

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE  
POLITICAL AND CHARITABLE SPENDING  
BY OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON  
COMPANY.

CASE NO. 20-1502-EL-UNC

## ENTRY

Entered in the Journal on March 9, 2022

### I. SUMMARY

{¶ 1} The Commission directs the Staff to issue a request for proposals for audit services to assist Staff in its review to determine whether the show cause demonstration submitted by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company is sufficient to ensure that the cost 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.

### II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy Ohio or the Companies) are electric distribution utilities, as defined by R.C. 4928.01(A)(6), and public utilities, as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4905.06 states, in relevant part, that the Commission has general supervision over all public utilities within its jurisdiction as defined in R.C. 4905.05, and may examine such public utilities and keep informed as to their general condition, capitalization, and franchises, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, the safety and security of the public and their employees, and their compliance with all laws, orders of the Commission, franchises, and charter requirements.

{¶ 4} R.C. 4905.05 states, in relevant part, that the jurisdiction, supervision, powers, and duties of the Commission extend to every public utility, the plant or property of which lies wholly within this state and when the property of a public utility lies partly within and partly without this state to that part of such plant or property which lies within this state; to the persons or companies owning, leasing, or operating such public utilities; and to the records and accounts of the business thereof done within this state.

{¶ 5} The Commission opened this proceeding on September 15, 2020, to review the political and charitable spending by the Companies in support of Am. Sub. H.B.6 and the subsequent referendum effort. On that same date, the attorney examiner directed the Companies 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. Further, the attorney examiner directed interested parties to file comments regarding the Companies' response by October 29, 2020, and to file reply comments by November 13, 2020.

{¶ 6} The Companies timely filed their response to the show cause order on September 30, 2020. As part of the response, the Companies included an affidavit of Santino L. Fanelli.

{¶ 7} In a memorandum filed on July 23, 2021, the Companies represented that the Deferred Prosecution Agreement (DFA) entered into between the Companies' parent corporation, FirstEnergy Corp., and the United States Attorney's Office for the Southern District of Ohio may require that the Companies supplement their response to the September 15, 2020 show cause order. Further, the Companies represented that the DFA requires that the Companies supplement certain portions of their discovery responses in this proceeding.

{¶ 8} By Entry issued August 3, 2021, the attorney examiner scheduled a prehearing conference in this proceeding to address a variety of matters, including, but not

limited to, the status of supplementing the original response to the show cause order. Further, the Entry indicated that a new schedule would be established for the filing of comments and reply comments to the Companies' response to the show cause order.

{¶ 9} On August 6, 2021, the Companies filed a motion for leave to file a supplemental response to the September 15, 2020 show cause order. No memoranda contra the Companies' motion were subsequently filed.

{¶ 10} In order to allow additional time to resolve numerous outstanding discovery disputes and other procedural issues, the attorney examiner extended the deadline for filing initial comments and reply comments to the Companies' response to the show cause order on several occasions, both sua sponte and at the request of various parties. See, e.g., Entry (Oct. 20, 2020) at ¶ 10; Entry (Apr. 22, 2021) at ¶¶ 6, 8, 12; Entry (May 13, 2021) at ¶¶ 23, 24, 28; Entry (July 20, 2021) at ¶¶ 15, 17; Entry (July 29, 2021) at ¶¶ 14, 16; Entry (Aug. 3, 2021) at ¶ 17.

{¶ 11} A prehearing conference was held on August 31, 2021, at which the Companies' unopposed motion for leave to supplement its response to the Commission's show cause order was granted, among other matters. Further, in order to provide parties time to adhere to the directives provided during the prehearing conference, the attorney examiner instructed that the initial and reply comment period would be established by subsequent entry. (Tr. (Aug. 31, 2021) at 9, 54).

