

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**INITIAL COMMENTS BY THE CITIZENS' UTILITY BOARD OF OHIO**

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**I. INTRODUCTION**

Pursuant to the Entry issued on October 28, 2021 in this proceeding, the Citizens' Utility Board of Ohio ("CUB Ohio") respectfully submits these Initial Comments for consideration by the Public Utilities Commission of Ohio ("Commission" or "PUCO"). These comments address the original and supplemental filings by the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy EDUs" or "Companies"), dated September 30, 2020, and August 6, 2021 ("Original Response" and "Supplemental Response," respectively), in response to the Commission's September 15, 2020 show cause order as to whether any political or charitable expenditures in connection with the enactment of House Bill 6 were funded by ratepayer charges.

As detailed below, these responses and other contemporaneous developments indicate that the Companies' parent organization First Energy Corporation ("FirstEnergy Corp.") both misclassified costs related to its political and lobbying activities and misused shared services labor in seeking to benefit its shareholders. This misconduct resulted in the FirstEnergy EDUs incurring imprudent costs and improperly charging those costs to ratepayers in Ohio and other jurisdictions. Accordingly, the Commission should undertake a full evidentiary process to consider appropriate sanctions against the Companies and other remedies for any legal

noncompliance. More fundamentally, the FirstEnergy EDUs' abuse of traditionally accepted mechanisms such as shared services agreements and classification of administrative expenses as part and parcel of their misconduct highlights the need for fundamental reforms to ensure robust scrutiny of utility political and lobbying activity in Ohio.

## **II. BACKGROUND**

On July 21, 2020, the U.S. Attorney's Office for the Southern District of Ohio issued a criminal complaint against the Speaker of the Ohio House and four Ohio lobbyists, alleging a federal racketeering conspiracy involving approximately \$60 million paid to 501(c)(4) entities to pass and uphold a billion-dollar nuclear plant bailout – the bailout enacted through House Bill 6 (“H.B. 6”) to support nuclear plants then owned by FirstEnergy Solutions, an unregulated affiliate of the FirstEnergy EDUs.<sup>1</sup> On September 15, 2020, the Commission ordered the FirstEnergy EDUs to provide a response “demonstrating that the costs of any political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, were not included, directly or indirectly, in any rates or charges paid by ratepayers in this state.”<sup>2</sup>

### **A. The Initial Response**

The Companies' Initial Response indicated that “the short and simple answer” to this inquiry “is ‘no.’”<sup>3</sup> According to that submission, “[i]t is simply not possible for the Companies’

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<sup>1</sup> U.S. Attorney's Office for the Southern District of Ohio, News Release, Ohio House Speaker, former chair of Ohio Republican Party, 3 other individuals & 501(c)(4) entity charged in federal public corruption racketeering conspiracy involving \$60 million, <https://www.justice.gov/usao-sdoh/pr/ohio-house-speaker-former-chair-ohio-republican-party-3-other-individuals-501c4-entity> (July 21, 2020).

<sup>2</sup> Entry (Sept. 15, 2020) at 2.

<sup>3</sup> FirstEnergy EDUs' Initial Response to Show Cause Entry (Sept. 30, 2020) at 1.

base distribution rates to include any H.B. 6 costs because the statutory process used by the Commission to set the Companies' base rates for providing electric service to customers excludes any costs to the Companies outside of their test year."<sup>4</sup> The FirstEnergy EDUs attested that because the test year in their most recent distribution base rate case occurred in 2007 and 2008, long before H.B. 6 was considered by the legislature, any costs relating to that bill could not have been included in base rates.<sup>5</sup> Additionally, the Companies asserted that, in accordance with Commission precedent holding that "political expenses and charitable contributions are not a proper operating expense to include in utility rates to the extent they are not a cost of rendering public utility service," it would not have recorded "[a]ny costs of political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort . . . in accounts that are used to calculate the Companies' riders and charges."<sup>6</sup>

A FirstEnergy Service Company ("FESC") employee, Santino Fanelli, who is "responsible for managing the regulatory activities of" the Companies, provided an affidavit in support of the Initial Response.<sup>7</sup> In that affidavit, he attested that "[t]he Companies have not included, directly or indirectly, any H.B. 6 costs in any rates or charges paid by ratepayers in Ohio" and that "[a]ny costs of political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, would not have been recorded in accounts that are used to calculate the Companies' riders and charges."<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1-2.

