



**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**INTERLOCUTORY APPEAL,  
REQUEST FOR CERTIFICATION TO THE PUCO COMMISSIONERS,  
AND  
APPLICATION FOR REVIEW  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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OCC appeals PUCO Examiner Price's August 31, 2021 ruling that denied OCC's discovery of information that FirstEnergy Corp. (the company that is charged with and admitted to a federal crime)<sup>1</sup> provided to FERC in a House Bill 6-related audit. OCC asks that this appeal be certified to the PUCO Commissioners for review and that the ruling be reversed, under Ohio Adm. Code 4901-1-15(B) and (E). Unlike PUCO Examiner Price's ruling in favor of the FirstEnergy Utilities, a U.S. District Judge has ordered FirstEnergy Corp. to produce for plaintiffs (shareholders) in the securities fraud case copies of all documents that FirstEnergy Corp. produced to FERC for the FERC investigation.<sup>2</sup> Ohio consumers deserve no less from their state regulator, the PUCO. For consumer protection, the PUCO should reverse its Examiner's ruling and not permit the FirstEnergy Utilities to thwart a thorough and proper PUCO investigation related to FirstEnergy Corp.'s criminal conduct.

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<sup>1</sup> *U.S. v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement (S.D. Ohio) (July 22, 2021).

<sup>2</sup> *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-03785 (S.D. Ohio), Opinion and Order at 6 (June 14, 2021).

The Public Utilities Commission of Ohio (“PUCO”) opened this case on September 15, 2020 in response to the Office of the Ohio Consumers’ Counsel’s (“OCC”) September 8, 2020 motions<sup>3</sup> to investigate FirstEnergy.<sup>4</sup> OCC’s motions were prompted by a criminal complaint filed by the U.S. Attorney for the Southern District of Ohio alleging bribes and kickbacks to pass tainted House Bill 6 (“H.B. 6”).<sup>5</sup>

In an August 31, 2021 ruling at a pre-hearing conference addressing OCC’s motions to compel discovery,<sup>6</sup> PUCO Attorney Examiner Price denied OCC’s motions to compel discovery on, among other things, copies of documents that FirstEnergy produced to FERC in the course of FERC’s audit of FirstEnergy Corp. and its affiliates.<sup>7</sup> FERC’s audit covers the period of H.B. 6 activities and will evaluate FirstEnergy’s compliance with restrictions on affiliate transactions, service companies accounting and recordkeeping and accounting and reporting requirements for public utilities transactions with affiliates.<sup>8</sup>

The Attorney Examiner ruled that OCC was not entitled to discover any information or documents from FirstEnergy that FirstEnergy has provided to FERC in connection with the audit. In denying OCC’s motion to compel, the Attorney Examiner gave as a reason: “We will let FERC proceed with their investigation in a confidential manner.”<sup>9</sup>

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<sup>3</sup> OCC filed its motions in both Case 17-2474-EL-RDR and Case 17-974-EL-UNC (September 8, 2020).

<sup>4</sup> “FirstEnergy” refers to the FirstEnergy utilities, The Cleveland Electric Illuminating Company, Ohio Edison Company and The Toledo Edison Company.

<sup>5</sup> *United States of America v. Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes, and Generation Now*, Case No. 1:20-MJ-00526 (U.S. Dist. S.D.) (July 17, 2020).

<sup>6</sup> Motion to Compel Responses to Fifth and Seventh Sets of Discovery and Request For Expedited Ruling on Motion to Compel and Motion for In-Camera Hearing by Office of the Ohio Consumers’ Counsel (June 29, 2021).

<sup>7</sup> Tr. of Prehearing Conference of August 31, 2021 at 18.

<sup>8</sup> FERC Docket No. FA19-1-000, Letter from L. Parkinson, Director, Officer of Enforcement, FERC (Feb. 6, 2019) (FERC Audit Letter).

<sup>9</sup> Tr. of Prehearing Conference of August 31, 2021 at 18 and 34-37 (The relevant excerpts of the transcript are at Attachment A).

OCC appeals this August 31, 2021 discovery ruling and asks that the appeal be certified to the PUCO Commissioners for review, under Ohio Adm. Code 4901-1-15(B). The Entry represents a new and novel interpretation of policy and a departure from past precedent. An immediate determination is needed to prevent the likelihood of undue prejudice or expense to OCC and FirstEnergy's consumers, considering that this discovery request would likely produce highly relevant information.

The following discovery requests are the subject of this interlocutory appeal. OCC's fifth set of discovery included RPD-01-001, which requested documents provided by FirstEnergy to FERC and provided by FERC to FirstEnergy relating to the audit.<sup>10</sup> OCC later withdrew its request for documents provided by FERC to FirstEnergy, and limited the request to documents provided by FirstEnergy to FERC for the audit.<sup>11</sup> OCC also asked for additional information related to the FERC audits in its sixth set of discovery. INT-06-003 asked for the names of FirstEnergy employees involved in the audit). RPD-06-008 asked for documents related to information that FirstEnergy produced to FERC for FERC's audit of FirstEnergy's lobbying and governmental affairs activities related to H.B. 6).<sup>12</sup>

Accordingly, and for the protection of utility consumers, the PUCO Commissioners should respond to OCC's interlocutory appeal by reversing the Attorney Examiner's discovery ruling of September 15, 2020. The ruling should be reversed and OCC's motion to compel discovery should be granted in the public's interest in a proper investigation of FirstEnergy.

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<sup>10</sup> Motion to Compel Responses to Fifth and Seventh Sets of Discovery and Request For Expedited Ruling on Motion to Compel and Motion for In-Camera Hearing by Office of the Ohio Consumers' Counsel (June 29, 2021).

<sup>11</sup> Letter from Maureen Willis to Gregory Price (August 30, 2021) (*See* Attachment B).

<sup>12</sup> Motion to Compel Responses to Sixth Set of Discovery and Request For Expedited Ruling on Motion to Compel and Motion for In-Camera Hearing by Office of the Ohio Consumers' Counsel (June 29, 2021).

The reasons for granting this interlocutory appeal are more fully stated in the following memorandum in support.

