

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Distribution Modernization Rider of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case No. 17-2474-EL-RDR
Edison Company.)	

In the Matter of the 2020 Review of the)	
Delivery Capital Recovery Rider of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 20-1629-EL-RDR
Illuminating Company, and The Toledo)	
Edison Company.)	

**MEMORANDUM IN RESPONSE TO THE INTERLOCUTORY APPEAL
OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

The Northeast Ohio Public Energy Council (“NOPEC”) supports the Interlocutory Appeal filed in these consolidated matters on March 4, 2024, by the Office of the Ohio Consumers’ Counsel (“OCC”) and the Ohio Manufacturers’ Association Energy Group (“OMAEG”). The appeal is taken from the Attorney Examiner’s entry issued in these matters on February 26, 2024, which set a new procedural schedule in these matters, which had been stayed since August 24, 2022.¹ The stay was imposed (and later extended) upon the request of the United States Department of Justice (“DOJ”). DOJ was concerned that proceeding with these cases could compromise its investigations related to the corruption surrounding the passage of Am. Sub. HB 6 (“HB6”) and subsequent referendum. A secondary justification for the stay was to provide OCC and other parties the opportunity to review a “mountain of evidence” produced in these and other related proceedings.²

¹ The stay was lifted by Attorney Examiner Entry issued February 21, 2024.

² Entry (Aug. 24, 2022) at ¶ 75.

As a result of the stay, the FirstEnergy Companies³ also suspended its production of documents requested in discovery. Since then, the mountain of evidence has grown substantially. Documents from the related federal securities' litigation alone number over 700,000 pages⁴ and have yet to be produced and reviewed. In addition, during the 18-month stay, federal and state criminal indictments were handed down against the former PUCO Chair and two FirstEnergy Corp executives. It is reasonable and consistent with the liberal discovery afforded by Ohio Rev. Code 4903.082 to allow the parties in these cases a full opportunity to discover, and review, material contained in the indictments. In fact, due process requires it.

Moreover, at the request of the Ohio Attorney General, the Attorney Examiner has prohibited all discovery that could be directed to the former Chair and the FirstEnergy executives.⁵ These are the central figures to the alleged corruption associated with the HB6 scandal and how it allegedly tainted these cases. For example, the attached email exchange between FirstEnergy's CEO and the President of one of the FirstEnergy Companies' affiliates allegedly discloses that the former Chair intervened on the FirstEnergy Companies' behalf by "burning the DMR final report" at issue in these cases.⁶ Indeed, the former Chair's alleged intervention was so extreme that the email exchange states there is "a lot of talk in going on in the halls of PUCO about does he work there or for us?" Going to hearing without the ability to discover material from the central figures of the HB6 scandal unfairly tilts the playing field against NOPEC and the other intervenors in these cases, and denies them due process.

³ The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Ohio Edison Company.

⁴ OCC estimates that 720,000 documents have yet to be produced. See Interlocutory Appeal (March 4, 2024) at 2.

⁵ See Entry (Mar. 1, 2024).

⁶ See *In Re Suvon, LLC d/b/a FirstEnergy Advisors*, Case No. 20-103-EL-AGG, Motion to Withdraw Certification Application, Exhibit A (Nov. 2, 2021) (attached).

NOPEC does not propose that discovery be had from the former Chair or the FirstEnergy executives at this point, based upon the Ohio Attorney General's recommendation. The only reasonable remedy is to stay these proceedings until the conclusion of the State's criminal cases. In the interim, discovery should be allowed to continue and the April 19, 2024, cutoff date extended.

In the February 21, 2024 Entry lifting the stay, the Attorney Examiner supported the initial stay of these proceedings by citing the DOJ's "unique" request. The Ohio Attorney General's request not to permit discovery of the former Chair or the FirstEnergy executives is unique in its own right. The request presents a novel issue for the Commission's review, and supports a new stay until the criminal proceedings have concluded.

NOPEC supports OCC's and OMAEG's interlocutory appeal and their request to stay these proceedings until the conclusion of the State's criminal proceedings and to extend the discovery period.

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with O.A.C. 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing Motion to Intervene was sent by, or on behalf of, the undersigned counsel to the following parties of record this 11th day of March, 2024.



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



NODISPLAY

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

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

Charles Jones

3:14 PM

I know. Pretty chilly and windy.

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3/11/2024 4:48:46 PM

in

Case No(s). 17-2474-EL-RDR, 20-1629-EL-RDR

Summary: Memorandum in Response to the Interlocutory Appeal of The Office of The Ohio Consumers' Counsel and The Ohio Manufacturers' Association Energy Group by Northeast Ohio Public Energy Council electronically filed by Teresa Orahood on behalf of Dane Stinson.