{¶ 12} By Entry issued October 28, 2021, the attorney examiner established a comment period regarding the Companies' response to the show cause order, as supplemented on August 6, 2021, with initial and reply comments to be filed by November 29, 2021, and December 14, 2021, respectively. Further, the attorney examiner deferred ruling on Ohio Consumer's Council's (OCC) October 27, 2021 motion until after responsive memoranda contra and comments regarding the Companies' show cause order had been received. Entry (Oct. 28, 2021) at ¶ 20.

{¶ 13} Initial comments regarding the Companies' show cause order were timely filed by Citizens' Utility Board of Ohio, OCC, and the Ohio Manufacturers' Association Energy Group (OMAEG) on November 29, 2021.<sup>1</sup> Reply comments were timely filed by OCC, Ohio Hospital Association, FirstEnergy Ohio, and OMAEG.<sup>2</sup> The comments generally supported an update of the Companies to ensure that political and charitable contributions are not recovered in rates.

{¶ 14} In accordance with the September 15, 2020 Entry, and based upon our review of the comments received and our continued commitment towards transparency in this investigation, the Commission directs Staff to issue the attached request for proposal (RFP) to acquire auditing services to assist the Commission with its review of the political and charitable spending of the Companies. The auditor's investigation shall determine whether the Companies' show cause demonstration is sufficient to ensure that the cost 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. Entry (Sept. 15, 2020) at ¶ 5. Notably, as set forth in the RFP, the auditor will be required to review costs booked to relevant Federal Energy Regulatory Commission accounts during the period from January 1, 2017 through December 31, 2019. In order to demonstrate the ability to perform the services required in the RFP, the proposal must show, in detail, the auditor's understanding of the project and the work required. Each proposal must address, with specificity, how the auditor will handle all of the issues in the RFP. The auditor must demonstrate that it will be able to perform the required services, showing its clear understanding of the tasks to be completed, the experience and qualifications of the personnel who will perform the work, and the anticipated breakdown of costs and timing. The selection criteria to be used by the Commission to determine the selection of the auditor

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<sup>1</sup> Ohio Energy Group, the Ohio Hospital Association, Natural Resources Defense Council, and Ohio Partners for Affordable Energy filed correspondence indicating they would not be filing initial comments.

<sup>2</sup> Ohio Energy Group filed correspondence indicating it would not be filing reply comments.

shall be the technical and management capabilities of each firm, as well as the overall cost of each bid.

{¶ 15} FirstEnergy Ohio shall directly contract with the auditor chosen by the Commission and bear the costs of the audit services solicited in the RFP.

{¶ 16} The Commission shall select and solely direct the work of the auditor. Staff will review and approve payment invoices submitted by the auditor.

{¶ 17} The auditor shall perform its audit and investigation as an independent contractor. Any conclusions, results, or recommendations formulated by the auditor may be examined by any participant to this proceeding. Further, it shall be understood that the Commission and/or its Staff shall not be liable for any acts committed by the auditor or its agents in the preparation and presentation of the report.

{¶ 18} The auditor will execute its duties pursuant to the Commission's statutory authority to investigate and acquire records, contracts, reports, and other documentation under R.C. 4903.02, 4903.03, 4905.06, 4905.15, and 4905.16. The auditor is subject to the Commission's statutory duty under R.C. 4901.16, which provides:

Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent. Whoever violates this section shall be disqualified from acting as agent, or acting in any other capacity under the appointment or employment of the commission.

{¶ 19} Once disclosure is permitted by R.C. 4901.16, the following process applies to the release of any document or information marked as confidential. Three days' prior, a notice of intent to disclose shall be provided to the party claiming confidentiality. Three

days after such notice, Staff or the auditor may disclose or otherwise make use of such documents or information for any lawful purpose, unless the Commission receives a request for a protective order pertaining to such documents or information within the three-day notice period. The three-day notice period will be computed according to Ohio Adm.Code 4901-1-07.