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

This case was initiated because of OCC’s motions to seek consumer protection in connection with what federal prosecutors have called “the largest bribery scheme ever.”<sup>13</sup> At the outset of this case, the FirstEnergy Utilities were directed to show cause that political and charitable spending related to the passage of H.B. 6 was not funded through charges paid by Ohio consumers.<sup>14</sup>

As stated in OCC’s motions, the PUCO has broad powers over public utilities operating in this state that provide utility service to Ohioans. Such authority is expressly conveyed in numerous provisions of the revised code including R.C. 4905.05, R.C. 4905.06 and R.C. 4909.154. These provisions allow the PUCO to examine and investigate the FirstEnergy utilities *and their owners* for their compliance with all laws and orders of the PUCO. And the PUCO can require an independent management audit of FirstEnergy’s corporate governance and its

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<sup>13</sup> N. Reimann, Ohio Speaker of the House Arrested in State’s ‘Largest Bribery Scheme Ever,’ Forbes.com (July 21, 2020).

<sup>14</sup> Entry at ¶5 (Sept. 15, 2020).

corporate relationships with other FirstEnergy affiliated entities. The PUCO may also investigate whether any money collected from consumers was improperly used for any illegal activities in connection with the passage of House Bill 6.

At issue in this interlocutory appeal is the Attorney Examiner's discovery ruling denying OCC's motions to compel discovery regarding RPD-5-001. As modified by OCC,<sup>15</sup> this discovery request seeks copies of the documents that FirstEnergy produced to FERC during the course of its financial audit of FirstEnergy Corp. and its affiliates. OCC requests that the PUCO commissioners overrule the Attorney Examiner's ruling and require FirstEnergy to produce these documents and the additional information that OCC sought in its sixth set of discovery relating to the FERC audit, as discussed more fully below.

## **II. STANDARD OF REVIEW**

The PUCO will review an Attorney Examiner's ruling if the Attorney Examiner (or other authorized PUCO personnel) certifies the appeal.<sup>16</sup> The standard applicable to certifying an appeal is that "the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice ... to one or more of the parties, should the commission ultimately reverse the ruling in question."<sup>17</sup> Upon consideration of an appeal, the PUCO may affirm, reverse, or modify the ruling or dismiss the appeal.<sup>18</sup>

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<sup>15</sup> Letter from Maureen Willis to Gregory Price (August 30, 2021) (*See* Attachment B).

<sup>16</sup> Ohio Adm. Code 4901-1-15(B).

<sup>17</sup> *Id.*

<sup>18</sup> Ohio Adm. Code 4901-1-15(E).

### III. REQUEST FOR CERTIFICATION

#### A. The discovery ruling presents a new or novel question of interpretation of law or policy.

The discovery ruling presents a new or novel question of interpretation of law or policy regarding how to interpret the scope of the FERC confidentiality provisions provided by 16 U.S.C. § 825 (2012) and 42 U.S.C. § 16452 (2012). The context for consumer protection from FirstEnergy is what federal prosecutors have called “the largest bribery scheme ever” in Ohio.

As background, on February 6, 2019, FERC’s Division of Audits and Accounting began an audit of FirstEnergy Corp. and its affiliates following the U.S. Attorney’s criminal complaint against former Speaker Larry Householder and others, and FirstEnergy’s disclosures of the H.B. 6 scandal in various SEC filings.<sup>19</sup> The audit covers the period from June 1, 2015 to the present and is examining whether FirstEnergy complied with FERC rules and regulations including:

- (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R Part 35;
- (2) service companies accounting, recordkeeping, and FERC Form No. 60 reporting requirements under 18 C.F.R. Parts 366, 367, and 369;
- (3) accounting and reporting requirements for franchised public utilities for their transactions with associated companies under 18 C.F.R. Parts 101 and 141; and
- (4) preservation of records requirements for holding companies and service companies under 18 C.F.R. Part 368.<sup>20</sup>

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<sup>19</sup> See, e.g., FirstEnergy Corp. 8-K (Oct. 29, 2020).

<sup>20</sup> FERC Docket No. FA19-1-000, Letter from L. Parkinson, Director, Officer of Enforcement, FERC (Feb. 6, 2019) (FERC Audit Letter).

FERC advised that all materials obtained by its Staff during the audit are placed in nonpublic files. FirstEnergy told its investors that the FERC audit includes “activities related to lobbying and governmental affairs activities concerning HB 6.”<sup>21</sup>

OCC’s fifth set of discovery included RPD-01-001, which requested documents provided by FirstEnergy to FERC and provided by FERC to FirstEnergy relating to the audit.<sup>22</sup> OCC later withdrew its request for documents provided by FERC to FirstEnergy, and limited the request to documents provided by FirstEnergy to FERC for the audit.<sup>23</sup> OCC also asked for additional information related to the FERC audits in its sixth set of discovery. INT-06-003 asked for the names of FirstEnergy employees involved in the audit). RPD-06-008 asked for documents related to information that FirstEnergy produced to FERC for FERC’s audit of FirstEnergy’s lobbying and governmental affairs activities related to H.B. 6).<sup>24</sup> The Attorney Examiner’s ruling denied OCC access to all of this information related to the FERC audit. OCC asks that the PUCO commissioners overturn these rulings.

The FirstEnergy Utilities refused to provide these documents, relying on the statutes cited in the FERC letter regarding confidentiality –16 U.S.C. 825 and 42 U.S.C. 16452. *These laws, however, prohibit only disclosure of utility information by a “member, officer, or employee of the Commission FERC.”* Neither statute applies to the present case.

The FirstEnergy Utilities also relied on C.F.R. 388.107 to establish confidentiality of the information OCC seeks. That regulation, however, only lists of records that are “exempt from

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<sup>21</sup> FirstEnergy Corp., Form 10-K at 125 (Feb. 18, 2021).

<sup>22</sup> Motion to Compel Responses to Fifth and Seventh Sets of Discovery and Request For Expedited Ruling on Motion to Compel and Motion for In-Camera Hearing by Office of the Ohio Consumers' Counsel (June 29, 2021).

<sup>23</sup> Letter from Maureen Willis to Gregory Price (August 30, 2021) (*See* Attachment B).

<sup>24</sup> Motion to Compel Responses to Sixth Set of Discovery and Request For Expedited Ruling on Motion to Compel and Motion for In-Camera Hearing by Office of the Ohio Consumers' Counsel (June 29, 2021).

disclosure.” It provides no guidance as to what party the disclosure exemption applies to. However, the title of the rule is “Commission records exempt from public disclosure.” OCC seeks from the FirstEnergy Utilities copies of documents they sent to FERC, not records that are in the control of FERC. As a result, the documents OCC seeks are not “Commission records.”

