

**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 FIRSTENERGY CORP. PRESIDENT AND
CEO STEVEN STRAH 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 President and CEO, Steven Strah. The subpoena requires Mr. Strah to appear at deposition.¹

Mr. Strah replaced Mr. Charles Jones after Mr. Jones's employment was terminated arising from his inaction and conduct relating to the H.B. 6 matter.²

The conduct that Mr. Jones engaged in 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 exchange for favorable legislation and regulatory action:
 - Defendant Charles E. Jones, who was FirstEnergy's Chief Executive Officer and a

¹ OCC would have included a request for Mr. Strah 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 *Id.*

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.³

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. Strah 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).

This case concerns FirstEnergy's noncompliance with Ohio corporate separation requirements, including FirstEnergy's misallocations of costs related to House Bill 6,

³ *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).

which were part of “the largest bribery money laundering scheme in Ohio history.” Mr. Strah is President and CEO of FirstEnergy Corp. and replaced Mr. Jones, who was terminated on October 29, 2020.⁴

Among other things, OCC needs to question Mr. Strah regarding what FirstEnergy described as “inaction and conduct” by Messrs. Jones, Dowling and Chack relating to the payments which resulted in misallocated costs to the FirstEnergy Ohio Utilities.⁵ OCC also needs to question Mr. Strah 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.⁶

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.⁷

⁴ FirstEnergy Corp. Form 8-K (October 29, 2020).

⁵ *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).

⁶ *In re FirstEnergy Audit*, Docket No. FA19-1-000 at 48 (February 4, 2022) (emphasis added).

⁷ *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).

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.⁸ OCC seeks information from Mr. Strah relating to the inaction and conduct by Messrs. Jones, Dowling and Chack 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."⁹ 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."¹⁰

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

⁸ Case No. 20-1629-EL-UNC, Audit Report, Expanded Scope at 28 (August 3, 2021).

⁹ *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).

¹⁰ 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

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In the Matter of the Ohio Edison)	
Company, the Cleveland Electric)	
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Edison Company's Compliance with)	
R.C. 4928.17 and the Ohio Adm. Code)	
Chapter 4901:1-37.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

OCC files this motion, per O.A. C. 4901-1-25, to subpoena Mr. Steven Strah. Mr. Strah 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."¹¹ 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.¹² FirstEnergy Corp. reported that its internal investigation into the matter led them to terminate Messrs. Jones, Dowling and Chack from the company due to their inaction and conduct related to this matter.¹³ Ebony

¹¹ *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).

¹² *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).

¹³ FirstEnergy Corp. Form 10-K at 125 (February 18, 2021).

Yeboah-Amankwah was “separated” for inaction relating to the House Bill 6 matter.¹⁴

The PUCO previously granted OCC’s motion to subpoena Ms. Yeboah-Amankwah in this case and overruled Ms. Yeboah-Amankwah’s motion to quash the subpoena.¹⁵

Mr. Strah replaced Mr. Jones as President and CEO of FirstEnergy Corp. He was Chief Financial Officer when the cost misallocations occurred. He signed a deferred prosecution agreement on behalf of FirstEnergy Corp. where the company admitted to the facts of honest services wire fraud related to the House Bill 6 matter, including the payments that resulted in cost misallocations to the FirstEnergy Utilities.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 President and CEO.

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-

¹⁴ *Id.*

¹⁵ Entry (June 16, 2022).

¹⁶ *United States v. FirstEnergy Corp.*, Case No. 1:21-cr-00086, Deferred Prosecution Agreement (July 22, 2021).

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).

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. 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. Strah 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

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).

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. Strah 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 President and CEO is needed to obtain crucial information for case preparation toward reaching justice in this proceeding.

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).

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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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. Steven Strah
2052 Rock Creek South
Akron, Ohio 44333

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Mr. Steven Strah, President and CEO 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.

**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	--	--	--	--	--

Item 1

Modification of agreement with Sustainability Funding Alliance

Year Four (2016)	\$1,733,333 (increase by \$600,000)
Year Five (2017)	\$2,866,666 (increase by \$600,000)
Year Six (2018)	\$2,866,666 (increase by \$600,000)
Year Seven (2019)	\$1,733,333 (increase by \$600,000)

New

Year Eight (2020)	\$900,000
Year Nine (2021)	\$800,000
Year Ten (2022)	\$700,000
Year Eleven (2023)	\$600,000
Year Twelve (2024)	\$600,000

\$600,000 per year (2016 through 2024) not contingent on ESP/PPA outcome acceptable to FE and payment underwritten by independent third party.