<sup>6</sup> *Id.* at 2-3.

<sup>7</sup> Initial Response, Ex. A at 1.

<sup>8</sup> *Id.* at 1-2.

A March 2021 deposition of Mr. Fanelli and subsequent discovery responses by FirstEnergy revealed additional details regarding the accounting treatment of political spending related to H.B. 6. Mr. Fanelli's deposition and supplemental discovery responses by the Companies indicated that, in fact, certain payments to 501(c)(4) entities in support of H.B. 6 had not originally been charged to Federal Energy Regulatory Commission ("FERC") Account 426.4, an account for political and related activities that is generally excluded from rate recovery in Ohio.<sup>9</sup> Instead, those payments had been charged to FERC Account 923, designated for professional and outside vendor services, and a portion was capitalized, with allocations to the Companies recognized as operating expense and cost of their electric plant.<sup>10</sup> Those costs were reclassified to FERC Account 426.4 in September 2020 – presumably not long before the Companies filed the Initial Response on September 30, 2020 – and the FirstEnergy EDUs have asserted that they did not impact retail electric customers' rates.<sup>11</sup>

## **B. The Supplemental Response**

The Companies filed a Supplemental Response on August 6, 2021, after the July 20, 2021 news that FirstEnergy Corp. had entered into a Deferred Prosecution Agreement ("DPA") with the U.S. Attorney's Office for the Southern District of Ohio. The Supplemental Response acknowledged that the DPA set forth stipulated facts regarding "a FirstEnergy Corp. payment of \$4,333,333, made on January 2, 2019 under a consulting agreement with Sustainability Funding Alliance ("SFA") [an entity owned by Samuel Randazzo, chair of the PUCO from February 2019

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<sup>9</sup> Fanelli Dep. at 131:4-5, 206:1-5 (March 9-10, 2021); Companies' Supplemental Response to Ohio Consumers' Counsel Interrogatory 1-19 (attached as Ex. A).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

through November 2020], which the DPA indicates was political spending in support of House Bill 6.”<sup>12</sup>

Notably, in addition to its provisions related to the FirstEnergy Solutions nuclear plants, H.B. 6 included a provision that allowed the FirstEnergy EDUs to establish a decoupling rider to collect distribution base rates keyed to their 2018 revenue – a year of high electricity sales – and to continue collecting lost distribution revenues, even though the lost distribution revenue mechanism was established to make up for revenue deficits due to energy efficiency programs that were repealed by H.B. 6.<sup>13</sup> This decoupling provision would, if fully implemented, have tended to benefit FirstEnergy Corp. shareholders while resulting in greater charges to the FirstEnergy EDUs’ ratepayers than without decoupling.

The Supplemental Response also does not mention that the DPA’s stipulated Statement of Facts indicates that the \$4.3 million payment and FirstEnergy Corp. officials’ efforts to support the nomination of Mr. Randazzo to the chairmanship of the PUCO were, in addition to their connection to H.B. 6, aimed at eliminating the requirement for the Companies to submit a base distribution rate case filing in 2024.<sup>14</sup> In fact, under the leadership of Mr. Randazzo, the Commission did retract that requirement in November 2019.<sup>15</sup> The Supplemental Response also does not acknowledge that the DPA’s Statement of Facts refers to FESC as the source of payments to Mr. Randazzo (referenced as “Public Official B” in the DPA) and describes the

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<sup>12</sup> Supplemental Response at 1.

