

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**COMMENTS
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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I. INTRODUCTION

In the wake of what has been described as “the largest bribery, money-laundering scheme ever perpetrated against the people in the state of Ohio,”¹ the Public Utilities Commission of Ohio (Commission) initiated an audit in the above-captioned proceeding of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s (collectively, the FirstEnergy Utilities) corporate separation policies and practices and compliance with Ohio law. As more facts concerning the enactment of Am. Sub. H.B. 6 (H.B. 6) and other self-enriching schemes come to light, it has become clear that various FirstEnergy entities have abused their corporate structure to wield power at the expense of Ohio utility customers.

On October 29, 2020, FirstEnergy Corp., the corporate parent of the FirstEnergy Utilities, filed a Form 8-K with the United States Securities and Exchange Commission (SEC) reporting the

¹ The former United States Attorney for the Southern District of Ohio characterized the Am. Sub. H.B. 6 (H.B. 6) scandal as “likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio”. WSYX ABC 6, *U.S. Attorney Update on Arrest of Ohio House Speaker Larry Householder and Four Associates*, YOUTUBE (Streamed live on July 21, 2020) (statement starting at 00:48), <https://www.youtube.com/watch?v=mYTY9GUnHMM>.

termination of the company’s Chief Executive Officer, Chuck Jones, together with two other executives: Dennis M. Chack, Senior Vice President of Product Development, Marketing, and Branding; and Michael J. Dowling, Senior Vice President of External Affairs.² The Form 8-K further stated that, during the course of FirstEnergy Corp.’s internal investigation related to ongoing government investigations, the Independent Review Committee of the Board of Directors determined that each of the terminated executives violated certain FirstEnergy Corp. policies and its code of conduct.³

In response to FirstEnergy Corp.’s disclosures and various state and federal, civil, and criminal H.B. 6-related proceedings,⁴ the Commission stated: “the information supplied by FirstEnergy Corp. in the Form 8-K requires that we take additional action to ensure compliance by the Companies and its affiliates with the corporate separation provisions of R.C. 4928.17 and with the Companies’ Commission-approved corporate separation plans.”⁵ Accordingly, the Commission ordered a corporate separation audit in this proceeding, which is now one of four proceedings before the Commission related to H.B. 6 and potential unlawful behavior or misconduct of the FirstEnergy Utilities.⁶

² Entry at ¶ 16 (November 4, 2020); *see also* FirstEnergy Corp.’s Form 8-K Report (October 29, 2020).

³ Entry at ¶ 16 (November 4, 2020).

⁴ *See, e.g., United States v. Householder*, Case No. 1:20-MJ-00526 (S.D. Ohio); *State ex rel. Yost v. FirstEnergy Corp.*, Case No. 20-CV-006281, Complaint (September 23, 2020); *City of Columbus v. FirstEnergy Corp.*, Case No. 20-CV-107005, Complaint (October 27, 2020); *State ex rel. Yost v. Energy Harbor Corp.*, Case No. 20-CV-07386, Complaint (November 13, 2020); *Smith v. FirstEnergy Corp.*, Case No. 2:20-CV-03755, 2021 WL 496415, (S.D. Ohio)

⁵ Entry at ¶ 17 (November 4, 2020).

⁶ *See* Case No. 20-1502-EL-UNC (concerning the political and charitable spending of the H.B. 6 utilities in support of H.B. 6); Case No. 20-1629-EL-RDR (concerning unsupported transactions and misallocations through the Delivery Capital Recovery Rider, base rates, and other recovery mechanisms, resulting in \$6.6 million in unlawful charges to the FirstEnergy Utilities’ customers); and Case No. 17-2474-EL-UNC (concerning whether the Distribution Modernization Rider was only used for purposes established in the FirstEnergy Utilities’ Fourth Electric Security Plan and a supplemental audit of whether customers’ rates were impacted by expenses associated with the naming rights of FirstEnergy Stadium.).

On September 13, 2021, the Corporate Separation Audit Report of the FirstEnergy Utilities (Audit Report) was filed in the above-captioned proceeding. The Audit Report determined that the FirstEnergy Utilities *only* complied with 23 out of Ohio's 44 total corporate separation requirements that the auditor reviewed and analyzed.⁷ Disturbingly, the Audit Report stated that the auditor could not access the records of FirstEnergy's compliance officer in place during 2016-2020 (the approximate timeframe that the H.B. 6 bribery scheme occurred) because the individual no longer works for the company. The Audit Report further found the following: the FirstEnergy Utilities have no detailed processes or procedural documents addressing corporate separation compliance; the FirstEnergy Utilities have not conducted a corporate separation audit since 2014; the FirstEnergy Utilities have little visibility or understanding of what charges are being allocated to them from affiliates; and the FirstEnergy Utilities use Commission-approved tariffs to generate profits for some of their competitive affiliates. Despite these findings, the Audit Report shockingly concluded that it "did not find [any] major non-compliance with the requirements."⁸

On October 12, 2021, as revised on November 12, 2021, the Commission established a procedural schedule and directed stakeholders to file comments on the Audit Report by November 22, 2021 and December 13, 2021, respectively.⁹ In accordance with the Commission's directive, the Ohio Manufacturers' Association Energy Group (OMAEG) hereby files in its initial comments regarding the Audit Report.

It has become quite clear that the scope of the Audit Report is insufficient to protect customers. The Audit Report is incomplete as it relies solely on voluntary disclosures from the

⁷ Audit Report at 7 (this does not include the numerous transactions that the auditor could not review as it did not have access to certain documentation).

⁸ *Id.*

⁹ Entry at ¶ 24 (November 12, 2021).

