

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

April 15, 2022

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I. INTRODUCTION

Once again, FirstEnergy is weaponizing its role in the discovery process to prevent case preparation by parties such as OCC. In a non-filed email that FirstEnergy sent to the PUCO just hours before the Commissioners were to rule on April 6th, FirstEnergy claimed it would need *four months* to gradually provide OCC with the documents. That kicked off another round of debate that includes the PUCO's call for memoranda to be filed today.

It's now *fourteen months* after OCC first requested H.B.6-related documents from FirstEnergy that FERC required it to provide for a federal audit. It's five weeks after PUCO Examiner Addison ordered FirstEnergy to provide the FERC-audit documents to OCC, upon revisiting withdrawn Examiner Price's denial. It's eight days after PUCO Commissioners denied FirstEnergy's appeal of Examiner Addison's ruling.

The FERC-audit information is important for investigations of FirstEnergy at the PUCO. Among FERC’s significant findings is that FirstEnergy appears to have “possibly obfuscated or circumvented to conceal or mislead as to the actual amounts, nature and

purpose of the lobbying expenditures.”¹ FERC’s audit follows the United States Government charging FirstEnergy Corp. with a federal corruption crime. And FirstEnergy Corp. agreed in the U.S. Deferred Prosecution Agreement that the United States can prove FirstEnergy’s crime in court.²

We recommend that the PUCO take a page from U.S. District Judge John Adams. Federal Judge Adams recently expressed his impatience with the lack of answers surrounding a settlement between FirstEnergy and shareholders. Judge Adams then demanded an immediate answer as to who at FirstEnergy authorized payment of what are said to be the bribes.³ And he ordered shareholders to take depositions of FirstEnergy to obtain more information.⁴

Likewise, the PUCO should order FirstEnergy to provide all the FERC-audit documents to OCC *posthaste*. We have primary and secondary proposals to recommend to the PUCO. Primarily we recommend that the PUCO stay the course with Examiner Addison’s ruling (that was consistent with an earlier *proposal by FirstEnergy’s counsel*), for FirstEnergy to disclose the documents by April 10, 2022.⁵ It seems that FirstEnergy is claiming it needs more time to disclose the records because it has the task (that it wanted) of excluding whole documents and making redactions based on the PUCO’s narrowed scope⁶ for the disclosures. In that event, the alleged competing goals of timeliness and

¹ Docket No. FA19-1-000, Audit Report at 48 (Feb. 4, 2022).

² *U.S. v. FirstEnergy Corp.*, Case No. 1:21-cr-00086, Deferred Prosecution Agreement at 14 (Jul. 22, 2021).

³ *Miller v. Anderson*, Case No. 5:20CV1743, Order at 9 (N.D. Ohio) (Mar. 22, 2022).

⁴ *Id.*, Order (Mar. 24, 2022).

⁵ Tr. 58-59 (Mar. 11, 2022).

⁶ Entry at ¶ 44 (Apr. 6, 2022).

document filtration should be reconciled in favor of timeliness. FirstEnergy should be ordered to forgo document filtering and provide the information that it would have filtered out, in the interest of timely disclosure to OCC.

OCC's secondary proposal (if our primary proposal is not adopted) is that the FirstEnergy Utilities should be required to produce all FERC-audit documents within 30 days of the PUCO Commissioners' April 6 Entry. That timeline still allows plenty (too much) of delay since OCC's February 7th request to revisit the issue and Examiner Addison's ruling. And during that time period FirstEnergy should provide documents at the *earliest time* available. It should not be doubted that FirstEnergy already could be and should be providing FERC-audit documents to OCC. But we have received nothing since the Commissioners' ruling.

Louis Brandeis wrote, a few years before his appointment to the United States Supreme Court, that:

Publicity is justly commended as a remedy for social and industrial diseases. Sunshine is said to be the best of disinfectants; electric light the most efficient policeman.⁷

It is time for a lot more sunshine in the investigations of FirstEnergy at the PUCO.

II. BACKGROUND

The FirstEnergy Utilities have delayed and distracted the parties' efforts to investigate their H.B.6-related political and charitable spending. FirstEnergy's delay in producing the FERC-audit documents, after being ordered to produce the documents by April 10, 2022, is just the latest example. For efficiency in presenting our points, the

⁷ Louis D. Brandeis, *What Publicity Can Do*, Harpers Weekly, Vol. 58, No. 2974 (Dec. 30, 1913).

following timeline is provided regarding OCC's wait for the FERC-audit documents from FirstEnergy.

