

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, the Cleveland Electric)
Illuminating Company, and the Toledo) Case No. 23-301-EL-SSO
Edison Company for Authority to Establish)
a Standard Service Offer Pursuant to R.C.)
4928.143 in the Form of an Electric)
Security Plan.)

**MOTION FOR SUBPOENA *DUCES TECUM*
FOR FIRSTENERGY VICE PRESIDENT, CONTROLLER
& CHIEF ACCOUNTING OFFICER
JASON LISOWSKI
TO ATTEND AND TESTIFY AT THE EVIDENTIARY HEARING
AND
REQUEST FOR AN EXPEDITED RULING
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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November 2, 2023

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FirstEnergy¹ proposes a new “electric security plan” (“ESP V”) that would add new charges (riders) and increase existing charges to its two million consumers totaling \$1.4 billion. FirstEnergy wants this \$1.4 billion increase even though there are many questions remaining about FirstEnergy’s accounting and cost allocation practices. Many of these questions were raised by FERC when it conducted a wide-ranging audit (“FERC Audit”) of FirstEnergy utilities and found numerous non-compliance issues.² On top of the improper accounting and misallocations it found, FERC also concluded that FirstEnergy had violated FERC’s Duty of Candor.³

¹ Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy”).

² *In re FirstEnergy Corp.*, Docket No. FA19-1-000, (Feb. 4, 2022) (“Transmittal Letter” and “FERC audit”).

³ Order Approving Stipulation and Consent Agreement at ¶ 2, *In re FirstEnergy Corp.*, INT23-2-000 (Dec. 30, 2022).

To protect consumers, OCC moves the PUCO to issue a subpoena *duces tecum* to FirstEnergy's Vice President, Controller and Chief Accounting Officer Jason Lisowski. Under the subpoena, Mr. Lisowski would be required to testify at the upcoming evidentiary hearing and to bring the relevant documents listed in the subpoena. Mr. Lisowski provided FirstEnergy's response to FERC's audit findings.⁴ Mr. Lisowski's testimony is needed to answer questions about the improper accounting and cost allocation practices identified by FERC that could impact the riders and charges sought from consumers under FirstEnergy's ESP V. Mr. Lisowski should also be available to answer questions as to what remedial measures were taken by FirstEnergy to correct these problems.

This Motion is based on the attached Memorandum in Support. The proposed subpoena is also attached. OCC requests an expedited ruling on this Motion under O.A.C. 4901-1-12 (C) because the evidentiary hearing is scheduled to begin on November 7, 2023. Per O.A.C. 4901-1-12 (C), OCC is unable to certify that other parties do not object.

⁴ FERC Audit at 67.

Respectfully submitted,

Maureen R. Willis (0020847)
Ohio Consumers' Counsel

/s/ John Finnigan

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

FirstEnergy⁵ proposes a new “electric security plan” (“ESP V”) that would add new charges (riders) and increase existing charges to its two million consumers totaling \$1.4 billion. FirstEnergy wants this \$1.4 billion increase even though there are many questions remaining about FirstEnergy’s accounting and cost allocation practices. Many of these questions were raised by FERC when it conducted a wide-ranging audit of FirstEnergy utilities and found numerous non-compliance issues. On top of the improper accounting and misallocations it found, FERC also concluded that FirstEnergy had violated FERC’s Duty of Candor.⁶

FERC published its audit (“FERC audit”) of FirstEnergy Corporation, including its Ohio companies and other owned entities covering the period of January 1, 2015 through September 30, 2021.⁷ The FERC audit evaluated the FirstEnergy companies’

⁵ Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

⁶ Order Approving Stipulation and Consent Agreement, *In re FirstEnergy Corp.*, Docket No. INT23-2-000 at ¶ 2 (Dec. 30, 2022).

