

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM IN SUPPORT OF DISCLOSURE OF DOCUMENTS
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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Dated: February 18, 2022

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I. INTRODUCTION

On September 15, 2020, the Public Utilities Commission of Ohio (Commission) initiated the above-captioned proceeding and directed Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the FirstEnergy Utilities) “to show cause, by September 30, 2020, 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.”¹

On June 29, 2021, in the above-captioned proceeding, the Office of the Ohio Consumers’ Counsel (OCC) filed two motions to compel, which in part requested that the FirstEnergy Utilities be required to produce information related to a Federal Energy Regulatory Commission (FERC) audit in FERC Docket No. FA19-1-000.² At an August 31, 2021 prehearing conference, the Attorney Examiner then denied OCC’s motions to compel and stated, “[w]e are going to go ahead and deny the motion to compel. We will let FERC proceed with their investigation in a confidential matter. If and when a public audit is released by FERC, we can revisit this issue at that time.”³

On February 6, 2019, FERC’s Division of Audits and Accounting had commenced an audit of FirstEnergy Corp. and its subsidiaries to evaluate compliance with various accounting, recordkeeping, and reporting requirements from June 1, 2015 until September 30, 2021.⁴

¹ Entry at ¶ 5 (September 30, 2020).

² See OCC’s Motion to Compel Responses to the Sixth Set of Discovery (June 29 2021); OCC’s Motion to Compel Responses to the Fifth and Seventh Set of Discovery (June 29, 2021).

³ Transcript of August 31, 2021 Prehearing Conference at 18 (September 13, 2021).

⁴ See Letter from L. Parkinson, Director, Officer of Enforcement, FERC, Docket No. FA19-1-000 (February 6, 2019).

On February 4, 2022, a final audit of FirstEnergy Corp. and its subsidiaries was publicly released and filed in the FERC docket (FERC Audit).⁵ The FERC Audit determined, among other things, that charges were collected from FirstEnergy subsidiaries' customers in order to fund the scandal-ridden Am. Sub. H.B. 6 (H.B. 6).⁶ As part of its review, the FERC Audit staff "collect[ed] audit evidence and information...to test and evaluate compliance with [FERC] requirements relevant to audit objectives."⁷ The evidence and information that FirstEnergy Corp. and its subsidiaries provided to FERC, which supported the FERC Audit's conclusion that customers were charged for H.B. 6-related expenses, are integral to the Commission's review in the above-captioned proceeding.

At a February 10, 2022 prehearing conference in the above-captioned proceeding, the Attorney Examiner directed parties, by February 18, 2022, to brief the issue whether FirstEnergy Corp. and its subsidiaries' production of documents in relation to the FERC Audit is protected from disclosure and whether any purported investigatory privilege continues to exist. In accordance with the Attorney Examiner's directive, the Ohio Manufacturers' Association Energy Group (OMAEG) hereby files its Memorandum in Support of disclosure of the FERC Audit documents. The FirstEnergy Utilities should be compelled to produce information related to the FERC Audit.

The information sought by OCC and other intervening parties is exceedingly relevant to the Commission's review in the above-captioned proceeding. Contrary to the FirstEnergy Utilities' argument, federal law and regulations *do not* protect the information sought from being disclosed. Similarly, Ohio law and regulations also do not protect the information sought from

⁵ FERC Audit Report of FirstEnergy Corporation and its Subsidiaries, Docket No. FA19-1-000 (February 4, 2022).

⁶ *Id.* at 50-51.

⁷ *Id.* at 23.

being disclosed. Moreover, even if the information sought is deemed to be confidential (which has yet to be demonstrated) that alone would not preclude the information sought from being provided to parties in the above-captioned proceeding pursuant to protective agreements and for the limited purpose of litigating the Commission's H.B. 6-related cases. Finally, to the extent that the FirstEnergy Utilities argue that the production of the requested information will impede the aforementioned FERC Audit and ongoing proceedings related thereto or future FERC audits, this proposition is without merit.

For the foregoing reasons and as explained in further detail below, OMAEG respectfully requests that the FirstEnergy Utilities be compelled to produce the requested information that pertains to the FERC Audit in Docket No. FA19-1-000.