FirstEnergy Utilities in the above-captioned proceeding and did not evaluate critical information that is available outside these proceedings. Despite the H.B. 6 bribery scheme and related disclosures being the impetus for this audit, e-mails from a Commission Staff member reveal that potential bidders were instructed that the audit would be a “standard corporate separation audit” and would *not* include matters addressed in other H.B. 6-related investigations, including FirstEnergy’s political and charitable spending in support of H.B. 6. Consequently, the Audit Report did not evaluate *any relevant* information available in the other H.B. 6-related audits or investigations, including those currently ongoing before the Commission. Further, the Audit Report did not evaluate records of FirstEnergy Corp.’s Chief Ethics Officer from the time the H.B. 6 bribery scheme was underway, even though this individual was responsible for ensuring compliance with Ohio’s corporate separation requirements. The Audit Report also did not evaluate recently released text messages regarding *ex parte* communications between FirstEnergy Corp.’s former CEO, who was also the President of the FirstEnergy Utilities, and the former Commission Chairman about an affiliate of the FirstEnergy Utilities and its pending application to become a competitive retail electric service (CRES) provider. Lastly, the auditor did not examine whether there are sufficient safeguards in place associated with the FirstEnergy Regulated Utility Money Pool to ensure compliance with Ohio’s corporate separation requirements.

The Audit Report and other information produced in H.B. 6-related proceedings clearly indicate that the FirstEnergy Utilities have violated numerous corporate separation requirements. The Commission should require a complete overhaul of the FirstEnergy Utilities’ corporate separation practices and procedures, which are severely lacking and facilitated the H.B. 6 bribery scheme. Furthermore, the FirstEnergy Utilities should be required to conduct regular corporate separation audits and be issued forfeitures for each violation cited in the Audit Report and other

non-compliance events. OMAEG urges the Commission to not limit its investigation to the Audit Report as a more thorough investigation of the FirstEnergy Utilities and their affiliates' books is likely to reveal the true extent of harm perpetrated against Ohio's utility customers and may prevent future harm from occurring. Lastly, given the severity of the violations and pattern of misconduct, the Commission should use its authority under R.C. 4928.18 and issue the FirstEnergy Utilities forfeitures for the numerous violations cited in the Audit Report and other non-compliance events, which will convey the message that the audit in the above-captioned proceeding is not perfunctory.

II. COMMENTS

A. The Scope of the Audit Report is Insufficient to Protect Customers and is Inconsistent with the Commission's Prior Directives.

The Commission initiated the audit in the above-captioned proceeding to determine whether the FirstEnergy Utilities complied with Ohio's corporate separation laws and regulations and the FirstEnergy Utilities' Commission-approved corporate separation plan. For several reasons, it is abundantly clear that the Audit Report cannot accurately conclude that the FirstEnergy Utilities did so.

First, the auditor claims that it could not access the records of FirstEnergy's compliance officer in place during 2016-2020 (approximately the same timeframe of the H.B. 6 bribery scheme) because the individual no longer works for the company and "[a]ssociated records were not identified per [] legal support, and backup personnel to that position were either also separated or there were none."¹⁰ After H.B. 6 state and federal corruption probes, FirstEnergy Corp. terminated various corporate officers. On October 29, 2021, U.S. District Court Judge Timothy

¹⁰ Audit Report at 1-2.

Black accepted guilty pleas from two of the individuals facing federal racketeering charges alongside former Ohio Speaker Larry Householder for their involvement in the H.B. 6 bribery scheme.¹¹ Hours later, FirstEnergy Corp. announced that “[d]uring the course of the Company’s investigation related to the ongoing government investigations, the existence of which was previously disclosed in the Company’s Form 10-Q for the period ended June 30, 2020,” it had terminated CEO Chuck Jones and two senior vice presidents for violating company policies and its code of conduct.¹² FirstEnergy Corp.’s Form 10-Q for the period ended June 30, 2020 disclosed details on the government’s investigation and subsequent litigation surrounding the investigation of H.B. 6.¹³ A week later FirstEnergy Corp. announced its “separation” from its Chief Ethics Officer without providing a reason for doing so.¹⁴

Based on the foregoing SEC disclosures, it is clear that the FirstEnergy Corp. terminated its former CEO and vice presidents for reasons related to the H.B. 6 bribery scheme. Given the close proximity of events, it is reasonable to assume that there is also a nexus between the H.B. 6 scheme and the separation of FirstEnergy Corp.’s former Chief Ethics Officer from the company. Per the Audit Report, “[t]he Chief Ethics Officer was designated as having ultimate responsibility for corporate separation compliance....”¹⁵ Accordingly, the records of FirstEnergy Corp.’s former Chief Ethics Officer from the time that FirstEnergy Corp. and others were carrying out the H.B. 6 bribery scheme are exceedingly relevant to the Commission’s H.B. 6-related investigation of the

¹¹ See *United States v. Cespedes*, Plea Agreement, Case No. 1:20-CR-77 (SD. Ohio October 29, 2020); *United States v. Longstreth*, Plea Agreement, Case No. 1:20-CR-77 (SD. Ohio October 29, 2020).

¹² FirstEnergy Corp.’s Form 8-K Report (October 29, 2020), <https://sec.report/Document/0001193125-20-281617>.

¹³ FirstEnergy Corp.’s Form 10-Q Report (August 17, 2020), <https://fintel.io/doc/sec-fe-10q-firstenergy-2020-august-17-18496>.

¹⁴ FirstEnergy Corp.’s Form 8-K Report (November 8, 2020), <https://sec.report/Document/0001193125-20-288458/>.

¹⁵ Audit Report at 32.

FirstEnergy Utilities. The fact that an employee is no longer employed is nonconsequential. The auditor should have insisted on obtaining the missing records, especially those concerning the employees' violations of company policies and the code of conduct, including those records of the Chief Ethics Officer. Why the FirstEnergy Utilities did not retrieve former employees' records, especially that of the person responsible for compliance with Ohio law, the Commission's rules, and the FirstEnergy Utilities' corporate separation plan for an audit of such, and turn them over to the auditor is a mystery. And why the auditor and Staff did not insist on such during the course of this audit is mind boggling. Even more troublesome is the conclusions that the auditor reached without obtaining such information.

