

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**INTERLOCUTORY APPEAL, REQUEST FOR CERTIFICATION TO THE  
PUCO COMMISSIONERS, AND APPLICATION FOR REVIEW  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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January 12, 2022

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The Office of the Ohio Consumers' Counsel ("OCC") appeals to the PUCO Commissioners the January 7, 2022 rulings by PUCO Attorney Examiner Gregory Price. Examiner Price deferred ruling on OCC's two separate motions for subpoenas.<sup>1</sup> We need the PUCO to sign our subpoenas now for advancing a real investigation of the FirstEnergy scandals. Specifically, OCC asks the Commissioners to overrule Examiner Price's ruling (and order OCC's requested subpoenas to be signed) that deferred ruling on OCC's requests for subpoenas until after the final audit report is filed by another auditor, Daymark.<sup>2</sup>

Unfortunately, OCC lacks the power to issue subpoenas and is left to depend upon the PUCO to sign our subpoenas. The legislature should change that.

As stated, OCC is seeking to depose the state-hired Auditor, Oxford Advisors, and to obtain related audit documents. The information to be gained from the subpoenas is highly relevant.

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<sup>1</sup> The Attorney Examiner ruling is reflected in the attached Prehearing Conference transcript dated January 7, 2022.

<sup>2</sup> Prehearing Tr. 11 (Jan. 7, 2022).

FirstEnergy Corp. acknowledged (in its Deferred Prosecution Agreement with the U.S. Attorney) that it paid “\$4.3 million to Public Official B [former PUCO Chair] through his consulting company in return for Public Official B performing official action in his capacity as PUCO Chairman to further FirstEnergy Corp.’s interests relating to passage of nuclear legislation and other specific FirstEnergy Corp. legislative and regulatory priorities, as requested and as opportunities arose.”<sup>3</sup> (To OCC’s knowledge, the former PUCO Chair has not been charged with a crime nor has he agreed with FirstEnergy’s assertions about its intent.)

Further, there is the shocking text message from former FirstEnergy CEO Chuck Jones to former FirstEnergy Senior VP Dennis Chack. Here is former FirstEnergy CEO Jones’s infamous text message about the “burning” of a PUCO audit report:

He [the former PUCO Chair] will get it done for us but cannot just jettison all process. Says the combination of overruling Staff and other Commissioners on decoupling, getting rid of SEET and ***burning the DMR final report*** has a lot of talk going on in the halls of the PUCO about does he work there or for us? He’ll move it as fast as he can. Better come up with a short term work around.<sup>4</sup> (Attached)

OCC’s requested subpoenas command Oxford Advisors to appear for deposition and produce related documents. FirstEnergy’s text reference to burning an audit report seemingly relates to the final audit report that Oxford Advisors was to file (but did not).

This FirstEnergy/PUCO scandal is connected to the FirstEnergy/House Bill 6 scandal. But the PUCO should recognize that the FirstEnergy/PUCO scandal is also a

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<sup>3</sup> *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement at 17 (July 22, 2021).

<sup>4</sup> *In the Matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code 4901:1-37*, Case No. 17-974-EL-UNC, Documents produced by FirstEnergy Corp. in response to OCC subpoena, Doc. No. 0000072 (March 4, 2020) (Emphasis added).

separate scandal and should be investigated as such. At the intersection of these two scandals lies the consumer interest.

The current PUCO Chair acknowledged that more transparency is needed to dispel the “black cloud” related to the H.B. 6 scandal.<sup>5</sup> But there has not been enough transparency or action.

This filing reflects the eighth OCC interlocutory appeal of Attorney Examiner rulings in the cases for investigating the FirstEnergy scandal. And this filing addresses another example of the challenge that consumers are facing when trying to obtain truth and justice through the subpoena process at the PUCO.

OCC filed a motion for subpoena three months ago, on October 21, 2021, seeking Oxford Advisors, one of the state -appointed auditors, to produce its never-filed “final” audit report and related documents (hereinafter “Audit Documents Subpoena”).

OCC filed a second motion for a subpoena a month ago, on December 10, 2021, seeking to depose Oxford Advisors on January 6, 2022. The subpoena to Oxford also required Oxford to bring all audit-related documents to the deposition (hereinafter “Deposition Subpoena”).