II. ARGUMENT

A. The FirstEnergy Utilities Should Be Required to Disclose the Information Sought, Which is Not Privileged Under Federal Law or Regulations.

The FirstEnergy Utilities have incorrectly argued that the information sought is protected from disclosure under federal law and regulations including 16 U.S.C. § 825(b), 42 U.S.C. § 16452(d), 18 C.F.R. § 3c.2(a), and 18 CFR § 388.107.⁸ However, the FirstEnergy Utilities' argument contravenes the plain language of these provisions, traditional canons of statutory interpretation, and relevant case law.

The discovery requests at issue are:

OCC-RPD-05-001: On February 16, 2021, FirstEnergy filed a Form 8-K with the SEC disclosing an investigation by FERC's Division of Audits and Accounting that includes activities relating to HB 6 lobbying and governmental affairs activities. Please produce all documents reflecting (i) communications from FERC's Division of Audits and Accounting relating to the investigation; (ii) communications from

⁸ See, e.g., the FirstEnergy Utilities' Memorandum Contra OCC's Motion to Compel Responses to the Sixth Set of Discovery at 2 (July 9, 2021); Attachment 1, the FirstEnergy Utilities' Response to OCC RPD-5-001 (March 18, 2021).

FirstEnergy to FERC's Division of Audits and Accounting relating to this investigation.⁹

OCC-INT-06-003. With respect to the financial audit of FirstEnergy Corp. including its service companies and other associated companies, undertaken by FERC, Division of Audits and Accounting, Office of Enforcement, Docket No. FA 19-1-000, please identify:

- a. The employees that have met with the FERC Staff either in person or via a virtual meeting;
- b. The employees interviewed by FERC Staff; and
- c. The employees that have communicated with the FERC Staff.¹⁰

16 U.S.C. § 825(b), in pertinent part, states “[n]o *member, officer, or employee of the Commission* shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as herein before provided, except insofar as he may be directed by the Commission or by a court.” (Emphasis added).

The plain language of the statute applies to members, officers, and employees of FERC. The discovery requests in question were served on the FirstEnergy Utilities and require the FirstEnergy Utilities to produce responsive documents, not FERC Staff. The discovery requests seek information about communications related to the FERC Audit and information that would have been produced by FirstEnergy Corp. and its subsidiaries when responding to FERC Staff's discovery requests and/or while otherwise answering questions or communicating with FERC Staff. It is the responses to discovery requests and other communications in the FERC Audit proceeding after the Audit has concluded that are being requested to be produced in this case. The discovery sought in this case neither requests nor would it require a member, officer, or employee of FERC to divulge *anything*, let alone facts or information learned by that staff member during the course of the FERC Audit that has now ended.¹¹ Try as they might, the FirstEnergy Utilities

⁹ See Attachment 1 OCC RPD 5-001; Attachment 2 OCC-INT 6-03.

¹⁰ See Attachment 2 OCC-INT 6-03.

¹¹ See Attachment 1 OCC RPD 5-001; Attachment 2 OCC-INT 6-03.

cannot reasonably interpret the plain meaning of 16 U.S.C. § 825(b) to protect the discovery responses and documents related to communications about the FERC Audit from disclosure under the statute by the FirstEnergy Utilities after the Audit has ended. No one is asking FERC Staff to testify to what it learned or how it conducted the audit during the investigatory stage. The investigation is now over and parties are seeking documents reflecting past communications about the Audit, which should be produced by the FirstEnergy Utilities.

The Commission has recognized that, “[i]n construing a statute, our paramount concern is legislative intent. If the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary.”¹² The Supreme Court of Ohio has also long held that courts and administrative agencies are prohibited from adding or removing words from statutes that do not exist. *State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 45 (2008) (holding, “[w]e cannot generally add a requirement that does not exist in the Constitution or a statute”); *Wachendorf v. Shaver*, 149 Ohio St. 231, 237, 78 N.E.2d 370, 374 (1948) (holding, “[i]t is a general rule that courts, in the interpretation of a statute, may not take, strike or read anything out of a statute, or delete, subtract or omit anything therefrom”); *see also* *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 88, 706 N.E.2d 1255 (1999). The Commission should not be misled by the FirstEnergy Utilities who improperly seek to modify the plain meaning of 16 U.S.C. § 825 so that it applies to subjects of regulatory audits in addition to members, officers, or employees of FERC.

