

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Distribution     )  
Modernization Rider of Ohio Edison Company,     ) Case No. 17-2474-EL-RDR  
The Cleveland Electric Illuminating Company,     )  
and The Toledo Edison Company                     )

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**REPLY TO PUCO STAFF'S OPPOSITION TO OCC'S SUBPOENA FOR DRAFT AUDIT  
REPORTS AND OTHER DOCUMENTS RELATED TO THE INVESTIGATION OF  
FIRSTENERGY  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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November 12, 2021

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**I. INTRODUCTION**

The PUCO Staff asks the PUCO to not sign OCC’s subpoena for records relating to a scheduled but never-filed auditor’s report in this case. OCC’s response to the PUCO Staff is that investigatory measures – such as the subpoena that OCC is asking the PUCO to sign – are an essential component of what would be a *real* PUCO investigation of FirstEnergy.

OCC’s request for a subpoena was prompted in part by shocking FirstEnergy text messages (that OCC obtained through an earlier subpoena) in which FirstEnergy’s former CEO Chuck Jones referenced the former PUCO Chair as “burning” the final audit report. Elsewhere, FirstEnergy Corp. has been charged with a federal crime related to the House Bill 6 scandal. Unfortunately for consumers, the legislature has not provided OCC with its own subpoena power, so OCC has to seek the signing of its subpoenas from the PUCO (where OCC’s subpoenas are regularly opposed by vested interests).

The PUCO Staff asserts that there is no “final” audit report for OCC to subpoena, so the PUCO should not sign it. And the PUCO Staff suggests that OCC’s use of a separate public

records request is a reason for the PUCO to not sign OCC's subpoena. The PUCO Staff is wrong on both counts.

OCC's subpoena (which the PUCO has yet to sign) is much broader than merely whether there is a draft final audit report from the PUCO's state-hired auditor (Oxford). Our requested subpoena includes a requirement for producing records containing any correspondence between the state-hired auditor and others such as the PUCO and FirstEnergy.

As to the PUCO Staff's claim that OCC's public records request is sufficient recourse, that is wrongly mixing the independent law for public records with the separate and distinct law for discovery in PUCO cases. Indeed, the Ohio Supreme Court just last month overturned a PUCO decision and admonished the PUCO for having denied OCC's discovery rights under law.<sup>1</sup>

## **II. BACKGROUND**

As background, OCC subpoenaed documents<sup>2</sup> from Oxford Advisors, the state-hired "third party monitor" first tasked with reviewing FirstEnergy's so-called distribution modernization rider.<sup>3</sup> Oxford was retained in 2018 by the PUCO as an "independent contractor" to produce, *inter alia*, a final report to be docketed with the PUCO 90 days after the termination of Rider DMR or its extension.<sup>4</sup> The PUCO ruled that any of Oxford's conclusions, results, and

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<sup>1</sup> *In re Application of FirstEnergy Advisors for Certification as a competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip. Op. 2021-Ohio-3630.

<sup>2</sup> OCC subpoenaed the final audit report and any draft versions of the report as well as all communications between Oxford Advisors and FirstEnergy and/or the PUCO Staff. OCC also asked that the PUCO Staff itself produce the documents for OCC.

<sup>3</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry (Jan. 24, 2018).

<sup>4</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry (Dec. 13, 2017) (Request for Proposal at 1) .

recommendations “may be examined by any participant to this proceeding.”<sup>5</sup> Oxford appears to have completed its work for the PUCO in early 2020, yet the case is ongoing. The PUCO, in response to OCC’s September 8, 2020 motions, found good cause to reopen the docket and ordered an additional review of the entire duration of the distribution modernization rider (conducted by another auditor selected by the PUCO, Daymark Advisors).<sup>6</sup>

As referenced above, the impetus for OCC’s subpoena was an outrageous text message released by FirstEnergy Corp. in response to an earlier OCC subpoena in the corporate separation audit case (and through a process for FirstEnergy to relinquish its claim of confidentiality). The text message is from former FirstEnergy CEO Chuck Jones to former FirstEnergy Senior VP Dennis Chack. The message says:

He [the former PUCO Chair] will get it done for us but cannot just jettison all process. Says the combination of overruling Staff and other Commissioners on decoupling, getting rid of SEET and **burning** the DMR final report has a lot of talk going on in the halls of the PUCO about does he work there or for us? He’ll move it as fast as he can. Better come up with a short term work around.<sup>7</sup> (See Attachment )

In the subpoena that OCC is asking the PUCO to sign (and that the PUCO Staff is opposing), OCC is seeking a copy of the so-called “burn[ed]” PUCO/Oxford final audit report *and other documents*.

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<sup>5</sup> *Id.* at ¶ 9.

<sup>6</sup> *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No 17-2474-EL-RDR, Entry (June 2, 2021).

<sup>7</sup> *In the Matter 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 4901:1-37*, Case No. 17-974-EL-UNC, Documents produced by FirstEnergy Corp. in response to OCC subpoena, Doc. No. 0000072 (March 4, 2020) (Emphasis added).

A final Oxford report was never docketed at the PUCO. To date, OCC and others have not been allowed to examine correspondence, notes, results, conclusions, or recommendations related to what would have been a final audit and/or the decision to stop working on the audit. By PUCO rule, the PUCO Staff is (conveniently) shielded from discovery. All that parties (and the public) are left with is the mid-term audit report that Oxford filed on June 14, 2019. But it would seem from paragraph 8 of Oxford's affidavit (filed with the PUCO Staff's opposition to OCC's subpoena) that state-hired Oxford would have been performing audit work under its state (PUCO) contract, after its mid-term report.

On February 26, 2020, former PUCO Chair Randazzo and other Commissioners announced a mystifying change of plans whereby state-hired Oxford's final audit report would *not* be filed. Instead, the case was dismissed and the record closed.<sup>8</sup> The Commissioners' ruling came despite its Staff's filed request for an extension of time to file Oxford's final report.<sup>9</sup>

The mid-term audit report from Oxford contained interesting information about the DMR money collected from consumers: “[d]ollars collected by OH Utilities, including dollars collected through Rider DMR, are contributed to the Regulated Money Pool” and “[b]y moving the Rider DMR funds into the Ohio Utilities Regulated Money Pool –other non-Ohio regulated companies have borrowing access to the Rider DMR funds.”<sup>10</sup> (More recently, the PUCO hired a

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<sup>8</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry (February 26, 2020).

<sup>9</sup> *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No 17-2474-EL-RDR, Entry (Feb. 18, 2020).

<sup>10</sup> *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No 17-2474-EL-RDR, Oxford Advisors Mid-Term Report at 17 (June 14, 2019).

new auditor, Daymark, to produce another audit report in this case spanning the entire duration of the distribution modernization rider.)<sup>11</sup>

It is said, through the PUCO Staff's reply to OCC's motion for a subpoena,<sup>12</sup> that there was no "final" audit report developed by Oxford. If anything, this statement leads to more questions – not fewer questions as the PUCO Staff suggests. Fittingly, OCC's requested subpoena is broader than just a request for a final audit report. It would include obtaining all communications between Oxford and FirstEnergy and/or the PUCO Staff. OCC's subpoena is designed to cut through the barriers of semantics and silence, toward obtaining answers, truth and justice.

Interestingly, the PUCO Staff's opposition to OCC's motion for a subpoena also relies on an affidavit from the state-hired auditor in which Oxford advises it was informed, in August 2019, that it would need to produce a final audit report.<sup>13</sup> But then Oxford states that it did not begin working on the final audit report until January 2020,<sup>14</sup> four months later. Again, the PUCO Staff's filing to oppose OCC's subpoena is short on answers and long on questions. These are questions that a *real* investigation into FirstEnergy should answer for the Ohio public. OCC's subpoena is a proper part of such an investigation's search for truth and justice.