{¶ 20} Upon request of the auditor or Staff, FirstEnergy Ohio shall provide any and all documents or information requested. FirstEnergy Ohio may conspicuously mark such documents or information as “confidential” if FirstEnergy Ohio believes the documents should be deemed as such. In no event, however, shall FirstEnergy Ohio refuse or delay in providing such documents or information.

### III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That Staff issue the RFP attached to this Entry and that April 6, 2022, be set as the due date for proposals in response to the RFP. It is, further,

{¶ 23} ORDERED, That, in accordance with Paragraph 15, FirstEnergy Ohio bear the cost of the auditing services of the auditor chosen by the Commission. It is, further,

{¶ 24} ORDERED, That FirstEnergy Ohio and the auditor shall observe the requirements set forth herein. It is, further,

{¶ 25} ORDERED, That a copy of this Entry be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

MJA/mef

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REQUEST FOR PROPOSAL NO. RA22-PCS-1

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AN AUDIT OF THE  
POLITICAL AND CHARITABLE SPENDING  
BY OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON  
COMPANY

Issued by:  
THE  
PUBLIC UTILITIES COMMISSION OF OHIO  
180 East Broad Street  
Columbus, Ohio  
43215-3793

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PROPOSAL DUE: APRIL 6, 2022

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## I. INTRODUCTION

On September 15, 2020, the Public Utilities Commission of Ohio (Commission) established Case No. 20-1502-EL-UNC to review the political and charitable spending by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively FirstEnergy Ohio or the Companies). The initial Entry filed by the Attorney Examiners set forth the scope of the proceeding, as stated below, and established a procedural schedule for comments and reply comments on the matter from interested parties.

“The Commission has determined that this proceeding should be opened to review the political and charitable spending by the FirstEnergy Utilities in support of Am. Sub. H.B.6 and the subsequent referendum effort. Accordingly, the Companies are directed 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.”

The following parties have been granted intervention in the proceeding: Environmental Law and Policy Center (ELPC), the Office of the Ohio Consumers’ Counsel (OCC), Ohio Energy Group (OEG), Ohio Environmental Council, Natural Resources Defense Council, Ohio Partners for Affordable Energy, Interstate Gas Supply, Inc., Ohio Manufacturers’ Association Energy Group (OMAEG), Northwest Aggregation Coalition, Ohio Hospital Association (OHA), Industrial Energy Users-Ohio, and Citizens’ Utility Board of Ohio (CUB Ohio).

On September 30, 2020, the Companies filed a response to the show cause provision of the initial Entry in the current case and denied that any political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort were included in any rates or charges paid by ratepayers in Ohio. An affidavit signed by Santino L. Fanelli, Director of Rates & Regulatory Affairs for FirstEnergy Service Company was also attached to the Companies’ response.

*The Companies’ current base rates were set in Case No. 07-551-EL-AIR, et al., based on a test year of twelve months ended February 2008. This test year clearly predated any of the H.B. 6 costs.<sup>1</sup>*

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<sup>1</sup> Case No. 20-1502-EL-UNC, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Response to Show Cause Entry (Sept. 30, 2020) at 2.

*Any costs of political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, would not have been recorded in accounts that are used to calculate the Companies' riders and charges. Therefore, the Companies' ratepayers have not paid riders or charges that include H.B. 6 costs.<sup>2</sup>*

On August 6, 2021, the Companies filed a motion to supplement the response to the Commission's September 15, 2021 directive to show cause, along with a memorandum in support. The Companies stated that:

*On July 20, 2021, the Companies' parent FirstEnergy Corp. entered into a Deferred Prosecution Agreement ("DPA") with the United States Attorney's Office for the Southern District of Ohio, which was filed with the United States District Court for the Southern District of Ohio on July 22, 2021. Following a review of the DPA, as well as the audit report filed on August 3, 2021 in Case No. 20-1629-EL-RDR, the Companies have determined it is necessary to file a supplemental response to the Commission's September 15, 2020 directive to show cause.*

On November 29, 2021, initial comments were filed in the case by the OCC, OMAEG, and CUB Ohio. On December 14, 2021, reply comments were filed in the case by the Companies, OCC, OMAEG, and OHA.

