

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION FOR A SUBPOENA DUCES TECUM FOR
FIRSTENERGY VICE PRESIDENT AND CHIEF ETHICS AND COMPLIANCE
OFFICER ANTONIO FERNANDEZ
TO ATTEND AND GIVE TESTIMONY AT A DEPOSITION
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Bruce Weston (0016973)
Ohio Consumers' Counsel

Maureen R. Willis (0020847)
Counsel of Record
John Finnigan (0018689)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Willis]: (614) 466-9567
Telephone [Finnigan]: (614) 466-9585
maureen.willis@occ.ohio.gov
john.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

February 7, 2022

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION FOR A SUBPOENA DUCES TECUM FOR
FIRSTENERGY VICE PRESIDENT AND CHIEF ETHICS AND COMPLIANCE
OFFICER ANTONIO FERNANDEZ
TO ATTEND AND GIVE TESTIMONY AT A DEPOSITION
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

This motion is to subpoena FirstEnergy's Vice President and Chief Ethics and Compliance Officer, Antonio Fernandez, to attend and give testimony at an OCC deposition in this government investigation of the FirstEnergy Utilities. FirstEnergy Corp. pledged, in the U.S. Deferred Prosecution Agreement, to cooperate with government investigations.¹ FirstEnergy Corp. stands charged with a federal crime.

Mr. Fernandez will be subject to oral cross-examination concerning the corporate separation policies, practices, and procedures of the FirstEnergy Ohio Utilities. OCC is scheduling the deposition for March 2, 2022, at 10:00 a.m. at OCC's offices in Columbus, Ohio. The subpoena also would require the deponent to produce various documents (detailed below), two days in advance of the deposition, all related to the FirstEnergy Ohio Utilities' corporate separation policies, practices, and procedures.

¹ *United States of America v. FirstEnergy Corp.*, Case No. 1:21-cr-86, Deferred Prosecution Agreement at 3-4 (Jul. 22, 2021).

Under Ohio law, the FirstEnergy utilities must implement and operate under a corporate separation plan that “satisfies the public interest” and is “sufficient” to protect Ohioans from undue preference or advantage being given to the utilities’ affiliate(s).² Under provisions of the Ohio Administrative Code, O.A.C. 4901:1-37-07, the FirstEnergy Ohio Utilities are obligated to “maintain records sufficient to demonstrate compliance with this chapter” and must produce, upon the request of staff, “all books, accounts and /or other pertinent records kept by an electric utility or its affiliates” related to businesses which require corporate separation. A key to investigating a utility’s compliance with these corporate separation provisions is the utility’s compliance officer. The utility’s compliance officer, must, among other things, certify that the utility’s corporate separation plan complies with the PUCO rules and orders.³

Daymark, one of the PUCO-hired Auditors in this proceeding, wrote it was advised that FirstEnergy’s “Chief Ethics Officer” has “ultimate responsibility for corporate separation compliance.”⁴ Daymark noted that the Chief Ethics Officer position and other positions responsible for compliance monitoring and tracking were vacant while Daymark was conducting its audit.⁵ Incredibly, Daymark noted that it “could not get access to records of the compliance officer in place during the audit period [2016 through 2020] since that person had been separated from the company prior to the start of

² R.C. 4928.17.

³ O.A.C. 4901:1-37-05(11).

⁴ Daymark Compliance Audit of FirstEnergy Operating Companies at 32 (Sept. 13, 2021).

⁵ *Id.*

the audit.”⁶ This makes no sense for consumer protection. Who’s in control – the government regulator and its auditor or the utility (FirstEnergy) being audited?

Also incredibly, Daymark wrote that it was advised by FirstEnergy staff that systems and processes in place for compliance monitoring and tracking during the four-year period now under PUCO investigation could not be located.⁷ Again, this makes no sense for consumer protection.