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<sup>11</sup> *Id.* Entry (June 2, 2021).

<sup>12</sup> *Id.*, Memorandum Contra to the Motion for Subpoena for Audit Report and Related Documents at 1 (Nov. 4, 2021).

<sup>13</sup> Oxford Affidavit at para. 8.

<sup>14</sup> *Id.* at para. 9.

### III. ARGUMENT

#### A. For transparency and consumer protection, the PUCO should sign OCC's subpoena and reject the opposition of the PUCO Staff.

According to the PUCO Staff, the final audit report of Oxford “does not exist in draft form or otherwise.”<sup>15</sup> The Staff attaches the affidavit of Paul Corey, who appears to have led the Oxford team in its review of FirstEnergy’s Rider DMR.<sup>16</sup> Mr. Corey states that Oxford “did not prepare any report, in any form, including interim updates to the Commission Staff, regarding FirstEnergy’s Rider DMR subsequent to the filing of the mid-report on June 14, 2019.”<sup>17</sup> The PUCO Staff asserts that because these documents do not exist, a subpoena for their production would be a “useless act.”<sup>18</sup>

The PUCO Staff offers to produce “as a supplement to OCC’s public records request” “any records provided to staff by the auditor that had not previously been shared and are referenced in this [the auditor’s] affidavit.” The Staff caveats its promise to produce records by advising that its production may be limited to documents that “are not otherwise exempt from disclosure under R.C. 149.43(A)(1)(v).”<sup>19</sup>

Neither the asserted non-existence of a final audit report, nor the PUCO’s Staff’s offer to supplement the PUCO’s response to OCC’s ten-month old public records request, resolves the need for the PUCO to sign and issue OCC’s subpoena. First, ruling on OCC’s subpoena would not be “useless” because OCC seeks more than the final audit report of Oxford. OCC requested all documents containing communications between Oxford Advisors and FirstEnergy and/or the

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<sup>15</sup> *Id.* at 1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at ¶12.

<sup>18</sup> Memorandum Contra at 1.

<sup>19</sup> *Id.*



PUCO Staff. The PUCO Staff glosses over that point, in its effort to prevent the signing of OCC's subpoena. The documents should be produced under OCC's subpoena to Oxford.

Second, OCC is entitled under discovery law to the records in Oxford's possession. That law includes R.C. 4903.082 and O.A.C. 4901-1-16 et seq. And that law includes Ohio Supreme Court precedent as recently as last month, where the Court overturned a PUCO Order, and admonished the PUCO for having denied OCC (and NOPEC) discovery rights under law.<sup>20</sup> The auditor may produce additional or different documents than those that the PUCO Staff produces. Or Oxford may produce different versions of the documents that the PUCO Staff may or may not produce. Oxford may have documents that the PUCO Staff lacks.

Additionally, as discussed below, the PUCO Staff's offer to produce documents under Ohio's public records laws is improperly mixing the independent law and standards of Ohio public records with the independent law of discovery. The PUCO Staff's approach, purporting that the two separate laws provide an either/or remedy, is wrong. The PUCO should recognize that the laws do not limit OCC to one or the other. The PUCO Staff's offer to produce records that OCC seeks is not a substitute for Oxford producing documents in response to our subpoena.

The PUCO itself ruled that any of Oxford's conclusions, results, and recommendations "may be examined by any participant to this proceeding."<sup>21</sup> OCC is exercising its right under R.C. 4903.082 to discover and examine Oxford's work.

We could say a lot more here about the PUCO Staff's offer to supplement the PUCO's answer to OCC's public records request. That could include saying more about PUCO delay and

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<sup>20</sup> *In re Application of FirstEnergy Advisors for Certification as a competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip. Op. 2021-Ohio-3630.

<sup>21</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry (Dec. 13, 2017) at ¶ 9.

denial of OCC's public records requests. But, as stated, the PUCO Staff is leading the PUCO astray by mixing the independent law for public records into its subpoena opposition. OCC is prepared to address its separate rights regarding its public records requests, under the remedies outside the PUCO provided by Ohio's public records law.