<sup>13</sup> Supplemental Response, Ex. 2 at 17-18.

<sup>14</sup> Supplemental Response, Ex. 1 at 35-43.

<sup>15</sup> *Id.* at 42.

actions of at least one FESC employee, “Executive 1,” who was involved in much of the activity around H.B. 6 and related interactions with Mr. Randazzo.<sup>16</sup>

The Supplemental Response does briefly refer to an August 3, 2021 independent audit report issued in Case No. 20-1629-EL-RDR (“Supplemental Audit Report”).<sup>17</sup> The auditor in that proceeding conducted a supplemental audit to investigate the mechanism for cost recovery of a range of payments for “vendor services, that were either improperly classified, misallocated to certain [FirstEnergy subsidiaries], or lacked proper supporting documentation,” according to FirstEnergy Corp.’s February 18, 2021 Form 10-K filing with the Securities and Exchange Commission. The auditor determined that, in total, over \$24 million of such payments had been recorded to FERC accounts:

- 588 Miscellaneous distribution expenses
- 911 Supervision (Major only)
- 921 Office supplies and expenses
- 923 Outside services employed
- 930.1 General advertising expenses
- 930.2 Miscellaneous general expenses
- 931 Rents
- 935 Maintenance of general plant<sup>18</sup>

In the course of the audit, the FirstEnergy EDUs identified \$210,095 of the relevant vendor payments as having been recovered through base rates as part of the test year revenue requirement.<sup>19</sup> Additionally, the Supplemental Audit Report recommended that the \$7.4 million

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<sup>16</sup> *Id.* at 34-43.

<sup>17</sup> Supplemental Response, Ex. 2.

<sup>18</sup> Supplemental Response, Ex. 2 at 10.

<sup>19</sup> *Id.* at 16.

of payments recorded as capital costs subsequent to the Companies' most recent rate case test year be excluded from rate base in any future distribution rate case.<sup>20</sup>

### III. COMMENTS

Throughout this proceeding, the Companies have understandably adhered to carefully constructed, bare-bones descriptions of their conduct and their ratepayer charges in characterizing evidence of potentially criminal misconduct. The Commission should not hesitate to take the next step in identifying the essential facts that have emerged in this case and other proceedings regarding the FirstEnergy EDUs' political and charitable activities relating to House Bill 6 as well as other Commission proceedings:

- 1) FirstEnergy Corp. made vendor payments, including but not limited to payments to 501(c)(4) organizations, as part of its political activities in support of its shareholders' financial interests. These payments were in part aimed at the enactment of the decoupling provision applicable to the Companies under H.B. 6, as well as the Commission's retraction of a previous requirement for the FirstEnergy EDUs to file a distribution rate case in 2024. FirstEnergy Corp. shared services employees, acting in part on behalf of the FirstEnergy EDUs pursuant to shared services agreements approved by this Commission, then misallocated these political activity costs to FERC Uniform System of Account ("USofA") numbers as administrative and general "overhead" expenses that were eligible for rate recovery from Ohio ratepayers. Absent Commission action on the findings and recommendations of the Supplemental Audit Report, the capitalized portion of those expenses could be included in a test year for a future distribution rate case filed by the Companies.
- 2) FirstEnergy Corp. shared services employees, acting in part on behalf of the FirstEnergy EDUs pursuant to shared services agreements approved by this Commission, spent time engaged in lobbying and political activities to benefit FirstEnergy Corp. shareholders at the expense of Ohio ratepayers. That internal labor cost forms part of the annual revenue requirement recovered by the Companies through base distribution rates.

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<sup>20</sup> *Id.* at 28.

CUB Ohio urges the Commission to acknowledge these facts and to take steps to ensure that utility administrative costs and shared services labor do not continue to offer a gaping loophole in its existing precedent barring distribution utilities from charging ratepayers for their political and charitable expenses.