Daymark noted that “[t]his limited Daymark’s ability to assess the Company’s compliance tracking and monitoring activities within the audit period.”⁸ Apparently Daymark is given to understatement. Again, incredibly, for the five-year period when FirstEnergy was part of “the largest bribery money laundering scheme in Ohio history” there were no compliance records to review. This makes no sense. Where are the efforts by Daymark and the PUCO to overcome FirstEnergy’s incredible impediments to auditing? *How convenient for FirstEnergy to not be auditable (which is a violation of O.A.C. 4901:1-37-07).*

Note that FERC spoke of having to overcome FirstEnergy’s creative use of bookkeeping:

Even more concerning, several factual assertions agreed to by FirstEnergy in DPA and the remedies FirstEnergy agreed to undertake, point towards internal controls having been possibly obfuscated or circumvented to conceal or mislead as to the actual amounts, nature, and purpose of the lobbying expenditures made, and as a result, the improper inclusion of lobbying and other nonutility costs in wholesale transmission billing rates.⁹

⁶ *Id.* at 1.

⁷ *Id.* at 32.

⁸ *Id.*

⁹ *In re FirstEnergy Audit*, Docket No. FA19-1-000 at 48 (Feb. 4, 2022) (emphasis added).

Add to those audit limitations some dismal news we learned about the PUCO through public records requests. *Appallingly, the PUCO Staff had instructed potential auditors that the audit would not include investigation of FirstEnergy's House Bill 6 activities. (See Attached).*

The deponent (Mr. Fernandez) was named Vice President and Chief Ethics and Compliance Officer at FirstEnergy Corp. effective April 12, 2021.¹⁰ FirstEnergy Corp. reported, in a Nov. 19, 2020 U.S. S.E.C. filing, that Ms. Ebony Yeboah-Amankwah (its former Chief Ethics Officer) and Robert Reffner (Senior Vice President and Chief Legal Officer) were “separated from FirstEnergy due to inaction and conduct that the Board determined was influenced by the improper tone at the top.”¹¹

This OCC subpoena would require Mr. Fernandez to attend a deposition and be subject to oral examination from day-to-day by parties in this case, including OCC. The subpoena would also command the deponent to produce, two days prior to the scheduled deposition, various documents related to corporate separation compliance activities undertaken on behalf of the FirstEnergy Ohio Utilities.

This case concerns whether FirstEnergy complied with Ohio's corporate separation law and provisions of the Ohio Administrative Code pertaining to corporate separation.¹² The case should especially include investigation of any corporate separation improprieties involving FirstEnergy scandals. Those scandals should include FirstEnergy's activities of concern involving House Bill 6 and FirstEnergy's activities of

¹⁰ FirstEnergy Corp. News Release, *FirstEnergy Names Antonio Fernandez Chief Ethics and Compliance Officer* (Mar. 22, 2021).

¹¹ FirstEnergy Corp. Form 10Q at 36 (Nov. 19, 2020).

¹² O.A.C. 4901:1-37.

concern involving the former PUCO Chair (and anyone else at the PUCO). But the PUCO Staff, behind the scenes, put the kibosh on investigating the House Bill 6 scandal in this case. Originally, an audit was performed by Sage and filed on May 14, 2018.

A second audit was ordered after FirstEnergy Corp. reported the firing of its CEO and two other executives for violating “certain Company policies and its code of conduct.”¹³ The PUCO recognized the need to “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.”¹⁴

The PUCO expanded the audit period to include “the period between November 1, 2016, and October 31, 2020, which includes examination of the time period leading up to the passage of Am. Sub. H.B.6 and the subsequent referendum.”¹⁵ But the PUCO Staff nullified the consumer protection of a review of House Bill 6 issues, as explained below. And so, unfortunately, the PUCO’s second auditor, Daymark, did not evaluate information covered by the PUCO’s Entry.¹⁶

Incredibly, we learned that the PUCO Staff limited the scope of the audit so that it did not include a review of whether FirstEnergy’s H.B.6 activities violated Ohio corporate separation law.¹⁷ This can be seen in the attached emails where the Staff

¹³ FirstEnergy Corp. Form 8-K (Oct. 30, 2020).

¹⁴ *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶17 (Nov. 4, 2020).

¹⁵ *Id.*

¹⁶ *Id.*, Daymark Audit Report at 1.

¹⁷ See Attachment A, OCC Motion for Supplemental Audit (Nov. 5, 2021).

informed potential bidders for the audit contract that “No. This is a standard corporate separation audit” that does not include an audit of the source of funds for political and charitable spending on H.B.6.

The audit should have determined if FirstEnergy made consumers pay for such funding. But the auditor wrote this surprising disclaimer in the audit report:

While information or documents produced in response to other audits or investigations 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.* (Emphasis added).¹⁸

All this resulted despite the fact that H.B.6 activity has been described as “likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio.”¹⁹ *And FirstEnergy Corp., the company that holds the FirstEnergy utilities serving two million Ohioans, stands charged with a federal crime.*

The PUCO has repeatedly stated that it is “determined to act in a deliberate manner, based upon facts rather than speculation.”²⁰ But to take appropriate action for public protection based on facts, the PUCO *must first obtain the facts*. The PUCO Staff’s inexplicable self-imposition of guardrails to prevent the PUCO’s investigation from including FirstEnergy’s House Bill 6 shenanigans is not consistent with finding the facts. Who is the PUCO Staff guarding?

¹⁸ Compliance Audit of FirstEnergy Operating Companies at 1 (Sept. 13, 2021).

¹⁹ Horn, D. *Ohio House Speaker Larry Householder arrested in \$60 million bribery case*. The Cincinnati Enquirer (Jul. 31, 2020).

²⁰ *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶17 (Nov. 4, 2020).

Signing this subpoena for OCC is part of obtaining the facts (and justice). The subpoena also would help to achieve Chairperson French's objective to provide "more transparency" "to lift the 'black cloud' of [the] HB 6 scandal" from over the PUCO.²¹

Accordingly, OCC files this motion for a subpoena duces tecum to Mr. Fernandez. Per O.A.C. 4901-1-25, Mr. Fernandez will give testimony at OCC's deposition and produce designated books, papers, and documents for OCC to review, two full days prior to the scheduled deposition. The documents the deponent is requested to produce should include:

- (1) All records that were in the possession of, or under the control, of Ebony Yeboah-Amankwah related to corporate separation for the FirstEnergy Ohio utilities during 2016 through 2020.
- (2) All records containing processes and procedures that FirstEnergy Ohio utilities used pertaining to Ohio corporate separation requirements during 2016 through 2020.
- (3) All records pertaining to training undertaken with respect to FirstEnergy Ohio utilities' corporate separation compliance from 2016 through 2020.
- (4) All records pertaining to FirstEnergy Ohio Utilities' day-to-day compliance with Ohio's corporate separation rules and law.
- (5) All internal audits conducted during 2016 to 2020, pertaining to the FirstEnergy Ohio Utilities' compliance with Ohio corporate separation requirements.
- (6) All documents relating to changes to the FirstEnergy Ohio Utilities' corporate separation plan since the former Chief Ethics Officer was "separated," including any changes currently under consideration.
- (7) All communications (emails, texts, etc.) between Mr. Fernandez and his supervisor and his supervisees, respectively, relating to the FirstEnergy Utilities' corporate separation plan for Ohio.
- (8) All records containing inquiries by FirstEnergy entities into the information that PUCO auditor Daymark stated (in its audit report) was missing and not available for Daymark's auditing.
- (9) All communications (emails, texts, etc.) between Mr. Fernandez and Ms. Yeboah-Amankwah relating to the FirstEnergy Utilities' corporate separation plan for Ohio, on and after May 1, 2020.
- (10) All records explaining, documenting and/or referencing the statement in an email from Ms. Yeboah-Amankwah about paying Lincoln Electric,

²¹ 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).

including any opinion that she held with regard to making the payment. (Attached).

- (11) All records in any and all forms that Ms. Yeboah-Amankwah took with her from her job that ended at FirstEnergy.
- (12) All records that any and all FirstEnergy entities provided to FERC regarding FERC's audit of FirstEnergy in FERC Case FA 19-1-000 for the period two weeks before the audit was released and records after the audit report release on February 4, 2022.
- (13) The FirstEnergy position (job) descriptions for Mr. Fernandez and formerly for Ms. Yeboah-Amankwah.
- (14) Records containing any and all correspondence between FERC and any and all FirstEnergy entities after the February 4, 2022 issuance of FERC's audit in FERC Case FA19-1-000.

OCC's motions are more fully explained in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis
Maureen R. Willis (0020847)
Counsel of Record
John Finnigan (0018689)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Willis]: (614) 466-9567
Telephone [Finnigan]: (614) 466-9585
maureen.willis@occ.ohio.gov
john.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. LAW AND ARGUMENT	2
A. The PUCO should grant OCC's motion and sign OCC's subpoena duces tecum to FirstEnergy's Chief Ethics and Compliance Officer.	2
III. CONCLUSION	4

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

MEMORANDUM IN SUPPORT

I. INTRODUCTION

OCC files this motion, per O.A. C. 4901-1-25, to subpoena Mr. Antonio Fernandez to attend and give testimony at a deposition conducted by OCC on March 2, 2022. The deponent is to produce two days prior to the deposition the books, papers, and documents, as specifically identified in the subpoena.

The deposition and records requested are intended to produce information that pertains to the issues in this case. The issues relate to how (and whether) the FirstEnergy Ohio Utilities complied with Ohio's corporate separation law and rules during 2016 through 2020. Incredibly, due to a lack of records, state-appointed auditor Daymark was unable to assess the FirstEnergy Ohio utilities' corporate separation compliance tracking and monitoring activities undertaken within that time frame.²²

Daymark reported that the FirstEnergy staff was unable to locate systems and processes in place for compliance monitoring and tracking during that period. The Chief Ethics and Compliance Officer, the deponent, has responsibility regarding FirstEnergy's corporate separation compliance.

²² Daymark Compliance Audit at 32 (Sept. 13, 2021).

The PUCO has stated that it is “determined to act in a deliberate manner, based upon facts rather than speculation.”²³ But to take appropriate action for public protection based on facts, the PUCO *must first obtain the facts*, including by signing this subpoena for OCC.

Accordingly, the PUCO should grant this motion. The motion should be granted for OCC to subpoena the FirstEnergy’s Chief Ethics and Compliance Officer and require the production of documents pertaining to the FirstEnergy Ohio Utilities’ corporate separation policies, practices, and procedures.

II. LAW AND ARGUMENT

A. The PUCO should grant OCC’s motion and sign OCC’s subpoena duces tecum to FirstEnergy’s Chief Ethics and Compliance Officer.

OCC satisfies O.A.C. 4901-1-25 for the granting of its motion for a subpoena duces tecum. Essentially, the signing of the subpoena is a ministerial act for the PUCO. The Attorney Examiner should sign the subpoena when presented by OCC in person, per O.A.C. 4901-1-25(A)(2). If that signing does not occur for whatever reason, the PUCO Examiner should promptly return the signed subpoena to OCC via “United States mail,” per O.A.C. 4901-1-25(A)(1). The PUCO’s consideration of whether a subpoena is “unreasonable or oppressive” is only prompted if another party moves to quash, per O.A.C. 4901-1-25(C).

Under R.C. 4903.082, parties must be given ample rights of discovery. The Ohio Supreme Court recently affirmed OCC and NOPEC’s broad statutory rights to discovery

²³ *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶17 (Nov. 4, 2020).

(as intervenors), when it reversed the PUCO's ruling in the FirstEnergy Advisors case. The PUCO's ruling denied motions to compel discovery among other things.²⁴ The Court directed the PUCO to rule on the merits of the discovery motions before issuing a decision on the matters before it.²⁵

The testimony of FirstEnergy's Chief Ethics and Compliance Officer on the FirstEnergy Ohio Utilities' policies, practices and procedures is crucial to establish whether the corporate separation plan was "sufficient"²⁶ to protect Ohio consumers. Incredibly, the state-appointed (PUCO) Auditor (Daymark) acknowledged that it could not assess FirstEnergy's compliance monitoring and process during the audit period. That's supposedly because FirstEnergy's Chief Ethics and Compliance Officer position, and other positions with responsibilities in this area, were unfilled.²⁷ Also incredibly, "FirstEnergy staff" was unable to locate systems and processes in place for compliance monitoring and tracking to ensure that the FirstEnergy Ohio Utilities complied with Ohio laws and rules on corporate separation.²⁸ Among other things, the deposition should provide answers to some key questions about corporate separation issues. And the subpoena should result in the production of records relevant to corporate separation issues.