Neither subpoena was signed by the PUCO. The subpoenas should just be a ministerial act by the Attorney Examiner. But they weren’t treated as such. That is wrong.

Specifically, Attorney Examiner Price addressed both of OCC’s requested subpoenas at a prehearing conference on January 7, 2022. Instead of ruling on OCC’s motions, the Attorney Examiner deferred ruling until after the “new” final audit report is

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<sup>5</sup> J. Pelzer, *New PUCO Chair Jenifer French: more transparency needed to lift the ‘black cloud’ of [the HB 6 scandal]*, Cleveland.com (May 18, 2021).

docketed (by new auditor, Daymark Energy Advisors). That audit report, “barring any further extensions,” is due on January 14, 2022.<sup>6</sup>

The Attorney Examiner justified not ruling on OCC’s pending subpoenas by stating that “It simply makes sense to the Bench to defer ruling, see if any of these questions have been answered by the final report prepared by Staff.”<sup>7</sup> But that approach does not make sense for OCC’s exercising its rights to discovery and case preparation, under R.C. 4903.082 and state rules, in the search for truth and justice about the FirstEnergy scandals.

Daymark, the auditor that was hired after Oxford Advisors, is not the auditor that was originally slated by the PUCO to produce a final audit report – which was referenced in the infamous FirstEnergy text message about “burning” the final report. The Attorney Examiner’s ruling unfairly impedes OCC’s case preparation.

OCC asks that this appeal be certified to the PUCO Commissioners for review and that, under O.A.C. 4901-1-15(B) and (E), the PUCO reverse the Attorney Examiner’s ruling. The Attorney Examiner’s ruling represents a new and novel interpretation of policy and a departure from past precedent. The ruling belies the PUCO’s own rules which “encourage the *prompt and expeditious* use of pre-hearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings”<sup>8</sup> and Ohio law (R.C. 4903.082). The ruling thwarts OCC’s search for truth and justice for consumers in the FirstEnergy scandals that involve the PUCO.

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<sup>6</sup> Prehearing Tr. 11 (Jan. 7, 2022).

<sup>7</sup> *Id.*

<sup>8</sup> O.A.C. 4901-1-16 (A). (Emphasis added).

An immediate decision on OCC's motions is needed, per O.A.C. 4901-1-15(B), to prevent the likelihood of undue prejudice or expense to OCC and FirstEnergy's consumers, should the PUCO ultimately reverse its ruling. The ruling impedes OCC's case preparation efforts. Those case preparation efforts are expected to include the filing of written comments/objections in response to a soon-to be released audit report by Daymark.

This case is yet another example of the failure to allow OCC to timely pursue its right to ample discovery, guaranteed by Ohio law (R.C. 4903.082) and PUCO rules (O.A.C. 4901-1-16 et seq.). The Ohio Supreme Court recently affirmed OCC and NOPEC's broad statutory right rights to discovery (as intervenors) when it reversed the PUCO's ruling that, among other things, denied motions to compel discovery regarding FirstEnergy Advisors.<sup>9</sup> The Court directed the PUCO to rule on the merits of discovery motions before issuing a decision on the matters before it.

Accordingly, and to protect utility consumers, the PUCO Commissioners should grant OCC's interlocutory appeal by reversing the Attorney Examiner's ruling of January 7, 2022. The PUCO should grant OCC's motions for subpoenas regarding former PUCO auditor Oxford Advisors. Such a ruling would be in the public's interest for a proper investigation and consumer protection. The PUCO should grant both motions and allow OCC to depose Oxford Advisors and to obtain the subpoenaed information immediately.

The reasons for granting this interlocutory appeal are more fully stated in the following memorandum in support.

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<sup>9</sup> *In re Suvon, LLC*, 2021-Ohio-3630\*.