On February 7, 2022, the OCC filed correspondence in the case to notify the Commission that the pending Federal Energy Regulatory Commission's audit of FirstEnergy Corp. had been completed, which included the audit report as an attachment, and requesting to clarify and resolve discovery related issues around the now completed investigation.

## **II. PURPOSE**

In accordance with the Attorney Examiner's Entry in Case No. 20-1502-EL-UNC, which was entered in the journal on September 15, 2020, the Commission is seeking proposals to review the political and charitable spending by FirstEnergy Ohio in support of Am. Sub. H.B. 6 and the subsequent referendum effort.

Minimum qualifications for the personnel assigned to the audit include certified public accountant (CPA) licensure and experience conducting external audits of regulated utilities. Preferred qualifications for the personnel assigned to the audit include experience

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<sup>2</sup> Case No. 20-1502-EL-UNC, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Response to Show Cause Entry (Sept. 30, 2020) at 3.

with forensic accounting or specific forensic accounting credentials, i.e., certified fraud examiner (CFE), certified forensics accountant (CR. FA), or certified in financial forensics (CFF).

The auditor shall be familiar with and comply with all:

- Generally accepted accounting principles (GAAP).
- Federal Energy Regulatory Commission (FERC) Uniform System of Accounts.
- Various accounting and tax changes or decisions issued during calendar year 2020.

### **III. SCOPE OF INVESTIGATION**

As part of the Commission’s review of the political and charitable spending by FirstEnergy Ohio, the Attorney Examiner ordered the Companies 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.”

The auditor’s investigation shall determine whether the Companies show cause demonstration is sufficient to ensure 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.”

The audit shall include but not be limited to:

#### **A. General Project Requirements**

The auditor selected shall:

- Cover an audit period from January 1, 2017, through December 31, 2019
- Review all filings in Case No. 20-1502-EL-UNC
- Obtain and review all discovery issued, to date, in Case No. 20-1502-EL-UNC and the Companies’ responses
- Obtain and review all appropriate documentation relating to the Companies’ show cause filings
- Review political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, including both inside and outside government relations staff and lobbyists
- Review costs booked to relevant FERC Accounts during the period from January 1, 2017 through December 31, 2019, including but not limited to:
  - 426.1 Donations

- 426.4 Expenditures for Certain Civic, Political and Related Activities
- 580 Operation supervision and engineering
- 923 Outside services employed
- 930.2 Miscellaneous general expenses
- Review polices, methods, and controls for the accounting of political and charitable spending costs

B. Role of the Auditor

Any auditor who is chosen by the Commission to perform an audit expressly agrees to perform his or her audit as an independent contractor. Any conclusions, results, or recommendations formulated by the auditor may be examined by any participant to the proceeding for which the audit report was generated. Further, it shall be understood that the Commission and/or Staff shall not be liable for any acts committed by the auditor or its agents in the preparation and presentation of the audit reports.

C. Commission Staff Supervision

Staff will oversee the project. Staff personnel shall be included on or informed of all correspondence between the auditor selected and the Company, and shall be given advanced notice of all meetings and interviews with the Company to allow Staff the opportunity to attend. The auditor shall meet with Staff no less than bi-weekly through the duration of the audit. These meetings may occur via telephone or online conference technology, such as Microsoft Teams or Cisco WebEx.

D. Cost Of Audit And Quotation Of Charges

The proposed cost of the audit shall include all expenses associated with conducting the audit and presenting the findings and recommendations in the audit report. A detailed presentation of costs shall be provided, broken down by phase/task, in conformance with this Request for Proposal. The proposed costs shall be considered firm prices for performing the work described in the proposal.