The PUCO should grant OCC's motion for a subpoena duces tecum to Mr. Fernandez to allow OCC to obtain this important information.

²⁴ *In re Suvon LLC*. Slip Op. No. 2021-Ohio-3630.

²⁵ *Id.* at ¶41.

²⁶ R.C. 4928.17 (A)(3).

²⁷ Daymark Compliance Audit at 32.

²⁸ *Id.*

III. CONCLUSION

The PUCO should sign OCC's subpoena toward giving Ohioans the benefit of a full investigation of FirstEnergy's corporate separation plan, including issues involving the FirstEnergy scandals. The PUCO must consider whether the plan satisfies the public interest and is sufficient to ensure the FirstEnergy Ohio Utilities do not extend undue preference or advantage to FirstEnergy affiliates, to the detriment of Ohio consumers. The deposition of FirstEnergy's Vice President and Chief Ethics and Compliance Officer and the production of related documents are needed for resolving this proceeding. The subpoena should be signed.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis
Maureen R. Willis (0020847)
Counsel of Record
John Finnigan (0018689)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Willis]: (614) 466-9567
Telephone [Finnigan]: (614) 466-9585
maureen.willis@occ.ohio.gov
john.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was served on the persons stated below via electric transmission this 7th day of February 2022.

/s/ Maureen R. Willis

Maureen R. Willis

Assistant Consumers' Counsel

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

SERVICE LIST

thomas.lindgren@ohioAGO.gov
werner.margard@ohioAGO.gov
joliker@igsenergy.com
Mnugent@igsenergy.com
bethany.allen@igs.com
evan.betterton@igs.com
gkrassen@bricker.com
dstinson@bricker.com
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com
trent@hubaydougherty.com
mwise@mcdonaldhopkins.com
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
talexander@beneschlaw.com
khehmeyer@beneschlaw.com

Attorney Examiners:

megan.addison@puco.ohio.gov
gregory.price@puco.ohio.gov
jacqueline.st.john@puco.ohio.gov

edanford@firstenergycorp.com
cwatchorn@firstenergycorp.com
bknipe@firstenergycorp.com
mrgladman@jonesday.com
mdengler@jonesday.com
radoringo@jonesday.com
iavalon@taftlaw.com
kverhalen@taftlaw.com
mpritchard@mcneeslaw.com
rdove@keglerbrown.com
bojko@carpenterlipps.com
donadio@carpenterlipps.com
tdougherty@theOEC.org
ctavenor@theOEC.org
jweber@elpc.org
trhayslaw@gmail.com
leslie.kovacik@toledo.oh.gov
sgoyal@jonesday.com
calee@jonesday.com
glpetrucci@vorys.com
dparram@bricker.com
rmains@bricker.com

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
Rates and Analysis Department
Public Utilities Commission of Ohio
180 East Broad Street, 3rd Floor
Columbus, Ohio 43215
Doris.mccarter@psc.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
Grid Modernization and Retail Markets Division
Rates and Analysis Department
Public Utilities Commission of Ohio
180 East Broad Street, 3rd Floor
Columbus, Ohio 43215
Doris.mccarter@psc.ohio.gov

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



London
Economics
Marie Fagan, PhD
Chief Economist
London Economics International
717 Atlantic Ave, Suite 1 A | Boston, MA | 02111
Direct: 1-617-933-7205
Cell 1-617-599-9308
www.londoneconomics.com

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.londoneconomicsexpress.com.

CAUTION: This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to csc@ohio.gov or click the Phish Alert Button if available.

