

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Ohio Edison)
Company, the Cleveland Electric)
Illuminating Company, and the Toledo) Case No. 17-974-EL-UNC
Edison Company's Compliance with)
R.C. 4928.17 and the Ohio Adm. Code)
Chapter 4901:1-37.)

**MOTION FOR A SUBPOENA FOR FORMER FIRSTENERGY LOBBYIST AND
DIRECTOR OF STATE REGULATORY AFFAIRS - OHIO JUSTIN BILTZ TO
APPEAR AT DEPOSITION
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Ohio Consumers' Counsel

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August 4, 2022

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This motion is to subpoena FirstEnergy's former lobbyist and Director of State Regulatory Affairs - Ohio, Justin Biltz. The subpoena requires Mr. Biltz to appear at deposition.¹

FirstEnergy terminated Mr. Biltz as a lobbyist effective February 23, 2021.² Mr. Biltz lobbied for FirstEnergy at the PUCO).³

Mr. Biltz reported to Michael Dowling, who was involved in conduct that was described by Plaintiffs' counsel in an affidavit filed in the federal securities lawsuit related to H.B. 6. The affidavit states:

* * *

4. Plaintiffs' counsel believe that the discovery received would have shown at trial that two senior executives of FirstEnergy devised and orchestrated FirstEnergy's payments to public officials in

¹ OCC would have included a request for Mr. Biltz to bring documents to his deposition; however, the Attorney Examiner ruled (wrongly in our view) that OCC is not entitled to request documents when it filed a motion to subpoena Ms. Ebony Yeboah-Amankwah for deposition. *See* Entry (June 16, 2022).

² L. Bischoff, *FirstEnergy cuts back on its lobbying ranks* (March 9, 2021).

³ Joint Legislative Ethics Committee, *Active Agents and Employers for 2019*.

exchange for favorable legislation and regulatory action:

- Defendant Charles E. Jones, who was FirstEnergy's Chief Executive Officer and a director at the time of the scheme and has since been terminated by the Company; and
 - Defendant Michael J. Dowling, who was FirstEnergy's Senior Vice President for External Affairs at the time of the scheme and has since been terminated by the Company.
5. Based on the discovery, Plaintiffs' counsel understand that Defendant Jones is the individual identified in the DPA [Deferred Prosecution Agreement] as "Executive 1" and that Defendant Dowling is the individual identified in the DPA as "Executive 2." The DPA describes Executive 1's and Executive 2's central roles in the events giving rise to this litigation.
 6. Defendants Jones and Dowling have vehemently denied acting improperly, and neither Jones nor Dowling have been charged by the Department of Justice.⁴

OCC intends to question the deponent on topics that are reasonably calculated to lead to the discovery of admissible evidence in this corporate separation case. Among these topics, OCC intends to question the deponent concerning the documents attached to this motion.

The present subpoena compels Mr. Biltz to appear for deposition. The deposition will be at OCC's offices at 65 East State Street, Suite 700, Columbus, Ohio 43215,

⁴ *Jennifer L. Miller v. Michael J. Anderson, et al.*, Case No. 5:20-cv-1743 Affidavit of Jeroen Van Kwaegen and Thomas Curry (N.D. Ohio) (March 23, 2022).

fourteen days from the date of the subpoena (or at such alternative date and/or location that is mutually agreed upon).

This case concerns FirstEnergy's noncompliance with Ohio corporate separation requirements, including FirstEnergy's misallocations of costs related to House Bill 6, which were part of "the largest bribery money laundering scheme in Ohio history." Mr. Biltz was lobbyist and Director of State Regulatory Affairs - Ohio at FirstEnergy.^{5,6}

Among other things, OCC needs to question Mr. Biltz regarding his interactions with Generation Now representatives and Mr. Sam Randazzo in the course of his lobbying work at the PUCO. Mr. Biltz may have relevant information related to actions Mr. Randazzo might have taken on FirstEnergy's behalf while serving as PUCO Chair, which is relevant to the misallocated costs to the FirstEnergy Ohio Utilities.⁷

It appears that, at Mr. Jones' and Mr. Dowling's direction, FirstEnergy made various political contributions which were then improperly allocated to the FirstEnergy Utilities and improperly charged to consumers. The misallocations were for FirstEnergy 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.⁸

Consumers were wrongly charged \$6,639,339 for FirstEnergy's improper cost allocations. FirstEnergy also improperly charged to capital accounts an additional

⁵ L. Bischoff, *FirstEnergy cuts back on its lobbying ranks* (March 9, 2021).