Based on the foregoing, OCC submits that the proper interpretation of the FERC confidentiality laws is that these provisions apply to the release of information by FERC, but not the release of information by a party that has provided information to FERC relating to a FERC audit. To hold otherwise would impair a proper PUCO investigation of FirstEnergy in Ohio.

The PUCO should take note that Attorney Examiner Price’s ruling conflicts with a recent U.S. District Judge’s ruling on discovery involving FirstEnergy Corp., the same law firm (Jones, Day) and the same facts as this case. On June 14, 2021, the U.S. District Court ordered FirstEnergy Corp. to produce to plaintiffs (shareholders) in the securities fraud case copies of all documents that FirstEnergy Corp. produced to FERC for the FERC audit.<sup>25</sup> Millions of Ohio consumers deserve no less from their state regulator, the PUCO.

The Court’s ruling protects FirstEnergy Corp.’s shareholders in the securities fraud case by giving them full access to all the information that FirstEnergy Corp. produced for the FERC audit. The PUCO Attorney Examiner’s ruling harms two million FirstEnergy consumers by denying them access to the same information. The PUCO Commissioners should protect FirstEnergy’s consumers by giving them the same information provided to FirstEnergy’s shareholders in the federal securities fraud case.

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<sup>25</sup> *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-03785 (S.D. Ohio), Opinion and Order at 6 (June 14, 2021).

**B. The discovery ruling represents a departure from past precedent.**

The discovery ruling also represents a departure from past precedent regarding how the PUCO interprets the confidentiality requirements that apply to regulatory agencies. Similar to the federal statutes providing for confidentiality of FERC records, Ohio has a statute providing for confidentiality of PUCO records. The Ohio statute states:

Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent. Whoever violates this section shall be disqualified from acting as agent, or acting in any other capacity under the appointment or employment of the commission.<sup>26</sup>

Both the federal and the Ohio statutes provide that the employees of the regulatory agency are charged with the duty of confidentiality. The federal laws prohibit the “members, officers and employees” of FERC from divulging confidential information,<sup>27</sup> while the Ohio law prohibits the “employees or agents” of the PUCO from divulging confidential information.

In the present case, the Attorney Examiner ruled that documents provided by FirstEnergy to FERC in connection with the audit are not subject to discovery.<sup>28</sup> Yet the PUCO routinely allows parties to obtain discovery of documents provided by a utility to PUCO Staff or an independent auditor in response to their data requests. And discovery is permitted during the conduct of the audit. Discovery is not held up until after the audit is complete. The PUCO has recognized that the privilege or confidentiality cloak is held by the Staff, and not the utility.

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<sup>26</sup> R.C. 4901.16.

<sup>27</sup> 16 U.S.C. § 825 (2012) and 42 U.S.C. § 16452 (2012).

<sup>28</sup> Tr. of Prehearing Conference of August 31, 2021 at 18 and 34-37.

Accordingly, the PUCO has routinely ordered the disclosure of documents provided to the auditor while the audit is underway.

A case in point is *In re Columbus Southern Power Co. Rate Case*,<sup>29</sup> where the utility refused to provide copies of its responses to staff data requests in a rate case. In granting OCC's motion to compel discovery, the Attorney Examiner noted:

Nothing in that section prevents the company from providing information to parties in a case. It is the examiner's understanding that it is common practice for a company to provide to the parties in a rate case a copy of its answers to staff data requests.<sup>30</sup>

And yet here, where similar statutes provide a cloak of confidentiality to documents FERC obtains during an audit, the Attorney Examiner extended the confidentiality cloak to cover the information provided by the utilities. The Attorney Examiner's ruling is inconsistent with the PUCO rulings routinely allowing discovery of documents and information that utilities provide to PUCO Staff or independent auditors during the course of the audit.

**C. An immediate determination is needed to prevent undue prejudice.**

This appeal should be certified to the PUCO. An "immediate determination" by the PUCO is needed to prevent undue prejudice<sup>31</sup> to OCC and Ohio consumers. Consumers may have been made to fund the illegal activities alleged in the criminal complaint through the rates they paid to FirstEnergy for electric utility service.

An immediate determination is needed to prevent the likelihood of further undue prejudice or expense to OCC and FirstEnergy's consumers, beyond the ongoing prejudice of FirstEnergy's delays of OCC's review. The FERC audit (which OCC's denied discovery related

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<sup>29</sup> Case No. 91-418-EL-AIR, Entry at ¶5 (Aug. 23, 1991).

<sup>30</sup> *Id.*

<sup>31</sup> O.A.C. 4901-1-15(B).

to) covers “activities related to lobbying and governmental affairs activities concerning HB 6”<sup>32</sup> – the same subject matter of this proceeding. There is no question, even given what little OCC discovery has been answered, that there is a real issue pertaining to the costs FirstEnergy Service Company allocated to the franchised public utilities in Ohio (and elsewhere). We know that FirstEnergy Service Company charged the FirstEnergy Ohio Utilities for H.B. 6-related political and charitable activities in 2017 and 2018, including for payments to Generation Now and Hardworking Ohioans.<sup>33</sup> We don’t know if that is the full extent of the political and charitable spending that was allocated to the Ohio FirstEnergy Utilities by FirstEnergy Service Company (or any other FirstEnergy affiliate).

Transactions between FirstEnergy Service Company and the franchised utilities are germane to the PUCO’s investigation here (and its investigation in the corporate separation proceeding). Allocation of expenditures by FirstEnergy Service Company to the Ohio FirstEnergy Utilities will be audited by FERC and that audit includes the period related to H.B.6. activities. It is highly likely that the documents FirstEnergy produced to FERC would be relevant to this proceeding.

This Appeal should be certified to the PUCO. An “immediate determination” by the PUCO is needed to prevent undue prejudice to OCC and Ohio’s consumers.

#### **IV. APPLICATION FOR REVIEW**

OCC asks the PUCO Commissioners to reverse PUCO Examiner Price’s August 31, 2021 ruling, under O.A.C. 4901-1-15(B) and (E). That ruling denied OCC’s discovery of information that FirstEnergy Corp. (the company that was charged with and admitted to a federal crime) provided to FERC in a House Bill 6-related audit. Unlike PUCO Attorney Examiner

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<sup>32</sup> FirstEnergy Corp., Form 10-K at 125 (Feb. 18, 2021).

