio Rules of Civil Procedure. Should the Companies withhold any document on the basis of any applicable privilege, immunity, or protection, the Companies will provide the information required by Ohio Rule of Civil Procedure 26(B)(8)(a).
9. The Companies object to each request to the extent that it seeks production of information that is confidential business, commercial, financial, or proprietary information belonging to the Companies or third parties.

10. The Companies object to OCC's Discovery Requests to the extent they seek information or documents protected from disclosure by the attorney-client privilege, attorney work product doctrine, or any other applicable doctrine.
11. The Companies object to OCC's Discovery Requests to the extent any request seeks confidential information that is protected from disclosure to third parties under Ohio R.C. 4901.16. To the extent any request calls for information that is the subject of an ongoing audit, that request functions as an end-run around Ohio R.C. 4901.16.
12. A statement that documents will be produced is not intended to suggest that responsive documents exist within the Companies' possession, custody, or control; nor is it intended to suggest that the Companies will search every electronic and paper file within their possession, custody, or control, because that exercise would be unduly burdensome and prohibitively expensive and is not required under the rules. A statement that documents will be produced means that the Companies will search for documents in those places where the Companies reasonably anticipate they may be located and, if located and not subject to any privilege, the Companies will make them available for inspection and copying at a mutually agreeable time and place. Where applicable, the Companies will designate documents as confidential or competitively sensitive confidential and will release such documents only to parties with properly executed protective agreements.

## **SUPPLEMENTAL RESPONSES AND OBJECTIONS TO INTERROGATORIES**

**INT-03-001.** FirstEnergy revealed in its third quarter SEC Form 10-Q that its Board of Directors fired former senior managers for violating company ethics policies when they paid \$4 million to a company "associated with an individual who subsequently was appointed to a full-time role as an Ohio government official directly involved in regulating FE's Ohio distribution companies."

- a. Please identify the name of the "individual" referred to in this statement;
- b. Please identify the name of the company to which such payment was made;
- c. Please identify the purported purpose of the payment;
- d. Please identify the real purpose of the payment;
- e. Please explain how FirstEnergy learned that the real purpose of the payment differed from the purported purpose of the payment;
- f. Please identify the FirstEnergy company that made the payment; and
- g. Please identify whether any costs from this payment were allocated to the Ohio utilities and, if so, the amounts allocated and the FERC accounts to which the costs were allocated.

**RESPONSE:** The Companies object to the term "FirstEnergy," as used in this Request, because it is vague and ambiguous, given ¶ 13 of OCC's general definitions. The Companies also object to OCC's characterization of the November 19, 2020 10-Q; the document speaks for itself. The Companies also object because this Request calls for information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Further, the Companies object because this Request seeks information that is not within OCC's authority to investigate, and the Companies object to the

extent this Request calls for information that is not within the Companies' possession, custody, or control. Additionally, OCC's requests are premature, given the audit is ongoing and the final audit report has yet to issue. Case No. 17-2474-EL-RDR, Hearing Tr., at 24:23-25:4 (April 8, 2021). The Companies also object to the extent OCC seeks information that is (1) confidential business, commercial, financial, or proprietary information belonging to the Companies or third parties or (2) protected from disclosure by the attorney client privilege or attorney work product doctrines. See also the Companies' objections to OCC RPD-02-002.

**SUPPLEMENTAL RESPONSE (DATED JULY 6, 2021):** Per the parties' June 16 meet-and-confer discussion and subject to and without waiving any objections, in response to subparts (a), (b), (c), (f), and (g), see OCC INT-02-002-Attachments 001–339 – Confidential.

Dated: July 6, 2021

Respectfully submitted,

/s/ Ryan A. Doringo

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*On behalf of the Companies*

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served on counsel for all parties by email on  
July 6, 2021:

/s/ Margaret M. Dengler  
*Attorney for the Companies*

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**in**

**Case No(s). 17-0974-EL-UNC, 20-1629-EL-RDR**

Summary: Motion to Quash Subpoena Duces Tecum issued to FirstEnergy Corp. and  
Subpoena Duces Tecum issued to FirstEnergy Service Company