

**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.	)	

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**MOTION FOR A SUBPOENA FOR FORMER FIRSTENERGY CORP. SENIOR  
VICE PRESIDENT OF PRODUCT DEVELOPMENT, MARKETING AND  
BRANDING DENNIS CHACK 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 of Product Development, Marketing and Branding Dennis Chack. The subpoena requires Mr. Chack to appear at deposition.<sup>1</sup>

Mr. Chack was terminated from his position at FirstEnergy Corp. effective October 29, 2020 because he violated certain FirstEnergy policies and its code of conduct [and] did not maintain and promote a control environment with an appropriate tone of compliance in certain areas of FirstEnergy's business, nor sufficiently promote, monitor or enforce adherence to certain FirstEnergy policies and its code of conduct.”<sup>2</sup>

FirstEnergy Corp. stated that Mr. Chack's termination stemmed from its internal investigation relating to the H.B. 6 matter.<sup>3</sup>

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<sup>1</sup> OCC would have included a request for Mr. Chack 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).

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

<sup>3</sup> *Id.*

Mr. Chack was fired at the same time as Mr. Jones and Mr. Dowling, whose conduct 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 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.<sup>4</sup>

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<sup>4</sup> *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).

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. Chack 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, which were part of "the largest bribery money laundering scheme in Ohio history." Mr. Chack was Senior Vice President of Product Development, Marketing and Branding at FirstEnergy Corp. through his termination on October 29, 2020.<sup>5</sup>

Among other things, OCC needs to question Mr. Chack regarding what FirstEnergy described as violations of "FirstEnergy policies and code of conduct" relating to the payments which resulted in misallocated costs to the FirstEnergy Ohio Utilities.<sup>6</sup> OCC also needs to question Mr. Chack 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

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<sup>5</sup> FirstEnergy Corp. Form 8-K (October 29, 2020).

<sup>6</sup> *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).

inclusion of lobbying and other nonutility costs in wholesale transmission billing rates.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> OCC seeks information from Mr. Chack relating to his 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."<sup>10</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>11</sup>

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

<sup>8</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 (August 3, 2021).

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

<sup>10</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 (November 4, 2020).

<sup>11</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).

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

Respectfully submitted,

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Ohio Consumers' Counsel

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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. Dennis Chack. Mr. Chack 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."<sup>12</sup> 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.<sup>13</sup> FirstEnergy Corp. reported that its internal investigation into the matter led them to "separate" Mr. Chack from the company due to his inaction and conduct related to this matter.<sup>14</sup> Ms. Ebony Yeboah-Amankwah was

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<sup>12</sup> *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).

<sup>13</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 (August 3, 2021).

<sup>14</sup> FirstEnergy Corp. Form 10-K at 125 (February 18, 2021).



“separated” at the same time as Mr. Chack for similar reasons.<sup>15</sup> The PUCO previously granted OCC’s motion to subpoena Ms. Ebony Yehboah-Amankwah in this case and overruled Ms. Yeboah-Amankwah’s motion to quash the subpoena.<sup>16</sup>

The PUCO has stated that it is “determined to act in a deliberate manner, based upon facts rather than speculation.”<sup>17</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 to FirstEnergy’s former Senior Vice President of Product Development, Marketing and Branding.**

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).

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<sup>15</sup> *Id.*

<sup>16</sup> Entry (June 16, 2022).

<sup>17</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 (November 4, 2020).

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.<sup>18</sup> The Court directed the PUCO to rule on the discovery motions before issuing a decision on the matters before it.<sup>19</sup>

Requiring Mr. Chack 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.<sup>20</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 U.S. Attorney/FirstEnergy deferred prosecution agreement indicates was political spending in support of House Bill 6.”<sup>21</sup>

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

<sup>19</sup> *Id.* at ¶ 41.

<sup>20</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 (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).

<sup>21</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 September 15, 2020 Show Cause Entry at 1 (August 6, 2021).

The PUCO should grant OCC's motion for a subpoena to require Mr. Chack 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 of Product Development, Marketing and Branding is needed to obtain crucial information for case preparation toward reaching justice in this proceeding.

Respectfully submitted,

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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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PUBLIC UTILITIES COMMISSION  
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Michael DeWine  
GOVERNOR



PUBLIC UTILITIES COMMISSION OF OHIO  
SUBPOENA

TO: Mr. Dennis Chack  
2510 Glenshire Cir.  
Uniontown, Ohio 44685

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Mr. Dennis Chack, former Senior Vice President of Product Development, Marketing and Branding 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.

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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.

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

**Short Message Report**

Conversations: 1	Participants: 2
Total Messages: 1	Date Range: 3/3/2020

**Outline of Conversations**

**NODISPLAY** 1 message on 3/3/2020 • Charles Jones • Dennis Chack

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



**NODISPLAY**

DC

**Dennis Chack**

3/3/2020, 11:23 AM

Any luck on talking with Sam on energy license we just received request for additional comments



## Short Message Report

Conversations: 1	Participants: 2
Total Messages: 5	Date Range: 3/4/2020

### Outline of Conversations



**NODISPLAY** 5 messages on 3/4/2020 • Charles Jones • Dennis Chack

**Messages in chronological order** (times are shown in GMT -05:00)



**NODISPLAY**

- CJ Charles Jones** 3/4/2020, 2:57 PM  
He will get it done for us but cannot just jettison all process. Says the combination of over ruling Staff and other Commissioners on decoupling, getting rid of SEET and burning the DMR final report has a lot of talk going on in the halls of PUCO about does he work there or for us? He'll move it as fast as he can. Better come up with a short term work around.
- DC Dennis Chack** 3:05 PM  
Ok thanks for discussing with him. How are you feeling
- CJ Charles Jones** 3:09 PM  
[REDACTED]  
[REDACTED] Stopped by Sam's today on my walk. He has friends down and has been busy but he was out doing some yard work. Walking about 3 miles a day right now. A little bored since I cant golf or even get in the pool. But better than sitting in Ohio. Weather has been beautiful last 3 days.\*
- DC Dennis Chack** 3:14 PM  
It was not the best the days we were there
- CJ Charles Jones** 3:14 PM  
I know. Pretty chilly and windy.

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**in**

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

Summary: Motion Motion for a Subpoena for Former FirstEnergy Corp. Senior Vice President of Product Development, Marketing and Branding Dennis Chack to Appear at Deposition by Office of the Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Willis, Maureen R.