**B. The PUCO's rules shield the PUCO Staff from discovery. An auditor hired by the PUCO who is an independent state contractor that has completed his audit is not protected from discovery, nor should he be. Alternatively, the PUCO has the authority to waive its rule for good cause– and should.**

The PUCO Staff asserts that Oxford is exempt from discovery. The PUCO Staff argues that “the Commission’s rules do not permit a subpoena to compel production of documents by a Commission-selected auditor.”<sup>22</sup> The PUCO Staff claims that Oxford was “operating as an extension of the Commission Staff and is entitled to the same exemption from discovery as applies to Staff.”<sup>23</sup>

But the plain language of the rules is controlling.<sup>24</sup> O.A.C. 4901-1-16(I) and 4901-1-25(D) protect “the commission staff” from discovery by third parties. The PUCO’s rules do not protect persons operating as an “extension” of the “commission staff.” Nor do the PUCO’s rules protect persons who no longer work for the PUCO. The PUCO Staff’s broad reading of the rules is not supportable for shielding the state-hired auditor from discovery in this investigation.

The PUCO’s rules do not protect Oxford Advisors (the auditor), the” third party monitor” who was originally tasked with reviewing FirstEnergy’s infamous distribution modernization rider.<sup>25</sup> Oxford was retained in 2018 by the PUCO as an “independent contractor” who was to

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<sup>22</sup> *Id.*

<sup>23</sup> Memorandum Contra at 2.

<sup>24</sup> *See, e.g., In re Columbus S. Power Co.*, 128 3d. 512, 520 (2011).

<sup>25</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry (Jan. 24, 2018).

produce, *inter alia*, a final report to be docketed with the Commission 90 days after the termination of Rider DMR or its extension.<sup>26</sup> Oxford Advisors is not “commission staff.” Even if considered an “extension” of the staff, that extension has been out of service long ago, when Oxford completed all of its contract work for the PUCO (and the PUCO, for some reason, did not rehire Oxford for the further auditing when the case was reopened for the House Bill 6 scandal). Oxford Advisors is not exempt from discovery. Nor should it be.

Under O.A.C. 4901-1-38(B), the PUCO may waive any requirement of its rules, for good cause, provided that the requirement is not mandated by statute. Here the PUCO should exercise its authority under this rule to allow a subpoena to be issued for documents in the Oxford’s possession. When the PUCO reopened this case and ordered a new audit, the PUCO found good cause under “the unique circumstances at this time” and given the “interests of both transparency and state policy.”<sup>27</sup> That same good cause dictates allowing OCC to seek discovery documents from Oxford, despite the PUCO Staff’s claim that discovery is not permissible on a PUCO-selected auditor.

The PUCO-referenced “unique circumstances at this time” involve what federal prosecutors have described as likely the largest bribery and money-laundering scheme that has “ever been perpetrated against the people of the state of Ohio.”<sup>28</sup> Later, under a Deferred Prosecution Agreement filed July 22, 2021, FirstEnergy Corp. was charged with (and admitted to the underlying facts of) the federal crime of honest services wire fraud in defrauding

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<sup>26</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry (Dec. 13, 2017) (Request for Proposal at 1).

<sup>27</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶22 (Dec 30, 2020).

<sup>28</sup> J. Carr Smyth and J. Seewer “Ohio Speaker, 4 others arrested in \$60M bribery case” AP News (July 21, 2020).

the public. The criminal charge relates to bribery or kickbacks to public officials for making \$60 million in dark money payments associated with tainted HB6.<sup>29</sup> According to the federal Deferred Prosecution Agreement and as suggested in FirstEnergy filings at the Securities and Exchange Commission, FirstEnergy had an arrangement with the former PUCO Chair (including a \$4.3 million payment to an entity owned by the former PUCO Chair) for various matters connected with furthering FirstEnergy's interests.<sup>30</sup> A FirstEnergy CEO text message, first partially disclosed in the Deferred Prosecution Agreement, referenced "burning" the final DMR report.