<sup>33</sup> Deposition of Santino Fanelli at 129-137 (Mar. 9, 2021).

Price's ruling in favor of the FirstEnergy Utilities, a U.S. District Judge has ordered FirstEnergy Corp. to produce for plaintiffs (shareholders) in the securities fraud case copies of all documents that FirstEnergy Corp. produced to FERC for the FERC investigation.<sup>34</sup> Ohio consumers deserve no less from their state regulator, the PUCO. The PUCO's ruling is inconsistent with the federal judge's ruling allowing access to the documents that FirstEnergy Corp. produced to FERC.

In the Deferred Prosecution Agreement, FirstEnergy admitted that it paid \$60 million to Generation Now and other entities controlled by Householder. In exchange for payments from FirstEnergy Corp., Householder's Enterprise helped pass H.B. 6, described by an Enterprise member as a billion-collar "bailout" that saved from closure two failing nuclear power plants in Ohio affiliated with FirstEnergy Corp. The Enterprise then worked to corruptly ensure that H.B. 6 went into effect by defeating a ballot initiative.<sup>35</sup> (No FirstEnergy employees have been charged.)

FirstEnergy Corp.'s disclosures about its involvement with H.B. 6 led FERC to initiate an audit of FirstEnergy Corp.'s governmental and political spending.<sup>36</sup> OCC's discovery requests at issue in this interlocutory appeal sought information related to the FERC audit.

**A. The information OCC seeks is within the permissible scope of discovery and is necessary for OCC to protect Ohio consumers, under the Ohio Administrative Code.**

The FirstEnergy Utilities claim that a privilege exists under federal law that protects them from disclosing the documents it produced to FERC in the FERC audit. As the objecting

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<sup>34</sup> *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-03785 (S.D. Ohio), Opinion and Order at 6 (June 14, 2021).

<sup>35</sup> *Id.* at ¶9, Affidavit of Blane J. Wetzel in Support of a Criminal Complaint.

<sup>36</sup> FERC Docket No. FA19-1-000, Letter from L. Parkinson, Director, Officer of Enforcement, FERC (Feb. 6, 2019) (FERC Audit Letter).

party, they bear the burden to establish that a privilege exists that protects this information from discovery.<sup>37</sup> “The policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side’s industry or efforts.”<sup>38</sup>

The PUCO’s rules on discovery “do not create an additional field of combat to delay trials or to appropriate the Commission’s time and resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings.”<sup>39</sup> The rules are also intended to “minimize commission intervention in the discovery process.”<sup>40</sup> These rules are intended to facilitate full and reasonable discovery, consistent with the statutory discovery rights parties are afforded under R.C. 4903.082.

R.C. 4903.082 states that “[a]ll parties and intervenors shall be granted ample rights of discovery.” *See* OCC v. PUC, 111 Ohio St.3d 300, 2006-Ohio-5789. The discovery statute was effective in 1983 as part of a more comprehensive regulatory reform. R.C. 4903.082 was intended to protect discovery rights for parties in PUCO cases. Yet all these years after the 1983 reform law, the FirstEnergy Utilities impeding OCC’s discovery efforts. The PUCO should not allow the FirstEnergy Utilities to obstruct and delay this process.

O.A.C. 4901-1-16(B) provides for the scope of discovery:

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

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<sup>37</sup> State ex rel. Fisher v. Rose Chevrolet, Inc., (C.A. 1992), 82 Ohio App.3d 520, 523.

<sup>38</sup> In the Matter of the Investigation into the Perry Nuclear Power Plant, Case No. 85-521-EL-COI, Entry at 23. (Mar. 17, 1987).

<sup>39</sup> *Id.*, citing Penn Central Transportation Co. v. Armco Steel Corp. (C.P. 1971), 27 Ohio Misc. 76. (emphasis added).

<sup>40</sup> Ohio Admin. Code 4901-1-16(A).

sought would be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

The PUCO's 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.<sup>41</sup> Requests for production may elicit documents within the possession, custody, or control, of the party upon whom the discovery is served, under O.A.C. 4901-1-20.

OCC sought discovery of information that FirstEnergy produced to FERC for the FERC audit. This discovery seeks information that is relevant and is reasonably calculated to lead to the discovery of admissible evidence because the FERC audit covers FirstEnergy's governmental and political spending related to H.B. 6. This PUCO case is a review of "the political and charitable spending by the FirstEnergy Utilities in support of Am. Sub. H.B. 6 and the subsequent referendum effort." OCC's discovery satisfies the aforementioned standards in the Ohio Administrative Code.

**B. It was contrary to law and reason for the PUCO to deviate from its past precedent without a clear need and without explaining how its past precedent is in error.**

The PUCO failed to adhere to its own precedents regarding the confidentiality of information held by a regulatory agency. The Supreme Court has ruled that the PUCO should respect its own precedents. It is essential that the PUCO respect its previous decisions and not depart from them without a clear need. In *Cleveland Elec. Ilium. Co. v. Pub. Util. Comm.* the Supreme Court stated:

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<sup>41</sup> Ohio Consumers' Counsel v. Pub. Util. Comm., 111 Ohio St.3d 300, 2006-Ohio-5789, citing to Moskowitz v. Mt. Sinai Med. Ctr. (1994), 69 Ohio St.3d 638, 661 and Disciplinary Counsel v. O'Neill (1996), 75 Ohio St.3d 1479.

Although the Commission should be willing to change its position when the need therefore is clear and it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.<sup>42</sup>

The PUCO violated this principle by not following its past precedent where it has required utilities to produce in discovery documents the utilities have provided to PUCO Staff or to independent auditors hired by the PUCO. This creates a conflict in the PUCO's treatment of the confidentiality rules for regulatory agencies. The PUCO should address this conflict by following the long-standing rule that parties are entitled to discovery of documents that a utility provides to FERC Staff, just as parties are entitled to documents a utility provides to PUCO Staff. In the alternative, the PUCO must explain why its past rulings are in error.

The PUCO also violated this principle by not following the federal judge's ruling that required FirstEnergy Corp. to produce information to the securities fraud plaintiffs that FirstEnergy Corp. produced to FERC for the FERC audit.<sup>43</sup> The Attorney Examiner did not acknowledge the federal court ruling or try to distinguish it. In fact, the federal court ruling is a precedent directly on point that the Attorney Examiner should have followed.