¹² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Decoupling Mechanism*, Case Nos. 19-2080-EL-ATA, et al., Order at ¶ 25 (January 15, 2020) (citing *WorldCom, Inc. v. City of Toledo*, Case Nos. 02-3207-AU-PWC, 02-3210-EL-PWC, Opinion and Order (May 14, 2003); (*State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Ed.*, 74 Ohio St. 543, 660 N.E.2d 463 (1996); (*Akron Management Corp. v. Zaino*, 94 Ohio St.3d 101, 760 N.E.2d 405 (2002)).

Finally, the FirstEnergy Utilities' interpretation should be rejected because it is inconsistent with how courts have interpreted the statute. For example, a state appellate court has held, "[b]y its plain language, the statute only restricts the disclosure of account information by a member, employee, or officer of the Commission. We therefore reject Johnston's claim that MEA's disclosures violated 16 U.S.C. § 825."¹³

The FirstEnergy Utilities are also incorrect in arguing that 42 U.S.C. § 16452(d) prevents disclosure of the information related to the FERC Audit.¹⁴ 42 U.S.C. § 16452(d) provides, [n]o member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction." (Emphasis added). Due to similarities between 16 U.S.C. § 825 and 42 U.S.C. § 16452(d), OMAEG hereby incorporates by reference its foregoing arguments and urges the Commission to reject the arguments that 42 U.S.C. § 16452(d) prevents disclosure of discovery responses and documents related to communications about the FERC Audit by the FirstEnergy Utilities after the Audit has ended.

The FirstEnergy Utilities have also argued that 18 C.F.R. § 3c.2(a) protects the information related to the FERC Audit from disclosure (which it does not).¹⁵

18 C.F.R. § 3c.2 reads:

(a) Section 1264(d) (42 U.S.C. 16452(d)) of the Public Utility Holding Company Act of 2005, section 301(b) (16 U.S.C. 825(b)) of the Federal Power Act, and section 8(b) (15 U.S.C. 717g) of the Natural Gas Act prohibit *any employee*, in the absence of Commission or court direction, from divulging any fact or information

¹³ *Johnston v. State*, No. A-7383, 2002 WL 563609, at *8 (Alaska Ct. App. Apr. 17, 2002).

¹⁴ *See, e.g.*, the FirstEnergy Utilities' Memorandum Contra OCC's Motion to Compel Responses to the Sixth Set of Discovery at 2 (July 9, 2021).

¹⁵ *Id.*

which may come to his or her knowledge during the course of examination of books or other accounts.

(b) The *nature and time of any proposed action* by the Commission are confidential and shall not be divulged to anyone outside the Commission. The Secretary of the Commission has the exclusive responsibility and authority for authorizing the initial public release of information concerning Commission proceedings. (Emphasis added).

Again, the FirstEnergy Utilities and their representatives are not FERC *employees*. Therefore, 18 C.F.R. § 3c.2(a) clearly does not apply to disclosure of information by the FirstEnergy Utilities after the FERC Audit has ended. In fact, the FirstEnergy Utilities go as far to admit that “while the [foregoing] federal statutes and regulation *expressly apply to FERC*, they reflect and implement important federal rules and policy that *implicitly* extends to state regulators like this Commission.”¹⁶ The FirstEnergy Utilities inexplicably have argued that their implicit policy considerations should somehow trump the plain language of the federal laws and regulations at issue. The Commission should reject this argument as it is without merit.

To the extent the FirstEnergy Utilities argue that compelling disclosure of information and communications concerning the FERC Audit violates 18 C.F.R. § 3c.2(b) they are also mistaken. 18 C.F.R. § 3c.2(b)’s plain language clarifies that it only applies to the nature and time of the proposed actions of FERC. The discovery requests in question do not seek to probe any substantive aspects of FERC’s proposed actions or Staff’s thoughts and analysis while the investigation is ongoing, and the FirstEnergy Utilities cannot reasonably argue that the underlying evidence or information in the FERC Audit is protected by 18 C.F.R. § 3c.2(b).