Second, the Audit Report completely fails to address FirstEnergy Corp.'s H.B. 6-related internal investigation, which resulted in the termination of certain corporate officers and prompted the Commission to initiate the corporate separation audit of the FirstEnergy Utilities in the first place.¹⁶ On October 12, 2021, the Commission issued an Entry in the above-captioned granting FirstEnergy Corp.'s motion to quash a subpoena that sought a copy of the internal investigation report that resulted in the termination of FirstEnergy Corp.'s former CEO Chuck Jones and two former FirstEnergy Corp. vice presidents.¹⁷ The Commission granted FirstEnergy Corp.'s motion upon finding that the report was protected from disclosure by attorney-client privilege and the work product doctrine and that it had not been demonstrated that the information contained in the report is relevant to the above-captioned proceeding.¹⁸ Given the surrounding events, FirstEnergy Corp.'s disclosures to the SEC regarding its internal H.B. 6 investigation, and the Commission's

¹⁶ Entry at ¶ 17 (November 4, 2020) ("The information supplied by FirstEnergy Corp. in the Form 8-K requires that we take additional action to ensure compliance by the Companies and its affiliates with the corporate separation provisions of R.C. 4928.17 and with the Companies' Commission-approved corporate separation plans."¹⁶

¹⁷ Entry at ¶ 20 (October 12, 2021).

¹⁸ *Id.* at ¶ 1.

statement that “the information supplied by FirstEnergy Corp. in the Form 8-K requires that we take additional action to ensure compliance by the Companies...,”¹⁹ it is unclear why such records were “not identified” as being relevant and provided to the auditor or the parties. Moreover, while the Commission may have interpreted that the internal investigation report itself is a communication that is protected from disclosure, that does not mean the underlying facts or information in the internal investigation report are privileged and protected from disclosure.²⁰ Nowhere in the Audit Report does it examine exactly why FirstEnergy Corp. terminated its corporate officers or how these events affected the FirstEnergy Utilities’ compliance with Ohio’s corporate separation laws. Again, the Commission initiated the audit in the above-captioned proceeding largely because of FirstEnergy Corp.’s disclosures to the SEC that it had terminated officers due to the results of an internal investigation related to the H.B. 6 bribery scheme. The Commission specifically stated: “[t]he Commission believes that the information supplied by FirstEnergy Corp. in the Form 8-K requires that we take additional action to ensure compliance by the Companies and their affiliates with the corporate separation provisions....”²¹ Accordingly, any audit or investigation of the FirstEnergy Utilities that does not account for such information contained in the internal investigation report is incomplete, inconsistent with the Commission’s prior directives in this proceeding, and wholly inadequate to protect customers. Furthermore, it has since been revealed that this investigatory report has been made public by another public utilities commission.²²

¹⁹ Entry at ¶ 17 (November 4, 2020).

²⁰ See *Plogger v. Myers*, 2017-Ohio-8229, ¶ 9, 100 N.E.3d 104, 106 (citing *Upjohn Co. v. United States*, 449 U.S. 383, 395, 101 S. Ct. 677, 685, 66 L. Ed. 2d 584 (1981)).

²¹ Entry at ¶ 1 (November 4, 2020).

²² See Petition of the Maryland Office of People’s Counsel to Investigate the Future of FirstEnergy’s Relationship with Potomac Edison in Light of Recent Events. MD. PUC Case No. 9667, Order No. 89990 (November 18, 2021).

Third, the Audit Report cannot accurately conclude that the FirstEnergy Utilities complied with Ohio’s corporate separation laws because it did not evaluate *any* relevant information made available through H.B. 6-related proceedings and investigations, including those pending before the Commission. It is now known that a Staff member responsible for managing the RFP process instructed potential bidders, including the auditor, that the audit in the above-referenced proceeding would be a “standard corporate separation audit” and would *not* include matters addressed in other H.B. 6-related investigations, including FirstEnergy’s political and charitable spending in support of H.B. 6.²³ It is unclear why a Staff member would make such statements regarding an investigation into the FirstEnergy Utilities’ corporate separation policies and practices when the fallout from the H.B. 6 was the impetus for the audit in the above-referenced proceeding and when the compliance issues under review have to do with affiliate abuses and inappropriate sharing of information and resources among affiliated companies, such as those alleged in the H.B. 6 scandal. The Commission itself tied the audit to the H.B. 6 investigation. It stated that the corporate separation audit was to include an “*examination of the time period leading up to the passage of Am. Sub. H.B. 6 and the subsequent referendum.*”²⁴

The Audit Report even recognized the deficiencies and limitations of the audit:

The findings in this audit are based *solely* on the information and documents produced by FirstEnergy for Daymark via data requests and interviews associated with the audit. While information or documents produced in response to other audits or investigation may be relevant to evaluating whether FirstEnergy’s conduct in a particular situation was a violation of the laws and rules governing corporate separation, they were not evaluated as part of this audit.²⁵

²³ See Attachment A.

²⁴ Entry at ¶ 1 (November 4, 2020) (emphasis).

²⁵ Audit Report at 1 (emphasis added).

Clearly, the FirstEnergy Utilities had a great deal of influence over the scope of the Audit Report because the entire report is solely based on information the FirstEnergy Utilities chose to disclose at the time. It is illogical to allow the FirstEnergy Utilities to “investigate themselves” in a proceeding before the Commission when their corporate parent has admitted to participating in the H.B. 6 bribery scheme, which included a \$4.3 million bribe to the former Chair of the Commission.²⁶

Moreover, the statement in the Audit Report demonstrates that the auditor treated the above-captioned proceeding in a vacuum and did not consider how relevant information made available through other proceedings affected the FirstEnergy Utilities’ compliance with Ohio’s corporate separation laws. For example, in the Commission’s H.B. 6-related audit of the Delivery Capital Recovery Rider (Rider DCR), the auditor determined that several millions of dollars in vendor payments were misallocated to the FirstEnergy Utilities, including payments from FirstEnergy Corp. and FirstEnergy Service Company to dark money groups that participated in the H.B. 6 bribery scheme as well as payments to the former Commission Chair’s consulting companies.²⁷ Such payments likely constitute corporate separation violations because FirstEnergy Corp. acted to enact subsidies for its subsidiary-owned nuclear plants and improperly charged the costs associated with enacting H.B. 6 and other favorable laws, as well as favorable regulatory treatment by the Commission, to the FirstEnergy Utilities’ customers. However, despite being highly relevant to the Commission’s inquiry and Ohio’s corporate separation laws, these transactions were not considered whatsoever in the Audit Report. As discussed further below, the Audit Report also did not evaluate the impropriety concerning favorable regulatory treatment by

²⁶ FirstEnergy Corp. Deferred Prosecution Agreement, Case No. 1:21-CR-86 (S.D. Ohio July 20, 2021).