Item 2

Ms. Vespoli, Mr. Dowling, Mr. Evans, Mr. Vegas, Mr. Frohle, Mr. Pine and Mr. Randazzo will jointly meet with President of the Senate, Speaker of the House and Governor to explain ESP/PPA related need to pass legislation extending SB 310 streamlined opt out to “mercantile customers” effective 1/1/17 with streamlined opt out applicable to AER, EE/PDR and opt out also applicable to any AER, EE/PDR requirements approved by the PUCO (including any requirements established as part of an ESP, MRO or any other PUCO process).

{C48819: }

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

To: "Mikkelsen, Eileen M." <mikkelsene@firstenergycorp.com>

Cc: "Strah, Steven E." <sestrah@firstenergycorp.com>

Subject: Re: Ohio HB 6 - Decoupling Talking Points.docx

Date: Fri, 19 Apr 2019 19:49:22 -0000

Importance: Normal

Thanks, Eileen. Steve, I know you want the financials, but a little more background on how we got to where we are. Shortly after all the Ohio utilities met with Speaker Householder, we received a draft copy of the legislation. The draft legislation (and ultimately the as-introduced legislation) eliminated Ohio's energy efficiency mandate, creating a significant annual financial hole for us by foreclosing our ability to continue recovery of Lost Distribution Revenue (LDR). Before the bill was introduced, we developed various ways to address the problem that would ensure our ability to continue recover LDR. Some of our LDR fixes were considered to be politically problematic (by the Speaker's office) because the solutions made it clear we would continue to recover LDR. After some back and forth with the Speaker's office, we landed on the decoupling language that was included in the as-introduced bill.

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

On Apr 19, 2019, at 3:08 PM, Mikkelsen, Eileen M. <mikkelsene@firstenergycorp.com> wrote:

Steve,

I am happy to catch up with you next week. I did discuss this with Jason Lisowski and Jon Taylor prior to the external affairs folks work to include this language in the bill. Both Jason and Jon supported the idea.

We also shared the plan with Steve, Irene and Ollie at our monthly regulatory update meeting. The team did prepare a revenue comparison over the planning period. Importantly, the bill was moving and we were faced with losing collection of lost distribution revenue in the future and were looking for a solution that we could tuck into the bill that wouldn't raise a lot of attention but would protect us financially. I will set something up to discuss in more detail next week. Thank you.

Sent from my iPhone

On Apr 19, 2019, at 2:49 PM, Strah, Steven E. <sestrah@firstenergycorp.com> wrote:

Mike/Eileen - -

I greatly appreciate the attached update and completely understand the "under the radar" aspect. I also understand the approach we be a good thing for customers and the company. I did have a couple questions.

Was there a financial analysis performed on the plan? How does it fit with our current financial plan? How does it impact our 6%-8% growth rate? Myself and the Finance team have seen nothing....I believe....I might be missing something. Perhaps Sonny or someone could reach out to me next week and provide a verbal briefing. Thanks.

From: Dowling, Michael J.

Sent: Monday, April 15, 2019 4:52 PM

To: Strah, Steven E. <sestrah@firstenergycorp.com>; Prezelj, Irene M. <prezelji@firstenergycorp.com>; Taylor, Jon <taylorj@firstenergycorp.com>; Staub, Steven R <ssaub@firstenergycorp.com>; Jones, Charles E. <jonesc@firstenergycorp.com>; Yeboah-Amankwah, Ebony <eyeboah@firstenergycorp.com>; Bingaman, Bradley A <bbingaman@firstenergycorp.com>; Knipe, Brian J <bknipe@firstenergycorp.com>
Cc: Bailey, Joel D. <baileyj@firstenergycorp.com>; Biltz, Justin T <jbiltz@firstenergycorp.com>; Pine, Ty <tpine@firstenergycorp.com>; Mikkelsen, Eileen M. <mikkelsene@firstenergycorp.com>
Subject: Ohio HB 6 - Decoupling Talking Points.docx

Attached are talking points prepared by our Corp. Comm. team with help from Rates, Legal and External Affairs on decoupling language which we proposed be included in the recently-introduced Ohio Clean Energy Bill (House Bill 6). The bill is also attached and the decoupling language appears on lines 517-557. To date, we haven't seen any media articles that have referenced the language. We'd like it to remain "under the radar" as long as possible, but we know the language will inevitably be questioned and discussed. We are educating legislators and others using the attached talking points. Considering the interest in this legislation, the varying degrees of support for the decoupling language from Ohio's other EDUs, and the upcoming earnings call, we wanted you to be aware of the language and have the talking points.

Please let me know if you have any questions.

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

8/4/2022 4:16:58 PM

in

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

Summary: Subpoena Motion for a Subpoena for FirstEnergy Corp. President and
CEO Steven Strah to Appear at Deposition by Office of the Ohio Consumers'
Counsel electronically filed by Ms. Alana M. Noward on behalf of Willis, Maureen R.