**A. The Commission Should Conduct a Full Evidentiary Hearing Regarding the Actions of FirstEnergy Shared Services Employees Related to H.B. 6 and Other Political Activities.**

Foremost, the Commission should hold a full evidentiary hearing to obtain sworn testimony from the Companies' employees – including shared services employees – who were involved in the activities described above. The labor expense for those employees is part of the revenue requirement for the FirstEnergy EDUs' base distribution rates.<sup>21</sup> Therefore, to the extent they expended hours in support of political activity related to H.B. 6 as identified in the DPA, the Companies' ratepayers may have at least indirectly paid for those costs.

Fundamentally, the Companies' Initial and Supplemental Responses suggest that they view distribution rates, once set, as something of a slush fund: as long as the test year revenue requirement does not include specific political and charitable expenses, then the Commission's oversight ends once a rate case is over and the FirstEnergy EDUs can spend distribution rate revenue at their discretion. But it is clear that FESC shared services employees, whose labor is included as part of the Companies' test year revenue requirement, played a significant role in the

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<sup>21</sup> Case Nos. 07-551-EL-AIR *et al.*, Staff Report (Dec. 4, 2007) at 10 (“The Applicant annualized test year labor expense to reflect estimated employee and wage levels expected for the end of the test year. The Applicant included in Its labor expense estimate payroll costs Including straight time labor, overtime labor, and Incentive compensation. Also included are allocated costs for shared services provided by FirstEnergy Service Co. employees.”).



activities around H.B. 6 and related lobbying efforts at the Commission. While the media headlines and criminal prosecution may center on outside payments to 501(c)(4) organizations and political officials, those could not have happened without the oversight and actions of FirstEnergy employees. At the *very* least, the Companies' customers should not be responsible for paying those employees' compensation.

Another key issue that has yet to be probed in this proceeding or any other Commission docket is whether FESC or FirstEnergy EDU personnel were aware that the \$4.3 million payment to Sustainability Funding Alliance or other vendor payments addressed in the Supplemental Audit Report were intended to further the Companies' financial and political interests outside of any relationship to H.B. 6. The Supplemental Response narrowly states that at the time of the filing of the Initial Response, "the Companies and their representatives were unaware that the \$4.3 million payment in part constituted political spending in support of HB 6."<sup>22</sup> Even assuming that is correct, were they still aware that it constituted political spending in support of favorable regulatory treatment for the Companies at the Commission, through elimination of the 2024 rate case filing requirement?

If so, the FirstEnergy EDUs may have made a material misstatement to the Commission in the Initial Response, where they stated that they would not have recorded "[a]ny costs of political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort . . . in accounts that are used to calculate the Companies' riders and charges" based on Commission precedent holding that "political expenses and charitable contributions are not a

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<sup>22</sup> Supplemental Response at 1-2, 3.

proper operating expense to include in utility rates to the extent they are not a cost of rendering public utility service.”<sup>23</sup> In that event, the Companies should face penalties pursuant to R.C. 4905.13, 4905.56, and 4905.99(B), and the Commission should expand the scope of this proceeding to ensure that the full extent of the Companies’ potential noncompliance is uncovered and met with an appropriate regulatory response. While the DPA addresses federal criminal allegations, there is evidence suggesting noncompliance by the FirstEnergy EDUs that may merit non-criminal regulatory enforcement or compliance measures. The DPA explicitly does not bind “any state or local law enforcement or regulatory agency,”<sup>24</sup> and the Commission remains obligated to carry out its duty to ensure that the FirstEnergy EDUs face appropriate consequences for any misconduct.

**B. The Commission Should Require and Advocate for Greater Transparency in Utility Accounting.**

Second, the Commission should institute proactive steps at the state level to bring greater transparency to the utility accounting practices that seem to have facilitated the inclusion of political activity spending and labor expense in the Companies’ rates, and pursue parallel changes at the federal level. This is essential to forestall future utility conduct that results in political activities being funded by captive ratepayers.