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On September 8, 2020, OCC filed investigatory motions to protect consumers against what federal prosecutors have called “the largest bribery scheme ever” in Ohio.<sup>10</sup> FirstEnergy Corp. fired its CEO and two other top executives on October 29, 2020. The firings occurred the same day that two of the criminal defendants in the *U.S. v. Householder*<sup>11</sup> entered guilty pleas.<sup>12</sup> FirstEnergy Corp.’s October 29, 2020 SEC filing explained that a committee of independent members of FirstEnergy’s Board of Directors was directing an internal investigation of ongoing governmental investigations, and it concluded that the executives’ actions related to H.B. 6 had violated company policies and its code of conduct.<sup>13</sup>

Later filings at the U.S. SEC revealed that FirstEnergy, through the course of its internal investigation, “discovered” that former executives had authorized a \$4.3 million payment to a firm controlled by the former PUCO Chair, reflecting there is also a FirstEnergy/PUCO scandal connected to but also distinct from the FirstEnergy/House Bill 6 scandal. And it was

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<sup>10</sup> N. Reimann, *Ohio Speaker of the House Arrested in State’s ‘Largest Bribery Scheme Ever*, Forbes.com (July 21, 2020).

<sup>11</sup> *U.S. v. Larry Householder, et al.*, Case No. 1:20-cr-00077, Complaint (S.D. Ohio) (July 21, 2020).

<sup>12</sup> J. Mackinnon, *FirstEnergy fires CEO Chuck Jones after 2 plead guilty in Householder bribery scheme*, Akron Beacon-Journal (Oct. 29, 2020).

<sup>13</sup> FirstEnergy Corp., Form 8-K (Oct. 29, 2020).

“discovered” that FirstEnergy had misallocated the \$4.3 million payment and other costs to its Utilities and thus to utility consumers over a ten-year period.<sup>14</sup>

FirstEnergy Corp. entered into a Deferred Prosecution Agreement that described unlawful acts and contained this partial version of the text message from former FirstEnergy CEO Chuck Jones to former FirstEnergy Senior VP Dennis Chack:

“He [the former PUCO Chair] will get it done for us but cannot just jettison all process.” There is ‘a lot of talk going on in the halls of PUCO about does he work there for us? He’ll move it as fast as he can.’”<sup>15</sup>

OCC later obtained the full text message from FirstEnergy via subpoena (and through a process for FirstEnergy to relinquish its claim of confidentiality). The text message is from former FirstEnergy CEO Chuck Jones to former FirstEnergy Senior VP Dennis Chack. Here is the full message:

He [the former PUCO Chair] will get it done for us but cannot just jettison all process. Says the combination of overruling Staff and other Commissioners on decoupling, getting rid of SEET and ***burning the DMR final report*** has a lot of talk going on in the halls of the PUCO about does he work there or for us? He’ll move it as fast as he can. Better come up with a short term work around.<sup>16</sup> (*See Attachment*)

In the vernacular of fired FirstEnergy CEO Chuck Jones, OCC wants to review what may have happened that is described by FirstEnergy as “burning” the PUCO/Oxford final audit. That

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<sup>14</sup> FirstEnergy Corp., Form 10-K (Feb. 18, 2021).

<sup>15</sup> *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement, Statement of Facts at 43 (July 22, 2021).

<sup>16</sup> *In the Matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company’s Compliance with R.C. 4928.17 and the Ohio Adm. Code 4901:1-37*, Case No. 17-974-EL-UNC, Documents produced by FirstEnergy Corp. in response to OCC subpoena, Doc. No. 0000072 (March 4, 2020) (Emphasis added).

review is part of OCC's duty to the public. And that review is OCC's right to discover under R.C. 4903.082.

The PUCO should not pre-judge for OCC what may be learned from deposing Oxford Advisors on this subject. And the PUCO should not relegate OCC to reading about what the later PUCO auditor, Daymark, has to say on the subject that involves Oxford. Comments on the Daymark audit will likely be due a mere thirty days after the "new" final audit is issued by Daymark (instead of Oxford. Daymark's final audit is expected to be filed on January 14, 2022).<sup>17</sup> Examiner Price's ruling would prevent OCC from using a deposition of Oxford for potential comment on Daymark's related audit report. The PUCO Commissioners should reverse that ruling, in favor of a proper investigation and OCC's rights under law.