E. Cost Of Presenting Expert Testimony

The proposed cost of the audit shall include actual costs associated with serving as an expert witness before the Commission during the applicable hearing, including time and materials. These expenses will be billed separately from the cost of the

audit but should be included in the total bid and included in the firm price used for contract purposes. Expenses associated with the presentation of testimony will include the following:

- Actual transportation expense (i.e., airfare, etc.).
- Actual living expenses (hotels, meals, local transportation).
- Actual preparation time, up to 8 hours per witness.
- Actual hours spent in travel.
- Actual hours spent presenting testimony.

#### **IV. TIMELINE**

The timeline presented below is intended to provide the auditor an understanding of the timeframe during which the audit is to be conducted. Although precise dates are used below, the actual dates for awarding the audit and for conducting audit and hearing activities may vary somewhat when they are set through a subsequent Commission entry.

Audit proposals due	April 6, 2022
Award audit (Commission Order)	May 4, 2022
Audit Conducted	May 4, 2022, through November 30, 2022
Draft audit report presented to Staff	December 1, 2022
Final audit report filed with Commission	December 16, 2022

#### **V. DEADLINES AND DELIVERABLES**

##### **A. Availability Of Documents**

The Company shall provide any and all documents or information requested by the auditor selected and Staff. The Company may conspicuously mark such documents or information as being “confidential.” In no event, however, shall the Company refuse or delay to provide such documents or information.

Staff or the auditor selected shall not publicly disclose any document marked “confidential” by the Company, except upon three days prior notice of intent to disclose served upon the Company’s counsel. Three days after such notice, Staff or the auditor may disclose or otherwise make use of such documents or information for any purpose, unless the Company move the Commission for a protective order pertaining to such documents or information within the three-day notice period.

The three-day notice period will be computed according to Ohio Adm.Code 4901-1-07. Service shall be complete upon mailing or delivery in person.

B. Fiscal Reports

The auditor will submit invoices when work is 50 percent complete and when work is 100 percent complete, unless more frequent intervals are agreed to by Staff. The invoices shall include details regarding the dates and activities covered by each invoice, and shall be sufficiently detailed to allow Staff to identify the work completed, the time spent in each billable activity, the personnel involved, and the corresponding charges in relation to the activity schedule originally set forth in the auditor's proposal. All invoices are to be sent to the Company and copies are to be sent to Staff.

After approval of the invoice by the Staff, the Company will be authorized to make payment.

The Company shall be ordered by the Commission to enter into a contract, which shall incorporate by reference all provisions of this proposal, with the auditor chosen by the Commission to perform the audit. Auditors shall submit a copy of this contract agreement between the auditor and Company to the Staff member assigned to the audit.

C. Interim Reporting

At the midpoint of the audit activities, the auditor selected will provide a progress report to Staff. This report will briefly describe progress made on required audit activities, as well as initial/tentative findings and conclusions on issues investigated to date. Unless requested by Staff, this interim report may be made verbally.

D. Draft Report

An electronic draft of the final audit report shall be sent to Staff at least ten days prior to the due date of the final audit report.

E. Final Report

An electronic version of the complete final audit report shall be docketed with the Commission by the morning of the date specified in Section IV. The final report

should include an executive summary of recommendations. The final docketed report should contain an overview of the investigation, recommended adjustments, if any, and an attestation by the auditor that the financial information contained in the application is from a reliable source. The final audit report should be docketed in a “searchable” PDF format. If it is necessary to prepare a redacted report, due to confidentiality concerns, a non-redacted report shall also be provided to both the Commission and the Company. If necessary, the final redacted report should be redacted using the Adobe Acrobat “redaction tool”. The non-redacted report shall clearly be labeled “confidential.”

F. Working Papers

A complete set of working papers is an integral part of the audit requirements. With the final audit report, the auditor selected shall deliver to Staff one complete set of working papers that contain documents used and procedures followed to develop the conclusions set forth in the audit report. Working papers should include Applicant’s name, case number, description (items in folder), and source documents. Voluminous documents may be included only as references in the working papers, upon Staff’s agreement. Confidential documents should be clearly marked and provided in a separate section of the working papers.