The factual background set forth above makes clear that FirstEnergy Corp. and its employees included political payments in FERC accounts chargeable to ratepayers in both Ohio

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<sup>23</sup> *Id.* at 2-3.

<sup>24</sup> Supplemental Response, Ex. 1, DPA at 11.

and other jurisdictions.<sup>25</sup> In the normal course of business, absent the involvement of the U.S. Attorney’s Office for the Southern District of Ohio, that malfeasance might never have come to light. Currently, utility accounting disclosures at the federal level, such as FERC Form 1, generally do not include any detailed line items related to outside vendor payments.<sup>26</sup> And as indicated in the Companies’ filings in this proceeding, which focus on the test year revenue requirement as the relevant set of costs for distribution base rates, it is hard to believe that they would be responsive to inquiries as to activities and costs incurred outside that test year through the rate case discovery process – if and when the FirstEnergy EDUs even finally submit a distribution rate application, which they have not done for almost 15 years.

Accordingly, neither utility financial filings nor the intermittently available rate case discovery process provides a promising avenue for scrutinizing utility political activity. CUB Ohio has joined with other groups in advocating for at least some changes to this status quo at

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<sup>25</sup> See, e.g., New Jersey Board of Public Utilities Docket No. ER21010083, *In the Matter of the Verified Petition of Jersey Central Power & Light Company Constituting Its Annual Filing With Respect to the Non-Utility Generation Charge Clause of Its Filed Tariff*, Jersey Central Power & Light Correspondence (Apr. 27, 2021) (FirstEnergy New Jersey distribution utility affiliate filing describing improper tariff charges resulting from FirstEnergy “vendor payments that had been improperly classified, misallocated, or otherwise lacked proper supporting documentation, and which had been charged to its affiliated operating companies,” and proposing refund of charges); New Jersey Board of Public Utilities Docket No. ER21010083, *In the Matter of the Verified Petition of Jersey Central Power & Light Company Constituting Its Annual Filing With Respect to the Non-Utility Generation Charge Clause of Its Filed Tariff*, New Jersey Board of Public Utilities Docket No. ER21010083, *In the Matter of the Verified Petition of Jersey Central Power & Light Company Constituting Its Annual Filing With Respect to the Non-Utility Generation Charge Clause of Its Filed Tariff*, Decision and Order Approving Stipulation for Provisional NGC Rates (Oct. 28, 2021) (approving stipulated refund amounts).

<sup>26</sup> See, e.g., Cleveland Electric Illuminating Company FERC Form 1 (Apr. 6, 2021) at page 323, available at <https://investors.firstenergycorp.com/sec-filings-and-reports/FERC-form-1/default.aspx>.

the FERC level, through comments in favor of a pending petition urging FERC to apply more scrutiny to utility trade group funding that may serve political purposes.<sup>27</sup> The Commission could certainly offer its own support for these types of changes at the federal level. But more importantly, the Commission has discretion to apply its own requirements for transparency in utility accounting. CUB Ohio respectfully proposes that the Commission explore such options, such as requiring line item disclosures of outside vendor payments included in FERC accounts for administrative and general “overhead” expenses that are chargeable to ratepayers, such as Account 923, as part of existing rider and rate filings. This change would add an additional element of transparency to ongoing proceedings, involving the disclosure of information that utilities should already have on hand and be prepared to explain. If such proactive disclosures had been required for the FirstEnergy EDUs, ten years of political payments might not have been included in ratepayer charges only to be uncovered in the course of a federal criminal investigation outside the purview of the PUCO.