## **II. STANDARD OF REVIEW**

The PUCO will review an Attorney Examiner's ruling if the Attorney Examiner (or other authorized PUCO personnel) certifies the appeal.<sup>18</sup> The standard applicable to certifying an appeal is that "the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice ... to one or more of the parties, should the commission ultimately reverse the ruling in question."<sup>19</sup> Upon consideration of an appeal, the PUCO may affirm, reverse, or modify the ruling or dismiss the appeal.<sup>20</sup>

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<sup>17</sup> Prehearing Tr. 11 (Jan. 7, 2022).

<sup>18</sup> O.A.C. 4901-1-15(B).

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

<sup>20</sup> O.A.C. 4901-1-15(E).

### III. REQUEST FOR CERTIFICATION

- A. The Attorney Examiner's ruling is a new or novel interpretation of PUCO policy (and rule) that discourages (not encourages) prompt and expeditious use of prehearing discovery and violates OCC's case discovery and preparation rights under R.C. 4903.082 and other law.**

Under O.A.C. 4901-1-16, the purpose of the PUCO's discovery rules is to "encourage prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings." O.A.C. 4901-1-17 allows discovery to begin "immediately after a proceeding is commenced and should be completed as expeditiously as possible." R.C. 4903.082 is a 1983 statute that was enacted as a reform law to give parties in PUCO cases proper discovery and preparation. The PUCO should let the law work for the public.

Consistent with the law and rules, OCC filed two subpoenas to allow it to seek discovery from one of the state-appointed auditors in this case, Oxford Advisors. OCC was pursuing its rights under the PUCO rules to obtain information relevant to the subject matter of this proceeding. Information sought to be obtained from the subpoenas goes to the issue of whether undue or improper influence was exerted by the former PUCO chair or others at the PUCO in relation to Oxford's DMR audit.

But instead of allowing OCC to move forward with "prompt and expeditious use of prehearing discovery," the Attorney Examiner deterred our discovery. The Attorney Examiner's ruling places OCC's subpoenas in limbo until the PUCO decides to rule. This ruling is contrary to Ohio law and discovery rules that encourage parties to engage in prompt and expeditious use of discovery. This is a new and novel interpretation of PUCO policy under O.A.C. 4901-1-15(B) and R.C. 4903.082.

**B. An immediate determination is needed to prevent undue prejudice.**

Under O.C. 4901-1-15(B), an “immediate determination” by the PUCO is needed to prevent undue prejudice<sup>21</sup> to OCC and Ohio consumers should the PUCO ultimately reverse the Attorney Examiner’s ruling. Examiner Price’s ruling further delays OCC’s case preparation efforts and the search for truth and justice. Those case preparation efforts are expected to include the filing of written comments/objections in response to a soon-to be released audit report by Daymark. Given these imminent deadlines, the deferred ruling on OCC’s subpoenas interferes with OCC’s discovery rights, case preparation and case presentation. OCC and consumers will be prejudiced without an immediate determination of this issue.

**IV. APPLICATION FOR REVIEW**

OCC asks the PUCO Commissioners, upon consideration of this appeal, to reverse Attorney Examiner Price’s January 7, 2022 ruling, under O.A.C. 4901-1-15(E). The Attorney Examiner justified his decision to defer ruling on OCC’s pending subpoenas by stating that “It simply makes sense to the Bench to defer ruling, see if any of these questions have been answered by the final report prepared by Staff.”<sup>22</sup>

But that approach does not make sense for OCC’s exercising its rights to discovery and case preparation, under R.C. 4903.082 and state rules, in the search for truth and justice about the FirstEnergy scandals. Daymark, the auditor that was hired after Oxford Advisors, is not the auditor that was originally slated by the PUCO to produce a final audit report. An Oxford report (not filed), not a Daymark report, was referenced in the infamous FirstEnergy text message about “burning” the final report. We rightly want to talk with Oxford in a deposition under subpoena.

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<sup>21</sup> O.A.C. 4901-1-15(B).

<sup>22</sup> Prehearing Tr. at 11.

The Attorney Examiner's ruling unfairly impedes OCC's consumer advocacy as allowed by law and rule.