¹⁶ The FirstEnergy Utilities’ Memorandum Contra OCC’s Motion to Compel Responses to the Sixth Set of Discovery at 6 (July 9, 2021).

The FirstEnergy Utilities are also mistaken in their objection that under 18 CFR § 388.107, the information sought is privileged and therefore protected from disclosure.¹⁷ Contrary to the FirstEnergy Utilities' characterization, the regulation is *not* a blank check to conceal information produced in FERC proceedings. Instead 18 CFR § 388.107 sets forth specific categories of documents (none of which are applicable in this context) that may not be disclosed in a *public forum*. In making their argument, the FirstEnergy Utilities appear have conflated privilege with confidentiality.

Indeed, FERC has clarified that “section 388.107 of the Commission's regulations does not apply to non-disclosure agreement procedures with an intervening party under section 388.112, because section 388.107 only relates to material *that may be protected from the public at-large*.”¹⁸ FERC further stated that “it is common practice for parties to a proceeding to use a protective agreement to gain access to confidential and proprietary information submitted on a non-public basis while at the same time ensuring such information is neither publicly disclosed nor used by parties for purposes unrelated to their participation in the proceeding” and “the Commission finds use of such agreements appropriately balances the interests of filers in protecting their sensitive information against inappropriate disclosure and the right of intervenors to access information necessary to their full and meaningful participation in a contested proceeding.”¹⁹ Accordingly, even if 18 CFR § 388.107 applied, it would not preclude the disclosure of the information sought in a non-public forum to parties who have executed confidentiality agreements with the FirstEnergy Utilities and/or FirstEnergy Corp.

¹⁷ Attachment 1, the FirstEnergy Utilities' Response to OCC RPD-5-001 (March 18, 2021)

¹⁸ *Arlington Storage Co., LLC*, 145 FERC ¶ 61,025, 61,107 (2013) (emphasis added).

¹⁹ *Id.*

Lastly, there is no danger of impeding FERC’s Audit and any argument to the contrary is a red herring. The final FERC Audit of FirstEnergy Corp. and its subsidiaries, the very subject of the discovery requests, has been filed and is publicly accessible.²⁰ The investigation leading up to the final FERC Audit report has ended. In its previous arguments, the FirstEnergy Utilities argued that the investigation was ongoing and that providing the documents and communications would somehow impeded that investigation: “[f]ederal law establishes that documents connected with an *ongoing* FERC audit are confidential and thus protected from disclosure.”²¹ Even if some so-called investigatory privilege existed (which the FirstEnergy Utilities have yet to establish), now that the FERC Audit has concluded and resulted in the filing of a final FERC Audit report, this argument by the FirstEnergy Utilities is moot as there is no ongoing investigation.

B. The FirstEnergy Utilities Should Be Required to Disclose the Information Sought, Which is Not Privileged Under Ohio Law or Regulations.

At the prehearing conference, the FirstEnergy Utilities stated that the documents were confidential and may not be publicly disclosed. While the FirstEnergy Utilities may have inadvertently used the word confidential instead of privileged, the distinction is important and worth addressing here in the event the FirstEnergy Utilities attempt to also make the argument that the documents are confidential and cannot be released. If the Commission determines that the production of documents at issue here is not protected by the investigatory privilege, the Commission should also determine that the documents are not otherwise protected and should be released to the public.

²⁰ FERC Audit Report of FirstEnergy Corporation and its Subsidiaries, Docket No. FA19-1-000 (February 4, 2022).

²¹ The FirstEnergy Utilities’ Memorandum Contra OCC’s Motion to Compel Responses to the Sixth Set of Discovery at 2 (July 9, 2021) (emphasis added).

Ohio Adm. Code 4901-1-24(D) provides that the Commission or certain designated Commission employees “may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information.” The FirstEnergy Utilities have the burden of demonstrating that the information sought constitutes a trade secret or other form of protected information under Ohio law.²²

Ohio law protects trade secrets by not considering them public records and exempting them from public disclosure.²³

Under R.C. 1333.61(D):

"Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.²⁴

To date, the FirstEnergy Utilities have not met their burden in demonstrating that the information sought is protected and, consistent with Ohio law, it should not be incumbent on intervening parties to demonstrate the contrary.

