

## CONNECTING THE DOTS:

### FIRSTENERGY POLITICAL \$\$\$, PROFITS, AND UTILITY POLICY

#### What does FirstEnergy want from the state of Ohio and consumers?

##### SEET AMENDMENT IN BUDGET BILL

Ohio's electric distribution utilities are state-regulated monopolies that are permitted to earn profits from the electric services they provide to Ohio consumers. In 2008, the state legislature passed [Senate Bill 221](#), which contained a consumer protection provision known as the [significantly excessive earnings test](#), or SEET. The SEET directs the Public Utilities Commission of Ohio (PUCO) to evaluate the earnings of each electric utility at the end of each plan year and determine whether the utility's earned return on equity was significantly excessive, based on earnings from the same period by other publicly traded companies that face comparable business and financial risk.<sup>1</sup> If the PUCO finds that the utility had significantly excessive earnings, it requires the utility to return to consumers the amount of the excess through prospective adjustments to rates.

As the moniker "significantly excessive earnings test" implies, Ohio utilities are currently permitted to collect profits – even profits that may be excessive – as long as they are not *significantly* excessive. Since the test was implemented, the [PUCO has determined twice that an over-17% return on equity triggers the need to adjust prospective rates](#) due to violation of the SEET, permitting Ohio electric distribution utilities to receive much [larger profits from consumers than utilities in other states](#) where the return on equity is typically far lower.

The Ohio House's version of the [state operating budget \(Substitute House Bill 166\)](#) that passed on May 9 includes an amended provision that specifically guarantees special treatment for FirstEnergy's regulated distribution utilities regarding the PUCO's SEET determination.<sup>2</sup> Substitute House Bill 166<sup>3</sup> would allow FirstEnergy's three distribution utilities to be treated as one, so that if even one distribution utility earned excessive profits, the profits from all three distribution companies could be spread out among the three companies. This means the distribution utility with significantly excessive profits would not be required to return the excess profit to consumers.

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<sup>1</sup> [Ohio Revised Code Sections 4928.142\(D\)\(4\)](#) and [4928.143\(E\) and \(F\)](#)

<sup>2</sup> Substitute House Bill 166 (Lines 44033-44037 and 44064-44068)

<sup>3</sup> Where to find amendment in Substitute HB 166, ORC Section 4928.143 (which begins on page 1424 at Line 43837). Changes are on lines 44033-44037 (page 1431), 440640-44068 (page 1432) and 44088-44089 (page 1432).

[Former legislator Jeff Jacobson, testifying for the Ohio Consumers' Counsel, stated:](#)

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FirstEnergy has already been gaming the 2008 law's profit standard at the PUCO. In a recent annual PUCO review of Ohio Edison's profits, the PUCO denied a million Ohio Edison consumers \$42 million in refunds for their utility's significantly excessive profits. (PUCO Case 18-857-EL-UNC) In this regard, the PUCO allowed Ohio Edison to exclude its so-called "Distribution Modernization Rider" from the law's profits review. That ruling artificially deflated monopoly Ohio Edison's calculation of significantly excessive profits, from an outrageously high percentage. This ruling was **AT THE EXPENSE OF OHIO FAMILIES AND BUSINESSES** whose electric bills were what should have been deflated. The questionable legality of this manipulation of FirstEnergy's monopoly profits would now be permanently solved for FirstEnergy by the budget bill.

The Governor's original budget bill did not contain these anti-consumer terms for FirstEnergy's monopoly electric service.

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## **HANDOUT TO FIRSTENERGY SOLUTIONS**

The Davis-Besse and Perry nuclear plants, owned by FirstEnergy Solutions (FES), a subsidiary of FirstEnergy, are scheduled to close in 2020 and 2021, respectively, and FES is [currently going through bankruptcy](#). In the meantime, FirstEnergy Solutions is still asking for a handout to help it keep the two nuclear plants open. If passed, House Bill 6 would provide FirstEnergy with over \$170 million per year, a designed windfall to bail out Ohio's two aging nuclear power plants. House Bill 6 calls the bailout a "clean air" program but would allow both coal and natural gas to also qualify for the subsidies, while restricting renewable energy from the same and **simultaneously dismantling the energy efficiency and renewable portfolio standards** from which Ohio has benefited since they were passed in 2008.

The bill has been rushed through the process, as [FirstEnergy claims it needs to have the money in time for its next refueling](#). The Ohio House's Energy and Natural Resources Subcommittee on Energy Generation even met during the legislative spring break for hearings on House Bill 6, to push the bill forward. Four hearings have been held ([two in the subcommittee](#) and [two in the Ohio House Energy and Natural Resources Committee](#)), and the bill could be voted out of committee and head to the floor as early as May 14.

## **CREDIT SUPPORT RIDER**

In 2016, the PUCO granted FirstEnergy [\\$612 million](#) through the distribution modernization rider. However, the rider does not commit any funds to modernize FirstEnergy's grid; rather, it was supposed to stabilize the company's credit rating. FirstEnergy recently asked for a two-year extension of the original rider (which expires in December 2019). The decision is currently [pending](#) at the commission.