In this regard, the PUCO should not pre-judge for OCC what may be learned from deposing Oxford Advisors on this subject. And the PUCO should not relegate OCC to reading about what the later PUCO auditor, Daymark, has to say on the subject that involves Oxford.

Further, comments on the Daymark audit will likely be due a mere thirty days after the "new" final audit is issued by Daymark (currently scheduled for January 14, 2022).<sup>23</sup> Examiner Price's ruling would prevent OCC from using a deposition of Oxford for potential comment on Daymark's related audit report. The PUCO Commissioners should reverse that ruling, in favor of a proper investigation and OCC's rights under law.

In the Deferred Prosecution Agreement, FirstEnergy admitted that it paid \$60 million to Generation Now and other entities controlled by the former Speaker of the House (the Enterprise) and \$4.3 million to the former PUCO Chair. The Deferred Prosecution Agreement states:

FirstEnergy Corp. paid 4.3 million dollars to Public Official B through his consulting company in return for Public Official B performing official action in his capacity as PUCO Chairman to further FirstEnergy Corp.'s interests relating to the passage of nuclear legislation and other specific legislative and regulatory priorities, as requested and as opportunities arose.<sup>24</sup>

Considering that Oxford Advisors worked for the state (PUCO) in this case and that it produced work product (albeit not a "final" audit report) and that FirstEnergy wrote a shocking text message about "burning" Oxford Advisors' final audit report for the state (PUCO), it makes

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<sup>23</sup> Prehearing Tr. 11 (Jan. 7, 2022).

<sup>24</sup> *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement at 17 (July 22, 2021).

complete sense for OCC to depose Oxford generally about its work and what did or did not happen with the final audit report. With all that plus Ohio law, it should make sense to the PUCO to grant OCC's Interlocutory Appeal.

In a recent case involving another FirstEnergy entity (FirstEnergy Advisors), the Ohio Supreme Court ruled that the PUCO erred regarding the fairness of its case process. The Court reversed the PUCO for failing to rule on discovery motions filed by parties prior to issuing an order on the merits.<sup>25</sup> The Court confirmed that "intervening parties in proceedings before the PUCO also have a statutory right to discovery under R.C. 4903.082."<sup>26</sup>

In that appeal the Court admonished the PUCO that it must "balance the statutory right to discovery and the constraints imposed by the ...time frame for ruling on the [substantive issues]."<sup>27</sup> Here, Attorney Examiner Price failed to strike an appropriate balance when he delayed ruling on OCC's discovery. Moreover, the ruling stands in contrast to the PUCO Chair's acknowledgement that more transparency is needed to dispel the "black cloud" related to the H.B. 6 scandal.<sup>28</sup>

## V. CONCLUSION

OCC's interlocutory appeal of Attorney Examiner Price's January 7, 2022 ruling meets the standard for granting interlocutory appeals. OCC's appeal on behalf of millions of Ohio consumers should be certified to the PUCO. The PUCO should reverse the Attorney Examiner's

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<sup>25</sup> *In re Suvon*, 2021-Ohio-3630\* at ¶42.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> J. Pelzer, *New PUCO Chair Jenifer French: more transparency needed to lift the 'black cloud' of [the HB 6 scandal]*, Cleveland.com (May 18, 2021).

ruling and allow OCC to proceed with its deposition of Oxford Advisors in the interest of truth and justice regarding the FirstEnergy scandals.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Interlocutory Appeal, Request for Certification to the PUCO Commissioners, and Application for Review by Office of the Ohio Consumers' Counsel was provided electronically to the persons listed below this 12th day of January 2022.

/s/ Maureen R. Willis

Maureen R. Willis

Senior Counsel

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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Edison Company. :

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PREHEARING CONFERENCE

before Mr. Gregory Price, Ms. Megan Addison, and Ms.  
Jacky St. John Werman, Attorney Examiners, at the  
Public Utilities Commission of Ohio, 180 East Broad  
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- - -

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Columbus, Ohio 43215

On behalf of the Industrial Energy Users  
of Ohio.