As discussed above, simply because information is deemed confidential, that does not mean it is privileged or completely insulated from disclosure. Parties to the above-captioned proceeding who have executed protective agreements, such as OMAEG, have a right to any

²² See *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 1999-Ohio-260, 85 Ohio St. 3d 171, 181, 707 N.E.2d 853, 862.

²³ See R.C. 149.43 (A)(1)(v); *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St.3d 513, 530 (1997).

²⁴ R.C. 1333.61(D) (emphasis added).

information that is “reasonably calculated to lead to the discovery admissible evidence,”²⁵ even if it is confidential in nature. Also, to the extent that only a portion of certain documents are deemed to be confidential, they can be redacted appropriately before being released in a public forum. In sum, the FirstEnergy Utilities cannot and should not be dictating what relevant information is available to the public, the parties, and/or the Commission during its review, particularly when their arguments for doing so are not supported by law.

III. CONCLUSION

For the aforementioned reasons, OMAEG respectfully requests that the FirstEnergy Utilities be compelled to disclose the information related to the FERC Audit.

Respectfully submitted,

/s/ Thomas V. Donadio

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²⁵ Ohio Adm. Code 4901-1-16(B).

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on February 18, 2022 upon the parties listed below.

/s/ Thomas V. Donadio
Thomas V. Donadio

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**RESPONSES AND OBJECTIONS TO
REQUESTS FOR PRODUCTION OF DOCUMENTS**

RPD-05-001. On February 16, 2021, FirstEnergy filed a Form 8-K with the SEC disclosing an investigation by FERC's Division of Audits and Accounting that includes activities relating to HB 6 lobbying and governmental affairs activities. Please produce all documents reflecting (i) communications from FERC's Division of Audits and Accounting relating to the investigation; (ii) communications from FirstEnergy to FERC's Division of Audits and Accounting relating to this investigation.

RESPONSE: The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not concern 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 also object to this Request as overbroad and unduly burdensome because it unreasonably purports to require the Companies to provide copies of "all documents reflecting [] communications" between FirstEnergy and FERC's Division of Audits and Accounting concerning the FERC investigation. The Companies also object to this Request on the ground that it is vague and ambiguous because the matter conducted by FERC's Division of Audits and Accounting is an audit and not an "investigation." The Companies further object on the ground that the information requested is confidential, non-public, and protected from disclosure under the Federal Power Act, including 16 U.S.C § 825, 42 U.S.C § 16452(d), and FERC's regulations, including 18 C.F.R. Part 388. Consistent with these statutes and regulations, FERC makes clear that its Audit process "is subject to the confidentiality provisions of [section 301 of the Federal Power Act]" and that "[d]ocuments and information that the Commission staff obtains during an audit, as well as all working papers developed, will be placed in nonpublic files." See "Audit Authority – Electric Audit Authority" description at <https://www.ferc.gov/enforcement-legal/enforcement/audits>. The Companies also object to this Request because OCC has no

jurisdiction to investigate the business practices of FirstEnergy Corp. or other affiliates of the Companies. Lastly, the Companies object to this Request because it seeks the production of documents that are not within the Companies' possession, custody, or control.

RPD-05-002. Please produce copies of all documents relating to any communication between FirstEnergy and Sam Randazzo relating to (i) the PUCO's elimination in November 2019 of the requirement that the FirstEnergy Utilities file a distribution rate case by May 31, 2024;(ii)FirstEnergy and the Public Utilities Commission of Ohio relating to the elimination of the rate case filing requirement.

RESPONSE: The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not concern 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 Request as overbroad, unduly burdensome, vague, and ambiguous because the Request seeks "all documents relating to any communication" concerning the topics referenced by the Request.

RPD-05-003. On February 16, 2021, FirstEnergy filed a Form 8-K with the SEC disclosing a partial settlement between the Ohio Attorney General and other parties. Please produce a copy of the partial settlement agreement including any side agreements reached

RESPONSE: The Companies object to this Request as not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. This Request does not concern 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.

