

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2020 Review of The     )  
Delivery Capital Recovery Rider of Ohio     ) Case No. 20-1629-EL-RDR  
Edison Company, The Cleveland Electric     )  
Illuminating Company, and The Toledo     )  
Edison Company.                                 )

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**MEMORANDUM CONTRA MOTION OF FIRSTENERGY FOR A  
PROTECTIVE ORDER  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The PUCO is auditing FirstEnergy's<sup>1</sup> 2020 Delivery Capital Recovery Rider ("DCR charge"). It expanded the audit to "determine if the costs of the naming rights for FirstEnergy Stadium have been recovered from [consumers] by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company."<sup>2</sup> The audit report has been filed.<sup>3</sup> To protect consumers, OCC's investigation into that audit (and the rest of the issues in this case) is ongoing. Notwithstanding the ongoing investigation, FirstEnergy wants to keep secret information about "payment schedules detailing the amount and timing of payments due to the Browns organization to maintain FirstEnergy Corp.'s rights under the sponsorship agreement."<sup>4</sup> In the interest of

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<sup>1</sup> The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, collectively, "Utilities" or "FirstEnergy Utilities."

<sup>2</sup> *Id.* at para. 1.

<sup>3</sup> Report of Investigation into Ohio Ratepayer Funding of Stadium Naming Rights (November 19, 2021).

<sup>4</sup> *See, e.g.*, the FirstEnergy Utilities' Motion for a Protective Order and Memorandum in Support ("Motion") at 5.

transparency and consumers, FirstEnergy's limitless request to deny public access to the information should be denied.

## II. ARGUMENT

### A. **Consumer protection requires public disclosure of information except in the most extraordinary of circumstances, which FirstEnergy would not be able to show if it is determined that they charged consumers for the naming rights of the Browns' stadium.**

To prevail on its motion for a protective order, FirstEnergy must overcome a “strong presumption” that citizens have a right to access information and documents involving governmental proceedings.<sup>5</sup> By law, “all proceedings of the public utilities commission and all documents and records in its possession are public records,” with limited exceptions.<sup>6</sup> R.C. 4905.07 similarly says that “all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys,” again, subject to limited exceptions. To overcome the strong presumption in favor of public disclosure, the party that seeks to keep information private (here, FirstEnergy) bears the burden of proving that “state or federal law prohibits release of the information.”<sup>7</sup>

The law *requires* the information to be made public unless *FirstEnergy* proves that it should be protected from public disclosure. By default, all documents in PUCO

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<sup>5</sup> *In re Joint Application of the Ohio Bell Tel. Co. & Ameritech Mobile Servs., Inc. for Approval of the Transfer of Certain Assets*, No. 89-365-RC-ATR, 1990 Ohio PUC LEXIS 1138, at \*5 (Oct. 18, 1990).

<sup>6</sup> R.C. 4901.12.

<sup>7</sup> Ohio Adm. Code 4901-1-24(D) (PUCO may redact documents “to the extent that state or federal law prohibits release of the information, including where the information is deemed ... to constitute a trade secret under Ohio law”). *See also In re Application of Jay Plastics Div. of Jay Indus., Inc. for Integration of Mercantile Cust. Energy Efficiency or Peak-Demand Reduction Programs with the Ohio Edison Co.*, Case No. 13-2440-EL-EEC, 2015 Ohio PUC LEXIS 139, at \*6 (“an entity claiming trade secret status bears the burden to identify and demonstrate that the material is included in categories of protected information under the statute and additionally must take some active steps to maintain its secrecy”) (Feb. 11, 2015).

proceedings are publicly available, and it is *FirstEnergy* who is asking the PUCO to conceal information from public disclosure. But FirstEnergy has failed to meet its burden to keep the information secret without any limits.

**B. In the interests of transparency and consumers, the information that the FirstEnergy Utilities seek to keep secret should be made public if it is found that the FirstEnergy Utilities charged consumers for the naming rights of the Browns' stadium.**

FirstEnergy asserts that information about “payment schedules detailing the amount and timing of payments due to the Browns organization to maintain FirstEnergy Corp.’s rights under the sponsorship agreement[]”<sup>8</sup> is a trade secret. We do not concede that it is, and reserve all rights to demonstrate that it is not.

But the information certainly is not entitled to trade secret protection, and should be disclosed publicly, if it is ultimately found that FirstEnergy charged consumers for the naming rights of the Browns' stadium. The amount and the timing of payments made to the Browns for the stadium naming rights is essential to deciding the remedies or sanctions, including refunding charges collected from consumers (plus interest), if FirstEnergy is found to have engaged in such improper cost allocations. Consumers have the right to know such information.

There has been no hearing in this case. Discovery remains ongoing. Our investigation remains ongoing. Because there has been no determination of whether FirstEnergy charged consumers for the naming rights of the Browns' stadium, the PUCO should not grant FirstEnergy's limitless Motion. Instead, the PUCO should deny the Motion and order that the information that FirstEnergy seeks to keep secret will be public

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<sup>8</sup> See, e.g., the FirstEnergy Utilities' Motion for a Protective Order and Memorandum in Support (“Motion”) at 5.

if it is determined that FirstEnergy charged consumers for the naming rights of the Browns' stadium.

### **III. CONCLUSION**

Notwithstanding that this case, like our investigation, remains ongoing, FirstEnergy asks the PUCO to keep certain information secret, without limits. The PUCO should deny the Motion. The PUCO should order that the information that FirstEnergy wants to keep secret will be public if it is determined that FirstEnergy charged consumers for the naming rights of the Browns' stadium.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission this 6th day of December 2021.

/s/ William J. Michael

William J. Michael

Assistant Consumers' Counsel

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

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Summary: Memorandum Memorandum Contra Motion of FirstEnergy for a  
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Ms. Deb J. Bingham on behalf of Michael, William J. Mr.