The auditor selected shall maintain working papers and document all supporting information, including, with limitation, meetings, interviews, or any pertinent information. The auditor selected shall utilize Staff’s data request procedures, utilizing a Microsoft Outlook public folder (or similarly accessible method) for issuing information requests and recording responses or may use its own system/process, provided Staff has full access to all data requests and responses and is able to store the requests and responses in Microsoft Outlook. All text documents should be word searchable and all data and formulas in Excel spreadsheets shall be fully disclosed and accessible.

G. Production Of Documents

At any time, upon request of the Commission or Staff, the auditor selected shall immediately produce any document of information obtained or produced within the scope of the audit.



H. Testimony

The auditor shall be expected to present expert testimony during the course of any hearing at which the audit report is considered. The individual providing testimony will be one or more persons who conducted or directed the audit activities being considered at any hearing.

**VI. MINIMUM CONTENTS OF PROPOSAL**

Each proposal shall contain page numbers and a table of contents. In a separate section, reflected in the table of contents, the following information shall be provided:

- A. Name, mailing address, and telephone number of the individual to contact if further information is desired;
- B. An indication of how the bidder plans to incorporate Staff's participation in the proposed work plan; and
- C. The name(s) of all subcontractors to be used in the performance of the proposed work, identification of the specific items to be performed/provided by the subcontractor, and the cost of the proposed subcontractor's work; or if no subcontractors are to be used, the entry "Subcontractor – non"/ (all such subcontractors indicated in the proposal will be acknowledged as accepted by the Commission upon selection of the proposal for contract awarded unless the auditor is previously notified of the contrary. No addition, deletion, or substitution of subcontractors will be permitted during the course of the contract unless approved in advance by Staff in writing.) If subcontractors are proposed, all information required in this section shall be supplied for each subcontractor proposed. Such information shall be supplied in a format parallel to the overall format specified for the contractor.
- D. The following required Equal Employment Opportunity (EEO) data must be provided for the auditor and each subcontractor:
  - 1. The total number of employees;
  - 2. The percentage of the total which are women;
  - 3. The percentage of the total which are Black, Hispanic, Asian, or American Indian (please specify);

4. The total number of employees located in Ohio offices;
  5. The percentage of the Ohio total which are women;
  6. The percentage of the Ohio total which are Black, Hispanic, Asian, or American Indian (please specify);
  7. The number of individuals to be assigned to the project;
  8. The percentage of the total assigned which are women;
  9. The percentage of the total assigned which are Black, Hispanic, Asian, or American Indian (please specify);
- E. A listing of contracts the auditor and each subcontractor has with the State of Ohio and:
1. Name of the state agency(s) for each contract;
  2. The cost of each contract;
  3. The duration of each current contract.
- F. A statement that neither the auditor, nor its parent(s) or subsidiaries have a financial interest in the Company and/or shared officers or directors and that the auditor, if selected, will not acquire or be subject to such an interest during the course of the work described in this RFP.

If the auditor believes that such a financial interest may exist and that such a statement cannot be completed as part of the proposal, please provide a listing of the auditor's (including parents and subsidiaries) and each subcontractor's clients which may have a financial interest in the Company, or their affiliates.

Auditors maintaining any ongoing contracts or agreements with the Company and affiliates may, at the discretion of the Commission, be disqualified by reason of possible conflict of interest. In the proposal, such contracts should be described in sufficient detail that the Commission can determine whether a conflict of interest exists. A response indicating that this information will be provided on request or

that such contracts are too numerous to enumerate will be cause for disqualification of the auditor.