⁶ FirstEnergy Corp. Form 8-K (October 29, 2020).

⁷ *Jennifer L. Miller v. Michael J. Anderson, et al.*, Case No. 5:20-cv-1743 Affidavit of Jeroen Van Kwaegen and Thomas Curry (N.D. Ohio) (March 23, 2022).

⁸ *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 (August 3, 2021).

\$7,445,573 which a PUCO auditor has recommended should be removed from rate base in future rate cases.⁹ OCC seeks information from Mr. Biltz relating to his involvement with Mr. Randazzo related to these misallocations.

The PUCO has repeatedly stated that it is “determined to act in a deliberate manner, based upon facts rather than speculation.”¹⁰ 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.”¹¹

Accordingly, OCC files this motion for a subpoena to Mr. Biltz, per O.A.C. 4901-1-25. This motion is more fully explained in the attached memorandum in support.

⁹ Case No. 20-1629-EL-UNC, Audit Report, Expanded Scope at 28 (August 3, 2021).

¹⁰ *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 (November 4, 2020).

¹¹ 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)

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Chapter 4901:1-37.)

MEMORANDUM IN SUPPORT

I. INTRODUCTION

OCC files this motion, per O.A. C. 4901-1-25, to subpoena Mr. Justin Biltz. Mr. Biltz should be compelled to appear for deposition at OCC’s offices at 65 East State Street, Suite 700, Columbus, Ohio 43215, fourteen days from the date of the subpoena (or alternatively at such date and/or location that is mutually agreed upon).

According to Plaintiffs counsel’s affidavit in the *Miller* litigation, Mr. Jones and Mr. Dowling “devised and orchestrated FirstEnergy’s payments to public officials in exchange for favorable legislation and regulatory action.”¹² An audit ordered by the PUCO revealed that a significant amount of the costs for these payments was improperly allocated to the FirstEnergy Ohio Utilities.¹³ FirstEnergy due to terminated Mr. Biltz as a lobbyist effective February 23, 2021.¹⁴ Ms. Ebony Yeboah-Amankwah was “separated” her inactions related to the House Bill 6 matter.¹⁵ The PUCO previously granted OCC’s

¹² *Jennifer L. Miller v. Michael J. Anderson, et al.*, Case No. 5:20-cv-1743 Affidavit of Jeroen Van Kwaegen and Thomas Curry (N.D. Ohio) (March 23, 2022).

¹³ *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 (August 3, 2021).

¹⁴ L. Bischoff, *FirstEnergy cuts back on its lobbying ranks* (March 9, 2021).

¹⁵ *Id.*

motion to subpoena Ms. Ebony Yehboah-Amankwah in this case and overruled Ms. Yeboah-Amankwah's motion to quash the subpoena.¹⁶

The PUCO has stated that it is “determined to act in a deliberate manner, based upon facts rather than speculation.”¹⁷ 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 to FirstEnergy's former lobbyist and Director of State Regulatory Affairs - Ohio.**

OCC satisfies O.A.C. 4901-1-25 for the granting of its motion for a subpoena. 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 (as intervenors), when it reversed the PUCO's decision in the FirstEnergy Advisors case.

¹⁶ Entry (June 16, 2022).

¹⁷ *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 (November 4, 2020).

Discovery rights are also in O.A.C. 4901-1-16 et seq. The PUCO denied motions to compel discovery among other things, in the case.¹⁸ The Court directed the PUCO to rule on the discovery motions before issuing a decision on the matters before it.¹⁹

Requiring Mr. Biltz to testify at deposition will help establish how and why FirstEnergy improperly misallocated House Bill 6 costs to the FirstEnergy Ohio Utilities. The evidence obtained to date establishes 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 6.²⁰ 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 U.S. Attorney/FirstEnergy deferred prosecution agreement indicates was political spending in support of House Bill 6.”²¹

The PUCO should grant OCC’s motion for a subpoena to require Mr. Biltz to testify at deposition.

¹⁸ *In re Suvon LLC*, 2021 WL 4783198, 2021-Ohio-3630 (October 14, 2021).

¹⁹ *Id.* at ¶ 41.

²⁰ *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 (March 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, 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) (August 3, 2021).

²¹ *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 September 15, 2020 Show Cause Entry at 1 (August 6, 2021).

III. CONCLUSION

The PUCO should sign OCC's subpoena toward giving Ohioans the benefit of a proper investigation of FirstEnergy's apparent corporate separation violations related to House Bill 6. OCC's requested subpoena to FirstEnergy's former lobbyist and Director of State Regulatory Affairs - Ohio is needed to obtain crucial information for case preparation toward reaching justice in this proceeding.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis
Maureen R. Willis (0020847)
Counsel of Record
John Finnigan (0018689)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was served on the persons stated below via electric transmission this 4th day of August 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:

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

Michael DeWine
GOVERNOR



PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA

TO: Mr. Justin Biltz
5524 Timberline Trl.
Hudson, Ohio 44236

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Mr. Justin Biltz, former lobbyist and Director of State Regulatory Affairs - Ohio of FirstEnergy, is hereby required to appear for deposition at OCC's office at 65 East State Street, Suite 700, Columbus, Ohio 43215 fourteen days of the date of this subpoena or at such alternative time and/or location as is mutually agreed.

This subpoena is issued in connection with the proceeding entitled: "In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Compliance with R.C. 4928.17 and the Ohio Adm. Code Chapter 4901:1-37, Case No. 17-974-EL-UNC."

Dated at Columbus, Ohio, this _____ day of August 2022.

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.

**The following documents, though originally marked confidential,
are public documents pursuant to OCC's disclosure notices
provided for under its protective agreement
with FirstEnergy.**

**STATE & FEDERAL COMMISSIONER CONTACTS
AS OF January 10, 2020**

	JONES	BELCHER	STRAH	DOWLING	BILTZ
MD COMMISSIONERS					
Jason Stanek, Chairman	10/29/18	--	--	11/11/18	10/29/19
Michael Richard	10/29/18	--	6/27/17	11/11/18	10/29/18
Anthony O'Donnell	--	--	--	11/11/18	7/22/19
Odogwu Obi Linton	10/29/18	--	--	10/29/18	--
Mindy L. Herman	--	--	--	--	6/24/19
NJ COMMISSIONERS					
Joseph L. Fiordaliso, President	2/26/18	2/1/19	--	7/23/19	10/29/19
Bob Gordon	--	--	--	11/18/19	11/18/19
Diane Solomon	2/26/18	--	--	2/26/18	11/19/19
Mary-Anna Holden	10/10/15	--	--	11/11/18	11/18/19
Upendra Chivukula	2/26/18	--	--	2/26/18	--
OH COMMISSIONERS					
Sam Randazzo, Chairman	9/23/19	--	2/12/17	9/23/19	11/18/19
Larry Friedeman	--	--	6/27/17	10/26/17	11/18/19
Dennis Deters	--	--	--	10/2/19	11/18/19
Beth Trombold	2/15/15	--	6/27/17	2/10/19	11/18/19
Dan Conway	--	--	6/27/17	2/10/19	11/18/19
PA COMMISSIONERS					
Gladys Brown, Chairman	4/28/15	--	--	11/18/19	11/18/19
David Sweet, Vice Chairman	--	--	--	--	--
John F. Coleman, Jr.	--	--	--	11/18/19	11/18/19
Andrew Place	--	--	--	--	10/29/19
Ralph Yanora	--	--	--	--	--
WV COMMISSIONERS					
Charlotte Lane, Chairman	--	--	--	7/29/19	11/18/19
Brooks F. McCabe, Jr.	8/10/16	--	6/27/17	7/29/19	11/19/19
Renee Larrick	--	--	--	--	--
FERC COMMISSIONERS					
Neil Chatterjee, Chairman	5/22/19	--	--	5/22/19	--
Richard Glick	5/22/19	--	--	5/22/19	11/18/19
Bernard McNamee	--	--	--	--	--