Given the magnitude of the information made public in the *United States v. FirstEnergy Corp.* Deferred Prosecution Agreement, the federal indictments and elsewhere, the PUCO should be conducting an earnest investigation into FirstEnergy activities that could have harmed utility consumers. But the PUCO Staff would have the PUCO deter a real investigation of FirstEnergy by denying OCC's subpoena – not to mention that in Case 17-974 the PUCO Staff instructed potential bidders for the audit contract that the project does *not* include the House Bill 6 scandal.<sup>31</sup> If the PUCO Staff doesn't want to pursue a full investigation of the FirstEnergy scandal, then it respectfully should not get in the way of those that do.

Ohio Civ.R. 1(B) states that procedural rules shall be construed to obtain just results. The extraordinary circumstances of this case, including where FirstEnergy Corp.'s former CEO

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<sup>29</sup> *United States of America v. FirstEnergy Corp.*, Cas No. 1 :21-cr-86, Deferred Prosecution Agreement at 16 (July 22, 2021).

<sup>30</sup> *Id.* at 17.

<sup>31</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, OCC/NOPEC Motion for Supplemental Audit, Attachment A (Nov. 5, 2021). (See Attachment).

texted that the former PUCO Chair purportedly “burned” the final audit report, demand this result.

Issuance of the subpoena is in keeping with the PUCO’s insistence upon acting “in a deliberate manner, based upon facts rather than speculation.”<sup>32</sup> And allowing full disclosure of such information would help achieve Chairperson French’s objective to provide “more transparency” “to lift the ‘black cloud’ of [the] HB 6 scandal.”<sup>33</sup>

Additionally, even if the PUCO’s rules currently prohibit OCC from seeking discovery from a PUCO-selected auditor (they don’t) the PUCO should exercise its authority under O.A.C. 4901-1-38(B) to waive its own rule and allow OCC’s discovery for the good cause shown. OCC seeks a production of documents, which according to the affidavit, are known and readily available. And the discovery OCC seeks is from a former PUCO (state) auditor performing state work, that appears to have completed its contract with the PUCO. Oxford’s audit is done, and OCC’s discovery cannot be said to interfere in any way with the ability of the PUCO Staff to discharge its responsibilities.

#### **IV. CONCLUSION**

In the interest of truth and justice for FirstEnergy’s two million utility consumers, the PUCO should issue OCC’s subpoena for information from the PUCO’s former auditor in this case.

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<sup>32</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶ 17 (Nov. 4, 2020).

<sup>33</sup> J. Pelzer, New PUCO Chair Jenifer French: more transparency needed to lift the ‘black cloud’ of the HB 6 scandal, Cleveland.com (May 18, 2021).

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply was served on the persons stated below via electric transmission this 12th day of November 2021.

*/s/ Maureen R. Willis*

Maureen R. Willis

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**Short Message Report**

Conversations: 1	Participants: 2
Total Messages: 1	Date Range: 3/3/2020

**Outline of Conversations**



**NODISPLAY** 1 message on 3/3/2020 • Charles Jones • Dennis Chack



**Messages in chronological order** (times are shown in GMT -04:00)

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**NODISPLAY**

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DC

**Dennis Chack**

3/3/2020, 11:23 AM

Any luck on talking with Sam on energy license we just received request for additional comments

## Short Message Report

Conversations: 1	Participants: 2
Total Messages: 5	Date Range: 3/4/2020

### Outline of Conversations

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**NODISPLAY** 5 messages on 3/4/2020 • Charles Jones • Dennis Chack

Messages in chronological order (times are shown in GMT -05:00)

