

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|--------------------------------------|---|------------------------|
| 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. |) | |

**JOINT DISCOVERY STATUS REPORT
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL
NORTHEAST OHIO PUBLIC ENERGY COUNCIL
AND OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

Consumer Parties¹ provide this joint discovery status update. This update is required per ¶ 30 of the Attorney Examiners' April 7, 2022 Entry, ¶ 28 of the June 16, 2022 Entry, ¶ 20 of the August 11, 2022 Entry, and ¶ 88 of the PUCO's August 24, 2022 Entry.

The Consumer Parties incorporate the information provided in their prior Joint Discovery Status reports and provide the following additional information in response to the PUCO directives requiring the Consumer Parties to file status updates on discovery and the number of documents that the Consumer Parties have received and collectively reviewed.

¹ Office of the Ohio Consumers' Counsel ("OCC"), the Northeast Ohio Public Energy Council ("NOPEC") and the Ohio Manufacturers' Association Energy Group ("OMAEG") (collectively, the "Consumer Parties").

II. DOCUMENT REVIEW

Table 1: Estimated Documents Produced by FirstEnergy Corp.

| Produced | Initial Review Completed | Awaiting Initial Review |
|---------------|--------------------------|-------------------------|
| 562,000 pages | Approx. 453,000 pages | Approx. 109,000 pages |

FirstEnergy Corp. produced approximately 90,000 additional pages of documents on August 12, 2022. FirstEnergy Corp.'s delay in producing documents has been a persistent problem. For example, FirstEnergy Corp. reported that by January 18, 2022, it had produced approximately 380,000 pages of the DOJ documents to plaintiffs in one of the civil cases.² However, FirstEnergy Corp. did not produce all such documents to the Consumer Parties until April 11, 2022. OCC has repeatedly asked FirstEnergy Corp. to produce documents simultaneously with documents that are produced in the civil litigation, but to no avail.

In light of the PUCO's six-month stay on discovery, FirstEnergy Corp. has now stopped its rolling production of civil litigation documents and production of additional documents or deposition transcripts that it previously agreed to produce. FirstEnergy Corp.'s rolling document production should continue despite the six-month stay the PUCO recently ordered of the four FirstEnergy HB 6 investigations. The discovery we are receiving from FirstEnergy Corp. is what has already been produced to the plaintiffs in the securities litigation. In the securities cases, there has been no stay on discovery; nor has there been a request by the U.S. Attorney to stay discovery. Accordingly, the PUCO should order that document production by FirstEnergy Corp., as part of FirstEnergy

² *Miller v. Anderson*, Case No. 5:20-cv-1743, Nominal Defendant FirstEnergy Corp.'s Status Report (doc. 240) at 2 (N.D. Ohio) (January 18, 2022).

Corp./OCC's agreement to produce all documents provided to the plaintiffs in the securities cases, continue.

The Consumer Parties also note that FirstEnergy Corp. claimed attorney-client privilege on many of the documents it produced in response to OCC's subpoena for documents produced to the DOJ or to the plaintiffs in the civil litigation.

The PUCO should require FirstEnergy Corp. to produce these documents now (along with a document index) to the Attorney Examiners to allow them to begin their in-camera review of the documents in which attorney-client privilege was claimed and therefore not disclosed. Such a review can be done while the stay on discovery is in effect and will expedite fact finding that will resume once the stay is lifted.

In a similar vein, at the time that discovery was stayed, FirstEnergy Corp. was working on providing OCC and other parties the confidential portions of the deposition transcript of Tracy Ashton, Assistant Controller, taken in the securities case, pursuant to the subpoena accepted on July 14, 2022. FirstEnergy Corp. produced a redacted transcript on August 1, 2022 and noted that it would produce the unredacted transcript as soon as possible.

The confidential information, including deposition exhibits, are records expected to be provided to OCC and other parties, under subpoena. As noted, in the securities cases, there has been no stay on discovery; nor has there been a request by the U.S. Attorney to stay discovery. To date, FirstEnergy Corp. has produced neither the unredacted transcript nor the deposition exhibits. Now FirstEnergy Corp. refuses to produce the unredacted transcript and the deposition exhibits due to the six-month stay on discovery. The unredacted transcript and deposition exhibits were produced to all parties

in the securities litigation without objection by the U.S. Attorney. As requested in the last status report, the PUCO should order FirstEnergy Corp. to produce this information in these cases immediately.

Table 2: Estimated Documents Produced by FirstEnergy Utilities

| Produced | Initial Review Completed | Awaiting Initial Review |
|--------------|--------------------------|-------------------------|
| 40,000 pages | Approx. 26,000 pages | Approx. 14,000 pages |

The FirstEnergy Utilities previously produced documents relating to the FERC audit of FirstEnergy Corp., but only through the date of the February 4, 2022 audit report. The FirstEnergy Utilities eventually agreed to produce documents related to the FERC audit report that were created after February 4, 2022. The Consumer Parties received the first batch of these additional documents from the FirstEnergy Utilities relating to the FERC audit on July 11, 2022, with additional documents to be produced on a rolling basis thereafter. However, no additional FERC audit documents have been received since that date.

III. DEPOSITIONS

The Consumer Parties deposed Ebony Yeboah-Amankwah on July 21, 2022. However, that deposition was interrupted, and the Consumer Parties were not able to complete the deposition of Ms. Yeboah-Amankwah that day. Additionally, an interlocutory appeal was taken of the Attorney Examiner’s ruling that would seemingly limit the deposition questioning of Ms. Yeboah-Amankwah. That appeal has not been ruled upon. Nonetheless, parties were in the process of rescheduling the deposition when the PUCO issued its August 24, 2022 Entry staying all four FirstEnergy investigation cases.

There are a number of depositions that have been noticed by OCC and have yet to be taken. Additionally, on August 4, 2022, OCC requested PUCO approval for nine subpoenas to assure attendance of witnesses at depositions. The subpoenas requested by OCC were for the following: Joel Bailey, former FirstEnergy Lobbyist and Vice President of State & Local Government Affairs & Economic Development; Chuck Jones, former FirstEnergy President and CEO; Ty Pine, former FirstEnergy Lobbyist and Director of State Affairs; Justin Biltz, former FirstEnergy Lobbyist and Director of State Affairs; Robert Reffner, former FirstEnergy Senior Vice President and Chief Legal Officer; Michael Dowling, former FirstEnergy Senior Vice President of External Affairs; Eileen Mikkelsen, former Vice President of Rates and Regulatory Affairs; Dennis Chack, former FirstEnergy Senior Vice President of Product Development, Marketing and Branding and FirstEnergy CEO Steven Strah. The subpoenas have not been signed by the PUCO. As requested in the last status report, the PUCO should sign the subpoenas so they can be served.

OCC expects to file additional motions for subpoenas to take the depositions of other FirstEnergy witnesses after the stay is lifted.

IV. PROCEDURAL SCHEDULE

The PUCO's August 24, 2022 Entry vacated all existing procedural schedules in all four FirstEnergy investigation cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joint Discovery Status Report was served on the persons stated below via electric transmission this 18th day of November 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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Summary: Report Joint Discovery Status Report by Office of the Ohio Consumers' Counsel, Northeast Ohio Public Energy Council and Ohio Manufacturers' Association Energy Group electronically filed by Ms. Alana M. Noward on behalf of Willis, Maureen R.