- G. A listing of all the auditor's and each subcontractor's offices, facilities, and equipment to be used in performance under this contract and their locations, including a specification of offices, facilities, and equipment located in Ohio. If none, state – none.
- H. For the auditor and each subcontractor, a description of all existing, pending or past rulings, judgements, findings, contingent liabilities, revocation of authority, regulatory investigations, judicial actions, or other formal or informal notices of violations, fines, or any other matter related to services in Ohio or equivalent services in another jurisdiction within the past five years.
- I. A statement of financial responsibility including certification that the auditor, joint partners if the auditor is a conglomerate operation, and any subcontractors have no outstanding liens or claims against them.
- J. Contact persons that the Commission or Staff may call to receive an assessment of the auditor's, and each subcontractor's previous performance. References should be provided for the company or companies proposing and for the individuals designated as principals for the project. The information required for each reference is as follows:
- Name of individual to contact for reference.
  - Company/facility which employed the individual.
  - Telephone number.
  - Whether reference is for the company or a principal.
  - Project or work for which reference is given.
- K. A description of the proposed scope of work to be performed including a work plan, expected deliverable products and task timing. In a separately numbered section, the auditor will provide a detailed cost breakdown by phase/task of the work plan including the class of personnel performing each phase/task of the work, the hourly rate charged for each class, the number of hours charged for each class, an equivalent breakdown of all subcontracted work, any direct or indirect cost items which the auditor plans to charge, and the total cost.
- L. Identification, by name, of the lead personnel to be employed, the extent of their involvement in the project, and a description of how the proposed personnel's

experience matches project requirements. Contract terms will not permit substitution of lead personnel without prior written approval of the Commission. Identification of lead personnel in the cost proposal will not constitute satisfactory compliance with this requirement.

- M. A description of the qualifications, experience, and proven results achieved by all professional lead or significant personnel to be employed on the project, with a summary of work performed on projects similar to the one contemplated by this RFP including specific references. The Commission reserves the right to request samples of prior relevant work from any auditor prior to making its final consultant selection.
- N. Identification by name, title and the hourly rate of pay and all other related costs of the individual or individuals who will present expert testimony before the Commission during the appropriate hearing.

## **VII. REVIEW CRITERIA**

Proposals will be evaluated on a basis which includes the following criteria:

- A. Compliance with Minimum Contents Requirements

Lack of satisfactory response to the minimum contents requirements will be grounds for elimination of any proposal from further consideration.

- B. Cost

The total proposed contract price is specified in the Proposal. Auditors are encouraged to provide as competitive a bid as is practicable.

- C. Understanding Of Project

Whether the entity bidding on the project has grasped intent of the project; is knowledgeable of the technical aspects required; indicates understanding of potential problems; demonstrates understanding of regulatory issues, trends, and perspectives; and the work plan indicates appropriate phasing. Whether the method of handling the project is indicated, the proposal reflects thorough understanding of project requirement, the methods appear realistic under stated time constraints, and innovative methodologies appear appropriate to the project. The proposal is responsive to the RFP.

D. Experience Of Personnel Assigned To Project And Related Organizational Experience

Relevant experience in field, qualified to undertake assignment. References of previous clients/projects provided.

E. Timelines

Demonstrated ability to meet stated deadline; realistic timelines provided; demonstrated proven results of lead personnel.

**VIII. OTHER PROPOSAL CRITERIA**

A. Relevance

The auditor shall include only relevant information and pertinent exhibits in the proposal. Duplication of materials provided in the RFP, exhaustive resumes, inclusion of standard company promotional materials, etc., will not garner additional points in the evaluation process and may detract from the clarity and conciseness of the proposal.

B. Proprietary Data in Proposal

Submissions to the Public Utilities Commission of Ohio become public documents available to open inspection. Proprietary data in a proposal will also assume this status. Therefore, discretionary action is recommended for any proprietary data to be submitted in proposals.

C. Due Date And Submittal Information

Any proposal submitted hereunder must be emailed to Krystina Schaefer, Rates and Analysis Department, Division Chief, Grid Modernization & Retail Markets, [krystina.schaefer@puco.ohio.gov](mailto:krystina.schaefer@puco.ohio.gov) or Zee Molter, Rates and Analysis Department, Public Utilities Aide, [zee.molter@puco.ohio.gov](mailto:zee.molter@puco.ohio.gov) on Wednesday, April 6, 2022 and no later than 5:00 p.m. ET.