²⁷ Audit Report at 27.

the Commission Chair for a FirstEnergy Utilities' affiliate, Suvon's (FirstEnergy Advisors), regarding the affiliate's application to provide CRES services. This impropriety was brought to light through recently released text messages.

Finally, the Audit Report did not examine whether there are sufficient safeguards in place associated with the "FirstEnergy Regulated Utility Money Pool" to ensure compliance with Ohio's corporate separation laws. The FirstEnergy Regulated Utility Money Pool was created by an agreement between the FirstEnergy Utilities and other FirstEnergy Corp. regulated affiliates and "allows the regulated companies to borrow from each other, and from the FirstEnergy Corp. to meet their short-term working capital needs."²⁸ FESC, an affiliate of the FirstEnergy Utilities, that was implicated in the H.B. 6 bribery scheme, is the administer of the FirstEnergy Regulated Utility Money Pool.²⁹ Once funds are collected from customers of the FirstEnergy Utilities and placed in the Pool, it appears that there is no system in place to identify or track funds associated with a specific recovery mechanism.³⁰ Non-Ohio regulated subsidiaries of FirstEnergy Corp. have the ability to borrow from the FirstEnergy Regulated Utility Money Pool to fund their expenditures,³¹ and funds from the Pool were used to pay dividends to FirstEnergy Corp.³² The Audit Report also did not examine whether there are sufficient systems in place to prevent regulated affiliates of the FirstEnergy Utilities from borrowing from or otherwise gaining a competitive advantage from

²⁸ See *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, Midterm Audit Report at 16 (June 14, 2019).

²⁹ *Id.*; Case No. 1:21-CR-86 (S.D. Ohio July 20, 2021) ("Between 2017 and March 2020, FirstEnergy Services paid more than \$59 million...to Generation Now- a purported 501(C)(4), which FirstEnergy Corp. knew was operated for the benefit of and controlled by [former Ohio House Speaker Larry Householder], upon its inception in early 2017.")

³⁰ See Supplemental Response of the FirstEnergy Utilities to OCC RFA-04-05 (May 13, 2021) (Attachment C).

³¹ See Supplemental Response of the FirstEnergy Utilities to OCC RFA-04-06 (May 13, 2021) (Attachment C).

³² See Supplemental Response of the FirstEnergy Utilities to OCC RFA-04-08 (May 13, 2021) (Attachment C).

access to such funds or to prevent funds collected from the customers of the regulated FirstEnergy Utilities from being used in ways that violate Ohio's corporate separation requirements. Consequently, there is a possibility, until demonstrated otherwise, that funds collected from customers of the regulated FirstEnergy Utilities are being used for purposes that do not adhere to Ohio's corporate separation laws. This is particularly true given that the administrator of the FirstEnergy Regulated Utility Money Pool, FESC, committed crimes that involved misallocating funds to the FirstEnergy Utilities and the Audit Report's findings that the FirstEnergy Utilities have extremely weak corporation separation safeguards in place.

Despite admitting its deficiencies and limitations, the Audit Report makes findings and conclusions regarding the FirstEnergy Utilities' overall compliance with the corporate separation rules, its plan, and Ohio law. For the foregoing reasons, the Commission should formally acknowledge the deficiencies in the Audit Report, order a supplemental audit to account for these deficiencies, and take further actions to protect the FirstEnergy Utilities' customers as set forth herein.

B. The FirstEnergy Utilities Have Violated Ohio's Corporate Separation Requirements.

The Commission should reject the Audit Report's conclusion that the FirstEnergy Utilities have not violated **any major** corporate separation requirements because such a conclusion is inconsistent with the Audit Report itself and other relevant information produced in H.B. 6-related proceedings, and defies logic as a violation of a rule is still a violation.³³

The purpose of Ohio's corporate separation requirements are to "create competitive equality, prevent unfair competitive advantage, prohibit the abuse of market and to effectuate the policy of

³³ Audit Report at 7.

the state of Ohio...”³⁴ including “avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa....”³⁵ As previously mentioned, only reviewing the limited documents and data provided by the FirstEnergy Utilities to the auditor, the Audit Report found that the FirstEnergy Utilities only complied with around half of Ohio’s 44 total corporate separation requirements,³⁶ which means that they violated approximately half of the Commission’s rules. The violations need to be recognized as violations and the FirstEnergy Utilities must be held accountable for the violations. Additionally, the blatant disregard for the Commission’s rules and the pattern of non-compliance should not be deemed as “minor,” as the Audit Report suggested. In fact, the lack of adequate corporate separation policies and practices and brazen disregard for the rules allowed the FirstEnergy Utilities to be used as a vehicle for corruption at the expense of their customers.

For example, the Audit Report stated: “Ohio Company staff have little visibility into what is being charged to them” and “Ohio Company staff should be made aware of and understand all charges that are being allocated to them.”³⁷ Through the Commission’s H.B. 6-related audit of the FirstEnergy Utilities’ Rider DCR, it is now known that the FirstEnergy Utilities improperly charged customers at least \$6.6 million for costs of improper transactions over the course of a decade including: (1) \$2.4 million through base distribution rates; (2) \$4.15 million through the Demand Side Management and Energy Efficiency rider (Rider DSE); and (3) \$82,850 through

³⁴ Ohio Adm. Code 4901:1-37-02.

³⁵ R.C. 4928.02(H).

³⁶ Audit Report at 7.

