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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

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

 **FILE**

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**MOTION FOR A SUBPOENA DUCES TECUM FOR FORMER FIRSTENERGY  
CORP. PRESIDENT AND CEO CHARLES JONES TO PROVIDE OCC WITH  
HIS WRITTEN DISCOVERY RESPONSES (INCLUDING DOCUMENTS) AND  
VIDEOTAPES, AUDIO RECORDINGS AND WRITTEN TRANSCRIPTS OF  
ANY AND ALL DEPOSITION TESTIMONY BY MR. JONES**

**BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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This motion is to subpoena FirstEnergy Corp.'s former President and Chief Executive Officer, Charles Jones. Mr. Jones is to produce discovery responses (including documents) and videotapes, audio recordings and written transcripts ("deposition materials") of depositions of Mr. Jones (if depositions were taken). The subpoenaed information is in the cases pending before U.S. District Judge John R. Adams, styled as *Jennifer L. Miller v. Michael J. Anderson, et al.*, Case No. 5:20-cv-1743 (N.D. Ohio) and pending before U.S. District Chief Judge Algenon Marbley, styled as *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-03785 (S.D. Ohio) and in the other cases related to House Bill 6 that are pending in those courts (collectively, the "federal securities cases"). Mr. Jones is compelled to produce the subpoenaed information at OCC's offices at 65 E. State St., Suite 700, Columbus, Ohio 43215 within fifteen days from the date of the subpoena.

This case concerns FirstEnergy's political and charitable spending, including its activities in support of House Bill 6, which were part of "the largest bribery money

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laundry scheme in Ohio history.” Mr. Jones was President and Chief Executive Officer at FirstEnergy Corp. through his termination on October 29, 2020.<sup>1</sup>

OCC needs the subpoenaed information as part of overcoming FirstEnergy’s creative bookkeeping, which FERC described in a recent audit report:

Even more concerning, several factual assertions agreed to by FirstEnergy in DPA and the remedies FirstEnergy agreed to undertake, point towards internal controls having been possibly obfuscated or circumvented to conceal or mislead as to the actual amounts, nature, and purpose of the lobbying expenditures made, and as a result, the improper inclusion of lobbying and other nonutility costs in wholesale transmission billing rates.<sup>2</sup>

Mr. Jones filed status reports in the *Miller* litigation describing his document production and discovery responses in that case. On December 23, 2021, Mr. Jones filed a status report stating that he made an initial document production on November 20, 2021.<sup>3</sup> On February 7, 2022, he filed another status report stating that he produced an additional batch of over 2,400 pages of documents, as well as responses to written discovery and a privilege log.<sup>4</sup> This OCC subpoena would require Mr. Jones to produce all such documents, discovery responses and privilege log, as well as all other documents and discovery responses produced in the federal securities cases since the February 7, 2022 status report. The subpoena would also require Mr. Jones to produce all deposition materials for any deposition(s) taken of him in the federal securities cases.

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<sup>1</sup> FirstEnergy Corp. Form 8-K (Oct. 29, 2020).

<sup>2</sup> *In re FirstEnergy Audit*, Docket No. FA19-1-000 at 48 (Feb. 4, 2022) (emphasis added).

<sup>3</sup> *Jennifer L. Miller v. Michael J. Anderson, et al.*, Case No. 5:20-cv-1743, Status Report of Defendant Charles E. Jones at 1 (N.D. Ohio) (Dec. 23, 2021).

<sup>4</sup> *Id.*, Status Report of Defendant Charles E. Jones at 1 (Feb. 7, 2021).

This PUCO case involves an investigation into FirstEnergy's political and charitable spending in support of House Bill 6. Various investigations have already revealed that, since 2017, FirstEnergy engaged in certain political spending. And it was revealed that FirstEnergy improperly booked to the FirstEnergy Utilities the cost of political contributions to Generation Now and Hardworking Ohioans, as well as payments to Sustainability Funding Alliance, a firm associated with former PUCO Chair Sam Randazzo.<sup>5</sup>

The PUCO has repeatedly stated that it is “determined to act in a deliberate manner, based upon facts rather than speculation.”<sup>6</sup> Signing this subpoena for OCC is part of obtaining the facts (and justice). The subpoena also would help to achieve Chair French's objective to provide “more transparency” “to lift the ‘black cloud’ of [the] HB 6 scandal” from over the PUCO.”<sup>7</sup>

Accordingly, OCC files this motion for a subpoena duces tecum to Mr. Jones, per O.A.C. 4901-1-25. OCC does not seek to depose Mr. Jones at this time but reserves the right to seek a deposition at a later date and to request additional documents. This motion is more fully explained in the attached memorandum in support.

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<sup>5</sup> *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 20-1629-EL-UNC, Audit Report, Expanded Scope (Aug. 3, 2021).

<sup>6</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶ 17 (Nov. 4, 2020).

<sup>7</sup> J. Pelzer, *New PUCO Chair Jenifer French: more transparency needed to lift the ‘black cloud’ of [the] HB 6 scandal*, Cleveland.com (May 18, 2021).

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Maureen R. Willis  
Maureen R. Willis (0020847)  
Counsel of Record  
John Finnigan (0018689)  
Connor D. Semple (0101102)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Willis]: (614) 466-9567  
Telephone [Finnigan]: (614) 466-9585  
Telephone [Semple]: (614) 466-9565  
[maureen.willis@occ.ohio.gov](mailto:maureen.willis@occ.ohio.gov)  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  
[connor.semple@occ.ohio.gov](mailto:connor.semple@occ.ohio.gov)  
(willing to accept service by e-mail)

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Electric Illuminating Company, and the	)	
Toledo Edison Company.	)	

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

OCC files this motion, per O.A. C. 4901-1-25, to subpoena Mr. Charles Jones. Mr. Jones is to produce discovery responses (including documents) and videotapes, audio recordings and written transcripts (“deposition materials”) of depositions of Mr. Jones. The subpoenaed information is in the cases pending before U.S. District Judge John R. Adams, styled as *Jennifer L. Miller v. Michael J. Anderson, et al.*, Case No. 5:20-cv-1743 (N.D. Ohio) and pending before U.S. District Chief Judge Algenon Marbley, styled as *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-03785 (S.D. Ohio) and in the other cases related to House Bill 6 that are pending in those courts (collectively, the “federal securities cases”). Mr. Jones is compelled to produce the subpoenaed information at OCC’s offices at 65 E. State St., Suite 700, Columbus, Ohio 43215 within fifteen days from the date of the subpoena.

The documents, discovery responses and deposition materials requested are intended to produce information that pertains to the issues in this case. The issues relate to whether (and how) the FirstEnergy Ohio Utilities engaged in political and charitable

spending and potential charges to utility consumers, including with regard to activities in support of House Bill 6<sup>8</sup>

The PUCO has stated that it is “determined to act in a deliberate manner, based upon facts rather than speculation.”<sup>9</sup> But to take appropriate action for public protection based on facts, the PUCO *must first obtain the facts*, including by signing this subpoena for OCC.

Accordingly, the PUCO should grant OCC’s motion.

## **II. LAW AND ARGUMENT**

### **A. The PUCO should grant OCC’s motion and sign OCC’s subpoena duces tecum to FirstEnergy’s former President and Chief Executive Officer.**

OCC satisfies O.A.C. 4901-1-25 for the granting of its motion for a subpoena duces tecum. Essentially, the signing of the subpoena is a ministerial act for the PUCO. The Attorney Examiner should sign the subpoena when presented by OCC in person, per O.A.C. 4901-1-25(A)(2). If that signing does not occur for whatever reason, the PUCO Examiner should promptly return the signed subpoena to OCC via “United States mail,” per O.A.C. 4901-1-25(A)(1). The PUCO’s consideration of whether a subpoena is “unreasonable or oppressive” is only prompted if another party moves to quash, per O.A.C. 4901-1-25(C).

Under R.C. 4903.082, parties must be given ample rights of discovery. The Ohio Supreme Court recently affirmed OCC and NOPEC’s broad statutory rights to discovery

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<sup>8</sup> Show-Cause Entry (Sept. 15, 2020).

<sup>9</sup> *In the Matter of the Review of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Compliance with R.C. 4928.17 and Ohio Adm. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Entry at ¶ 17 (Nov. 4, 2020).

(as intervenors), when it reversed the PUCO's decision in the FirstEnergy Advisors case. The PUCO denied motions to compel discovery among other things, in the case.<sup>10</sup> The Court directed the PUCO to rule on the merits of the discovery motions before issuing a decision on the matters before it.<sup>11</sup>

The information compelled for production by the subpoena is relevant to establishing what political and charitable spending occurred in support of House Bill 6. That matter includes whether any such costs were charged to the FirstEnergy Utilities (and ultimately charged to consumers).

It already appears that FirstEnergy improperly charged the FirstEnergy Utilities for several items. One item was a portion of the \$60 million in payments to Generation Now to benefit a legislator for help in passing House Bill 6.<sup>12</sup> Another item was "a FirstEnergy Corp. payment of \$4,333,333, made on January 2, 2019 under a consulting agreement with Sustainability Funding Alliance ("SFA"), which the DPA indicates was political spending in support of House Bill 6."<sup>13</sup>

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<sup>10</sup> *In re Suvon LLC*, 2021 WL 4783198, 2021-Ohio-3630 (Oct. 14, 2021).

<sup>11</sup> *Id.* at ¶ 41.

<sup>12</sup> *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*, Deposition of Santino Fanelli at 129-130 (Mar. 9, 2021) (testifying that political and charitable spending costs involving Generation Now payments were allocated to the Ohio companies); see also *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 20-1629-EL-RDR, Case No. 20-1629-EL-RDR, Compliance Audit of the 2020 Delivery Capital Recovery (DCR) Riders of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Expanded Audit Report at Table 24 at 27 (Auditor finding that a payment of \$355,800 to Generation Now was "unsupported" but nonetheless classified in part as capital investment and charged to FirstEnergy consumers through the 2017 Rider DCR and the Pole attachment charges). (Aug. 3, 2021).

