BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of 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. 17-0974-EL-UNC
In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 17-2474-EL-RDR
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

POST-HEARING REPLY BRIEF
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

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TABLE OF CONTENTS

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I. INTRODUCTION

Post-facto remedial measures are not compliance.

Withholding an unknown number of documents from auditors is not cooperation.

And *lack* of evidence as a result of withheld and/or obfuscated information does not satisfy an entity's burden of proof.

Yet these are the assertions that the Ohio Edison Company, The Cleveland Illuminating Company, and The Toledo Edison Company's (collectively, the Ohio Utilities, the Companies, or FirstEnergy) attempt to make in their initial brief. FirstEnergy also urges the Public Utilities Commission of Ohio (Commission) to simply accept these assertions without further inquiry or analysis.

FirstEnergy claims that it has "transformed" itself and demonstrated a commitment to remediation and reform in the years since the exposure of the notorious House Bill 6 (HB 6) corruption scheme and other substantial amounts of misconduct, which includes blatant corporate separation violations and bribing the Commission's own former Chair Samuel Randazzo.[1] However, regardless of whether this bold claim is even true, such *subsequent* corrective actions are not relevant to the audits conducted in this consolidated proceeding for the period prior to and leading up to and the passage of HB 6 and the referendum effort. In fact, these claims are themselves yet further admissions that, *during the time periods being audited*, FirstEnergy (1) was not in compliance with Ohio's corporate separation laws and rules; (2) did not use Distribution Modernization Rider (Rider DMR) funds for the specific purposes set forth in ESP IV; (3) improperly passed on HB 6 costs to customers through Rider DCR, Rider DSE2, and other mechanisms, and (4) entered into unlawful side deals and passed on the costs to consumers. Moreover, this claim regarding after-the-fact remedial measures regarding HB 6 does not even properly cover related patterns of obstruction, corruption, and stealing from customers, such as FirstEnergy's various illicit agreements with and payments to Randazzo. In short, "[t]he gravity of the Companies' corruption is absolutely staggering,"[2] and this staggering and egregious pattern of corruption should not be forgotten or trivialized or allowed to go unpunished simply because FirstEnergy, FirstEnergy's parent company, FirstEnergy Corp. (FE Corp.), and other related subsidiaries were caught and therefore forced to—ostensibly—change their unethical ways of doing business.

[1] The Ohio Companies' Post-Hearing Brief at 2–3 (July 21, 2025) (hereinafter, FirstEnergy Brief).

[2] Northeast Ohio Public Energy Council Initial Post Hearing Brief at 7–8, 17–18, 22 (July 21, 2025) (hereinafter, NOPEC Brief).

While FirstEnergy spends pages of its initial brief insisting that it "cooperated during the audit and hearing process and facilitated the creation of a fulsome, transparent record,"[3] the evidentiary record tells a different story. As explained by the Ohio Manufacturers' Association Energy Group (OMAEG) and other intervenors in this case, FirstEnergy failed time and again to provide appropriate and necessary documentation to the Commission's auditors with regards to its (1) compliance—or lack thereof—with Ohio's corporate separation laws and rules, (2) use of Rider DMR funds, and (3) transactions involving certain vendors with known ties to the HB 6 conspiracy, which included Randazzo.[4] As noted by the Office of the Ohio Consumers' Counsel (OCC): "We simply have no way to know the full scope of the corruption,"[5] in large part due to FirstEnergy's evident aversion to transparency and maintaining appropriate documentation that would usually be retained in the ordinary course of business—which is itself a violation of Ohio Adm.Code 4901:1-37-07[6]—and/or FirstEnergy's refusal to hand over such documentation.

In addition to willfully and/or negligently obfuscating the record by failing to maintain and/or failing to provide necessary documentation, FirstEnergy has habitually endeavored to trivialize and downplay the severity of what has become known as "the largest bribery, money-

[3] FirstEnergy Brief at 19.

[4] *See e.g.*, OMAEG Initial Post-Hearing Brief on HB 6 Audits at 24–25, 33, 36–38, 48, 51–52 (July 21, 2025) (hereinafter, OMAEG Brief); Initial Brief for Consumer Protection by Office of the Ohio Consumers' Counsel at 11–12, 16, 19–20, 49, 55, 58–59 (July 21, 2025) (hereinafter, OCC Brief); Initial Merit Brief of Northwest Ohio Aggregation Coalition at 9 fn. 24 (July 21, 2025) (hereinafter, NOAC Brief); Post-Hearing Brief of Ohio Energy Group at 2–3 (July 21, 2025) (hereinafter, OEG Brief); NOPEC Brief at 7–8, 17–18, 22; Initial Post Hearing Brief of Retail Energy Supply Association and Interstate Gas Supply, LLC at 9–11 (July 21, 2025) (hereinafter, RESA/IGS Brief); Initial Brief of Ohio Cable Telecommunications Association at 4–5, 10–14 (July 21, 2025) (hereinafter, OCTA Brief).

