

**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 )

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**MEMORANDUM ON DOCUMENT PRODUCTION TIMELINE OF  
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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**I. INTRODUCTION**

Despite the Attorney Examiner's directive to produce responsive documents, and having over a month's notice and opportunity to do so, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the FirstEnergy Utilities) have continued to unreasonably and unlawfully delay required production of documents.

The Public Utilities Commission of Ohio (Commission) initiated the above-captioned proceeding nearly two years ago to evaluate the political and charitable spending of the FirstEnergy Utilities in support of the scandal-ridden Am. Sub. H.B. 6 (H.B. 6) and to determine the potential impact on customers and customers' rates.<sup>1</sup> The Ohio Manufacturers' Association Energy Group (OMAEG) intervened in this case on September 30, 2020.<sup>2</sup>

On March 11, 2022, the Commission granted a motion to compel production of documents supplied to the Federal Energy Regulatory Commission (FERC) by the FirstEnergy Utilities' parent corporation, FirstEnergy Corp.<sup>3</sup> FirstEnergy Corp. supplied these documents in relation to

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<sup>1</sup> Entry at ¶ 5 (Sept. 15, 2020).

<sup>2</sup> See Motion to Intervene and Memorandum in Support of The Ohio Manufacturers' Association Energy Group (Sept. 30, 2020).

<sup>3</sup> Tr. at 6 (Apr. 11, 2022); Tr. at 52-59 (Mar. 11, 2022).

FERC’s recently completed audit of FirstEnergy Corp. and its subsidiaries, including the FirstEnergy Utilities and their affiliates.<sup>4</sup> The Commission directed the FirstEnergy Utilities to produce the responsive documents within thirty days.<sup>5</sup>

Nearly a month later and less than a week before production was due, on April 6, 2022, the FirstEnergy Utilities sent out an informal email request for an extension of time to produce the documents to the parties and the Attorney Examiners. The FirstEnergy Utilities asked for an extended production deadline, and for the ability to produce documents on a rolling basis. Subsequently, the Attorney Examiners directed the interested parties to resolve the discovery dispute.<sup>6</sup> As the FirstEnergy Utilities were unwilling to reach an agreement with the parties regarding the outstanding document production, the Attorney Examiners directed the parties to file briefings on the issue.<sup>7</sup> As such, the OMAEG submits the following arguments for the Commission’s consideration.

## **II. ARGUMENT**

While OMAEG does not necessarily object to a “rolling production” of documents in discovery, such a production schedule cannot be an opportunity for the FirstEnergy Utilities to continue to evade their obligation to produce responsive documents. Given the fact that the FirstEnergy Utilities have repeatedly sought to unduly delay discovery in this case, the Commission should direct the FirstEnergy Utilities to set a definite schedule for any “rolling production” of documents. The FirstEnergy Utilities continue to delay production of documents that have already been produced to FERC and the FirstEnergy Utilities cannot provide any

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<sup>4</sup> Tr. at 6 (Apr. 11, 2022).

<sup>5</sup> Tr. at 52-59 (Mar. 11, 2022).

<sup>6</sup> Entry at ¶ 26 (Apr. 13, 2022).

<sup>7</sup> *Id.* at ¶ 29.

reasonable explanation as to why further delay in the required production of documents is necessary. The FirstEnergy Utilities have been on notice, for months, that they would be required to present this information.

The Office of the Ohio Consumers' Counsel (OCC) initially filed the motion to compel on June 29, 2021. Although the Commission initially denied OCC's motion to compel, it noted that it would revisit the issue "[if] and when a public audit is released by FERC."<sup>8</sup> After FERC released the audit publicly in February, the Attorney Examiners informed the FirstEnergy Utilities they would rule on the motion to compel.<sup>9</sup> Finally, at the prehearing conference granting the motion to compel, the Attorney Examiner expressed that a "30-day time frame is appropriate."<sup>10</sup> The attorney for the FirstEnergy Utilities did not raise any concerns with the proposed time frame.

Nor did the FirstEnergy Utilities file an interlocutory appeal or a motion for extension. Importantly, Commission regulations generally require a party to respond to requests for production of documents within twenty days.<sup>11</sup> Additionally, the Attorney Examiner can extend the time frame for discovery, either upon its own motion, or motion of a party for good cause shown.<sup>12</sup> The Attorney Examiner already extended this deadline, when, upon granting the motion to compel, they gave the FirstEnergy Utilities more than twenty days to respond to document production. If the FirstEnergy Utilities needed a *further* extension of time to respond to these requests, the FirstEnergy Utilities should have filed a motion for extension for good cause shown

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<sup>8</sup> Tr. at 17-18 (Aug. 31, 2022).

<sup>9</sup> Tr. at 9-10 (Feb. 10, 2022)

<sup>10</sup> Tr. at 59 (Mar. 11, 2022).

<sup>11</sup> Ohio Adm.Code 4901-1-20(C).

<sup>12</sup> Ohio Adm.Code 4901-1-13; 4901-1-17(G); 4901-1-20(C).

as required by the Ohio Administrative Code.<sup>13</sup> They did not. Instead, they waited nearly a month to informally email the parties five days before production was due and inform the parties that they would not be able to produce the documents by the ordered date.

Furthermore, the FirstEnergy Utilities have not made any showing of good cause to grant an extension, as they have not provided any reasonable explanation as to why an extension is needed. The FirstEnergy Utilities have already produced the documents at issue to FERC as part of the audit, and presumably already have the documents compiled. The FirstEnergy Utilities are already in possession and control of the responsive documents and have not explained why they need further time to review those documents. Nor do the FirstEnergy Utilities need to significantly redact the production. The responsive documents are to consist of all documents related to Ohio, the HB 6 scandal, and the Ohio entities, and are not limited to those which only pertain to the FirstEnergy Utilities. The parties to this proceeding have also executed confidentiality agreements with the FirstEnergy Utilities so confidentiality issues should not delay the production.

It is important to note that the FirstEnergy Utilities have taken every possible action to prevent and delay compliance with Commission-ordered production of documents. Given this fact, it seems likely that granting the FirstEnergy Utilities a “rolling” production schedule would simply allow the FirstEnergy Utilities to continue to delay the production of documents as the hearing date approaches. Although the FirstEnergy Utilities have proposed a date for initial production, they have not specified when further productions will occur under the rolling schedule, when production will conclude, or what documents will be produced in which production. As such, OMAEG requests that FirstEnergy be ordered to produce all of the documents immediately.

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<sup>13</sup> Ohio Adm.Code 4901-1-13; 4901-1-17(G); 4901-1-20(C).

Nonetheless, to the extent the Commission considers a rolling production schedule, OMAEG respectfully requests that the Commission direct the FirstEnergy Utilities to produce whatever documents they have today immediately, and then present a definite production schedule for the remaining documents.

### **III. CONCLUSION**

Despite being put on notice that it would likely have to produce responsive documents following the conclusion of the FERC audit, and despite a clear directive from the Commission to produce responsive documents by April 11, 2022, the FirstEnergy Utilities continue to employ unreasonable and unlawful stalling tactics to prevent the release of discoverable information. The Commission should put an end to these stalling tactics, and direct the FirstEnergy Utilities to immediately produce all documents.

Alternatively, the Commission should direct FirstEnergy to produce all documents it presently has immediately and then present a schedule for “rolling production” of the remaining documents and clarify when further productions will occur, when production will be completed, and what documents will be produced in each production. Furthermore, the schedule should be sufficiently short enough for discovery to conclude in advance of any hearing in this case.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

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*/s/ Kimberly W. Bojko*

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