⁷ *In re FirstEnergy Corp.*, Docket No. FA19-1-000, (Feb. 4, 2022) (“Transmittal Letter” and “FERC audit”).

level of compliance with: (1) cross-subsidization restrictions on affiliate transactions; (2) service companies accounting and recordkeeping; (3) accounting and reporting requirements for franchised public utilities for their transactions with associated companies; and (4) preservation of records requirements for holding companies and service companies.⁸

The FERC audit contains seven findings of noncompliance and 38 recommendations that required FirstEnergy Corporation and its subsidiaries to take corrective action.⁹ These findings involved improper accounting and cost misallocations which could potentially affect riders and charges FirstEnergy is seeking to collect from consumers under its ESP V.

FirstEnergy explained FERC's audit findings in its most recent 10-K as follows:

FERC Audit FERC's Division of Audits and Accounting initiated a nonpublic audit of FESC in February 2019. Among other matters, the audit is evaluating FirstEnergy's compliance with certain accounting and reporting requirements under various FERC regulations. On February 4, 2022, FERC filed the final audit report for the period of January 1, 2015 through September 30, 2021, which included several findings and recommendations that FirstEnergy has accepted. *The audit report included a finding and related recommendation on FirstEnergy's methodology for allocation of certain corporate support costs to regulatory capital accounts under certain FERC regulations and reporting. Effective in the first quarter of 2022 and in response to the finding, FirstEnergy had implemented a new methodology for the allocation of these corporate support costs to regulatory capital accounts for its regulated distribution and transmission companies on a prospective basis.*¹⁰

⁸ FERC audit at 1.

⁹ *Id.* at 4 and 28.

¹⁰ FirstEnergy Corp., Form 10-K at 113 (Feb. 13, 2023).

The FERC audit was transmitted to Mr. Lisowski¹¹ and he provided FirstEnergy Corporation's response to the audit. Mr. Lisowski is the Vice President, Controller and Chief Accounting Officer of FirstEnergy. Mr. Lisowski should be made available to answer questions about the improper accounting and cost allocation practices identified by FERC. He should also be available to answer questions as to what remedial measures were taken by FirstEnergy to correct these problems.

The Attorney Examiner's July 19, 2023, Entry scheduled an evidentiary hearing for November 7, 2023. Consistent with O.A.C. 4901-1-25(A), OCC seeks a subpoena *duces tecum* to compel FirstEnergy Vice President, Controller and Chief Accounting Officer Jason Lisowski to attend the evidentiary hearing and be subject to cross examination on the FERC audit and related matters of accounting and cost allocation. Mr. Lisowski would be required to attend the hearing day to day until called upon to testify, subject to cross examination. Mr. Lisowski would also be required to bring to the hearing and make available to OCC the relevant documents listed in the subpoena.

II. LAW AND ARGUMENT

A. **Under O.A.C. 4901-1-25(A), OCC is entitled to seek a subpoena *duces tecum* to command FirstEnergy's Vice President, Controller and Chief Accounting Officer to produce documents, attend and give testimony at the evidentiary hearing.**

Ohio Administrative Code 4901-1-25(A) allows parties to obtain subpoenas for testimony at hearing. The rule provides, in pertinent part:

A) The commission, any commissioner, the legal director, the deputy legal director, or an attorney examiner may issue subpoenas, upon their own motion or upon motion of any party. A subpoena shall command the person to whom it is

¹¹ *Id.*

directed to attend and give testimony at the time and place specified therein. A subpoena may also command such person to produce the books, papers, documents, or other tangible things described therein.***¹²

OCC's Motion meets these requirements. The subpoena should be issued.

B. Issuing subpoenas to facilitate parties' discovery is within the PUCO's authority where, as here, the subpoenas seek information reasonably calculated to lead to the discovery of admissible evidence.

The PUCO's subpoena power, which facilitates parties' ability to conduct discovery, is grounded in Ohio law and rules. Attorney examiners are authorized to issue subpoenas.¹³ "A party may *** in a subpoena name a corporation, partnership, association, government agency, or municipal corporation and designate with reasonable particularity the matters on which examination is requested"¹⁴ and "[a] subpoena may require a person, other than a member of the commission staff, to attend and give testimony at a deposition, and to produce designated books, papers, documents, or other tangible things within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code."¹⁵

The scope of discovery is defined as follows:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the sought would be inadmissible at the hearing if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence.¹⁶

¹² O.A.C. 4901-1-25(A).