November 29, 2021

Respectfully submitted,

/s/ Madeline Fleisher  
Madeline Fleisher (0091862)  
(Counsel of Record)  
Dickinson Wright PLLC  
150 East Gay Street, Suite 2400  
Columbus, Ohio 43215  
(614) 591-5474  
[mfleisher@dickinsonwright.com](mailto:mfleisher@dickinsonwright.com)

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<sup>27</sup> FERC Docket No. RM21-15-000, *Center for Biological Diversity’s Petition for Rulemaking to Amend the Uniform System of Accounts’ Treatment of Industry Association Dues*, Joint Comments of the Citizens Utility Board of Illinois, Citizens Utility Board of Michigan, Citizens Utility Board of Ohio, and Citizens Utility Board of Wisconsin on Docket No. RM21-15-000 (Apr. 26, 2021) at 3-4 (attached as Exhibit B).

Michael W. Wise (0046694)  
McDonald Hopkins  
600 Superior Avenue East  
Suite 2100  
Cleveland, OH 44114  
T: 216.430.2034  
[mwise@mcdonaldhopkins.com](mailto:mwise@mcdonaldhopkins.com)

*Counsel for Citizens' Utility Board of Ohio*

### **CERTIFICATE OF SERVICE**

The e-filing system of the Public Utilities Commission of Ohio will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case as of November 29, 2021.

/s/ Madeline Fleisher  
Madeline Fleisher

## **Exhibit A**

Interrogatory and its sub-parts because expenditures made by the Companies are outside OCC's jurisdiction and, thus, unlawful for OCC to investigate. The Companies further object to this Interrogatory and its sub-parts because they are overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seek to impose an undue expense by, among other things, not defining how these types of expenses would be associated with providing electric service. The Companies further object to this Interrogatory and its sub-parts because the accounting detail requested is not relevant to the subject matter involved in the proceeding and is not reasonably calculated to lead to the discovery of relevant or admissible evidence.

Subject to and without waiving the foregoing objections, the costs of the Companies' political and charitable spending are recorded in FERC Accounts 426.1 and 426.4, which are not used to calculate the Companies' rates or charges.

**SUPPLEMENTAL RESPONSE (Dated April 12, 2021):**

Subject to and without waiving the foregoing objections, see OCC INT-01-14 Attachment 1.

**INT-01-19:** Referring to Ohio Edison's 2018 FERC Form 1,

- a. Please describe the "charitable contribution carryforward" that is shown on Schedule Page 261, line 10 as \$15,000,000. Is that amount incorporated into the rates Ohio electric customers paid or will pay for electric service from Ohio Edison?
- b. Please describe the "charitable contribution carryforward" that is shown on Schedule Page 234 with a beginning balance of \$71,177 and an end of year balance of \$3,312,220. Is that amount incorporated into the rates Ohio electric customers paid or will pay for electric service from Ohio Edison?



- c. Please identify if any of the amounts listed in FERC Sub-Account 930.2 “miscellaneous general” on page 335 relate to political and charitable spending? If so, which if any of the line items are incorporated into the rates Ohio electric customers paid or will pay for electric service from Ohio Edison?
  - (i) please describe “economic development” shown on line 14 and identify the charges that make up the \$-661,217 amount shown there.
- d. Referring to the “Transactions with Associated (Affiliated Companies)” shown on page 429 and 429.1, please identify if any of the amounts charged or credited relate to political or charitable spending? If so, which if any of the line items are incorporated into the rates Ohio electric customers paid or will pay for electric service from Ohio Edison?

**RESPONSE:**

The Companies object to this Interrogatory and its sub-parts on the grounds that it seeks information irrelevant to the subject matter involved in the proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence because is unrelated to whether the costs of any H.B. 6 Spending were included, directly or indirectly, in any rates or charges paid by the Companies’ ratepayers in Ohio. The Companies further object to this Interrogatory because it is overly broad, unduly burdensome, harassing, oppressive, vague, ambiguous and seeks to impose an undue expense.

**SUPPLEMENTAL RESPONSE (Dated April 12, 2021):**

Subject to and without waiving the foregoing objections,

- a. The \$15,000,000 included on line 10 of page 261 relates to two items recorded in December 2018 in FERC Account 426.1 that were accrued for but not yet paid: 1) \$10,000,000 is a contribution to FirstEnergy

Foundation; and 2) \$5,000,000 is an economic development contribution commitment. These amounts did not impact retail electric customers' rates.