RPD-05-004. Please produce a copy of all documents relating to FirstEnergy's decision whether to enter into a partial settlement agreement with the Ohio Attorney General and other parties.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

INT-06-001. Please identify Art Richards and specify his position, which entity he works for, who he directly reports to and who directly reports to him.

RESPONSE: Art Richards is the Director of General Accounting. He is an employee of FirstEnergy Service Company. See also the Companies' response to OCC INT-06-002.

INT-06-002. Referring to Mr. Fanelli's deposition at page 111, please identify all employees (by name, position, with direct reports indicated) that comprise the "accounting group."

RESPONSE: Please see OCC INT-06-002 Attachment 1 for a current organizational chart for the Accounting organization at FirstEnergy.

INT-06-003. With respect to the financial audit of FirstEnergy Corp. including its service companies and other associated companies, undertaken by FERC, Division of Audits and Accounting, Office of Enforcement, Docket No. FA 19-1-000, please identify:

- a. The employees that have met with the FERC Staff either in person or via a virtual meeting;
- b. The employees interviewed by FERC Staff; and
- c. The employees that have communicated with the FERC Staff.

RESPONSE: The Companies object to this Request because it seeks information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. The information sought does not concern, nor is it

- d. What was the rationale for booking part of these costs to Account 923 and to capitalize the remaining portion of these costs?
- e. Who had knowledge of the booking of part of these costs to Account 923 and to capitalize the remaining portion of these costs and when was that knowledge acquired?

RESPONSE: The Companies object to this Request as overbroad, vague, and ambiguous because the Request refers generally to any “payments by FirstEnergy Service Company to Generation Now and Hardworking Ohioans.” The Companies interpret this Request to refer to the 2017 payments to Generation Now and the 2018 payment to Hardworking Ohioans referenced in Mr. Fanelli’s deposition testimony. Case No. 20-1502-EL-UNC, Dep. Tr., at 131:4-5, 2061-5 (March 9-10, 2021). Subject to the clarification above and without waiving any of their objections, the Companies further state as follows:

In response to subparts (a), (b), and (c), the Companies state that the 2017 payments to Generation Now were approved by Michael J. Dowling, former Senior Vice President of External Affairs, and the 2018 payment to Hardworking Ohioans was approved by Joel D. Bailey, former Vice President of State & Local Governmental Affairs & Economic Development. The External Affairs department originally coded these payments to cost collectors that were recorded as an operating expense at FirstEnergy Service Company. Based on the cost collectors charged, a portion of these costs were ultimately recognized as operating expense and cost of electric plant at the Companies. Upon subsequent review of these payments, a determination was made that the costs should have been recorded to FERC Account 426.4 “Expenditures for certain civic, political and related activities.” In September 2020, the amounts were credited from operating expense and cost of electric plant at the Companies and debited to nonoperating expense.

The Companies object to subpart (d) on the grounds that this Request calls for information outside of the Companies' possession and control. The Companies further object to the term "rationale" as vague and ambiguous.

The Companies further object to subpart (e) on the grounds that this subpart is overbroad, unduly burdensome, vague, and ambiguous because it calls for information outside of the Companies' possession and control and impossible for the Companies to ascertain.

INT-06-005. Please identify (name, position, and FirstEnergy entity) who authorized and/or approved the following payments by FirstEnergy Service Company that a portion thereof were subsequently allocated to the First Energy Ohio Utilities:

- a. \$250,000 to Generation Now on 3/16/2017;
- b. \$250,000 to Generation Now on 5/14/2017;
- c. \$250,000 to Generation now on 5/17//2017; and
- d. \$250,000 to Generation Now on 8/10/2017.

RESPONSE: The Companies object to this Request and its subparts because they seek information not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. The information sought does not concern, nor is it reasonably calculated to lead to information concerning, 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.

Subject to and without waiving the foregoing objections, the Companies state that Michael J. Dowling, former Senior Vice President of External Affairs, approved the payments referenced

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

Summary: Memorandum in Support of Disclosure of Documents electronically filed
by Mr. Thomas V. Donadio on behalf of OMA Energy Group