[5] OCC Brief at 42.

[6] Ohio Adm.Code 4901:1-37-07(A) requires electric distribution utilities like FirstEnergy to "maintain records sufficient to demonstrate compliance with this [corporate separation rules] chapter, and shall produce, upon the request of staff, all books, accounts, and/or other pertinent records kept by an electric utility or its affiliates as they may relate to the businesses for which corporate separation is required under section 4928.17 of the Revised Code."

laundering scheme ever perpetrated against the people in the state of Ohio,"[7] as well as its own involvement in the conspiracy. For example, while FirstEnergy grudgingly admits that the 2013 consulting agreement (2013 Agreement) between FirstEnergy Service Company (FESC) and Randazzo's solely-owned shell company Sustainability Funding Alliance (SFA) *could be* deemed a corporate separation violation (and it most certainly should be), FirstEnergy insists that, at most, only minimal forfeitures should be imposed given that "the Companies are not the same entities they were in 2013" and "[t]the circumstances surrounding the 2013 consulting agreement are unclear."[8] Again, whether or not FirstEnergy has managed to improve itself since its years-long corrupt enterprise was exposed is not relevant to this proceeding, nor should these supposed remedial measures allow FirstEnergy to escape penalties for *years* of fraud against Ohio customers. Additionally, the circumstances surrounding the 2013 Agreement are only unclear *because* of FirstEnergy's own actions. The Ohio Utilities should not be rewarded simply because they managed to sufficiently cover up their wrongdoing and conceal/destroy pertinent records related to it. FirstEnergy's casual dismissal of the 2013 Agreement, and its subsequent amendment (2015 Amendment) also speaks to FirstEnergy's pattern of downplaying the significance of these agreements as mere "undisclosed side deals." While these agreements, and an earlier 2010 Irrevocable Assignment of Claims and related Invoice (collectively, 2010 Agreement) certainly constitute side deals that should have been disclosed pursuant to R.C. 4928.145, they are also, significantly, part of a pattern of corruption and stealing from customers for the benefit of FirstEnergy, FE Corp., and affiliated entities. And they should be treated as such.

[7] The former United States Attorney for the Southern District of Ohio characterized the scheme as "likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio," WSYX ABC 6, U.S. Attorney Update on Arrest of Ohio House Speaker Larry Householder and Four Associates, YOUTUBE (Streamed live on July 21, 2020) (statement starting at 00:48), https://www.youtube.com/watch?v=mYTY9GUnHMM.

[8] FirstEnergy Brief at 48–49.

FirstEnergy's long history and pattern of obfuscation, interference, and noncompliance with the Commission's directives regarding the audits conducted in this proceeding should not be rewarded with a finding that the deficient and insufficient audit reports—none of which actually reviewed HB 6 items or investigated FirstEnergy's involvement in the scheme—somehow demonstrate that FirstEnergy satisfied its burden of proof in this proceeding. To the contrary, as established during the evidentiary hearing and as detailed in the initial briefs filed by OMAEG, OCC, the Northwest Ohio Aggregation Coalition (NOAC), the Ohio Energy Group (OEG), the Northeast Ohio Public Energy Council (NOPEC), Retail Energy Supply Association (RESA) and Interstate Gas Supply, LLC (IGS), and the Ohio Cable Telecommunications Association (OCTA) (collectively, Intervenors): (1) "the evidentiary record is replete with evidence demonstrating that FirstEnergy maintains a general indifference toward the regulatory systems and processes necessary to preserve the sanctity of the Ohio competitive market;"[9] (2) one of the Commission's Rider DMR auditors "found no evidence that revenues obtained through Rider DMR were ever spent on modernizing the grid;"[10] and (3) that "since at least 2014, FirstEnergy Ohio repeatedly included unsubstantiated and unrelated vendor costs in the rate calculations."[11] Additionally, the voluminous evidence provided by Intervenors (a necessity in this proceeding since not a single one of the Commission's third-party independent auditors actually reviewed HB 6 issues as directed by the Commission or investigated FirstEnergy's involvement in the conspiracy, nor did any of FirstEnergy's witnesses provide written testimony regarding HB 6 issues) overwhelmingly demonstrates that (1) FirstEnergy utterly failed to sustain its burden of proof and that its actions in furtherance of HB 6 and (2) the bribes have and still are causing harm to customers.

[9] RESA/IGS Brief at 15. *See also* OCC Brief at 50, 53; NOAC Brief at 2–8; OEG Brief at 2; NOPEC Brief at 6–9.

[10] OCC Brief at 23. *See also* OEG Brief at 2–3; NOPEC Brief at 17–18.