³⁷ *Id.* at 14.

pole attachment rates.³⁸ In addition, the Rider DCR audit revealed that vendor payments were misallocated to the FirstEnergy Utilities from FirstEnergy Service Company (FESC), including payments to dark money groups that participated in the H.B. 6 bribery scheme as well as payments to the former Commission Chair’s consulting companies.³⁹

The now infamous H.B. 6 included \$1.1 billion in nuclear subsidies for the FirstEnergy Utilities’ former affiliate, FirstEnergy Solutions (now Energy Harbor).⁴⁰ As explained above, FirstEnergy Corp. admitted to misallocating funds to the regulated, noncompetitive FirstEnergy Utilities in order to subsidize the FirstEnergy Utilities’ competitive affiliate, FirstEnergy Solutions. This is a flagrant violation of Ohio’s corporate separation requirements, which expressly prohibit this sort of cross-subsidization.⁴¹ In fact, the Audit Report even states that an example of a cross-subsidy might be, “[t]he competitive FirstEnergy companies having some of their costs subsidized by the rest of the company, *especially the regulated utilities*, in ways that enhance their competitiveness.”⁴²

Also of concern is the Commission’s April 22, 2020 approval of Suvon LLC, d/b/a FirstEnergy Advisors, an unregulated affiliate of the FirstEnergy Utilities, to operate as a CRES provider.⁴³ In a 7-0 decision on October 14, 2021, the Supreme Court of Ohio ruled that the Commission unlawfully approved FirstEnergy Advisors’ application for CRES certification.⁴⁴

³⁸ Rider DCR Audit Report Expanded Scope at 5.

³⁹ *Id.* at 27.

⁴⁰ R.C. 3706.46 (Amended by House Bill 12, 134th General Assembly on June 30, 2021).

⁴¹ R.C. 4928.02(H); Ohio Adm. Code 4901:1-3704(A)(3).

⁴² Audit Report at 34 (emphasis added).

⁴³ *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Finding and Order at ¶ 1 (April 22, 2020).

⁴⁴ *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630, ¶ 45.

The Court determined that despite objections about FirstEnergy Advisors’ relationship with its parent company, “PUCO granted the certification requested, issuing a barebones order that offered no explanation as to how FirstEnergy Advisors met the applicable legal requirements.”⁴⁵ Accordingly, the Court remanded the case to the Commission to determine whether FirstEnergy Advisors can comply with all applicable legal requirements, including the Commission’s corporate separation rules, before certifying the company.⁴⁶ On November 2, 2021, FirstEnergy Advisors filed a motion with the Commission to withdraw its certification,⁴⁷ which the Commission granted shortly thereafter.⁴⁸ Recently released text messages from March 2020 suggest that FirstEnergy Corp.’s then CEO Chuck Jones (who was also President of the FirstEnergy Utilities) and former Commission Chairman Sam Randazzo were communicating about FirstEnergy Advisors’ pending certificate.⁴⁹ More specifically, Dennis Chack, a former FirstEnergy Corp. executive, asked Chuck Jones, “[a]ny luck on talking with Sam on energy license we just received request for additional comments.”⁵⁰ To which Chuck Jones replied:

*He will get it done it 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 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.*⁵¹

⁴⁵ *Id.* at ¶ 3.

⁴⁶ *Id.* at ¶ 4.

⁴⁷ *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, FirstEnergy Advisors’ Motion at 1 (November 2, 2021).

⁴⁸ *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Order on Remand at ¶ 14 (November 3, 2021).

⁴⁹ *See* Attachment B.

⁵⁰ *Id.*

⁵¹ *Id.* (emphasis added).

As explained above, FirstEnergy Corp. has admitted to misallocating funds to its regulated utilities to bribe the former Commission Chairman.⁵² The foregoing text message exchange suggests that as part of the arrangement, the former Commission Chairman may have acted to approve the FirstEnergy Utilities' unregulated affiliate's application for certification to provide CRES services. If this is true, then again, it would seem that FirstEnergy Corp. used its regulated utilities to gain a competitive advantage in violation of Ohio's corporate separation laws (among other laws). While the Commission rescinded FirstEnergy Advisors' CRES certification,⁵³ FirstEnergy Advisors' motion to rescind its CRES certification application states: "FirstEnergy Advisors intends to file a new certification application in the near future."⁵⁴ Until all of the investigations concerning the FirstEnergy Utilities and their affiliates are resolved, OMAEG urges that the Commission not authorize FirstEnergy Advisors to provide CRES services in Ohio. Moreover, it is imperative that the Commission initiate an independent investigation of the communications and circumstances surrounding FirstEnergy Advisors' CRES certification.

In addition to the foregoing concerns, the Audit Report found instances of the FirstEnergy Utilities and affiliated entities' non-compliance with Ohio corporate separation laws. FirstEnergy Products (FEP) and FirstEnergy Home (FEH) are affiliates of the FirstEnergy Utilities. FEP offers non-electric products to customers of the FirstEnergy Utilities through a Commission-approved

⁵² See also the FirstEnergy Utilities' Response to IGS-INT-05-001 (stating that portions of payments made to the former Commission Chair's consulting company between 2014 and 2020 were allocated to the FirstEnergy Utilities) (Attachment D).

⁵³ *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, Order on Remand at ¶ 11 (November 3, 2021).

⁵⁴ *In the Matter of the Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, Case No. 20-103-EL-AGG, FirstEnergy Advisors' Motion at 6 (November 2, 2021).

tariff.⁵⁵ The Audit Report determined that FEP’s “net profits are not passed through to the customers of the regulated utilities who are paying for the billing services used by FEP in their rates”⁵⁶ and recommended implementing a profit-sharing mechanism to benefit customers. OMAEG supports this recommendation. While FEP offers products to customers of the regulated FirstEnergy Utilities, FEH is unregulated and offers some of the same products to customers throughout Ohio.⁵⁷ The Audit Report concluded that there is not sufficient separation between FEP and FEH and that FEP is gaining a competitive advantage by marketing its products with the utilities’ name, which is prohibited under Ohio’s corporate separation rules.⁵⁸ OMAEG recommends that FEP and FEH be required to take corrective actions to ensure compliance with the applicable corporate separation requirements cited in the Audit Report.

The foregoing misallocated funds and corporate separation violations may have been detected sooner, *if* the FirstEnergy Utilities had adequate safeguards in place. However, as stated in the Audit Report, the FirstEnergy Utilities “have *no* detailed processes or procedural documents addressing corporate separation compliance.”⁵⁹ While the FirstEnergy Utilities are required to maintain a Cost Allocation Manual (CAM) under Ohio Adm. Code 4901:1-37-08 to prevent cross-subsidization by the FirstEnergy Utilities, employees of the FirstEnergy Utilities play little to no part in maintaining the CAM, there is no formalized process for disputing an allocated charge, and “*the Ohio Companies have no control over the costs allocated to them by FESC.*”⁶⁰

⁵⁵ Audit Report at 59.