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NODISPLAY

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- CJ **Charles Jones** 3/4/2020, 2:57 PM  
He will get it done for us but cannot just jettison all process. Says the combination of over ruling Staff and other Commissioners on decoupling, getting rid of SEET and burning the DMR final report has a lot of talk going on in the halls of PUCO about does he work there or for us? He'll move it as fast as he can. Better come up with a short term work around.
- DC **Dennis Chack** 3:05 PM  
Ok thanks for discussing with him. How are you feeling
- CJ **Charles Jones** 3:09 PM  
[REDACTED]  
[REDACTED] Stopped by Sam's today on my walk. He has friends down and has been busy but he was out doing some yard work. Walking about 3 miles a day right now. A little bored since I cant golf or even get in the pool. But better than sitting in Ohio. Weather has been beautiful last 3 days.
- DC **Dennis Chack** 3:14 PM  
It was not the best the days we were there
- CJ **Charles Jones** 3:14 PM  
I know. Pretty chilly and windy.

**From:** [Mccarter, Doris](#)  
**To:** ["Marie Fagan"](#)  
**Subject:** RE: RFP RA20-CA-X, questions  
**Date:** Friday, November 13, 2020 4:16:00 PM  
**Attachments:** [lmaae007.png](#)

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I am so sorry. I forgot. Actually, it has to be for the whole period because we want the entire corporate separation audit and Sage was only a subset of the corporate separation rules, with a heavy focus on Code of Conduct.

**Doris E. McCarter**

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**From:** Mccarter, Doris  
**Sent:** Friday, November 13, 2020 4:07 PM  
**To:** Marie Fagan <[marie@londoneconomics.com](mailto:marie@londoneconomics.com)>  
**Subject:** RE: RFP RA20-CA-X, questions

Hello.

The answers to your first and second questions are, "No." This is a standard corporate separation audit.  
The answer to the third question is that you do not need to audit the time period of the Sage audit, just the time period before and after it.

**Doris E. McCarter**

Grid Modernization and Retail Markets Division  
Rates and Analysis Department  
Public Utilities Commission of Ohio  
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Columbus, Ohio 43215  
[Doris.mccarter@puco.ohio.gov](mailto:Doris.mccarter@puco.ohio.gov)

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**From:** Marie Fagan <[marie@londoneconomics.com](mailto:marie@londoneconomics.com)>  
**Sent:** Friday, November 13, 2020 2:04 PM  
**To:** Mccarter, Doris <[doris.mccarter@puco.ohio.gov](mailto:doris.mccarter@puco.ohio.gov)>  
**Subject:** RFP RA20-CA-X, questions

Dear Ms. McCarter,  
London Economics is pleased to have the opportunity to bid on RFP RA20-CA-X. Related to that, we have a handful of questions:

- 1) Does the audit requested in RFP RA20-CA-X include the item in paragraph 12 of the Commission's Entry of November 4, 2020 in Case No. 17-974-EL-UNC? In other words, does it include an audit of the Distribution Modernization Rider ("DMR"), to examine whether FirstEnergy improperly used funds collected in the DMR?
- 2) Does the audit requested in RFP RA20-CA-X include the item in paragraph 15 of the Commission's Entry of November 4, 2020 in Case No. 17-974-RL-UNC? In other words, does it include an audit of whether the source of funds for political and charitable spending by the Companies in support of Am. Sub. H.B. 6 was from rates or charges paid by Ohio ratepayers?
- 3) The audit requested in RFP RA20-CA-X will cover the period November 1, 2016 through October 31, 2020; this period encompasses the period (June 28, 2017 through February 28, 2018) which was included in a previous audit of FirstEnergy's compliance with corporate separation rules performed by Sage Management Consultants, LLC and published May 14, 2018 in Case No. 17-0974-EL-UNC ("Sage Report"). Does audit requested in RFP RA20-CA-X include a detailed audit and re-examination of the time period already covered in the Sage Report? Or does the audit requested in RFP RA20-CA-X envision that the consultant will limit its activities with respect to the June 28, 2017- February 28, 2018 time period to reviewing and commenting on the Sage Report, and focus its detailed audit on the time periods before and after the Sage Report time period?