¹³ R.C. 4901.18.

¹⁴ O.A.C. 4901-1-21(F).

¹⁵ O.A.C. 4901-1-25.

¹⁶ O.A.C. 4901-1-16(B) (Emphasis added).

The PUCO rule is similar to Ohio Civ. R. 26 (B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.¹⁷

Under this standard, there are more than adequate grounds for granting OCC's motion for subpoena in the interest of consumer protection. The FERC audit's finding of improper accounting and misallocation of costs identifies a number of problems that could affect the rates and charges being sought from consumers under the proposed ESP V. Mr. Lisowski is FirstEnergy's Vice President, Controller and Chief Accounting Officer. Mr. Lisowski handled FirstEnergy's response to the FERC audit. He is in the best position to provide answers as the FERC audit and produce the information OCC seeks. The PUCO should allow OCC to subpoena Mr. Lisowski. This would help OCC determine whether proper remedial measures have been implemented or whether consumers are at risk of overcharges under ESP V flowing from improper accounting and cost allocation practices.

III. CONCLUSION

The PUCO should approve OCC's Motion to Subpoena. OCC should have an opportunity to discover whether the past improper accounting and cost allocation practices of FirstEnergy, identified by FERC, affect the charges FirstEnergy is seeking to collect from consumers under its ESP V. For the protection of consumers, OCC respectfully requests the PUCO grant this Motion for the reasons discussed above. OCC requests an expedited ruling on this Motion under O.A.C. 4901-1-12 (C) because the

¹⁷ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St.3d 1479.

evidentiary hearing is scheduled to begin on November 7, 2023. Per O.A.C. 4901-1-12

(C), OCC is unable to certify that other parties do not object.

Respectfully submitted,

Maureen R. Willis (0020847)
Ohio Consumers' Counsel

/s/ John Finnigan
John Finnigan (0018689)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Subpoena *Duces Tecum* for FirstEnergy Vice President, Controller & Chief Accounting Officer Jason Lisowski to Attend and Testify at the Evidentiary Hearing and Request for an Expedited Ruling was served upon the persons listed below by electronic transmission this 2nd day of November, 2023.

/s/ John Finnigan
John Finnigan
Assistant Consumers' 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
GOVERNOR



PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA DUCES TECUM
FOR EXAMINATION AT HEARING

TO: Jason Lisowski
Vice President, Controller and Chief Accounting Officer
FirstEnergy Corp.
76 South Main Street
Akron OH 44308

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Jason Lisowski, FirstEnergy Vice President, Controller and Chief Accounting Officer, is ordered to appear and testify, at the evidentiary hearing in Case No. 23-301-EL-SSO.

Mr. Lisowski is to appear at the outset of the hearing, on November 7, 2023, at 10:00 a.m., and attend the hearing day to day, until called upon to testify. The hearing is to take place at the offices of the Commission, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio. Mr. Lisowski shall also bring and make available to OCC on November 7, 2023, the relevant documents listed in this subpoena.

Mr. Lisowski shall be subject to examination by OCC and others on matters relating to the FERC audit report dated February 2, 2022 and filed in FERC Docket FA19-1-000¹⁸ Mr. Lisowski shall bring with him to the evidentiary hearing: all internal

¹⁸ *In re FirstEnergy Corp.*, Docket No. FA19-1-000, (Feb. 4, 2022).

reports and external reports prepared by outside consultants (including assessments by third parties) related to FERC's audit findings as reported in FA19-1-000, along with information documenting any accounting changes or reforms undertaken in response to the FERC audit. .

Dated at Columbus, Ohio, this _____ day of November 2023.

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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in

Case No(s). 23-0301-EL-SSO

Summary: Subpoena Motion for Subpoena Duces Tecum for FirstEnergy Vice President, Controller & Chief Accounting Officer Jason Lisowski to Attend and Testify at the Evidentiary Hearing and Request for an Expedited Ruling by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Finnigan, John.