



Office of the Ohio Consumers' Counsel

September 9, 2021

Ms. Tanowa Troupe
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RE: *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of FirstEnergy*, Case No. 20-1629-EL-RDR

Dear Ms. Troupe:

On August 26, 2021, the Office of the Ohio Consumers' Counsel ("OCC") filed a motion to compel discovery responses in this case. OCC mistakenly omitted to attach one of the discovery requests (and the response thereto) that is the subject of the motion to compel. To correct this inadvertent error, OCC is hereby filing the omitted discovery request (and the response thereto) – RPD-02-001.

If you have any questions, please contact me at: 614-466-1292 or Ambrosia.Wilson@occ.ohio.gov.

Thank you.

Sincerely,

/s/ Ambrosia E. Wilson
William Michael (0070921)
Counsel of Record
Ambrosia E. Wilson (0096598)
Assistant Consumers' Counsel

cc: Attorney Examiners, Parties of Record

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.)	

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

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 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.

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

RPD-02-001: On February 16, 2021, FirstEnergy filed a Form 8-K with the SEC disclosing an audit by FERC’s Division of Audits and Accounting. Please produce all documents reflecting (i) communications from FirstEnergy to FERC’s Division of Audits and Accounting relating to this audit.

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 to this Request because it seeks 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 business practices of FirstEnergy Corp. or other affiliates of the Companies. The Companies further object on the ground that the information requested is confidential, non-public, and protected from disclosure under the Federal Power Act, including 16 U.S.C § 825, 42 U.S.C § 16452(d), and FERC’s regulations, including 18 C.F.R. Part 388. Consistent with these statutes and regulations, FERC makes clear that its Audit process “is subject to the confidentiality provisions of [section 301 of the Federal Power Act]” and that “[d]ocuments and information that the Commission staff obtains during an audit, as well as all working papers developed, will be placed in nonpublic files.” See “Audit Authority – Electric Audit Authority” description at <https://www.ferc.gov/enforcement-legal/enforcement/audits>.

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

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 20-1629-EL-RDR

Summary: Correspondence Letter Attaching Discovery Response by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Wilson, Ambrosia E.