Many thanks,  
Marie Fagan



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*London Economics International, LLC ("LEI") is an economic and financial consulting company with two decades of experience advising both private and public entities in energy and infrastructure markets. LEI publishes bi-annual market reviews of all US and Canadian regional power markets available at [www.londoneconomicspress.com](http://www.londoneconomicspress.com).*

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**From:** [Mccarter, Doris](#)  
**To:** [Fieldman, Alyson](#)  
**Cc:** [Wiefling, Guler Ann](#); [Molter, Lindsey](#)  
**Subject:** RE: RFP Clarification Questions  
**Date:** Friday, November 20, 2020 9:30:00 AM

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Hello Everyone,

The Order language was just to give background around various other proceedings occurring at the PUCO. That text refers to another case. The audit that will be the subject of this case is a traditional corporate separation audit.

I need an overall cost (cap) from you. However, I will still need that broken down by specific task areas, hours per tasks, person/cost per hour per task. Such a breakdown informs me as to the level of effort going into the audit, the areas of effort, the competencies engaged in the areas of review and also your understanding of/approach to the audit.

The hearing costs can be delineated as a per hour charge, since it is unknown if a further proceeding will be needed. Please be certain to make it a separate section of your bid.

***Doris E. McCarter***

[Grid Modernization and Retail Markets Division](#)

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**From:** Fieldman, Alyson <Alyson.Fieldman@marcumllp.com>

**Sent:** Friday, November 20, 2020 8:36 AM

**To:** Mccarter, Doris <doris.mccarter@puco.ohio.gov>; Molter, Lindsey <Zee.Molter@puco.ohio.gov>

**Cc:** Wiefling, Guler Ann <Guler.Wiefling@marcumllp.com>

**Subject:** RFP Clarification Questions

Good morning, Ms. McCarter and Ms. Molter,

Marcum LLP will be submitting a proposal in response to the RFP that PUCO has issued as it relates to an audit / investigation of First Energy Corp. We understand from the RFP that one of the engagement's purposes will be to review the company's compliance with the Corporate Separation Rules adopted by PUCO.

Paragraph 15 of the order that PUCO issued on 11/4/2020 regarding this RFP, states that PUCO has "opened proceedings to review whether any political and charitable spending by the Companies in support of Am. Sub. H.B. 6 and the subsequent referendum effort was included, directly or indirectly, in any rates or charges paid by ratepayers in this state." The RFP, however, does not explicitly include this as an objective of the work to be undertaken by the selected auditor. Does PUCO wish the selected auditor to conduct tests in order

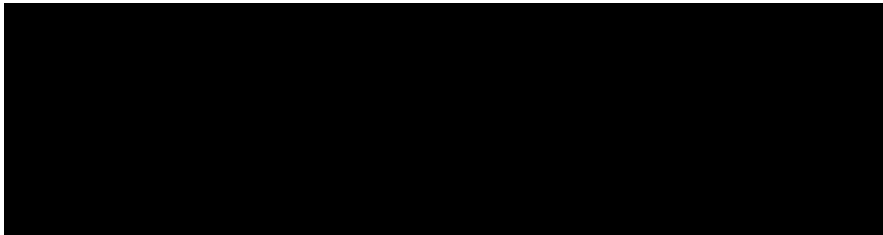
to determine whether such contributions were directly or indirectly paid by ratepayers?

Separately, the RFP on page 2 states that “the proposed costs shall be considered firm prices for performing the work described in the proposal.” Can you please clarify whether PUCO is asking for a fixed price for this engagement or whether it is asking for hourly rates by level of resource with such rates remaining constant for the duration of the engagement?

Thank you for your time and we look forward to your response.

Kind regards,  
Alyson

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**in**

**Case No(s). 17-2474-EL-RDR**

Summary: Reply Reply to PUCO Staff's Opposition to OCC's Subpoena for Draft Audit Reports and Other Documents Related to the Investigation of FirstEnergy by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.