<sup>13</sup> *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, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Supplemental Response to the Sept. 15, 2020 Show Cause Entry at 1 (Aug. 6, 2021).



The PUCO should grant OCC's motion for a subpoena duces tecum to Mr. Jones to enable OCC to obtain this relevant information from the federal securities cases. The federal securities cases have issues that overlap with issues in this PUCO case.

Finally, it would not be "unreasonable or oppressive"<sup>14</sup> for Mr. Jones to produce this information. OCC is asking for information that Mr. Jones appears to have already produced in the federal securities cases.

### **III. CONCLUSION**

The PUCO should sign OCC's subpoena toward giving Ohioans the benefit of a proper investigation of FirstEnergy's political and charitable spending in support of House Bill 6. OCC's requested subpoena for documents, discovery responses and deposition materials by FirstEnergy's former President and Chief Executive Officer are needed to investigate in this proceeding.

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<sup>14</sup> O.A.C. 4901-1-25(C).

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Maureen R. Willis

Maureen R. Willis (0020847)  
Counsel of Record  
John Finnigan (0018689)  
Connor D. Semple (0101102)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Willis]: (614) 466-9567  
Telephone [Finnigan]: (614) 466-9585  
Telephone [Semple]: (614) 466-9565  
[maureen.willis@occ.ohio.gov](mailto:maureen.willis@occ.ohio.gov)  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  
[connor.semple@occ.ohio.gov](mailto:connor.semple@occ.ohio.gov)  
(willing to accept service by e-mail)

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion was served on the persons stated below  
via electric transmission this 7<sup>th</sup> day of July 2022.

/s/ Maureen R. Willis

Maureen R. Willis  
Senior Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document  
on the following parties:

### **SERVICE LIST**

werner.margard@ohioAGO.gov  
sarah.feldkamp@OhioAGO.gov  
thomas.lindgren@OhioAGO.gov  
rlazer@elpc.org  
rkelter@elpc.org  
jweber@elpc.org  
trhayslaw@gmail.com  
leslie.kovacik@toledo.oh.gov  
evan.betterton@igs.com  
joe.oliker@igs.com  
michael.nugent@igs.com  
mkurtz@BKLawfirm.com  
kboehm@BKLawfirm.com  
jkylercohn@BKLawfirm.com

Attorney Examiners:  
megan.addison@puco.ohio.gov  
jacqueline.st.john@puco.ohio.gov

bknipe@firstenergycorp.com  
mrgladman@jonesday.com  
mdengler@jonesday.com  
radoringo@jonesday.com  
sgoyal@jonesday.com  
dborchers@bricker.com  
dparram@bricker.com  
rmains@bricker.com  
ctavenor@theOEC.org  
knordstrom@theoec.org  
rdove@keglerbrown.com  
mpritchard@mcneeslaw.com  
bmckenney@mcneeslaw.com  
Bojko@carpenterlipps.com  
mwise@mcdonaldhopkins.com  
trent@hubaydougherty.com

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**PUCO**  
Michael DeWine  
GOVERNOR

STATE OF OHIO  
PUBLIC UTILITIES COMMISSION  
180 E. EAST BROAD STREET  
COLUMBUS OHIO 43266-0573



PUBLIC UTILITIES COMMISSION OF OHIO  
SUBPOENA DUCES TECUM

TO: Mr. Charles E. Jones  
4443 Bridle Trail  
Akron, Ohio 44333

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Mr. Charles E. Jones, former President and Chief Executive Officer of FirstEnergy Corp., is hereby required to produce the following documents to OCC at OCC's office at 65 East State Street, Suite 700, Columbus, Ohio 43215 within fifteen days of the date of this subpoena:

- (1) All discovery responses (including documents) that Mr. Jones produced in discovery in the federal shareholder derivative litigation pending before U.S. District Judge John R. Adams, styled as *Jennifer L. Miller v. Michael J. Anderson, et al.*, Case No. 5:20-cv-1743 (N.D. Ohio) ("the Miller litigation") and pending before U.S. District Chief Judge Algenon L. Marbley, styled as *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-03785 (S.D. Ohio) and in any related cases pending in those courts (collectively, the "federal securities cases").
- (2) All videotapes, audio recordings, and written transcripts ("deposition materials") for any and all depositions taken of Mr. Jones in the federal securities cases.

This OCC subpoena would require Mr. Jones to produce all documents, discovery responses and privilege log, as well as all other documents and discovery responses produced in the federal securities cases since his February 7, 2022 status report in the

federal securities cases. The subpoena would also require Mr. Jones to produce all deposition materials for any deposition(s) taken of him in the federal securities cases.

The subpoenaed information will be produced to the Ohio Consumers' Counsel at OCC's offices at 65 E. State St., Suite 700, Columbus, Ohio 43215 within fifteen days from the date of the subpoena in connection with the proceeding entitled: "*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,*" PUCO Case No. 20-1502-EL-UNC.

Dated at Columbus, Ohio, this \_\_\_\_\_ day of July 2022.

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PUCO Attorney Examiner

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.