⁵⁶ *Id.* at 61.

⁵⁷ *Id.* at 10.

⁵⁸ *Id.*

⁵⁹ *Id.* at 6.

⁶⁰ *Id.* at 81 (emphasis added).

The Audit Report further explained, “[b]ased on our interviews, we conclude that FirstEnergy’s approach to compliance is to assume if a violation or hint of one becomes apparent it is taken care of, but there is little ongoing reporting or monitoring to ensure compliance occurs...” and that “the Company’s assumption is that compliance is happening until it is not happening and thus becomes an issue.”⁶¹ The Audit Report also determined that the FirstEnergy Utilities “do[] not offer any specific training targeted at meeting the OAC 4901 compliance requirements” despite the Audit Report acknowledging that “targeted training and education are a critical part of an effective compliance plan.”⁶² Relatedly, the Audit Report determined that the FirstEnergy Utilities have not conducted a corporate separation audit since 2014⁶³ and that the FirstEnergy Utilities “lean heavily on compliance with FERC requirements to meet the Ohio separation requirements” and that despite being aware of the gaps between the federal and Ohio requirements, “FirstEnergy has not taken any action to address this gap.”⁶⁴

In sum, the FirstEnergy Utilities have few, if any, formal processes in place to detect corporate separation violations. This compliance approach, or lack thereof, is at best lackadaisical and is wholly inadequate for a regulated monopoly. Since the Audit Report is completely based on voluntary disclosures from the FirstEnergy Utilities and the FirstEnergy Utilities do not have adequate systems in place to detect corporate separation violations, it is reasonable to conclude that the Audit Report may have just scratched the surface of the FirstEnergy Utilities’ corporate separation deficiencies. Thus, it is imperative that the Commission order an overhaul of the

⁶¹ *Id.*

⁶² *Id.* at 6-7.

⁶³ *Id.* at 11.

⁶⁴ *Id.* a 6.

FirstEnergy Utilities’ corporate separation practices and not limit its investigation to the findings of the Audit Report.

C. The Commission Should Issue an Adverse Inference Instruction Against the FirstEnergy Utilities at the Evidentiary Hearing.

In its October 12, 2021 Entry, the Commission directed that the evidentiary hearing for the above-captioned proceeding will commence on February 10, 2022.⁶⁵ Under the Commission’s rules, the FirstEnergy Utilities bear the burden of proof to demonstrate compliance with Ohio’s corporate separation requirements,⁶⁶ and it is well-settled that the Commission has discretion to regulate the manner and mode of its hearings.⁶⁷ Here, there is a considerable information asymmetry among the parties where the FirstEnergy Utilities and related entities possess or should possess relevant information concerning compliance with Ohio’s corporate separation requirements. In this proceeding and other H.B. 6-related proceedings before the Commission, the FirstEnergy Utilities have feigned ignorance in what appears to be an attempt to impede a meaningful investigation. For example, in response to the Commission’s Rider DCR Audit, the FirstEnergy Utilities stated that they “do not have additional supporting documentation”⁶⁸ regarding the transactions that were misallocated and that they “do not know why such information is unavailable.”⁶⁹ Similarly, in the above-referenced proceeding, the FirstEnergy Utilities denied that the FirstEnergy Corp. Board of Directors discovered that the FirstEnergy Utilities violated their Commission-approved corporate separation plans and Ohio law and rules simply because the

⁶⁵ Entry at ¶ 24 (October 12, 2021).

⁶⁶ Ohio Adm. Code 4901:1-37-02(E).

⁶⁷ See *Toledo Coal for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559, 560, 433 N.E.2d 212, 214 (1982).

⁶⁸ Rider DCR Audit Expanded Scope at 4.

⁶⁹ *Id.*

FirstEnergy Utilities “are not aware of any discovery or conclusion by FirstEnergy Corp.’s Board of Directors or any committee of that Board” that such a violation occurred.⁷⁰

“Not being aware” of information is clearly not the same as an unequivocal denial, falls short of the FirstEnergy Utilities’ burden of proving an affirmative defense, and exemplifies the need for an adverse inference instruction in this proceeding. An adverse inference instruction allows a factfinder to “draw an inference that would be unfavorable to the party who has failed to produce the evidence in question” and normally require a showing of malfeasance or gross neglect.⁷¹ Based on the Audit Report it is undeniable that the FirstEnergy Utilities acted with gross negligence by having no detailed processes or procedural documents addressing corporate separation compliance and have little to no visibility or understanding of what charges are being allocated to them from affiliates, which resulted in improper charges collected from customers and facilitated a massive public corruption scheme. Accordingly, the Commission should instruct that any incomplete or missing information should be construed as adverse evidence against the FirstEnergy Utilities at the hearing, unless there is good cause shown for why such information is unavailable. Requiring an adverse inference instruction will ensure fairness at the hearing and incentivize the FirstEnergy Utilities to produce or search for information that they have or should reasonably have in their possession, custody, or control.

⁷⁰ See the FirstEnergy Utilities’ Supplemental Response to OCC RFA-04-013 (October 6, 2021) (Attachment E).

⁷¹ *Schwaller v. Maguire*, 1st Dist. Hamilton No. C–020555, 2003 WL 22976339, *5 (Dec. 19, 2003).

D. The Commission Should Require Annual Corporate Separation Audits and Make the Findings Publicly Available.

The Audit Report stated that the FirstEnergy Utilities' last corporate separation audit was in 2014, which was "not a best practice."⁷² OMAEG agrees that the Commission should conduct regular corporate separation audits of the FirstEnergy Utilities to ensure compliance with Ohio's corporate separation laws and regulations. The Commission has the authority to require annual audits under R.C. 4928.18(B), which allows the Commission to "examine such books, accounts, or other records kept by an electric utility or its affiliate as may relate to the businesses for which corporate separation is required..." and the Commission "may investigate such utility or affiliate operations as may relate to those businesses and investigate the interrelationship of those operations." Accordingly, OMAEG requests that the Commission require corporate separation audits to be conducted annually at the FirstEnergy Utilities' expense and the Commission should make such reports publicly available.

E. The Commission Should Issue Forfeitures to the FirstEnergy Utilities for Their Corporate Separation Violations.

OMAEG urges the Commission to invoke its authority to issue forfeitures to the FirstEnergy Utilities.⁷³ The Audit Report concluded that, of the limited data that the auditor received from the FirstEnergy Utilities and reviewed, the FirstEnergy Utilities had only complied with 23 out of Ohio's 44 total corporate separation requirements.⁷⁴ That means that the FirstEnergy Utilities violated 21 requirements and rules of the Commission. Given the extensive nature of the violations, the Commission should not only require an overhaul of the FirstEnergy

⁷² Audit Report at 11.

⁷³ See R.C. 4928.18(D)(1).

⁷⁴ Audit Report at 7.

Utilities' corporate separation policies, practices, and quality assurance, but it should also issue a large, deterrent forfeiture to the FirstEnergy Utilities.

The Commission has authority under R.C. 4928.18 to issue the FirstEnergy Utilities up to \$25,000 per day in forfeitures per the 21 corporate separation violations cited in the Audit Report during the period of 2016-2020, in addition to the other probable corporate separation violations discussed herein. Accordingly, at a minimum, the FirstEnergy Utilities should be assessed \$766.5 million in forfeitures for the 21 corporate separation violations cited by the auditor.⁷⁵ The FirstEnergy Utilities should be held accountable for not properly maintaining and adhering to a CAM and their corporate separation plan, as well as Ohio law. Given the severity of the violations and pattern of misconduct, forfeitures are warranted and will convey the message that the audit in the above-captioned proceeding is not perfunctory.

III. CONCLUSION

The conclusion of the Audit Report states:

Daymark applauds the efforts FirstEnergy is taking towards rethinking and revamping their compliance program. There is an opportunity for FirstEnergy while undergoing a transformative compliance process, to include Ohio corporate separation rules in its review. Currently, there appears to be a lack oversight and ongoing monitoring specific to Ohio corporate separation rules. As part of an overarching compliance overhaul, Daymark urges FirstEnergy to consider strengthening its Ohio corporate separation compliance program.⁷⁶

It is unclear exactly why the independent auditor is congratulating the FirstEnergy Utilities for attempting to adhere to Ohio's laws and regulations, when they obviously failed to do so. In addition, the findings in the Audit Report and other H.B. 6-related proceedings before the Commission make it clear that the FirstEnergy Utilities cannot be trusted to merely "rethink" or

⁷⁵ If the \$25,000 per day forfeiture is applied to the four-year Audit Period from 2016-2020 for 21 violations, the forfeiture amount equals \$766.5M ((4 * 365 days) * 21 violations * \$25,000 = \$766.5M).

⁷⁶ Audit Report at 103.

“consider strengthening” their compliance practices and procedures. Instead, a Commission-ordered overhaul of the FirstEnergy Utilities’ corporate separation, accounting, code of conduct, and recordkeeping practices is necessary as is a more thorough investigation of the magnitude of the harm perpetrated against the FirstEnergy Utilities’ customers in order to make customers whole. At a minimum, forfeitures must be assessed for the patent violations and harm caused to customers .For the reasons stated above, OMAEG respectfully requests that the Commission adopt the recommendations set forth herein.

Respectfully submitted,

/s/ Kimberly W. Bojko

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on November 22, 2021 upon the parties listed below.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

*Counsel for the Ohio Manufacturers'
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From: [Mccarter, Doris](#)
To: ["Marie Fagan"](#)
Subject: RE: RFP RA20-CA-X, questions
Date: Friday, November 13, 2020 4:16:00 PM
Attachments: [image002.png](#)

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

Grid Modernization and Retail Markets Division
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Doris.mccarter@puco.ohio.gov

From: Mccarter, Doris
Sent: Friday, November 13, 2020 4:07 PM
To: Marie Fagan <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

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From: Marie Fagan <marie@londoneconomics.com>
Sent: Friday, November 13, 2020 2:04 PM
To: Mccarter, Doris <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.

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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

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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[180 East Broad Street, 3rd Floor](#)
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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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OCC has redacted the "confidentiality" notice that appears on this document received from the PUCO STAFF (including the Marcum Auditing firm), as the document was not deemed confidential by the sender.

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)



NODISPLAY

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



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

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

- 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.

SUPPLEMENTAL RESPONSES TO REQUESTS FOR ADMISSION

RFA-04-05. Please admit or deny that all funds the FirstEnergy Utilities received from Rider DMR were placed into the Regulated Utility Money Pool.

ADMIT/DENY: The Companies object to this Request for Admission in its entirety because OCC's Discovery Requests are premature. Under the November 4 Entry in this proceeding, the final audit report is not due until April 21, 2021, and Commission Staff has requested an extension of that deadline to June 21, 2021. As the Commission has recognized, no discovery in audit proceedings may be taken prior to the issuance of the final audit report. *See, e.g., 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 at ¶ 15 (Nov. 1, 2018) (denying motion to compel discovery as premature). The Companies reserve their right to make all further objections to this Request for Admission at the appropriate time.

SUPPLEMENTAL RESPONSE: (Dated May 13, 2021):

The Companies further object to this Request as not relevant or reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections: Admitted.

RFA-04-06. Please admit or deny that non-OHIO regulated subsidiaries of FirstEnergy Corp. have borrowing access to Rider DMR funds through the Regulated Money pool.

ADMIT/DENY: The Companies object to this Request for Admission in its entirety because OCC's Discovery Requests are premature. Under the November 4 Entry in this proceeding, the final audit report is not due until April 21, 2021, and Commission Staff has requested an extension of that deadline to June 21, 2021. As the Commission has recognized, no discovery in audit

proceedings may be taken prior to the issuance of the final audit report. *See, e.g., 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 at ¶ 15 (Nov. 1, 2018) (denying motion to compel discovery as premature). The Companies reserve their right to make all further objections to this Request for Admission at the appropriate time.