The PUCO should take note that Attorney Examiner Price's ruling conflicts with a recent U.S. District Judge's ruling on discovery involving FirstEnergy Corp., the same law firm (Jones, Day) and the same facts as this case. On June 14, 2021, the U.S. District Court ordered FirstEnergy Corp. to produce to plaintiffs (shareholders) in the securities fraud case copies of all

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<sup>42</sup> 42 Ohio St.2d 403, 431 (1975).

<sup>43</sup> *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-03785 (S.D. Ohio), Opinion and Order at 6 (June 14, 2021).

documents that FirstEnergy Corp. produced to FERC for the FERC audit.<sup>44</sup> Millions of Ohio consumers deserve no less from their state regulator, the PUCO.

The Court's ruling protects FirstEnergy Corp.'s shareholders in the securities fraud case by giving them full access to all the information that FirstEnergy Corp. produced for the FERC audit. The PUCO Attorney Examiner's ruling harms two million FirstEnergy consumers by denying them access to the same information. The PUCO Commissioners should protect FirstEnergy's consumers by giving them the same information provided to FirstEnergy's shareholders in the federal securities fraud case.

**C. This case presents a new and novel question of law and it was unreasonable to interpret the law to deny OCC's motions to compel discovery to obtain documents that FirstEnergy produced for the FERC audit.**

The PUCO has broad authority to investigate public utilities under R.C. 4905.05, 4905.06, 4909.154 and Ohio Adm. Code 4901-1-12. Specifically, under R.C. 4905.06, the PUCO has "general supervision" over "all public utilities within its jurisdiction allowing the PUCO to "examine such public utilities" with respect to, among other things "*their compliance with all laws, orders of the commission.*" And the PUCO's jurisdiction also extends to "all other companies" (per R.C. 4905.05 including companies that are part of an electric utility holding company system) as to any matters that "may relate to the costs associated with the provision of utility service by public utilities in this state which are affiliated or associated with such companies."

The PUCO frequently relies on these statutes to obtain information from the parent companies in matters such as rate cases, where the parent company holds important information

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<sup>44</sup> *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-03785 (S.D. Ohio), Opinion and Order at 6 (June 14, 2021).

relevant to the utility's financial condition and its need for a rate increase. The PUCO also relies on these statutes when it must obtain information involving serious safety incidents, such as the 2003 FirstEnergy blackout or the 2002 incident involving a large opening in the reactor head at the Davis-Bessie nuclear plant. The PUCO also relies on these statutes in cases of great public interest, such as investigating the cost overruns for the nuclear plants constructed in Ohio. For that reason, the PUCO seemingly would want to interpret these jurisdictional statutes broadly to give itself full access to records that a utility produces to FERC in connection with a FERC audit, or to other agencies such as the SEC, NERC and the DOT. The Attorney Examiner's ruling creates a precedent that could block the PUCO's access to obtain important information when these other agencies are conducting their own investigations.

In the name of justice for Ohio consumers, the PUCO should use those powers to modify the Attorney Examiner's discovery ruling by granting OCC's motion to compel discovery regarding RPD-5-001, which seeks communications from FERC and copies of documents that FirstEnergy produced to FERC for FERC's audit of FirstEnergy's lobbying and governmental affairs activities related to H.B. 6, as well as the related information that OCC seeks in the sixth set of discovery.

**D. It was unreasonable for the Attorney Examiner to rule that he would reconsider his ruling after the FERC issues its audit report.**

The Attorney Examiner ruled that OCC could ask for reconsideration of his discovery ruling after FERC issues its audit report.<sup>45</sup> This ruling is unreasonable because FERC might not conclude its audit investigation and issue the audit report until after the present case is litigated and closed. It can be wondered whether, at such a delayed future time, the PUCO would again deny OCC's discovery request for reasons including the PUCO could decide to not reopen the

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<sup>45</sup> Tr. of Prehearing Conference of August 31, 2021 at 18 and 34-37.

case under O.A.C. 4901-1-34. But OCC – and the Ohioans we represent – are being denied our statutory discovery rights *now*.

R.C. 4903.082 states that “[a]ll parties and intervenors shall be granted ample rights of discovery.” See *OCC v. PUC*, 111 Ohio St.3d 300, 2006-Ohio-5789. The Attorney Examiner’s ruling is unreasonable in that it could deprive OCC of its right to this information if the FERC audit report is issued after the present case has concluded.

## **V. CONCLUSION**

OCC’s interlocutory appeal of Attorney Examiner Price’s August 31, 2021 ruling (denying part of an OCC motion to compel discovery responses from the FirstEnergy Utilities) meets the standard for granting interlocutory appeals. OCC’s appeal on behalf of millions of Ohio consumers should be certified to the PUCO and the PUCO should reverse the Attorney Examiner’s ruling. For consumer protection, the PUCO should reverse its Examiner’s ruling and not permit the FirstEnergy Utilities to thwart a thorough and proper PUCO investigation related to FirstEnergy Corp.’s criminal conduct.

Respectfully submitted,

Bruce Weston (#0016973)  
Ohio Consumers' Counsel

*/s/ Maureen R. Willis*

Maureen R. Willis (# 0020847)  
Senior Counsel  
Counsel of Record  
John Finnigan (#0018689)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

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(Willing to accept service by e-mail)

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Interlocutory Appeal, Request for Certification to the Commission, and Application for Review by Office of the Ohio Consumers' Counsel was provided electronically to the persons listed below this 7th day of September 2021.

*/s/Maureen R. Willis*  
Senior Counsel  
Assistant Consumers' Counsel

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

### **SERVICE LIST**

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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PREHEARING CONFERENCE

before Mr. Gregory Price, Ms. Megan Addison, and  
Ms. Jacky St. John, Attorney Examiners, at the Public  
Utilities Commission of Ohio, via Webex, called at  
10:01 a.m. on Tuesday, August 31, 2021.

- - -

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

- - -

1 APPEARANCES:

2 FirstEnergy Service Company  
3 By Mr. Brian Knipe  
4 76 South Main Street  
5 Akron, Ohio 44308

6 Jones Day  
7 By Ms. Michael R. Gladman  
8 325 John H. McConnell Boulevard, Suite 600  
9 Columbus, Ohio 43215

10 Jones Day  
11 By Mr. Ryan A. Doringo  
12 901 Lakeside Avenue East  
13 Cleveland, Ohio 44114

14 On behalf of the Ohio Edison Company, The  
15 Cleveland Electric Illuminating Company,  
16 and The Toledo Edison Company.