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](#)

[Rates and Analysis Department](#)

[Public Utilities Commission of Ohio](#)

[180 East Broad Street, 3rd Floor](#)

[Columbus, Ohio 43215](#)

Doris.mccarter@puco.ohio.gov

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

Alyson Fieldman
Chief Marketing Strategy Officer
6685 Beta Drive
Mayfield Village, OH 44143
P: (440) 459-5969
C: (352) 642-3884
Alyson.Fieldman@marcumllp.com
[LinkedIn](#)

MARCUM
ACCOUNTANTS + ADVISORS

DISCLAIMER:

This communication has been prepared for informational purposes only and is not intended to constitute advertising or solicitation and should not be used or interpreted as tax or professional advice, unless otherwise stated. The content of this communication is limited to the matters specifically addressed herein and is not intended to address other potential tax consequences or the potential application of tax penalties to this or any other matter. Those seeking tax or professional advice should contact a member of our firm. Transmission of this information is not intended to create, and receipt does not constitute, any client-firm relationship. Personal or confidential information should not be sent to Marcum without first communicating directly with a member of our firm about establishing a client relationship.

CAUTION: This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to csc@ohio.gov or click the Phish Alert Button if available.

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.

STATE OF OHIO
PUBLIC UTILITIES COMMISSION
180 E. EAST BROAD STREET
COLUMBUS OHIO 43266-0573

Michael DeWine
GOVERNOR



PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA DUCES TECUM

TO: Mr. Antonio Fernandez
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Mr. Antonio Fernandez, Vice President and Chief Ethics and Compliance Officer of FirstEnergy Service Company, is hereby required to appear for deposition at 10:00 a.m. on March 2, 2022 at OCC's office at 65 East State Street, Suite 700, Columbus, Ohio 43215. Mr. Fernandez is also required to produce the following documents to OCC at the same location, two days prior to the scheduled deposition:

- (1) All records that were in the possession of, or under the control, of Ebony Yeboah-Amankwah related to corporate separation for the FirstEnergy Ohio utilities during 2016 through 2020.
- (2) All records containing processes and procedures that FirstEnergy Ohio utilities used pertaining to Ohio corporate separation requirements during 2016 through 2020.
- (3) All records pertaining to training undertaken with respect to FirstEnergy Ohio utilities' corporate separation compliance from 2016 through 2020.
- (4) All records pertaining to FirstEnergy Ohio Utilities' day-to-day compliance with Ohio's corporate separation rules and law.
- (5) All internal audits conducted during 2016 to 2020, pertaining to the FirstEnergy Ohio Utilities' compliance with Ohio corporate separation requirements.
- (6) All documents relating to changes to the FirstEnergy Ohio Utilities' corporate separation plan since the former Chief Ethics Officer was "separated," including any changes currently under consideration.

- (7) All communications (emails, texts, etc.) between Mr. Fernandez and his supervisor and his supervisees, respectively, relating to the FirstEnergy Utilities' corporate separation plan for Ohio.
- (8) All records containing inquiries by FirstEnergy entities into the information that PUCO auditor Daymark stated (in its audit report) was missing and not available for Daymark's auditing.
- (9) All communications (emails, texts, etc.) between Mr. Fernandez and Ms. Yeboah-Amankwah relating to the FirstEnergy Utilities' corporate separation plan for Ohio, on and after May 1, 2020.
- (10) All records explaining, documenting and/or referencing the statement in an email from Ms. Yeboah-Amankwah about paying Lincoln Electric, including any opinion that she held with regard to making the payment. (Attached).
- (11) All records in any and all forms that Ms. Yeboah-Amankwah took with her from her job that ended at FirstEnergy.
- (12) All records that any and all FirstEnergy entities provided to FERC regarding FERC's audit of FirstEnergy in FERC Docket No. FA19-1-000 for the period two weeks before the audit was released and records after the audit report release on February 4, 2022.
- (13) The FirstEnergy position (job) descriptions for Mr. Fernandez and formerly for Ms. Yeboah-Amankwah.
- (14) Records containing any and all correspondence between FERC and any and all FirstEnergy entities after the February 4, 2022 issuance of FERC's audit in FERC Docket No. FA19-1-000.

The documents will be produced in connection with the proceeding entitled: "*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 Chapter 4901:1-37* (Case No. 17-0974-EL-UNC),"

Dated at Columbus, Ohio, this 7 day of February 2022.



Attorney Examiner

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

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

2/7/2022 4:38:15 PM

in

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

Summary: Motion Motion for a Subpoena Duces Tecum for FirstEnergy Vice President and Chief Ethics and Compliance Officer Antonio Fernandez to Attend and Give Testimony at a Deposition by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Willis, Maureen R.