A Year of Delay in Public-Interest Investigation of FirstEnergy

FERC announces audit of FirstEnergy for five-year period (Jan. 1, 2015 to Sept. 30, 2021) – 02/6/19	
PUCO opens Case 20-1502 in response to OCC Motions- 09/15/20	09/8/20 – OCC files consumer-protection Motions asking PUCO to investigate FirstEnergy H.B.6 scandal
FirstEnergy objects to disclosing FERC-audit documents to OCC – 03/18/21	02/19/21 – OCC asks FirstEnergy for audit documents it was required to provide to FERC
OCC asks FirstEnergy for more FERC-audit documents – 03/24/21	
OCC files Motion asking PUCO to compel FirstEnergy to disclose its FERC-audit documents – 06/29/21	04/23/21 – FirstEnergy again objects to disclosing FERC-audit documents to OCC
PUCO Examiner Price denies OCC's Motion to require FirstEnergy to disclose FERC-audit documents and notes possible future "revisiting" of his denial – 08/31/21	07/9/21 – FirstEnergy files opposition to OCC's Motion to Compel
FERC issues audit of FirstEnergy, with findings that include "internal controls having been possibly obfuscated or circumvented to conceal or mislead as to the actual amounts, nature and purpose of the lobbying expenditures." – 02/4/22	09/7/21 – OCC asks PUCO Commissioners to overturn Examiner Price's ruling
Examiner Price withdraws from hearing the case – 03/4/22	02/7/22 – OCC asks Examiner Price to revisit his 8/31/21 denial of OCC's Motion
FirstEnergy asks PUCO Commissioners to overturn Examiner Addison's ruling – 03/16/22	03/11/22 – Examiner Addison revisits the 8/31/21 ruling and rules in OCC's favor, requiring FirstEnergy to produce FERC-audit documents by 4/10/22

<p>PUCO Commissioners reject FirstEnergy's appeal and order it to disclose FERC-audit documents. Examiner Addison emails parties asking for resolution of the timeline for disclosure. Sets conference call to discuss – 04/6/22</p>	<p>04/6/22 – FirstEnergy sends non-filed email to Examiner seeking 120 days to gradually disclose documents to OCC if Commissioners rule against it</p>
<p>PUCO Examiner cancels conference call and schedules prehearing conference for 4/11/22; settlement negotiations occur between OCC and FirstEnergy over the timeline for FirstEnergy's disclosure – 04/8/22</p>	<p>04/7/22 – FirstEnergy proposes to gradually disclose the documents in a 90-day period; OCC objects and asks for the conference call to be public and for court reporter at conference call</p>
<p>OCC advises Examiner that OCC and FirstEnergy did not reach agreement; FirstEnergy responds to OCC – 04/12/22</p>	<p>04/11/22 – Prehearing conference held; Examiner orders parties to negotiate, with a deadline the next day, otherwise pleadings will be needed. Examiner asks for update on status of discussions. Discussions continue.</p>
<p>Examiner Addison issues Entry requesting legal memoranda by 4/15 and 4/19, with a prehearing on 4/20/22 – 04/13/22</p>	<p>04/13/22 – OCC emails Examiner Addison, rebutting FirstEnergy's 4/12/22 email</p>

A. Examiner Addison required FirstEnergy to produce the FERC-audit documents by April 10, 2022, as proposed by FirstEnergy's Counsel.

The Attorney Examiner ordered FirstEnergy to produce the FERC documents at a prehearing conference on March 11, 2022.⁸ *At that time, FirstEnergy's counsel asked for a 30-day time frame to produce the documents.*⁹ The Attorney Examiner granted this request.¹⁰ The Attorney Examiner's 30-day deadline required FirstEnergy to produce the FERC-audit documents by April 10, 2022.

⁸ Transcript of Prehearing Conference on March 11, 2022 at 59 (Mar. 25, 2022).

⁹ *Id.*

¹⁰ *Id.*

The FirstEnergy Utilities filed an interlocutory appeal of the Attorney Examiner ruling, asking that it be overturned by the Commissioners.¹¹ FirstEnergy’s interlocutory appeal did not challenge the 30-day time frame or ask that the time frame be changed to a “rolling” basis. OCC opposed FirstEnergy’s interlocutory appeal. The PUCO placed the matter on its agenda for its April 6, 2022 sunshine meeting.