## **How does FirstEnergy wield influence?**

### **CAMPAIGN CASH**

During the last two election cycles (2015-2018), FirstEnergy's political action committee (PAC) and employees contributed [over \\$1.2 million](#) to legislative and statewide candidates, including contributions to candidates for the Ohio Supreme Court.

During the 2018 election cycle, the FirstEnergy PAC hit the primary and general election campaign contribution limits by contributing [\\$25,415.58 to Larry Householder's campaign committee Friends of Householder](#).

During the last two election cycles (2015-2018), FirstEnergy's PAC and employees contributed [\\$281,717 to Republican Party committees](#) and [\\$45,500 to Democratic Party committees](#).

During the 2018 election, Larry Householder had his eye on being the speaker. The [nonprofit news organization Inside Climate News](#) noted that a [dozen Republican candidates received contributions of the same size from Friends of Householder](#) (\$7,707.79) during the 2018 primaries. [Seven of those candidates also received payments from FirstEnergy's PAC](#) (between \$5,000 and \$13,700).

### **TRAVEL**

In January 2017, Ohio House Speaker Larry Householder and one of his sons traveled to President Donald Trump's inauguration on a [FirstEnergy corporate plane](#).

### **LOBBYING**

[FirstEnergy has 13 lobbyists](#), including the following "hired gun" lobbyists: the [Success Group's](#) Anthony Aquillo, Richard Ayish, and McKenzie Davis; [Calfee, Halter & Griswold's](#) Leah Pappas Pomer and Joshua Sanders; the [CJR Group's](#) Josh Rubin and Brittany Warner; and [MJK Consulting's](#) Michael Koren.

There are four lobbyists advocating for [FirstEnergy Solutions](#), including the following contract lobbyists: the [Oxley Group's](#) Juan Cespedes and Robert Schuerger, and Geoffrey Verhoff of the DC-based [Akin Gump](#) (who is [also the Republican National Committee's Finance Chair](#)). Brian Durdle and Lori Herf from Baker Hostetler represent the [FirstEnergy Solution Bondholder Group](#) at the Ohio Statehouse.

Together, from 2015-2018, these well-connected contract lobbyists for FirstEnergy contributed [nearly \\$200,000](#) to statewide and legislative candidates' campaigns.

### **Secret money<sup>4</sup>: What we don't know**

Last year, the [Center for Public Integrity](#) reported that a secret money group had targeted former State Rep. Christina Hagan in the 16th congressional district's 2018 primary. Hagan concluded that the negative ads attacked her because she stood up to FirstEnergy. The TV ads were paid for by the Conservative Leadership Alliance. Marc Himmelstein, the Conservative Leadership Alliance's treasurer, was a FirstEnergy lobbyist for many years. The Center for Responsive Politics reviewed congressional lobbying filings and determined that since 2010, FirstEnergy has paid \$640,000 to Himmelstein's firm, National Environmental Strategies.

### **GENERATION NOW**

We don't know whether FirstEnergy is using secret money to build public pressure this year. It is unclear how a pro-House Bill 6 TV advertisement is connected to FirstEnergy, but it is worth questioning. The ad features wind and solar energy and a series of "clean" images and include the line "Clean energy and clean air begin with clean government."

The television ad was paid for by a 501(c)(4) organization innocuously called [Generation Now Inc.](#) Unlike Ohio PACs, Generation Now does not have to file with the Ohio Secretary of State's office.

### **HERE'S WHAT WE DO KNOW**

Generation Now Inc. has donated over \$1 million to the [Growth & Opportunity PAC](#), a conservative super PAC that has purchased significant media buys through groups such as CrossRoads Media and Storytellers Group. The statutory agent for both Generation Now Inc. and Growth & Opportunity PAC is the same person: [David Eric Lycan](#), an attorney for Dinsmore & Shohl LLP. This is the same law firm that employs State Representative Bill Seitz (R-Cincinnati).

Lycan has also served as counsel for U.S. Senate Majority Leader Mitch McConnell's re-election campaign.

### **SOME REMAINING QUESTIONS**

- Who funds Generation Now Inc.?
- Who else funds Growth & Opportunity PAC?
- Who else has Generation Now Inc. and Growth & Opportunity PAC produced ads for?

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<sup>4</sup> [Secret Money \(aka Dark Money\) Basics, Open Secrets.org](#)



## Methodology

The database for the campaign contribution research is based on campaign finance filings available online at [sos.state.oh.us/campaign-finance](https://sos.state.oh.us/campaign-finance). This study examines contributions to state and county party committees and does not include considerable contributions to national political party committees from the FirstEnergy PAC and employees made during the following years: 2015, 2016, 2017 and 2018. Employee identification focused primarily on the candidate reporting in the campaign finance filings. If one or more campaign finance filings identified FirstEnergy as an employer and employer information is missing in other contribution records, Common Cause Ohio denoted the donors as affiliated with FirstEnergy.

Information about lobbyists in the state of Ohio is available at the legislative inspector general's and the Joint Legislative Ethics Committee's website, at <https://www2.jlec-olig.state.oh.us/olac/>.