SUPPLEMENTAL RESPONSE: (Dated May 13, 2021)

The Companies further object to this Request as not relevant or reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, the Companies admit that other non-Ohio regulated subsidiaries of FirstEnergy Corp. have borrowing access to the regulated money pool. However, after reasonable inquiry, information known or readily obtainable is insufficient to enable the Companies to admit or deny that any dollars borrowed from the regulated money pool are “Rider DMR funds.”

RFA-04-07. Please admit or deny that FirstEnergy utilities can borrow from the Regulated Money Pool to fund their expenditures.

ADMIT/DENY: The Companies object to this Request for Admission in its entirety because OCC’s Discovery Requests are premature. Under the November 4 Entry in this proceeding, the final audit report is not due until April 21, 2021, and Commission Staff has requested an extension of that deadline to June 21, 2021. As the Commission has recognized, no discovery in audit proceedings may be taken prior to the issuance of the final audit report. *See, e.g., 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 at ¶ 15 (Nov. 1, 2018) (denying motion to compel discovery as premature). The Companies reserve their right to make all further objections to this Request for Admission at the appropriate time.

SUPPLEMENTAL RESPONSE: (Dated May 13, 2021)

Subject to and without waiving the foregoing objections: Admitted.

RFA-04-08. Please admit or deny that from January 1, 2017 forward, funds in the Regulated Money Pool have been used to pay dividends to FirstEnergy Corp.

ADMIT/DENY: The Companies object to this Request for Admission in its entirety because OCC's Discovery Requests are premature. Under the November 4 Entry in this proceeding, the final audit report is not due until April 21, 2021, and Commission Staff has requested an extension of that deadline to June 21, 2021. As the Commission has recognized, no discovery in audit proceedings may be taken prior to the issuance of the final audit report. *See, e.g., 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 at ¶ 15 (Nov. 1, 2018) (denying motion to compel discovery as premature). The Companies reserve their right to make all further objections to this Request for Admission at the appropriate time.

SUPPLEMENTAL RESPONSE: (Dated May 13, 2021)

Subject to and without waiving the foregoing objections: Admitted.

RFA-04-09. Please admit or deny that FirstEnergy Utilities borrowed from the Regulated Money Pool to fund House Bill 6 activities.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

IGS-INT-05-001: Page 9 in the “Expanded Scope” section of the “Compliance Audit of the 2020 Delivery Capital Recovery (DCR) Riders of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company and Expanded Scope” filed on August 3, 2021 in Case No. 20-1629-EL-RDR provides a list of certain vendor transactions that were charged or allocated to The Cleveland Electric Illuminating Company, Ohio Edison Company, or The Toledo Edison Company from FirstEnergy Service Company. The list includes payments made to Sustainability Funding Alliance for “Payments pursuant to Consulting Services Agreement and Amendments (2013-2018).”

Regarding these payments:

- a. Did the Ohio Companies incur the costs of these payments through the allocation made by FirstEnergy Service Company?

RESPONSE:

With respect to sub-part (a), the Companies object to the terms “incur the costs” and “these payments” as used in this Request, because they are vague and ambiguous. The Companies assume “these payments” are intended to mean Sustainability Funding Alliance (“SFA”) payments made between 2013 and 2018.

Subject to that interpretation, and without waiving the foregoing objections, the Companies state that portions of payments made to SFA between 2014 and 2020 were allocated to the Ohio Companies.

ADMIT/DENY: The Companies object to this Request for Admission in its entirety because OCC's Discovery Requests are premature. Under the November 4 Entry in this proceeding, the final audit report is not due until April 21, 2021, and Commission Staff has requested an extension of that deadline to June 21, 2021. As the Commission has recognized, no discovery in audit proceedings may be taken prior to the issuance of the final audit report. *See, e.g., 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 at ¶ 15 (Nov. 1, 2018) (denying motion to compel discovery as premature). The Companies reserve their right to make all further objections to this Request for Admission at the appropriate time.

SUPPLEMENTAL RESPONSE (OCTOBER 6, 2021): While portions of certain payments made by FirstEnergy Corp. to third parties to support the enactment of House Bill 6 were allocated to the Companies, the Companies deny that they engaged in political and charitable spending to support the enactment of House Bill 6.

RFA-04-013. Please admit or deny that the internal investigation undertaken at the direction of the independent members of the FirstEnergy Board of Directors discovered that FirstEnergy violated its Corporate Separation Plan.

ADMIT/DENY: The Companies object to this Request for Admission in its entirety because OCC's Discovery Requests are premature. Under the November 4 Entry in this proceeding, the final audit report is not due until April 21, 2021, and Commission Staff has requested an extension of that deadline to June 21, 2021. As the Commission has recognized, no discovery in audit

proceedings may be taken prior to the issuance of the final audit report. *See, e.g., 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 at ¶ 15 (Nov. 1, 2018) (denying motion to compel discovery as premature). The Companies reserve their right to make all further objections to this Request for Admission at the appropriate time.

SUPPLEMENTAL RESPONSE (OCTOBER 6, 2021): The Companies are not aware of any discovery or conclusion by FirstEnergy Corp.'s Board of Directors or by any committee of that Board that there has been any violation of the Companies' Corporate Separation Plan and therefore deny this Request on that basis.

RFA-04-014. Please admit or deny that the internal investigation undertaken at the direction of the independent members of the FirstEnergy Board of Directors discovered that former CEO Charles Jones violated FirstEnergy's Corporate Separation Plan.

ADMIT/DENY: The Companies object to this Request for Admission in its entirety because OCC's Discovery Requests are premature. Under the November 4 Entry in this proceeding, the final audit report is not due until April 21, 2021, and Commission Staff has requested an extension of that deadline to June 21, 2021. As the Commission has recognized, no discovery in audit proceedings may be taken prior to the issuance of the final audit report. *See, e.g., 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 at ¶ 15 (Nov. 1, 2018) (denying motion to compel discovery as premature). The Companies

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Case No(s). 17-0974-EL-UNC

Summary: Comments electronically filed by Mrs. Kimberly W. Bojko on behalf of
OMA Energy Group