B. The PUCO Commissioners affirmed the Attorney Examiner’s ruling, requiring FirstEnergy to produce the FERC-audit documents on April 10, 2022, unless otherwise ordered.

On the afternoon of April 6, the PUCO Commissioners issued their Entry affirming the Attorney Examiner’s ruling and denying FirstEnergy’s Interlocutory Appeal. The PUCO found that “OCC is entitled to discovery of this information, as the information at issue is relevant to the subject matter of the proceeding, the information sought appears reasonably calculated to lead to the discovery of admissible evidence, and the Companies have not proven that the information is either privileged or irrelevant.”¹² The PUCO ruled that “[t]he Companies will be required to produce the responsive materials within 30 days of the March 11, 2022 prehearing conference unless otherwise ordered.”¹³ The PUCO Examiners are now considering whether to order “otherwise,” and should not.

¹¹ Interlocutory Appeal (Mar. 16, 2022).

¹² Entry at ¶ 43 (Apr. 6, 2022).

¹³ *Id.* at ¶ 44.

III. RECOMMENDATIONS FOR DUE PROCESS WITH A CONSUMER PROTECTION TIMELINE

A. The PUCO should require FirstEnergy to produce FERC-audit documents on the timeline proposed by OCC.

Primarily we recommend that the PUCO stay the course with the rulings of Examiner Addison and the Commissioners, for FirstEnergy to disclose the documents by April 10, 2022.¹⁴ The rulings were consistent with an earlier *proposal by FirstEnergy's counsel*.¹⁵

It seems that FirstEnergy is claiming it needs more time to disclose the records because it has the task (that it wanted) of excluding whole documents and making redactions based on the PUCO's narrowed scope¹⁶ for the disclosures. In that event, the alleged competing goals of timeliness and document filtration should be reconciled in favor of timeliness. FirstEnergy should be ordered to forgo document filtering and provide the information that it would have filtered out, in the interest of timely disclosure to OCC.

OCC's secondary proposal (if our primary proposal is not adopted) is that the FirstEnergy Utilities should be required to produce all FERC-audit documents within 30 days of the PUCO Commissioners' April 6 Entry. That timeline still allows plenty (too much) of delay since OCC's February 7th request to revisit the issue and Examiner Addison's later ruling. And during this time period FirstEnergy should provide documents at the *earliest time* available. It should not be doubted that FirstEnergy already

¹⁴ Tr. 58-59 (Mar. 11, 2022).

¹⁵ *Id.*

¹⁶ Entry at ¶ 44 (Apr. 6, 2022).

could be and should be providing FERC-audit documents to OCC. But we have received nothing since the Commissioners' ruling.

The PUCO should adopt OCC's primary proposal for FirstEnergy to disclose the FERC-audit documents. If not, at the very least, the PUCO should adopt OCC's secondary proposal.

In regard to OCC's secondary proposal, "priority documents" should be provided first to OCC. Priority documents would be defined as documents FirstEnergy provided to FERC that were responsive to FERC-audit report Finding "4" Accounting for Lobbying Expenses, Donation, and Costs that lacked proper supporting documentation (pages 46-53) and FERC-audit report Finding "6" Service Company Billing Procedures (pages 58-60).

B. The PUCO should reject the proposed 120-day rolling document production by FirstEnergy.

The 120-day rolling timeline request came from the FirstEnergy Utilities on April 6, 2022 in a non-public email, days before the April 10, 2022, deadline for document production. (See attached). FirstEnergy's 120-day non-filed extension request was *four times longer* than the 30-day period that FirstEnergy's Counsel offered and agreed to during the March 11, 2022 prehearing conference. Under FirstEnergy's email proposal, FirstEnergy would have till August 6, 2022, to complete its production of FERC-audit documents.¹⁷

While the delay would serve FirstEnergy well, it prejudices OCC and other parties in this case and in other cases. For example, the FERC documents are germane to

¹⁷ Entry (Apr. 6, 2022).

the corporate separation proceeding, Case No. 17-974-EL-UNC. It hardly seems a coincidence that FirstEnergy's proposed four-month delay will make it difficult to impossible to use these documents in Case No. 17-974, which has an August hearing. Delayed production of the documents will also affect OCC's ability to depose Mr. Lisowski, Ms. Yeboah and potentially others in the corporate separation case.

FirstEnergy proposed a deadline for document production that works for its agenda. The PUCO should reject FirstEnergy's continuing attempts to weaponize discovery to prevent parties' case preparation and presentation of evidence to Commissioners.

C. The PUCO should issue a ruling clarifying the scope of the documents to be produced.

At the March 11, 2022, prehearing conference, the parties discussed the scope of the documents to be produced. The Attorney Examiner ruled that the FirstEnergy Utilities should produce "documents which concern the Ohio companies."¹⁸

The Attorney Examiner should provide further guidance on the scope of this ruling. The required scope should prohibit the FirstEnergy Utilities from withholding documents or redacting information unless the information *solely relates to a non-Ohio FirstEnergy electric distribution utility*.

This scope is appropriate to allow OCC and the parties their discovery rights under R.C. 4903.082 and O.A.C. 4901-1-16 et seq. Without defining the scope in this manner, the FirstEnergy Utilities might only produce a document if it contains the name of one of the three Ohio Utilities. Or the FirstEnergy Utilities may construe the scope to

¹⁸ Transcript of Prehearing Conference on Mar. 11, 2022 at 59 (Mar. 25, 2022).

include only the Ohio utilities, and not companies such as FirstEnergy Service Company, FirstEnergy Corp, FirstEnergy Solutions and FirstEnergy's electric transmission subsidiary serving Ohioans, American Transmission Systems Inc. (ATSI).

Such a FirstEnergy approach would defeat the purpose of requiring the FirstEnergy Utilities to produce the FERC documents related to Ohio. This scope must be defined broadly to allow OCC and the parties to understand the FERC-audit report findings such as:

- “the existence of significant shortcomings in FirstEnergy and its subsidiary companies’ controls over financial reporting, including controls over the accounting for the costs of civic, political and related activities, such as lobbying activities....”¹⁹
- “these controls may have been circumvented in ways designed to conceal the nature and purpose of expenditures made and, as a result, that led to the improper inclusion of lobbying and other nonutility costs in wholesale rate determinations.”²⁰
- “accounting detail records, invoices, engagement letters, press articles, advertisement contracts and advertisements on social media platforms” that FERC needed “in order to understand the nature and extent of the lobbying activities.”²¹

The proper scope of the document production should be defined now. It can be expected that FirstEnergy's tactics of delay will not be limited to a protracted response timeline but will include other opportunistic non-responsiveness.

¹⁹ *In re FERC Audit of FirstEnergy Corp. and its subsidiaries*, Docket No. FA19-1-000, Audit Report (Feb. 4, 2022) at 16.

²⁰ *Id.*

²¹ *Id.* at 48.

D. The PUCO should establish a process for reviewing documents and redactions that FirstEnergy excluded from production.

The PUCO should establish a process for the PUCO Attorney Examiner to review, in later prehearings and with input from parties, what documents and redactions FirstEnergy excluded from production. This would be consistent with the PUCO's prior approach when parties withhold documents from production on privilege grounds.

The review is necessary given the PUCO is allowing FirstEnergy the discretion to filter out non-Ohio information and information outside 2017-2019. Given what FERC said in its audit about FirstEnergy potentially obfuscating or circumventing "to conceal or mislead" as to its lobbying expenses, FirstEnergy is the last utility in the state, if not the country, that should be trusted with discretion for what to disclose on these issues involving truth and justice for Ohioans.

To facilitate this process the FirstEnergy Utilities should produce a *withholding log* for identifying any documents FirstEnergy entities are withholding or redacting. The log should include the reason for the redacting or withholding.

IV. CONCLUSION

The PUCO ruled that FirstEnergy should provide the FERC-audit documents to OCC by April 10, 2022. That date has come and gone without FirstEnergy providing a single document to OCC. FirstEnergy's mantra is delay. But we need answers and justice for consumers.

Primarily we recommend that the PUCO stay the course with Examiner Addison's ruling (that was consistent with an earlier *proposal by FirstEnergy's counsel*), for FirstEnergy to disclose the documents by April 10, 2022. OCC's secondary proposal (if our primary proposal is not adopted) is that the FirstEnergy Utilities should be

required to produce all FERC-audit documents within 30 days of the PUCO

Commissioners' April 6 Entry.

As U.S. District Judge John Adams recently wrote: "This bribery scheme has undoubtedly shaken whatever trust that Ohioans may have had in the political process used by their elected officials. The public has a right to know how it is that the political process was so easily corrupted."²²

Respectfully submitted,
Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis
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²² *Miller v. Anderson*, Order at 8 (Mar. 22, 2022) (citations omitted).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum was served on the persons stated below via electronic transmission, this 15th day of April 2022.

/s/ Maureen R. Willis
Maureen R. Willis
Senior Regulatory 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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Willis, Maureen

From: Goyal, Shalini B. <sgoyal@jonesday.com>
Sent: Wednesday, April 6, 2022 6:26 PM
To: Addison, Megan; St. John, Jacky
Cc: bknipe@firstenergycorp.com; Gladman, Michael R.; Doringo, Ryan A.; Dengler, Molly M.; Margard, Werner; Willis, Maureen; Finnigan, John; Michael, William; rkelter@elpc.org; trhayslaw@gmail.com; leslie.kovacik@toledo.oh.gov; Kimberly W. Bojko; evan.betterton@igs.com; joe.oliker@igs.com; michael.nugent@igs.com; mkurtz@BKLawfirm.com; kboehm@BKLawfirm.com; jkylercohn@BKLawfirm.com; mwise@mcdonaldhopkins.com; dborchers@bricker.com; dparram@bricker.com; rmains@bricker.com; ctavenor@theOEC.org; rdove@keglerbrown.com; mpritchard@mcneeslaw.com; bmckenney@mcneeslaw.com; mmcdonnell@dickinsonwright.com; trent@hubaydougherty.com; jweber@elpc.org
Subject: RE: FirstEnergy Ohio Utilities - Show Cause Audit - Case No. 20-1502-EL-UNC

Attorney Examiner Addison,

We apologize for the delay and thank you for the clarification. We are assessing the production timing in light of today's Entry; we will confer with counsel for the parties tomorrow and report back in advance of the 5:00 PM deadline.

Thank you,

Shalini Goyal
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Office +1.614.281.3825

From: Megan.Addison@puco.ohio.gov
Sent: Apr 6, 2022 4:48 PM
To: "Goyal, Shalini B." <sgoyal@jonesday.com>; Jacqueline.St.John@puco.ohio.gov
Cc: "Knipe, Brian J" <bknipe@firstenergycorp.com>; "Gladman, Michael R." <mrgladman@JonesDay.com>; "Doringo, Ryan A." <radoringo@jonesday.com>; "Dengler, Molly M." <mdengler@jonesday.com>; werner.margard@ohioattorneygeneral.gov; Maureen.Willis@occ.ohio.gov; John.Finnigan@occ.ohio.gov; William.Michael@occ.ohio.gov; rkelter@elpc.org; trhayslaw@gmail.com; leslie.kovacik@toledo.oh.gov; bojko@carpenterlipps.com; evan.betterton@igs.com; joe.oliker@igs.com; michael.nugent@igs.com; mkurtz@BKLawfirm.com; kboehm@BKLawfirm.com; jkylercohn@BKLawfirm.com; mwise@mcdonaldhopkins.com; dborchers@bricker.com; dparram@bricker.com; rmains@bricker.com; ctavenor@theOEC.org; rdove@keglerbrown.com; mpritchard@mcneeslaw.com; bmckenney@mcneeslaw.com; mmcdonnell@dickinsonwright.com; trent@hubaydougherty.com; jweber@elpc.org
Subject: RE: FirstEnergy Ohio Utilities - Show Cause Audit - Case No. 20-1502-EL-UNC

** External mail **

As today is quickly coming to a close, we wanted to provide the parties with some guidance as to how we may address the Companies' request below. Within today's Entry denying the interlocutory appeal, the Commission

directed the Companies to produce the responsive materials within 30 days of the March 11, 2022 prehearing conference, unless otherwise ordered. The Commission further clarified our rulings from the prehearing conference, noting that the motion to compel would only be granted for information falling within the period from January 1, 2017 through December 31, 2019. Given this clarification may require the Companies to reevaluate what information is required to be produced, in addition to the concerns raised by Ms. Goyal, we would not be opposed to entertaining a request to produce these documents on a rolling basis. However, the parties should work amongst themselves to determine a reasonable timeframe to propose to the attorney examiners by 5:00 pm tomorrow. If the parties are unable to come to an agreement, the attorney examiners will make themselves available Friday morning for a brief conference call to discuss this issue. Either way, any changes as to the timing of production of documents responsive to OCC's motion to compel will be memorialized in an entry issued on Friday.

Megan Janelle Addison

Senior Attorney Examiner
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Legal Department
Public Utilities Commission of Ohio
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This message and any response to it may constitute a public record and thus may be available to anyone who requests it.

From: Addison, Megan

Sent: Wednesday, April 6, 2022 2:26 PM

To: Goyal, Shalini B. <sgoyal@jonesday.com>; St. John, Jacky <Jacqueline.St.John@puco.ohio.gov>

Cc: Knipe, Brian J <bknipe@firstenergycorp.com>; Gladman, Michael R. <mrgladman@JonesDay.com>; Doringo, Ryan A. <radoringo@jonesday.com>; Dengler, Molly M. <mdengler@jonesday.com>; Margard, Werner <werner.margard@ohioattorneygeneral.gov>; Willis, Maureen <Maureen.Willis@occ.ohio.gov>; Finnigan, John <John.Finnigan@occ.ohio.gov>; Michael, William <William.Michael@occ.ohio.gov>; rkelter@elpc.org; trhayslaw@gmail.com; leslie.kovacik@toledo.oh.gov; Kimberly W. Bojko <bojko@carpenterlipps.com>; evan.betterton@igs.com; joe.oliker@igs.com; michael.nugent@igs.com; mkurtz@BKLawfirm.com; kboehm@BKLawfirm.com; jkylercohn@BKLawfirm.com; mwise@mcdonaldhopkins.com; dborchers@bricker.com; dparram@bricker.com; rmains@bricker.com; ctavenor@theOEC.org; rdove@keglerbrown.com; mpritchard@mcneeslaw.com; bmckenney@mcneeslaw.com; mmcdonnell@dickinsonwright.com; trent@hubaydougherty.com; jweber@elpc.org

Subject: RE: FirstEnergy Ohio Utilities - Show Cause Audit - Case No. 20-1502-EL-UNC

Thank you, Ms. Goyal. Have the Companies reached out to the other parties to see if they are agreeable to production on a rolling basis, as proposed?

Megan Janelle Addison

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This message and any response to it may constitute a public record and thus may be available to anyone who requests it.

From: Goyal, Shalini B. <sgoyal@jonesday.com>

Sent: Wednesday, April 6, 2022 10:43 AM

To: Addison, Megan <Megan.Addison@puco.ohio.gov>; St. John, Jacky <Jacqueline.St.John@puco.ohio.gov>
Cc: Knipe, Brian J <bknipe@firstenergycorp.com>; Gladman, Michael R. <mrgladman@JonesDay.com>; Doringo, Ryan A. <radoringo@jonesday.com>; Dengler, Molly M. <mdengler@jonesday.com>; Margard, Werner <werner.margard@ohioattorneygeneral.gov>; Willis, Maureen <Maureen.Willis@occ.ohio.gov>; Finnigan, John <John.Finnigan@occ.ohio.gov>; Michael, William <William.Michael@occ.ohio.gov>; rkelter@elpc.org; trhayslaw@gmail.com; leslie.kovacik@toledo.oh.gov; Kimberly W. Bojko <bojko@carpenterlipps.com>; evan.betterton@igs.com; joe.oliker@igs.com; michael.nugent@igs.com; mkurtz@BKLawfirm.com; kboehm@BKLawfirm.com; jkylercohn@BKLawfirm.com; mwise@mcdonaldhopkins.com; dborchers@bricker.com; dparram@bricker.com; rmains@bricker.com; ctavenor@theOEC.org; rdove@keglerbrown.com; mpritchard@mcneeslaw.com; bmckenney@mcneeslaw.com; mmcdonnell@dickinsonwright.com; trent@hubaydougherty.com; jweber@elpc.org
Subject: FirstEnergy Ohio Utilities - Show Cause Audit - Case No. 20-1502-EL-UNC

Dear Attorney Examiners Addison & St. John,

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies") write to seek additional time to make any production of FERC-related materials in response to your Honors' March 11, 2022 ruling. See Case No. 20-1502-EL-UNC, Hr'g Tr. (Mar. 11, 2022), at 52:14-56:9. During that hearing, Attorney Examiner Addison indicated the Examiners would be willing to adjust the timing of any production. Though the Companies' interlocutory appeal is still pending, the Companies have been working on preparing their production, and have identified the size of the review population. Even as limited by the Attorney Examiners, the Companies must review more than 8,700 documents to identify whether each document (1) contains information pertaining to the Companies specifically and (2) requires the redaction of information unrelated to the Companies. Given the time it will take to review the documents, many of which are voluminous excel files which require extra processing by our document vendor to redact and produce, the Companies request that the Attorney Examiners permit them to begin rolling productions of documents 30 days from the date of any order denying our interlocutory appeal, where all productions will be completed within 120 days of the date of any such order.

We are happy to discuss this request further at your Honors' convenience.

Shalini Goyal
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Willis, Maureen

From: Goyal, Shalini B. <sgoyal@jonesday.com>
Sent: Thursday, April 7, 2022 2:27 PM
To: Noward, Alana; Addison, Megan
Cc: St. John, Jacky; bknipe@firstenergycorp.com; Gladman, Michael R.; Doringo, Ryan A.; Dengler, Molly M.; Margard, Werner; Willis, Maureen; Finnigan, John; Michael, William; rkelter@elpc.org; trhayslaw@gmail.com; leslie.kovacik@toledo.oh.gov; Kimberly W. Bojko; evan.betterton@igs.com; joe.oliker@igs.com; michael.nugent@igs.com; mkurtz@BKLawfirm.com; kboehm@BKLawfirm.com; jkylercohn@BKLawfirm.com; mwise@mcdonaldhopkins.com; dborchers@bricker.com; dparram@bricker.com; rmains@bricker.com; ctavenor@theOEC.org; rdove@keglerbrown.com; mpritchard@mcneeslaw.com; bmckenney@mcneeslaw.com; mmcdonnell@dickinsonwright.com; trent@hubaydougherty.com; jweber@elpc.org
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Shalini Goyal
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Office +1.614.281.3825

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ctavenor@theOEC.org; rdove@keglerbrown.com; mpritchard@mcneeslaw.com; bmckenney@mcneeslaw.com; mmcdonnell@dickinsonwright.com; trent@hubaydougherty.com; jweber@elpc.org

Subject: RE: Regarding FirstEnergy's Non-Filed Extension Request for Producing Discovery Ordered under the April 6, 2022 PUCO Entry - 20-1502-EL-UNC

** External mail **

Resending to include Ms. Goyal and Attorney Examiner St. John. My apologies for the omission in my previous email.

Thank you,



Alana Noward
Senior Case Team Coordinator

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
(614) 466-7964
Alana.Noward@occ.ohio.gov

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At Maureen Willis' request, please find OCC's response to FirstEnergy's Request below.

Hello Attorney Examiner Addison,

Per your inquiry to the parties yesterday, OCC objects to FirstEnergy's non-filed extension request seeking four more months of delay for OCC's March 24, 2021 discovery request. FirstEnergy was out of pleadings and out of time after filing its interlocutory appeal.

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denial of our June 29, 2021 motion to compel FirstEnergy to give OCC the documents it gave to FERC. As stated, OCC originally asked FirstEnergy for the documents a year ago on March 24, 2021.

Your March 11, 2022 ruling required the FirstEnergy Utilities to produce responsive materials “within 30 days of the March 11, 2022 prehearing conference”. Thirty days from your ruling would require FirstEnergy to produce the documents on April 10, 2022. This timeframe is reasonable for the responses to be produced and is consistent with yesterday’s order by the Commissioners. FirstEnergy should have been preparing for this eventuality after your March 11, 2022 ruling. Not only are these documents relevant in this case but they are highly relevant to other cases.

We are familiar with FirstEnergy Corp.’s approach of “rolling” production of discovery documents in the 17-974 case and have found it to be problematic. FirstEnergy Corp.’s rolling production of SEC and DOJ documents to OCC began in October of 2021. Six months later, we are still waiting for a large number of those documents to “roll” into OCC.

Moreover, it would be a dubious assumption to believe that other delays and problems with FirstEnergy’s document production would even end in four months. For example, we are skeptical about giving FirstEnergy discretion to decide which documents “contains information pertaining to the Companies specifically as it referenced in its April 7, 2022 email.

Finally, we object to FirstEnergy’s non-transparent use of emails, including just hours before the Commissioners’ scheduled ruling, in this very public case. For the Friday conference call, we request a court reporter and that the conference be open to the public as provided under law.

Thank you for your consideration.



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Senior Case Team Coordinator

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From: Addison, Megan
Sent: Friday, April 8, 2022 9:45 AM
To: Goyal, Shalini B.; Noward, Alana
Cc: St. John, Jacky; bknipe@firstenergycorp.com; Gladman, Michael R.; Doringo, Ryan A.; Dengler, Molly M.; Margard, Werner; Willis, Maureen; Finnigan, John; Michael, William; rkelter@elpc.org; trhayslaw@gmail.com; leslie.kovacik@toledo.oh.gov; Kimberly W. Bojko; evan.betterton@igs.com; joe.oliker@igs.com; michael.nugent@igs.com; mkurtz@BKLawfirm.com; kboehm@BKLawfirm.com; jkylernohn@BKLawfirm.com; mwise@mcdonaldhopkins.com; dborchers@bricker.com; dparram@bricker.com; rmains@bricker.com; ctavenor@theOEC.org; rdove@keglerbrown.com; mpritchard@mcneeslaw.com; bmckenney@mcneeslaw.com; mmcdonnell@dickinsonwright.com; trent@hubaydougherty.com; jweber@elpc.org
Subject: RE: Regarding FirstEnergy's Non-Filed Extension Request for Producing Discovery Ordered under the April 6, 2022 PUCO Entry - 20-1502-EL-UNC

Hello all,

In light of the entry issued in Case No. 17-974-EL-UNC late yesterday, we will be canceling the conference call currently scheduled at 11:00 am today and scheduling a prehearing conference at the offices of the Commission on Monday at 11:00 am to discuss this issue. The scheduling entry will be issued later today and will indicate whether there will be a court reporter, depending on Armstrong and Okey's availability. We encourage the parties to continue to discuss any potential resolution amongst themselves until that time.

Megan Janelle Addison

Senior Attorney Examiner
Deputy Section Chief, Electric Section
Legal Department
Public Utilities Commission of Ohio
(614) 995-9025
PUCO.ohio.gov



This message and any response to it may constitute a public record and thus may be available to anyone who requests it.

From: Addison, Megan
Sent: Thursday, April 7, 2022 2:56 PM
To: Goyal, Shalini B. <sgoyal@jonesday.com>; Noward, Alana <Alana.Noward@occ.ohio.gov>
Cc: St. John, Jacky <Jacqueline.St.John@puco.ohio.gov>; bknipe@firstenergycorp.com; Gladman, Michael R. <mrgladman@JonesDay.com>; Doringo, Ryan A. <radoringo@jonesday.com>; Dengler, Molly M. <mdengler@jonesday.com>; Margard, Werner <werner.margard@ohioattorneygeneral.gov>; Willis, Maureen <Maureen.Willis@occ.ohio.gov>; Finnigan, John <John.Finnigan@occ.ohio.gov>; Michael, William <William.Michael@occ.ohio.gov>; rkelter@elpc.org; trhayslaw@gmail.com; leslie.kovacik@toledo.oh.gov; Kimberly W. Bojko <bojko@carpenterlipps.com>; evan.betterton@igs.com; joe.oliker@igs.com; michael.nugent@igs.com; mkurtz@BKLawfirm.com; kboehm@BKLawfirm.com; jkylernohn@BKLawfirm.com; mwise@mcdonaldhopkins.com; dborchers@bricker.com; dparram@bricker.com; rmains@bricker.com; ctavenor@theOEC.org; rdove@keglerbrown.com; mpritchard@mcneeslaw.com; bmckenney@mcneeslaw.com; mmcdonnell@dickinsonwright.com; trent@hubaydougherty.com; jweber@elpc.org
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We certainly appreciate the updates as to where things stand. While we are disappointed the parties were unable to reach a resolution on their own, we will be available for a brief conference call at 11:00 am tomorrow morning. There will be no court reporter; however, as noted in my email yesterday, we will put out an entry memorializing the arguments presented and the resolution to this issue later in the day.

Parties planning to participate in or listen to the conference call shall dial 614-721-2972 and enter access code 343 101 615#. Thank you.

Megan Janelle Addison

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in

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

Summary: Memorandum Memorandum on FirstEnergy's Delayed Disclosure of
FERC-Audit Documents by Office of the Ohio Consumers' Counsel electronically
filed by Ms. Alana M. Noward on behalf of Willis, Maureen R.