17 Bruce J. Weston, Ohio Consumers' Counsel  
18 By Ms. Maureen R. Willis,  
19 Senior Counsel  
20 and Mr. John Finnigan,  
21 Assistant Consumers' Counsel  
22 65 East State Street, Suite 700  
23 Columbus, Ohio 43215

24 On behalf of the Residential Customers of  
25 the Ohio Edison Company, The Cleveland  
Electric Illuminating Company, and The  
Toledo Edison Company.

Interstate Gas Supply, Inc.  
By Mr. Evan Betterton,  
Ms. Bethany Allen,  
Mr. Joseph Olikier,  
and Mr. Michael Nugent  
6100 Emerald Parkway  
Dublin, Ohio 43016

On behalf of the Interstate Gas Supply,  
Inc.

- - -

1 APPEARANCES: (Continued)

2           Kegler, Brown, Hill & Ritter Co., LPA  
3           By Mr. Robert Dove  
4           65 East State Street, Suite 1800  
5           Columbus, Ohio 43215

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

9           The Ohio Environmental Council  
10           By Ms. Miranda R. Leppla,  
11           Mr. Trent Dougherty,  
12           and Mr. Chris Tavenor  
13           1145 Chesapeake Avenue, Suite I  
14           Columbus, Ohio 43212

15                           On behalf of The Ohio Environmental  
16                           Council.

17           Carpenter Lipps & Leland LLP  
18           By Ms. Kimberly W. Bojko  
19           and Mr. Thomas Donadio  
20           280 North High Street  
21           280 Plaza Suite 1300  
22           Columbus, Ohio 43215

23                           On behalf of the Ohio Manufacturers'  
24                           Association Energy Group.

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

                          On behalf of the Industrial Energy Users  
                          of Ohio.

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

                          On behalf of the Ohio Energy Group.

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APPEARANCES: (Continued)

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

On behalf of the Citizens Utility Board  
of Ohio.

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

On behalf of the Staff of the PUCO.

- - -

1 Tuesday Morning Session,

2 August 31, 2021.

3 - - -

4 EXAMINER ST. JOHN: The Public Utilities  
5 Commission of Ohio calls for a prehearing conference  
6 at this time and place Case No. 20-1502-EL-UNC being  
7 in the Matter of the Review of the Political and  
8 Charitable Spending by Ohio Edison Company, The  
9 Cleveland Electric illuminating Company, and The  
10 Toledo Edison Company.

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

15 Let's begin by taking the appearances  
16 starting with the Companies.

17 MR. KNIPE: Good morning, your Honors.  
18 Appearing on behalf of The Ohio Edison Company, The  
19 Cleveland Electric Illuminating Company, and Toledo  
20 Edison Company, I am Brian Knipe, FirstEnergy Service  
21 Company, 76 South Main Street, Akron, Ohio 44308.  
22 Also appearing on behalf of the companies from the  
23 Jones Day law firm are Michael Gladman, 325 John H.  
24 McConnell Boulevard, Suite 600, Columbus, Ohio 43215  
25 and Ryan Doringo, North Point, 60 -- 901 Lakeside

1           So we think this request implicates  
2 documents that are not in our -- in the Companies'  
3 possession, custody, and control and that the scope  
4 of the request far exceeds the bounds of permissible  
5 discovery in this proceeding.

6           EXAMINER PRICE: Okay. We are going to  
7 go ahead and deny the motion to compel. We will let  
8 FERC proceed with their investigation in a  
9 confidential matter. If and when a public audit is  
10 released by FERC, we can revisit this issue at that  
11 time.

12           Next up is RPD-05-06 and that will be  
13 denied for the same reasons as INT-05-01.

14           Okay. RPD-05-07, Mr. Doringo, would you  
15 like to speak to this?

16           MR. DORINGO: Yes, thank you, your Honor.  
17 Going back to a point I just raised regarding  
18 possession, custody, or control, this request and  
19 several other ones that we are going to talk about  
20 following this go -- go to -- go to, you know, issues  
21 involving FirstEnergy Corp.'s Board of Directors.  
22 This one talks about the -- and other FirstEnergy  
23 Corp., you know, entities.

24           So this one talks about FirstEnergy  
25 Corp.'s internal audit department and -- and focuses

1 MS. WILLIS: 6-03, okay. 6-03 really was  
2 asking about information of the -- concerning the  
3 identity of the FirstEnergy employees that worked on  
4 the FERC audit. Unlike the previous discovery  
5 requests here we are asking merely information that's  
6 certainly not confidential. It's certainly not part  
7 of the FERC investigation, so we are just asking to  
8 identify those employees that are working on the FERC  
9 audit on behalf of FirstEnergy.

10 EXAMINER PRICE: Mr. Doringo.

11 MR. DORINGO: Thank you, your Honor. We  
12 don't see how this is relevant to the Companies'  
13 political and charitable spending in this case or  
14 likely -- or calculated to lead to admissible  
15 evidence when we are talking about an ongoing, you  
16 know, FERC investigation that we just, you know,  
17 recognize is protected from -- from disclosure.

18 I don't agree that this wouldn't reveal  
19 the -- any information that -- that is not conf --  
20 any not -- I don't agree this isn't confidential  
21 information is what I am trying to say. You know,  
22 who FERC is meeting with or has met with and, you  
23 know, the people that have responded to requests or  
24 otherwise communicated with Staff, I think that could  
25 reveal the direction of the investigation.

1           And again, we're also talking about  
2 information regarding every FirstEnergy Corp. entity,  
3 not just the Companies and FirstEnergy Corp. itself,  
4 that is subject to this FERC audit.

5           EXAMINER PRICE: Ms. Willis, would you be  
6 satisfied if we limited the scope of this request to  
7 employees of the Company or Service Company employees  
8 that allocate time to the Companies and we exclude  
9 counsel?

10           MS. WILLIS: Your Honor, yes, to the --  
11 although to the extent that it would involve  
12 FirstEnergy Corp. employees, yes, we would agree. We  
13 don't need to understand who -- you know, we know who  
14 the counsel are. We would like to know who is  
15 involved in the auditing and responding to FERC's  
16 audit requests; so, yes, we would agree to that as  
17 long as --

18           EXAMINER PRICE: I must not have been  
19 clear. I was saying if we limit it to employees of  
20 the FirstEnergy utilities or employees of the Service  
21 Companies that allocate time to FirstEnergy  
22 employees, would you be satisfied with this  
23 discovery -- with that response?