D. Contractor Requirements And Minority Participation

The Commission, in awarding the contract, will give preference to Ohio contractors. Ohio contractors include not only established domestic companies actively doing business in Ohio but also encompass multi-state companies with

headquarters outside of Ohio but with substantial commitments of offices, divisions, and facilities within the state. The Commission will give preference to proposals that demonstrate compliance with minority and women EEO criteria.

E. Late Proposals

A proposal is late if received at any time after the due date set for receipt of the proposals. A late proposal will be considered along with other proposals only if it is received before the evaluation of proposals has, in the sole opinion of the Commission, substantially progressed, and then only if it offers some important technical or scientific advantage that is of benefit to the Commission.

F. Modification Or Withdrawal Of Proposal

Any proposal may be modified or withdrawn upon written request of the auditor if such request is received by the Commission at the above address by the date set for receipt of original proposals.

G. Modification Or Withdrawal Of This RFP

This Request for Proposal may be modified or withdrawn at any time prior to the time set for receipt of proposals and thereafter, as long as no proposal has been opened. Upon any such modification or withdrawal, all bidders will be notified and any person or firm who has expressly requested such notice in writing will also be notified of such changes at the discretion of the Commission.

H. Right To Reject Any And All Proposals

The Commission reserves the right, without limitation or discussion with those submitting proposals, to reject any and all proposals.

I. Penalty For Divulging Information

The auditor selected shall abide by all provisions of Sections 4901.16 of the Ohio Revised Code which states; "Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent. Whoever violates this section shall be disqualified from acting

as agent, or acting in any other capacity under the appointment or employment of the commission”

The auditor shall not divulge any information regarding its audit activities to the media or to any other entity, except in its report and testimony before the Commission, before, during, and /or after the audit. All comments or concerns that the auditor wants to address shall be directed to the Commission’s Media Office.

J. Conflict of Interest/Ethics

The auditor represents, warrants and certifies that it and its employees engaged in the administration or performance of this audit are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws including but not limited to Chapter 102 and Sections 2921.42 and 2921.43 of the Ohio Revised Code. Auditor further represents, warrants, and certifies that neither Auditor nor any of its employees will do any act that is inconsistent with such laws or otherwise presents a conflict of interest.

K. RFP Website

All firms wishing to remain on the Commission’s bidder list must subscribe to the PUCO RFP list by clicking on the “PUCO RFP Email Notification List” link at:

<https://puco.ohio.gov/wps/portal/gov/puco/documents-and-rules/request-for-proposals>

Pending RFPs and further information will be posted at the above website.

L. Statutory Scope of Audit

Any auditor selected by the Commission to perform an audit shall execute its duties pursuant to the Public Utilities Commission’s statutory authority to investigate and acquire records, contracts, reports and other documentation under Sections 4903.02, 4903.03, 4905.06, 4905.15, and 4905.16, Revised Code.

M. Auditor Selection

The Commission reserves the right to determine that the described audit will not be conducted or will be conducted by Staff, depending on the Commission’s needs and circumstances at the time of the selection.

## **IX. QUESTIONS**

Technical questions regarding this RFP should be directed to Krystina Schaefer at [krystina.schaefer@puco.ohio.gov](mailto:krystina.schaefer@puco.ohio.gov). Direct administrative questions to either Krystina Schaefer at [krystina.schaefer@puco.ohio.gov](mailto:krystina.schaefer@puco.ohio.gov) or Zee Molter at [zee.molter@puco.ohio.gov](mailto:zee.molter@puco.ohio.gov).



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**in**

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

Summary: Entry directing the Staff to issue a request for proposals for audit services to assist Staff in its review to determine whether the show cause demonstration submitted by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company is sufficient to ensure that the cost 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 electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio