

**BEFORE  
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 ) Case No. 20-1502-EL-UNC  
Illuminating Company, and The Toledo )  
Edison Company. )  
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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON COMPANY’S  
REPLY MEMORANDUM CONCERNING THE TIMING OF THE PRODUCTION OF  
DOCUMENTS PRODUCED TO THE FEDERAL ENERGY REGULATORY  
COMMISSION**

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**I. INTRODUCTION**

In their April 15, 2022 Supplemental Memorandum, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“the Companies”) asked for permission to produce documents responsive to the Attorney Examiners’ March 11 Ruling<sup>1</sup> and the Commission’s April 6 Entry<sup>2</sup> by June 17, 2022. The Companies explained that they have already made a first production of compelled FERC Audit materials, and that they will prioritize certain categories of information related to lobbying expenses, donations, and FirstEnergy Service Company billing practices. The Companies will endeavor to provide productions as expeditiously as possible and plan to stagger productions between today and June 17.

The briefs of the Office of the Ohio Consumer’s Counsel (“OCC”) and the Ohio Manufacturer’s Association Energy Group (“OMAEG”) reflect confusion concerning the

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<sup>1</sup> Case No. 20-1502-EL-UNC, Hr’g Tr. (Mar. 11, 2022), at 57:1-59:25 (“March 11 Ruling”).

<sup>2</sup> Case No. 20-1502-EL-UNC, Entry (Apr. 6, 2022) (“April 6 Entry”).

Companies' plans for this production. Both OMAEG and OCC mistakenly claim the Companies either seek an open-ended production schedule or rolling productions within 120 days.<sup>3</sup> OCC's and OMAEG's opposition to the Companies' proposed rolling production appears to be based on the beliefs that the Companies seek to intentionally delay these proceedings and resist producing documents. Neither is correct. To the contrary, the Companies have *opposed* the parties' requests to indefinitely stay these proceedings and have produced more than 26,000 pages of documents in four separate proceedings to date. OMAEG's and OCC's opposition relies on incorrect premises, including that the Companies never expressed concern over the initial 30-day timeline<sup>4</sup> and never produced any documents.<sup>5</sup>

The parties are not prejudiced by the Companies' proposed production timeline. The parties will have the compelled discovery well in advance of the December 2022 audit report in this proceeding.

Further, OCC's proposal to expand the scope of the production should be rejected. OCC asks the Attorney Examiners to overrule past Commission decisions and relitigate the scope of the compelled production. The Attorney Examiners made clear that any production must be related to the Companies over a specified time frame.<sup>6</sup> OCC's request for information related to FirstEnergy entities other than the Companies is improper and beyond the scope of this proceeding.

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<sup>3</sup> In fact, the Companies' offer for 120-day rolling productions did not survive beyond April 6—OCC and OMAEG both know that. *See* Ex. A.

<sup>4</sup> Case No. 20-1502-EL-UNC, Memorandum on FirstEnergy's Delayed Disclosure of FERC-Audit Documents by Office of the Ohio Consumers' Counsel (Apr. 15, 2022), at 5, 8 ("OCC Mem."); Case No. 20-1502-EL-UNC, Memorandum on Document Production Timeline (Apr. 15, 2022), at 3 ("OMAEG Mem.").

<sup>5</sup> OCC Mem. at 3.

<sup>6</sup> *See infra* Section II.B. and n.16.

Accordingly, the Companies respectfully ask the Attorney Examiners to affirm the scope of the Companies' production obligations, and adopt the Companies' proposed production timeline and plan.

## **II. ARGUMENT**

### **A. There Is No Prejudice To The Parties.**

As the Companies explained in their April 15 Memorandum, there is good cause to extend the production deadline to June 17.<sup>7</sup> And a mid-June production completion date provides the parties with ample time to review documents for this case, in compliance with the Commission's rules.<sup>8</sup> The arguments from OCC and OMAEG claiming prejudice in favor of alternative timelines are without merit.

First, under the Companies' proposal, the parties will have the FERC production well in advance of the procedural deadlines in this case. Again, the audit report in this proceeding is not due until December, with comments likely not scheduled until early 2023. The Companies' proposal therefore affords the parties months of time to review the FERC audit materials before any key procedural dates.

Second, the Companies do not seek to delay this case or any other proceedings before the Commission. The Companies have never suggested rolling productions be unlimited in time. Any proposal has been capped with a date certain for completing productions. But from the outset, and contrary to OCC and OMAEG assertions,<sup>9</sup> the Companies have acknowledged that meeting the

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<sup>7</sup> Companies' Mem. at 3-6.

<sup>8</sup> O.A.C. 4901-1-17(A) ("Unless otherwise ordered for good cause shown, discovery must be completed prior to the commencement of the hearing.").

<sup>9</sup> OMAEG Mem. at 3. *See also* OCC Mem. at 5, 7.

April 11 production deadline would be difficult.<sup>10</sup> Indeed, until the Companies had an understanding of the universe of the compelled documents (which were originally produced to FERC Audit Staff by FirstEnergy Corp., not by the Companies), and clarity from the Commission as to the responsive time period (which was among the subjects of the Companies' interlocutory appeal), they could only estimate what would be reasonable. This is exactly why the Companies reserved their rights to seek additional time during the March 11 preconference hearing.<sup>11</sup>

Third, while the Companies are making every effort to review and produce documents as expeditiously as possible, the production proposals put forth by OCC are unreasonable. This is not only because they are outside the scope of the Attorney Examiners' March 11 Ruling and the Commission's April 6 Entry,<sup>12</sup> but also because they impose an incredible burden on the Companies to complete all productions by May 6.<sup>13</sup> It is simply not true that the Companies have been "on notice" to produce FERC documents for months<sup>14</sup> when they only received final word as to what was actually compelled on April 6. A June 17 production deadline, with priority productions completed before that date, does not prejudice OCC, OMAEG, or any other party. The Companies are only asking for time to provide an accurate production of responsive materials.

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<sup>10</sup> Case No. 20-1502-EL-UNC, Hr'g Tr. (Apr. 11, 2022), at 57:25-28:5 ("MR. DORINGO: . . . And in terms of timing, I would say given the length of the audit that continued for, you know, some years, and the breath of the audit and OCC's request, we would request *30 days at least to make a production, subject to any motions of interlocutory appeal.*") (emphasis added).

<sup>11</sup> Case No. 20-1502-EL-UNC, Hr'g Tr. (Apr. 11, 2022), at 57:25-28:5.

<sup>12</sup> OCC Mem. at 3, 7-8.

<sup>13</sup> OCC Mem. at 8.

<sup>14</sup> OMAEG Mem. at 3; OCC Mem. at 1, 4.

## **B. The Scope Of Any Production Is Already Defined.**

Additionally, the “scope”<sup>15</sup> of this production has already been well laid out. The Companies have been compelled to produce documents provided by FirstEnergy entities to FERC Audit Staff, related to Ohio Edison Company, The Cleveland Electric Illuminating Company, or The Toledo Edison Company, between January 1, 2017 and December 31, 2019.<sup>16</sup> However, OCC’s brief attempts, in this dispute over the timing of this production, to relitigate the scope of the Attorney Examiners’ March 11 Ruling and the Commission’s April 6 Entry.<sup>17</sup> Specifically, OCC demands that the Companies (1) produce information related to FirstEnergy Service Company (“FESC”), FirstEnergy Corp., FirstEnergy Solutions Corp. (“FES”),<sup>18</sup> and American Transmission Systems Inc. (“ATSI”);<sup>19</sup> (2) provide all documents other than those “solely relat[ing] to a non-Ohio FirstEnergy electric distribution utility”;<sup>20</sup> and (3) forgo redactions of information entirely.<sup>21</sup>

Each of these demands should be denied. For starters, OCC’s new request for information about FESC, FirstEnergy Corp., FES, and ATSI fall outside the Attorney Examiners’ March 11 Ruling and ignore the very restrictions *OCC itself* placed on its document request, which OCC

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<sup>15</sup> OCC Mem. at 9-10.

<sup>16</sup> Case No. 20-1502-EL-UNC, Hr’g Tr. (Apr. 11, 2022), at 59:5-59:14 (“MR. DORINGO: Just to be clear, when you say it includes production of documents from FirstEnergy entities, I understand that to mean all entities that were under -- that were party to that audit, *but so the limitation then is only those documents which concern the Ohio Companies?* ATTORNEY EXAMINER ADDISON: *Of course.* And I think we did make that designation earlier during the conference, but thank you for making that clarification, Mr. Doringo.”) (emphasis added); Case No. 20-1502-EL-UNC, Entry (Apr. 6, 2022), at ¶ 44. (affirming the Attorney Examiners’ ruling in this respect).

<sup>17</sup> OCC Mem. at 11 (“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.”).

<sup>18</sup> FES, now known as Energy Harbor, LLC, is not affiliated with FirstEnergy Corp.

<sup>19</sup> OCC Mem. at 10.

<sup>20</sup> OCC Mem. at 9.

<sup>21</sup> OCC Mem. at 3, 7-8.

expressly limited “to communications from the FirstEnergy Utilities to FERC’s Division of Audits and Accounting.”<sup>22</sup> But more to the point, information from these entities is not relevant to the Commission’s review of political and charitable spending by or on behalf of *the Companies*.

Additionally, OCC’s call to “prohibit the FirstEnergy Utilities from withholding documents or redacting information unless the information solely relates to a non-Ohio FirstEnergy electric distribution utility”<sup>23</sup> ignores the reality of the FERC productions. As OCC and OMAEG know, the FERC audit report touched on more than a dozen FirstEnergy entities—as did FERC’s audit requests. And thus in most instances, the audit responses necessarily contain information related to multiple entities, many of which are outside Ohio and the Commission’s jurisdiction. Indeed, the Companies’ modest production of documents on April 15 contains most of the documents that apply to the Companies and do not contain specific information for other entities.

The Attorney Examiners should also reject any argument that “FirstEnergy should be ordered to forgo document filtering”<sup>24</sup> because it would set aside the Commission’s defined production scope. The redactions the Companies request time to complete are not self-imposed to avoid production.<sup>25</sup> *See also, supra* at Section II.A. They are needed to protect confidential information related to entities that are not fairly before the Commission. They are also essential to complying with the Commission’s April 6 Entry, which limited the scope of any production to information related to the Ohio Companies over a specific time period. The parties are not entitled

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<sup>22</sup> Case No. 20-1502-EL-UNC, OCC Motion to Compel Responses to Fifth and Seventh Sets of Discovery (June 29, 2021), at 2-3.

<sup>23</sup> OCC Mem. at 9.

<sup>24</sup> OCC Mem. at 3. *See also*, OMAEG Mem. at 4 (“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.”).

<sup>25</sup> OCC Mem. at 7.

to large tracts of information unrelated to the Companies where there is a means to reasonably produce only that information that is responsive and relevant.

Nor do OCC or OMAEG point to any deficiency within the Companies' productions to date which warrants additional oversight of the Companies' review by the Attorney Examiners. OCC's proposal is based entirely on speculation.<sup>26</sup> In fact, the Companies have already explained they intend to do a document-by-document review to ensure information is not incorrectly excluded because it does not explicitly reference the Companies.<sup>27</sup> And while the Companies are willing to produce a "responsiveness log" should the Attorney Examiners deem one necessary, there is no obligation under the rules of procedure to produce one.<sup>28</sup> Should OCC, or any other party, have questions concerning the Companies' productions, the Companies would be happy to address those questions directly as is normally done during litigation. But as it stands, OCC's proposed review prematurely demands Attorney Examiner intervention, places an immense burden on the Attorney Examiners to check the Companies' work, and further delays these proceedings.<sup>29</sup>

### III. CONCLUSION

Neither OCC nor OMAEG raise compelling reasons for why the Companies' proposed timetable should not be adopted. For all the reasons stated in their April 15 Memorandum, and

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<sup>26</sup> See, e.g., OCC Mem. at 12.

<sup>27</sup> Companies' Mem. at 4.

<sup>28</sup> Accord, *In re Zolofit (Sertraline Hydrochloride) Prod. Liab. Litig.*, No. 12-MD-2342, 2013 WL 8445354, at \*2 (E.D. Pa. Oct. 31, 2013), report and recommendation adopted, No. 12-MD-2342, 2013 WL 8445280 (E.D. Pa. Nov. 19, 2013) ("[T]here is not a requirement in the rules that a party explain how it decided that a particular document fell outside of the scope of discovery. In general, there is no basis in the rules for requiring a party to disclose its thinking about why it did not produce a particular document."); *Beverage Distributors, Inc. v. Miller Brewing Co.*, No. 2:08-CV-1112, 2010 WL 1727640, at \*5 (S.D. Ohio Apr. 28, 2010).

<sup>29</sup> See, e.g., *Beverage Distributors, Inc. v. Miller Brewing Co.*, No. 2:08-CV-1112, 2010 WL 1727640, at \*5 (S.D. Ohio Apr. 28, 2010) ("an in camera review of each redacted document and the corresponding unredacted original would be unnecessarily burdensome and time-consuming.").

those raised above, the Companies respectfully ask the Attorney Examiners to permit them to complete rolling productions by June 17, 2022.

Dated: April 19, 2022

Respectfully submitted,

*/s/ Michael R. Gladman*

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*On behalf of the Companies*



**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on April 19, 2022. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

*/s/ Shalini B. Goyal*  
\_\_\_\_\_  
*Attorney for the Companies*

# **EXHIBIT A**

## Goyal, Shalini B.

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**From:** Megan.Addison@puco.ohio.gov  
**Sent:** Thursday, April 7, 2022 2:56 PM  
**To:** Goyal, Shalini B.; Alana.Noward@occ.ohio.gov  
**Cc:** Jacqueline.St.John@puco.ohio.gov; bknipe@firstenergycorp.com; Gladman, Michael R.; Doringo, Ryan A.; Dengler, Molly M.; werner.margard@ohioattorneygeneral.gov; Maureen.Willis@occ.ohio.gov; John.Finnigan@occ.ohio.gov; William.Michael@occ.ohio.gov; rkelder@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: Regarding FirstEnergy's Non-Filed Extension Request for Producing Discovery Ordered under the April 6, 2022 PUCO Entry - 20-1502-EL-UNC

**\*\* External mail \*\***

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

Senior Attorney Examiner  
Deputy Section Chief, Electric Section  
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**From:** Goyal, Shalini B. <sgoyal@jonesday.com>  
**Sent:** Thursday, April 7, 2022 2:27 PM  
**To:** Noward, Alana <Alana.Noward@occ.ohio.gov>; Addison, Megan <Megan.Addison@puco.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>; rkelder@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: Regarding FirstEnergy's Non-Filed Extension Request for Producing Discovery Ordered under the April 6, 2022 PUCO Entry - 20-1502-EL-UNC

Good afternoon, Your Honors.

As Your Honors have seen below, OCC objects to the Companies' proposal of a 90-day rolling production. For completeness, the Companies report that, as Your Honors instructed, this morning the Companies reached out to all parties. NOAC defers to OCC. IEU-Ohio, ELPC, IGS, NRDC, OPAE, OHA, OEG and OEC have no objection to the rolling schedule. OMAEG and CUB Ohio do not necessarily object to a rolling production within a reasonable time frame, but OMAEG would like additional clarification on timing of the first production. We have not received a response from other intervenors.

As to OMAEG's question concerning the timing of our first production, as we indicated to the parties, we expect to make our first production within 30 days of April 6. Though the date range reduced the total number of documents, the Companies still need to review more than 19,000 pages. However, our intention is to make productions as they are ready, so we may be prepared to make our first production sooner than 30 days.

Thank you.

Shalini Goyal  
Associate  
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**Cc:** Goyal, Shalini B. <[sgoyal@jonesday.com](mailto:sgoyal@jonesday.com)>; [Jacqueline.St.John@puco.ohio.gov](mailto:Jacqueline.St.John@puco.ohio.gov); [bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com); Gladman, Michael R. <[mrgladman@JonesDay.com](mailto:mrgladman@JonesDay.com)>; Doringo, Ryan A. <[radoringo@jonesday.com](mailto:radoringo@jonesday.com)>; Dengler, Molly M. <[mdengler@jonesday.com](mailto:mdengler@jonesday.com)>; [werner.margard@ohioattorneygeneral.gov](mailto:werner.margard@ohioattorneygeneral.gov); [Maureen.Willis@occ.ohio.gov](mailto:Maureen.Willis@occ.ohio.gov); [John.Finnigan@occ.ohio.gov](mailto:John.Finnigan@occ.ohio.gov); [William.Michael@occ.ohio.gov](mailto:William.Michael@occ.ohio.gov); [rkelter@elpc.org](mailto:rkelter@elpc.org); [trhayslaw@gmail.com](mailto:trhayslaw@gmail.com); [leslie.kovacik@toledo.oh.gov](mailto:leslie.kovacik@toledo.oh.gov); [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com); [evan.betterton@igs.com](mailto:evan.betterton@igs.com); [joe.oliker@igs.com](mailto:joe.oliker@igs.com); [michael.nugent@igs.com](mailto:michael.nugent@igs.com); [mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com); [kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com); [jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com); [mwise@mcdonaldhopkins.com](mailto:mwise@mcdonaldhopkins.com); [dborchers@bricker.com](mailto:dborchers@bricker.com); [dparram@bricker.com](mailto:dparram@bricker.com); [rmains@bricker.com](mailto:rmains@bricker.com); [ctavenor@theOEC.org](mailto:ctavenor@theOEC.org); [rdove@keglerbrown.com](mailto:rdove@keglerbrown.com); [mpritchard@mcneeslaw.com](mailto:mpritchard@mcneeslaw.com); [bmckenney@mcneeslaw.com](mailto:bmckenney@mcneeslaw.com); [mmcdonnell@dickinsonwright.com](mailto:mmcdonnell@dickinsonwright.com); [trent@hubaydougherty.com](mailto:trent@hubaydougherty.com); [jweber@elpc.org](mailto: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



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**CONFIDENTIALITY NOTICE:**

This message may contain privileged and/or confidential information for intended recipients only. If you have received this communication in error, please notify me immediately by email and telephone.

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**From:** Noward, Alana

**Sent:** Thursday, April 7, 2022 12:52 PM

**To:** Addison, Megan <[Megan.Addison@puco.ohio.gov](mailto:Megan.Addison@puco.ohio.gov)>

**Cc:** [bknipe@firstenergycorp.com](mailto:bknipe@firstenergycorp.com); Gladman, Michael R. <[mrgladman@JonesDay.com](mailto:mrgladman@JonesDay.com)>; Doringo, Ryan A. <[radoringo@jonesday.com](mailto:radoringo@jonesday.com)>; Dengler, Molly M. <[mdengler@jonesday.com](mailto:mdengler@jonesday.com)>; Margard, Werner <[werner.margard@ohioattorneygeneral.gov](mailto:werner.margard@ohioattorneygeneral.gov)>; Willis, Maureen <[Maureen.Willis@occ.ohio.gov](mailto:Maureen.Willis@occ.ohio.gov)>; Finnigan, John <[John.Finnigan@occ.ohio.gov](mailto:John.Finnigan@occ.ohio.gov)>; Michael, William <[William.Michael@occ.ohio.gov](mailto:William.Michael@occ.ohio.gov)>; [rkelter@elpc.org](mailto:rkelter@elpc.org); [trhayslaw@gmail.com](mailto:trhayslaw@gmail.com); [leslie.kovacik@toledo.oh.gov](mailto:leslie.kovacik@toledo.oh.gov); [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com); [evan.betterton@igs.com](mailto:evan.betterton@igs.com); [joe.oliker@igs.com](mailto:joe.oliker@igs.com); [michael.nugent@igs.com](mailto:michael.nugent@igs.com); [mkurtz@BKLLawfirm.com](mailto:mkurtz@BKLLawfirm.com); [kboehm@BKLLawfirm.com](mailto:kboehm@BKLLawfirm.com); [jkylercohn@BKLLawfirm.com](mailto:jkylercohn@BKLLawfirm.com); [mwise@mcdonaldhopkins.com](mailto:mwise@mcdonaldhopkins.com); [dborchers@bricker.com](mailto:dborchers@bricker.com); [dparram@bricker.com](mailto:dparram@bricker.com); [rmains@bricker.com](mailto:rmains@bricker.com); [ctavenor@theOEC.org](mailto:ctavenor@theOEC.org); [rdove@keglerbrown.com](mailto:rdove@keglerbrown.com); [mpritchard@mcneeslaw.com](mailto:mpritchard@mcneeslaw.com); [bmckenney@mcneeslaw.com](mailto:bmckenney@mcneeslaw.com); [mmcdonnell@dickinsonwright.com](mailto:mmcdonnell@dickinsonwright.com); [trent@hubaydougherty.com](mailto:trent@hubaydougherty.com); [jweber@elpc.org](mailto:jweber@elpc.org)  
**Subject:** Regarding FirstEnergy's Non-Filed Extension Request for Producing Discovery Ordered under the April 6, 2022 PUCO Entry - 20-1502-EL-UNC

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.

Yesterday the PUCO Commissioners denied FirstEnergy's interlocutory appeal. That appeal challenged a March 11, 2022 ruling by Examiner Addison that granted OCC's February 7, 2022 requested revisiting of Examiner Price's Aug. 31, 2021 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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Summary: Reply Memorandum Concerning the Timing of the Production of Documents Produced to FERC electronically filed by Mrs. Shalini B. Goyal on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company