

**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. )

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**STATEMENT OF ADDITIONAL AUTHORITY  
FOR  
OCC AND NOPEC JOINT INTERLOCUTORY APPEAL  
AND  
OCC AND NOPEC JOINT MOTION FOR SUPPLEMENTAL AUDIT  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL  
AND THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

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OCC and NOPEC bring to the attention of the PUCO additional authority in the above-referenced proceeding. The additional authority is the publicly filed FERC Audit of FirstEnergy and its affiliates, dated February 4, 2022, and filed in FERC Docket No. FA19-1-000. The authority is particularly relevant to OCC/NOPEC's January 14, 2022, Interlocutory Appeal and OCC/NOPEC's Motion for a Supplemental Audit, filed on November 5, 2021.

FERC's audit includes shocking new revelations about FirstEnergy's creative bookkeeping. For example, FERC's audit concludes the existence:

of significant shortcomings in FirstEnergy and its subsidiaries' internal controls over financial reporting, including controls over accounting for expenses relating to civic, political, and related activities, such as lobbying activities performed by and on behalf of FirstEnergy and its subsidiaries. Even more concerning, several factual assertions agreed to by FirstEnergy in DPA [Deferred Prosecution Agreement] 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.<sup>1</sup>

These costs, were incurred to benefit FirstEnergy's non-regulated affiliates, including FirstEnergy Solutions. And were included, in part, in FirstEnergy's Ohio electric distribution utilities' rates.<sup>2</sup> The FERC audit findings suggest a direct violation of R.C. 4928.17, which is the core issue in this proceeding.

In their *Joint Interlocutory Appeal*, OCC and NOPEC requested that this proceeding be held in abeyance until a supplemental audit can be conducted. And we requested that discovery in this matter continue.<sup>3</sup> OCC and NOPEC noted that forcing parties to file testimony and to participate in an upcoming hearing (March 14, 2022) is premature. The timeline would end the fact-finding needed for the truth about the FirstEnergy scandals, despite our discovery rights being guaranteed by Ohio law and PUCO rules.<sup>4</sup> OCC/NOPEC noted that the PUCO (and Ohioans) should benefit from information that is developed in other investigations, including the FERC audit.

In the *Joint Motion for a Supplemental Audit*, OCC/NOPEC urged the PUCO to require a supplemental audit of FirstEnergy. Incredibly, the PUCO Staff derailed consideration of House Bill 6 issues in the investigation in this case. So a supplemental audit is needed to accomplish what should already have been in the audit. And a

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<sup>1</sup> FERC Audit Report at 48 (Feb. 4, 2022), Docket No. FA19-1-000.

<sup>2</sup> *Id.* at 48-51.

<sup>3</sup> *In the Matter of the Review 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. 17-974-EL-UNC, Interlocutory Appeal, Request for Certification to the PUCO Commissioners, and Application for Review (Jan. 14, 2022).

<sup>4</sup> *Id.* at 2, 6, 13-14.

supplemental audit should investigate the potential violations associated with FirstEnergy Advisors' behind-the scenes communications, activities, and related matters.<sup>5</sup>

Allowing a party to file additional authority is consistent with practice at the Supreme Court of Ohio. Ohio Supreme Court Rule of Practice 7.04(A) provides: "If a relevant authority is issued after the deadline has passed for filing a party's jurisdictional memorandum, that party may file a citation to the relevant authority but shall not file additional argument."

Here, the additional authority is the publicly filed FERC audit of FirstEnergy and its affiliates. Because FERC's audit was publicly filed after the joint motions, there was no way for OCC/NOPEC to have included the FERC audit in its earlier filings.

Respectfully submitted,

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<sup>5</sup> *In the Matter of the Review 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. 17-974-EL-UNC, Motion for Supplemental Audit, Motion at 4 (Nov. 5, 2021).*

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Statement of Additional Authority was served on the persons listed below via electronic transmission, this 8th 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:

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Summary: Notice Statement of Additional Authority for OCC and NOPEC Joint Interlocutory Appeal and OCC and NOPEC Joint Motion for Supplemental Audit by Office of the Ohio Consumers' Counsel and the Northeast Ohio Public Energy Council electronically filed by Ms. Alana M. Noward on behalf of Willis, Maureen R.