- b. The referenced amounts are included in the beginning and ending FERC Account 190 totals on page 234. The change in the balance of "charitable contribution carryforward" is primarily due to the deferred tax asset impact of the amounts discussed above in part a. These amounts did not impact retail electric customers' rates.
- c. FERC Account 930.2 is not for political or charitable spending.
  - (i) The (\$661,217) is the write-off of previously accrued but unspent funds.
- d. Included in the amounts on page 429 of OE's 2018 FERC Form 1 is \$64,166 of costs allocated from FirstEnergy Service Company (FESC) to OE for political or charitable spending. These amounts were all reported in FERC Accounts 426.1 and 426.4, and they did not impact retail electric customers' rates.

In addition, a payment of \$500,000 was made in 2018 by FESC to Hardworking Ohioans, and a portion of the payment was allocated to the Companies as follows: CEI = \$62,600; OE = \$84,450; and TE = \$30,050. These amounts were included in the Companies' 2018 FERC Form 1, page 429. The amounts were charged to FERC Account 923 and a portion was capitalized. In September 2020, these amounts were reclassified to FERC Account 426.4. These costs incurred by the Companies did not impact retail electric customers' rates.

**INT-01-021:** Referring to Cleveland Electric Illuminating Company's 2018 FERC Form 1,

- a. Please describe the nature of the item listed on page 450.2 as "Ohio Economic Development.";

## **Exhibit B**

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Public input on Docket No. RM21-15-000,     )  
Center for Biological Diversity’s Petition for     )  
Rulemaking to Amend the Uniform     )  
System of Accounts’ Treatment of Industry     )  
Association Dues     )

**Docket No. RM21-15-000**

**JOINT COMMENTS OF THE CITIZENS UTILITY BOARD OF ILLINOIS, CITIZENS  
UTILITY BOARD OF MICHIGAN, CITIZENS UTILITY BOARD OF OHIO, AND  
CITIZENS UTILITY BOARD OF WISCONSIN ON DOCKET NO. RM21-15-000**

THE CITIZENS UTILITY BOARDS OF ILLINOIS, MICHIGAN, OHIO, AND  
WISCONSIN (“Midwest CUB Network”) provides these comments in support of the Petition submitted by the Center for Biological Diversity (“CBD”) on March 17, 2021, requesting that the Federal Energy Regulatory Commission (“Commission” or “FERC”) amend the Uniform System of Accounts (“USofA”) to require that utilities record their industry association dues as presumptively non-recoverable (i.e., below-the-line) for rate recovery purposes.

The organizations in the Midwest CUB Network are state-based, residential and small business non-profit advocacy organizations working to achieve maximally affordable, reliable, and sustainable energy policy. Our issues are increasingly impacted by Commission and RTO decisions, particularly as we progress through an energy transition that solves for climate change. These issues are complex, time-consuming, and most advocacy organizations suffer from information asymmetry and a lack of sufficient resources to participate in the process effectively.

In recent years, as advancements in energy technologies have accelerated the adoption of cost-effective, cleaner, and more distributed energy resources, we have also witnessed utilities

across the country dedicating significant political, lobbying, and other advocacy resources to responding to the concurrent disruption of their business model. While utilities are free to undertake advocacy to protect their incumbent interests, those resources should not come from ratepayer funds that utilities access by virtue of their status as regulated monopolies. In accordance with that principle, political and lobbying expenditures by individual utilities generally are excluded from rates based on their assignment to below-the-line USofA Account 426.