Bricker & Eckler, LLP  
By Ms. Rachael Mains  
and Mr. Devin Parram  
100 South Third Street  
Columbus, Ohio 43215-4291

On behalf of the Ohio Hospital  
Association.

Boehm, Kurtz & Lowry  
By Mr. Michael Kurtz  
and Ms. Jody Kyler Cohn  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

Environmental Law & Policy Center  
By Ms. Janean Weber  
21 West Broad Street, 8th Floor  
Columbus, Ohio 43215

On behalf of the Environmental Law &  
Policy Center.

- - -

APPEARANCES: (Continued)

Dave Yost, Ohio Attorney General  
By Mr. Thomas Lindgren,  
Mr. Werner L. Margard, III,  
and Ms. Kyle Kern,  
Assistant Attorneys General  
Public Utilities Section  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

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Friday Morning Session,  
January 7, 2022.

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EXAMINER ST. JOHN: The Public Utilities Commission of Ohio calls for a prehearing conference at this time and place Case No. 17-2474-EL-RDR being 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.

My name is Jacky St. John, and with me are Gregory Price and Megan Addison. And we are the Attorney Examiners assigned to preside over this prehearing conference.

Let's begin by taking appearances starting with the Companies.

MR. KNIPE: Good morning, your Honors. Appearing on behalf of Ohio Edison, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, I am Brian Knipe, 76 South Main Street, Akron, Ohio 44308.

Also appearing on behalf of the Companies from the Jones Day law firm are Michael Gladman, 325 John H. McConnell Boulevard, Columbus, Ohio 43215 and Ryan Doringo, North Point, 901 Lakeside Avenue,

1 Cleveland, Ohio 44114.

2 EXAMINER ST. JOHN: Thank you.

3 Ohio Consumers' Counsel.

4 MS. WILLIS: Thank you, your Honor. On  
5 behalf of the residential customers of the  
6 FirstEnergy utilities, Bruce Weston, Consumers'  
7 Counsel, represented by Maureen Willis, William  
8 Michael, and John Finnigan, 65 East State Street,  
9 Suite 700, Columbus, Ohio 43215. Thank you.

10 EXAMINER ST. JOHN: Thank you.

11 Ohio Energy Group.

12 MS. COHN: Good morning, your Honor. On  
13 behalf of Ohio Energy Group, Jody Cohn, Michael Kurtz  
14 from the law firm of Boehm, Kurtz & Lowry, 36 East  
15 Seventh Street, Suite 1510, Cincinnati, Ohio 45202.

16 EXAMINER ST. JOHN: Thank you. Ohio  
17 Partners for Affordable Energy.

18 MR. DOVE: Good morning, your Honor. On  
19 behalf of Ohio Partners for Affordable Energy, this  
20 is Robert Dove with the law firm Kegler, Brown, Hill  
21 & Ritter, 65 East State Street, Suite 1800, Columbus,  
22 Ohio 43215.

23 EXAMINER ST. JOHN: Thank you.

24 Environmental Law & Policy Center.

25 MS. WEBER: Good morning, your Honor.

1 This is Janean Weber with the Environmental Law &  
2 Policy Center, 21 West Broad Street, 8th Floor,  
3 Columbus, Ohio 43215.

4 EXAMINER ST. JOHN: Thank you.

5 Ohio Manufacturers' Association Energy  
6 Group.

7 MR. DONADIO: Good morning, your Honor.  
8 Thomas Donadio appearing on behalf of the Ohio  
9 Manufacturers' Association Energy Group with the law  
10 firm of Carpenter Lipps & Leland located at 280 North  
11 High Street, Suite 1300, Columbus, Ohio 43215.

12 EXAMINER ST. JOHN: Thank you.

13 Industrial Energy Users - Ohio.

14 MR. PRITCHARD: On behalf of IEU-Ohio,  
15 Matt Pritchard with the law firm of McNees, Wallace &  
16 Nurick, 21 East State Street, Columbus, Ohio 43215.

17 EXAMINER ST. JOHN: Thank you.

18 Citizens Utility Board of Ohio. Ohio  
19 Hospital Association.

20 MS. MAINS: Good morning, your Honors.  
21 On behalf of the Ohio Hospital Association, Rachael  
22 Mains and Devin Parram of the law firm Bricker &  
23 Eckler located at 100 South Third Street, Columbus,  
24 Ohio 43215. Thank you.