From: "Dowling, Michael J." <dowlingm@firstenergycorp.com>

To: "Biltz, Justin T" <jbiltz@firstenergycorp.com>

Subject: Re: [EXTERNAL] Google Alert - Ohio "consumers counsel"

Date: Mon, 1 Jul 2019 11:19:19 +0000

Importance: Normal

I spoke with Same a few times yesterday - mostly on HB6, but we also discussed DMR and what we are recommending to Sam.

Michael J. Dowling
Senior VP, External Affairs
FirstEnergy
330-384-5761 office
330-283-1180 mobile

On Jul 1, 2019, at 7:05 AM, Biltz, Justin T <jbiltz@firstenergycorp.com> wrote:

I will be on the phone as well. I agree, we are going to need to call all the commissioners and several staff.

Sent from my iPad

On Jun 30, 2019, at 6:19 PM, Dowling, Michael J. <dowlingm@firstenergycorp.com> wrote:

Are you ready for tomorrow morning cej meeting. I'll call in. Regardless of decision, we need to talk to PUCO staff and Sam.

Michael J. Dowling
Sr. Vice President, External Affairs
330-384-5761

Begin forwarded message:

From: Google Alerts <googlealerts-noreply@google.com>

Date: June 30, 2019 at 5:31:19 PM EDT

To: dowlingm@firstenergycorp.com

Subject: [EXTERNAL] Google Alert - Ohio "consumers counsel"



Ohio "consumers counsel"

As-it-happens update · June 30, 2019

NEWS

Fix PUCO so it serves all Ohioans, not just the state's utilities: editorial

cleveland.com

Meanwhile, the General Assembly has slashed the budget of **Ohio's Consumers' Counsel**, which the legislature created in 1976 to be Ohio residential ...

F T [Flag as irrelevant](#)

Why House Bill 6 to bail out Ohio nuclear plants is likely headed to passage:

Thomas Suddes

cleveland.com

Why House Bill 6 to bail out Ohio nuclear plants is likely headed to passage: ... The **Consumers' Counsel** is the state agency that represents **Ohio's** ...

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Short Message Report

Conversations: 1	Participants: 6
Total Messages: 4	Date Range: 7/1/2019

Outline of Conversations



NODISPLAY 4 messages on 7/1/2019 • Doug Colafella • Ebony Yeboah-Amankwah • Eileen M. Mikkelsen
• Justin Biltz • Michael Dowling • Robert Reffner

Messages in chronological order (times are shown in GMT -04:00)**NODISPLAY**

- MD **Michael Dowling** 7/1/2019, 11:46 AM
I talked to Sam R just now. He indicated that based on our OSC reconsideration decision this morning that the PUCO would like to issue an entry making it subject to refund. I asked him to hold off to see if we can make a tariff filing - so we are proactively doing it as opposed to reacting to a PUCO action. He liked that and asked that we work with Tammy T (and that Tammy would like bring in Greg Price). I spoke with Eileen about this and she has plans in motion. I wanted to send a text to ensure we're all on the same page. Doug Colafella is on this text. Eileen is working with Doug to revise the media statement. Thanks all.
- EM **Eileen M. Mikkelsen** 11:49 AM
Sonny is working with Brian to draft language and Sonny will reach out to Tammy at Staff.
- DC **Doug Colafella** 12:10 PM
Doug here, I talked to EMM and just emailed a slightly revised statement to the group
- EM **Eileen M. Mikkelsen** 1:24 PM
Sonny talked to Tammy and Don Howard from staff. Our plan is in line with their thinking. There was some back and forth on language.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

8/4/2022 4:13:19 PM

in

Case No(s). 17-0974-EL-UNC

Summary: Motion Motion for a Subpoena for Former FirstEnergy Lobbyist and Director of State Regulatory Affairs - Ohio Justin Biltz to Appear at Deposition by Office of the Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Willis, Maureen R.