The treatment of trade association dues is far less straightforward. As explained in CBD's Petition, those dues are recorded in Account 930.2 and are therefore routinely recovered from ratepayers unless ratepayer advocates meet the burden to show the charges are not appropriate. That task is rarely simple, especially in jurisdictions where rate proceedings do not occur on a regular schedule; where discovery in a proceeding is limited to a particular test year designated by the utility; or where ratepayer advocates simply face resource constraints in pursuing multiple important issues. As a non-profit organizations, we can better apply our limited resources to protect the interests of residential and small business customers if it does not face an uphill battle attempting to carry burdens that should more properly apply to a regulated monopoly.

One particularly notable example of the type of trade association activity that would be effectively addressed by granting CBD's Petition has arisen with respect to FirstEnergy Corp.'s advocacy in support of state legislation (House Bill 6) in Ohio, where CUB Ohio represents all consumers, including over 2,000 members, a law that provided for hundreds of millions of dollars in subsidies for nuclear plants then owned by an unregulated FirstEnergy generation affiliate.

A year after the enactment of House Bill 6, it emerged that FirstEnergy had provided significant funding for 501(c)(4) organizations that later pled guilty to federal racketeering charges related to efforts to ensure the passage of the legislation and undermine an opposing ballot initiative.<sup>1</sup> While FirstEnergy's conduct is an issue for another day, it certainly demonstrates that the utility's activities were overtly political. Relevant to this specific proceeding, the trade association Edison Electric Institute subsequently spotlighted FirstEnergy's efforts in support of House Bill 6 as a case study at its December 2019 "Campaign Institute," a week-long event for utility executives.<sup>2</sup> That is exactly the type of trade industry event that might not be expressly categorized as political or lobbying activity, but that ratepayers should not be forced to pay for through industry dues.

It is also unrealistic as a practical matter to expect ratepayer organizations and advocates to comb through details of trade association activity every year in order to discern which individual events and activities by trade associations fall within the scope of legitimate above-the-line efforts to provide just and reasonable utility service. In fact, for Ohio ratepayers that opportunity may never come, given that FirstEnergy's Ohio distribution utilities filed their last base distribution rate case in 2007 and are not required to file a new one until 2024.<sup>3</sup> A trade association's political activities falling within the gap of more than a decade between filings and the ability to apply scrutiny to utility expenditures in the relevant test year are even more difficult to detect and appropriately account for in ratemaking.

The burden should therefore lie on utilities themselves to make the showing that trade association dues are being dedicated to appropriate purposes. A failure to address this will leave

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<sup>1</sup> <https://www.daytondailynews.com/local/generation-now-says-it-will-plead-guilty-in-60m-bribery-case/BWTJQRRWAVCHVNA7W2JMZGUUYQ/#:~:text=1%2C%202020.&text=Generation%20Now%2C%20the%20nonprofit%20involved,outlined%20in%20U.S.%20District%20Court.>

<sup>2</sup> <https://www.energyandpolicy.org/eei-campaign-institute.>

<sup>3</sup> Public Utilities Commission of Ohio Case No. 19-361-EL-RDR, Entry (Dec. 30, 2020).

ratepayers are risk of seeing association dues locked in via base rates and left unexamined for years and perhaps decades. A straightforward way to accomplish that goal is to amend the USofA to provide for the recording of trade association dues in Account 426 as a below-the-line expense. We therefore urge the Commission to grant CBD's Petition and ensure that the USofA's national framework remains a useful tool for protecting retail ratepayers.

Signed,

David Kolata, Executive Director – Citizens Utility Board of Illinois

Amy Bandyk, Executive Director – Citizens Utility Board of Michigan

Tom Bullock, Executive Director – Citizens Utility Board of Ohio

Tom Content, Executive Director – Citizens Utility Board of Wisconsin

Document Content(s)

CUB FERC Comments on Docket RM-21-15-000 FINAL.PDF.....1



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

Summary: Comments Initial Comments by the Citizens' Utility Board of Ohio  
electronically filed by Ms. Madeline Fleisher on behalf of Citizens' Utility Board of  
Ohio