24           MS. WILLIS: If I understand you to  
25 exclude FirstEnergy Corp., I guess I would not.

1 Again, we want to -- the information we're seeking is  
2 who are the people that are -- actually know the  
3 information, who are the people that FERC is turning  
4 to, and who is FirstEnergy, the utilities and the  
5 Service Company, identifying as people with knowledge  
6 and expertise.

7 We are hoping that will lead us to  
8 potential employees to depose to find out more  
9 information about, you know, the -- how the -- how  
10 records are kept, how the Service Company is -- and  
11 the Service Company and the utilities allocate costs  
12 which are really very germane to this -- this issue  
13 and these cases and as well as the other  
14 investigation cases including corporate sep and the  
15 DCR case.

16 So I -- I understand your wanting to  
17 limit or offering a compromise. I'm just not willing  
18 to accept it because I think it excludes FirstEnergy  
19 Corp., although I don't even know who the FirstEnergy  
20 Corp. person or persons would be. I would imagine  
21 it's most FirstEnergy Service Company along with the  
22 employees but do not know that.

23 EXAMINER PRICE: Okay. We'll deny the  
24 motion to compel. We will allow FERC to continue its  
25 investigation without any potential disruptions by

1 the PUCO or people operating under a motion to compel  
2 from the PUCO. As I said earlier, if and when a  
3 final public audit report is issued, we can revisit  
4 this issue.

5 That takes us to RPD-06-03. Mr. Doringo,  
6 we have your request for communications including  
7 e-mail from one employee on a defined set of time and  
8 a defined set of materials. Would you care to  
9 address this?

10 MR. DORINGO: Yes, your Honor. The -- we  
11 do have one employee with a relatively limited amount  
12 of time, May 1, 2020, through the present. We  
13 believe though that these -- this request remains  
14 overbroad when, you know, we are including terms like  
15 Account 923 or Account 426.1, adjust or adjustments,  
16 reverse or reversal.

17 I think I understand what OCC is getting  
18 at here. But the way they are going about it I think  
19 is in the manner of a fishing expedition that's  
20 targeted at really this time period Mr. Fanelli's  
21 investigation, you know, relating to these issues,  
22 but I think the problem here is the scope of the  
23 requests, and I can just tell you we ran the numbers,  
24 would return about 20,000 documents just for  
25 Mr. Fanelli if we were to run these terms.

1 go farther than that.

2 EXAMINER PRICE: Okay. Ms. Willis, care  
3 to respond?

4 MS. WILLIS: No, your Honor, nothing to  
5 add.

6 EXAMINER PRICE: Thank you. Well, let's  
7 just be consistent with our previous rulings. We'll  
8 strike out misallocate, misallocation, allocate, and  
9 allocation, reverse or reversal, adjust or  
10 adjustments, and reclassify or reclassified and grant  
11 the motion to compel the remaining issues.

12 MS. WILLIS: Your Honor, with respect to  
13 the remaining RPD-06-08, we will concede consistent  
14 with your earlier rulings on the fifth set that we  
15 would expect your ruling to be consistent and are  
16 willing to take our punishment.

17 EXAMINER PRICE: Thank you. Thank you.  
18 At this time we are going to pause for a period.  
19 Actually let's not. Let's take -- turn our attention  
20 to the privilege log and allow Mr. Doringo to make  
21 any arguments he has -- before we begin the in camera  
22 review, let's let Mr. Doringo make any arguments he  
23 has regarding the privilege log. We'll then allow  
24 Ms. Willis to respond and then take a break while the  
25 Examiners review the actual documents.



## Office of the Ohio Consumers' Counsel

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August 30, 2021

Gregory A. Price, Attorney Examiner  
Public Utilities Commission of Ohio  
180 E. Broad Street  
Columbus, Ohio 43215

Re: Case No. 20-1502-EL-UNC

Dear Attorney Examiner Price:

This letter responds to your email instructing the parties to notify you of the remaining items in dispute regarding OCC's Motions to Compel for its Fifth, Sixth and Seventh Sets of Discovery. The remaining items in dispute are as follows:

### **Fifth Set of Discovery**

**INT-5-001** – seeks information related to FirstEnergy's SEC disclosure about H.B. 6 matters that it "is taking proactive steps to resolve a range of regulatory proceedings affecting its Ohio utilities by pursuing holistic and transparent discussions with key stakeholders." OCC agrees to limit this request to matters related to FirstEnergy's political and charitable spending in support of H.B. 6.

**RPD-5-001** – seeks communications from FERC and copies of documents that FirstEnergy produced to FERC for FERC's audit of FirstEnergy's lobbying and governmental affairs activities related to H.B. 6. OCC agrees to limit this request to copies of the documents that FirstEnergy produced to FERC.

**RPD-5-006** – seeks documents related to FirstEnergy's SEC disclosure about H.B. 6 matters that it "is taking proactive steps to resolve a range of regulatory proceedings affecting its Ohio utilities by pursuing holistic and transparent discussions with key stakeholders." OCC agrees to limit this request to matters related to FirstEnergy's political and charitable spending in support of H.B. 6.

**RPD-5-007** – seeks documents related to any communication by or among FirstEnergy directors, executives or employees relating to the possibility of FirstEnergy's Internal Audit department performing any audit relating to FirstEnergy's activities in connection with H.B. 6.

**RPD-5-008** – seeks documents related to FirstEnergy's SEC disclosure about H.B. 6 matters that it "has made significant changes to its approach to governmental affairs engagement and is limiting participation in the political process. This also includes ensuring that the disclosures around the company's political advocacy are more robust going forward so that it is clear what efforts the company appropriately supports."

Hon. Gregory A. Price  
August 30, 2021  
Page 2 of 4

**RPD-5-010** – seeks documents related to FirstEnergy’s SEC disclosure about H.B. 6 matters that an Independent Review Committee of the Board of Directors is overseeing various matters. OCC seeks documents provided to or produced by the Independent Review Committee related to political or charitable spending.