25 EXAMINER ST. JOHN: Thanks.

1 And last on behalf of Staff.

2 MR. LINDGREN: Thank you, your Honor. On  
3 behalf of the Staff, Ohio Attorney General Dave Yost  
4 by Thomas Lindgren and Werner Margard and Kyle Kern  
5 at 30 East Broad Street, 26th Floor, Columbus, Ohio  
6 43215.

7 EXAMINER ST. JOHN: Thank you very much.

8 Now I would like to address a few issues  
9 before turning things over to Judge Price. First of  
10 all, the Ohio Hospital Association has filed a motion  
11 for leave to file out of time to intervene. That was  
12 filed on May 28 of 2021. I'll note that no memoranda  
13 contra were filed. In its motion the Ohio Hospital  
14 Association stated that it has a substantial interest  
15 in the proceeding because some of its members are in  
16 FirstEnergy territory and paid the Rider DMR charges.

17 So at this time we find the Motion to  
18 Intervene is reasonable and should be granted.

19 Next, I would like to address the motion  
20 for protective order that was filed by FirstEnergy  
21 utilities on June 14 of 2019. By entry issued  
22 November 16 of 2019, the Attorney Examiners denied  
23 the motion in part to the extent that FirstEnergy no  
24 longer wished to pursue protective treatment.

25 And the Attorney Examiners directed

1 FirstEnergy to file a response in regards to the  
2 remaining portion of the motion to compel.

3 FirstEnergy filed that correspondence on November 19  
4 of 2021 stating that they to longer need to pursue  
5 protective treatment for the remaining portion.

6 So in order to make the record clear, the  
7 remaining portion of that motion for protective order  
8 will be denied.

9 And now at this time I will go ahead and  
10 turn things over to Judge Price.

11 EXAMINER PRICE: Thank you.

12 We just have a few more housekeeping  
13 matters to clean up and then hopefully won't take too  
14 much of everybody's time. The next issue we have is  
15 on September 24, 2021, OCC filed a motion for  
16 subpoena against FirstEnergy Corp. As we indicated  
17 in the prehearing conference in another case this  
18 week, you know, the Bench is not a party to what  
19 happens after the subpoena has been issued. We  
20 either get a motion to quash or assume the subpoena  
21 is being complied with.

22 So we did ask the other day for an update  
23 from OCC and FirstEnergy Corporation, and they were  
24 able to give us an update that some 230,000 pages of  
25 documents have been produced. We are just going to

ask if there is anything to add to that update which is particularly relevant to this particular proceeding.

MS. WILLIS: No, your Honor. As we indicated in the -- our prehearing conference earlier this week, the motion for a subpoena was filed in both cases, and it was resolved by FE Corporation agreeing to produce the information that it has produced to other parties in the various civil suits against it. So the same -- you know, the same update is -- is given that was given earlier this week is that our motion for subpoena need not be ruled upon because we have been able to reach agreement with FirstEnergy Corp. Thank you.

EXAMINER PRICE: Just to clarify, Ms. Willis, I think we actually did grant the subpoena. There has just been no motion to quash.

MS. WILLIS: Okay. Thank you, your Honor. Thank you.

EXAMINER PRICE: Maybe I'm wrong, but I think that's the current status. We've had a lot of subpoenas in these cases.

Speaking of which we have two more subpoenas that are pending motions. A motion for subpoena for Oxford Advisors related to the alleged

1 draft final report was filed by OCC October 20, 2021.  
 2 Memo contra was filed by the Staff on November 4,  
 3 2021. OCC filed its reply on November 12, 2021. In  
 4 addition a motion for subpoena for Oxford Advisors --  
 5 to conduct a deposition of Oxford Advisors related to  
 6 the midterm report they have filed was filed by OCC  
 7 on December 10, 2021. Memo contra was filed  
 8 December 27, '21. And then a reply was filed on  
 9 January 3, 2022.

