

**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 CORP. SENIOR
VICE PRESIDENT AND CHIEF LEGAL OFFICER ROBERT REFFNER TO
APPEAR AT DEPOSITION
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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August 4, 2022

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This motion is to subpoena FirstEnergy Corp.'s former Senior Vice President and Chief Legal Officer, Robert Reffner. The subpoena requires Mr. Reffner to appear at deposition.¹

Mr. Reffner was separated from his position at FirstEnergy Corp. effective November 8, 2020 "due to inaction and conduct that the Board determined was influenced by the improper tone at the top."² FirstEnergy Corp. stated that Mr. Reffner's separation stemmed from its internal investigation relating to the H.B. 6 matter.³

The conduct that Mr. Reffner failed to address was described by Plaintiffs' counsel in an affidavit filed in the federal securities lawsuit related to H.B. 6. The affidavit states:

¹ OCC would have included a request for Mr. Reffner 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 Ebony Yeboah-Amankwah for deposition. *See* Entry (June 16, 2022).

² FirstEnergy Corp. Form 10-K at 125 (February 18, 2021).

³ *Id.*

* * *

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 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

The present subpoena compels Mr. Reffner to appear for deposition. The deposition will be at OCC's offices at 65 East State Street, Suite 700, Columbus, Ohio 43215, fourteen days from the date of the subpoena (or at such alternative date and/or location that is mutually agreed upon).

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).

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. Reffner was Senior Vice President and Chief Legal Officer at FirstEnergy Corp. through his termination on November 8, 2020.⁵

Among other things, OCC needs to question Mr. Reffner regarding what FirstEnergy described as “inaction and conduct” relating to the payments which resulted in misallocated costs to the FirstEnergy Ohio Utilities.⁶ OCC also needs to question Mr. Reffner about FirstEnergy’s 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.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

⁵ FirstEnergy Corp. Form 8-K (October 29, 2020).

⁶ *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).

⁷ *In re FirstEnergy Audit*, Docket No. FA19-1-000 at 48 (February 4, 2022) (emphasis added).

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 \$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. Reffner relating to his inaction and conduct that allowed these misallocations to occur.

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. Reffner, per O.A.C. 4901-1-25. This motion is more fully explained in the attached memorandum in support.

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).

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,

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Ohio Consumers' Counsel

/s/ Maureen R. Willis

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

OCC files this motion, per O.A. C. 4901-1-25, to subpoena Mr. Robert Reffner. Mr. Reffner 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 Corp. reported that its internal investigation into the matter led them to "separate" Mr. Reffner from the company due to his inaction and conduct related to this matter.¹⁴ Ebony Yeboah-Amankwah was

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 FirstEnergy Corp. Form 10-K at 125 (February 18, 2021).

“separated” at the same time as Mr. Reffner for similar reasons.¹⁵ The PUCO previously granted OCC’s motion to subpoena Ebony Yeboah-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 Senior Vice President and Chief Legal Officer.

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

¹⁵ *Id.*

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).

(as intervenors), when it reversed the PUCO's decision in the FirstEnergy Advisors case. 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. Reffner 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

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).

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

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 Senior Vice President and Chief Legal Officer is needed to obtain crucial information for case preparation toward reaching justice in this proceeding.

Respectfully submitted,

Bruce Weston (0016973)
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/s/ Maureen R. Willis

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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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Michael DeWine
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PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA

TO: Mr. Robert Reffner
247 Hollywood Ave.
Akron, Ohio 44313

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Mr. Robert Reffner, former Senior Vice President and Chief Legal Officer of FirstEnergy Corp., 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.

**This foregoing document was electronically filed with the Public Utilities
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8/4/2022 4:14:17 PM

in

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

Summary: Subpoena Motion for a Subpoena for Former FirstEnergy Corp. Senior Vice President and Chief Legal Officer Robert Reffner to Appear at Deposition by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Willis, Maureen R.