**RPD-5-011** – seeks documents provided to or produced by the Compliance Oversight Sub-Committee of the Audit Committee (as discussed in FirstEnergy’s SEC disclosure about H.B. 6 matters) related to political or charitable spending.

**RPD-5-012** – seeks documents provided to or produced by the FirstEnergy Audit Committee related to FirstEnergy’s activities relating to H.B. 6.

**Items requiring supplemental responses**

On August 6, 2021, the FirstEnergy Utilities filed a Motion to Leave to File a Supplemental Response to the September 15, 2020 Show Cause Entry. The Motion included a copy of the Deferred Prosecution Agreement (“DPA”) between the United States of America and FirstEnergy Corp. related to H.B. 6. The Motion seeks leave to supplement the Companies’ response to the show cause order to include amounts that ratepayers paid in pole attachment rates relating to a \$4.3 million payment under a “consulting agreement” between FirstEnergy Corp. and Sustainability Funding Alliance. The Motion attaches a proposed Supplemental Response, which states at pp. 1-2:

Prior to the filing of the DPA, the Companies and their representatives were unaware that the \$4.3 million payment in part constituted political spending in support of HB 6.

Now that the FirstEnergy Utilities admit that the \$4.3 million payment was political spending, they must provide supplemental responses to the following items:

**INT-5-002** – seeks information related to FirstEnergy’s SEC disclosure about H.B. 6 matters regarding the “consulting agreement” with Sustainability Funding Alliance.

**INT-5-003** – seeks information related to FirstEnergy’s SEC disclosure about H.B. 6 matters regarding charges for consulting agreements that were improperly allocated to the FirstEnergy Utilities.

**RPD-5-002** – seeks documents related to any communication between FirstEnergy and Sam Randazzo relating to (i) the PUCO’s elimination in November 2019 of the requirement that the FirstEnergy Utilities file a distribution rate case by May 31, 2024; (ii) FirstEnergy and the PUCO relating to the elimination of the rate case filing requirement.

**RPD-5-005** – seeks documents related to FirstEnergy’s SEC disclosure about H.B. 6 matters regarding the “consulting agreement” with Sustainability Funding Alliance.

Hon. Gregory A. Price  
August 30, 2021  
Page 3 of 4

**RPD-5-013** – seeks documents related to FirstEnergy’s SEC disclosure about H.B. 6 matters regarding charges for consulting agreements that were improperly allocated to the FirstEnergy Utilities.

**Sixth Set of Discovery**

**INT-6-003** – seeks information regarding the identity of FirstEnergy employees working on the FERC audit of FirstEnergy’s lobbying and governmental affairs activities related to H.B. 6.

**RPD-6-003** – seeks copies of all communications sent to or from Mr. Santino L. Fanelli from May 1, 2020 through the present date containing certain terms about allocating to the FirstEnergy Utilities the costs of FirstEnergy’s political and charitable spending related to H.B. 6.

**RPD-6-004** – seeks copies of all communications sent to or from Ms. Eileen Mikkelsen from May 1, 2020 through the present date containing certain terms about allocating to the FirstEnergy Utilities the costs of FirstEnergy’s political and charitable spending related to H.B. 6.

**RPD-6-005** – seeks copies of all communications sent to or from Mr. Art Richards from May 1, 2020 through the present date containing certain terms about allocating to the FirstEnergy Utilities the costs of FirstEnergy’s political and charitable spending related to H.B. 6.

**RPD-6-006**– seeks copies of all communications sent to or from Mr. Chuck Jones from May 1, 2020 through the present date containing certain terms about allocating to the FirstEnergy Utilities the costs of FirstEnergy’s political and charitable spending related to H.B. 6.

**RPD-6-008** – seeks documents related to information that FirstEnergy produced to FERC for FERC’s audit of FirstEnergy’s lobbying and governmental affairs activities related to H.B. 6.

**Items requiring supplemental responses**

**RPD-6-002** – seeks copies of internal prep documents associated with the investor relations call of February 16, 2021 that pertain to the discussion of misallocation of costs. (*See Deposition of Mr. Fanelli, Tr. 32.*)

**RPD-6-007** – seeks documents supplied to PUCO staff pertaining to vendors and services that were classified into the wrong accounts or for which there was inadequate documentation, as described during the FirstEnergy fourth quarter earnings call by Mr. Pappas. (*See Deposition of Mr. Fanelli, Tr. 167-169.*)

**RPD-6-009** – seeks documents relating to communications (including electronic communications) from Mr. Art Richards to Mr. Fanelli with respect to the misallocation involving Generation Now payments and Hardworking Ohioans payments. (*See Deposition of Mr. Fanelli, Tr. 276.*)

**RPD-6-012** – seeks copies of documents reviewed by Mr. Fanelli in preparing his affidavit attached to FirstEnergy’s response to the PUCO’s show cause order.

Hon. Gregory A. Price  
August 30, 2021  
Page 4 of 4

**RPD-6-013** – (referring to the Companies’ response to OCC INT 06-007, which seeks information about FirstEnergy’s communications with PUCO Staff regarding payments to Generation Now that were allocated to the FirstEnergy Utilities) seeks documents related to communications by or on behalf of the Companies pertaining to the allocation of 2017 payments and /or contributions by FirstEnergy Service Company to the FirstEnergy Ohio Utilities.

**RPD-6-014** – (referring to the Companies’ response to OCC INT 06-010, which asked for the identity of documents Mr. Fanelli reviewed as the basis for his conclusion that Rider DSE did not include any costs relating to payments to Generation Now or Hardworking Ohioans) seeks documents and communications by or on behalf of the Companies related to the Utilities’ review of the FirstEnergy Ohio Utilities’ riders to determine whether they contained any costs relating to Generation Now or Hardworking Ohioans.

**Seventh Set of Discovery** – no remaining items in dispute.

**Items requiring supplemental responses from earlier sets of discovery**

Based on the FirstEnergy Utilities’ admission that the \$4.3 million “consulting” payment was political spending, this may trigger the need for supplemental responses to various items in the FirstEnergy Utilities’ responses to OCC’s earlier sets of discovery.

Thank you for your consideration.

Respectfully yours,

/s/ Maureen R. Willis  
Maureen R. Willis (0020847)  
Counsel of Record

cc: All Parties of Record

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/7/2021 5:22:04 PM**

**in**

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

Summary: Request Interlocutory Appeal, Request for Certification to the PUCO Commissioners, and Application for Review by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.