10 We'll continue to defer ruling on both  
 11 motions until after the filing of the final audit  
 12 report in this case by Staff. That report is  
 13 scheduled to be filed on January 14, 2022, barring  
 14 any further extensions. It simply makes sense to the  
 15 Bench to defer ruling, see if any of these questions  
 16 have been answered by the final report prepared by  
 17 Staff. Otherwise, we will proceed by ruling on the  
 18 motions for subpoena at a later date.

19 Related further to the final Staff  
 20 Report, we will set the comment period by entry so  
 21 all parties have notice to it, but just so counsel is  
 22 aware for planning purposes, assume that the comments  
 23 will be due about 30 days after the audit report is  
 24 filed assuming -- which would be mid-February if  
 25 there is no further extensions. Reply comments will

1 then be due as usual 15 days after the initial  
2 comments.

3           Excuse me. The last issue we have is a  
4 request for discovery update from the parties. A  
5 motion to compel was granted to OCC on its second set  
6 of discovery on this case on April 8, 2021. We've  
7 heard nothing from the parties whether there are any  
8 issues, but we just wanted to close the loop and make  
9 sure all the production under the motion to compel  
10 has been completed, and we can -- we can put this one  
11 to bed.

12           Ms. Willis.

13           MS. WILLIS: Your Honor, in -- in  
14 preparing for this prehearing, I have apparently  
15 missed that -- that motion. I know you advised us to  
16 look. I was looking over the documents and looking  
17 over the -- the docket card. I did miss that. You  
18 know, I can certainly give you an update through a  
19 letter, but I would believe had -- because OCC has  
20 not raised issues or pursued issues with regard to  
21 that, that these matters have been resolved.

22           We generally do follow up on discovery  
23 disputes which are not resolved, so I'm assuming that  
24 it was resolved, but I can certainly double-check and  
25 next week file a letter confirming that the issues

1 have been resolved.

2 EXAMINER PRICE: Thank you.

3 Mr. Gladman, anything to add?

4 MR. GLADMAN: I'll defer to Mr. Doringo  
5 on this discovery issue, if that's okay, your Honor.

6 EXAMINER PRICE: Sure.

7 MR. DORINGO: Yes, your Honor, I can add  
8 a little more color to that. After the last  
9 prehearing conference which was amazingly in April of  
10 last year, we -- we negotiated -- well, you had  
11 actually put the onus on us to move for a protective  
12 order if we had continuing objections to any of OCC's  
13 requests, and I believe it was its second set of  
14 discovery.

15 We negotiated those issues with OCC.  
16 Some requests were withdrawn by OCC, but we answered  
17 all of the other ones. And in my view there is no  
18 remaining dispute on that discovery set.

19 We -- actually just today in preparation  
20 for this prehearing conference and in your orders  
21 from the corporate separation conference on Tuesday,  
22 we reviewed to make sure we were all caught up,  
23 realized there were some documents that were  
24 inadvertently not produced yet.

25 We fixed that issue this morning, and

1 with that production made to OCC this morning, we  
2 believe that -- that every issue addressed in that  
3 initial prehearing conference has been resolved.

4 EXAMINER PRICE: Thank you. That's very  
5 helpful.

6 Are there any other issues the parties  
7 have that they want to bring to the Bench's  
8 attention?

9 Hearing none, very good. Thank you all  
10 for your time and attendance in this prehearing  
11 conference. I think its useful in these cases to  
12 eliminate as many housekeeping matters as we can and  
13 without spending too much time on it. So I expect  
14 that the two -- two prehearing conferences scheduled  
15 for next week will be similar to this in length and  
16 productivity. So thank you all.

17 With that we are adjourned. We are off  
18 the record.

19 (Thereupon, at 10:14 a.m., the prehearing  
20 conference was adjourned.)

21 - - -

CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Friday, January 7,  
2022, and carefully compared with my original  
stenographic notes.




---

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-7210)

- - -

## 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.

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**1/12/2022 4:10:46 PM**

**in**

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

Summary: Request Interlocutory Appeal, Request for Certification to the PUCO  
Commissioners, and Application for Review by Office of the Ohio Consumers'  
Counsel electronically filed by Ms. Alana M. Noward on behalf of Willis, Maureen R.