[11] OCTA Brief at 1. *See also* OCC Brief at 49–50; OEG Brief at 2; NOPEC Brief at 21–22; RESA/IGS Brief at 12.

Pursuant to the established procedural schedule in this case, OMAEG filed its initial brief on July 21, 2025, and hereby files its reply brief in the above-captioned proceeding. For all the reasons set forth above and detailed in the Intervenors' briefs, **OMAEG urges the Commission to hold FirstEnergy accountable to customers.** Despite what FirstEnergy leads you to believe, to date, **FirstEnergy's customers have not been made whole.**

More specifically, OMAEG urges the Commission to take the following actions: **(1) find that FirstEnergy failed to sustain its burden of proof in this proceeding with respect to all three audits; (2) find that the audits conducted regarding HB 6 issues were deficient, incomplete, and not in compliance with the Commission's orders or requests for proposals (RFPs); (3) find that FirstEnergy was not in compliance with Ohio's corporate separation laws and rules during the audit periods; (4) find that Rider DMR funds were not used for the specific purposes set forth in ESP IV and therefore should be refunded to customers in full; (5) find that HB 6 costs were improperly passed on to customers through Rider DCR, Rider DSE2, and other mechanisms and should therefore be refunded to customer in full; (6) adopt all of the recommendations contained in the audit reports filed in this proceeding; (7) adopt all of the recommendations contained in OMAEG witness Seryak's testimony; (8) adopt all of the recommendations contained in OCC witness Brown's testimony; (9) adopt all of the recommendations contained in the Intervenors' briefs; (10) order that FirstEnergy provide refunds to customers as set forth herein; (11) impose the maximum amount of forfeitures authorized by law for each and every corporate separation and Ohio law violation by FirstEnergy; and (12) initiate supplemental corporate separation and other audits to determine the full extent of the Ohio law and Commission rule violations that took place in**

relation to the HB 6 conspiracy, bribes, undisclosed side deals, and other unlawful behavior.[12]

II. RESPONSIVE ARGUMENTS

A. FirstEnergy's Subsequent Remedial Measures Do Not Absolve It of Wrongdoing Related to HB 6, Violating Corporate Separation Rules and Law, Bribing Randazzo, and Other Corrupt Activities.

As mentioned previously, the HB 6 corruption scheme has now notoriously become known as "the largest bribery, money-laundering scheme ever perpetrated against the people in the state of Ohio."[13] Over $60 million was paid to former Ohio House Speaker Larry Householder's dark money group Generation Now in exchange for favorable legislative treatment, which culminated in an over $1 billion bailout paid for by Ohio customers; $4.3 million was paid to former Commission Chair Randazzo in exchange for favorable regulatory treatment as well as help crafting HB 6; and millions more was spent quashing the anti-HB 6 referendum. Moreover, even before the initiation of the HB 6 conspiracy, FirstEnergy, FE Corp., and affiliated entities were engaged in a long-standing pattern of corrupt activity dating back to at least 2010. Specifically, undisclosed agreements with Randazzo—made in exchange for the cooperation of Randazzo's then-client Industrial Energy Users-Ohio (IEU-Ohio) in various electric security plan (ESP) settlements—resulted in Randazzo receiving additional bribes totaling over $20 million through his shell companies SFA and Industrial Energy Users of Ohio Administration Company (IEU-Admin).

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[12] OMAEG also reiterates its request that the Commission reverse the Administrative Law Judges' evidentiary rulings that improperly restricted OMAEG's cross-examination of former FE Corp. entity executives as described in OMAEG's initial brief pursuant to Ohio Adm.Code 4901-1- 15(F). Since FirstEnergy failed to address these matters in its initial brief and for efficiencies, OMAEG's arguments have not been reproduced or bolstered herein.

[13] WSYX ABC 6, U.S. Attorney Update on Arrest of Ohio House Speaker Larry Householder and Four Associates. *See also* OCC Brief at 1.

FirstEnergy does not deny any of this.[14]

Rather, the Companies seek to avoid the repercussions of over a decade of corporate misconduct and bad behavior by claiming that their so-called "commitment to remediation and reform" somehow washes away the sins of the past and renders unnecessary and excessive any penalties imposed by the Commission for (1) numerous corporate separation violations, (2) misusing customer funds, (3) passing improper and unsupported costs on to customers, (4) bribing Randazzo, both in his capacity as counsel for IEU-Ohio and Commission chair, and (5) significantly tarnishing the reputation of Ohio's regulatory processes.[15] According to FirstEnergy, this proceeding is meant to supplement rather than replicate other agencies' efforts related to HB 6 and FirstEnergy's corrupt dealings with Randazzo.[16] Neither OMAEG nor any other Intervenor contests that fact. However, as explained by OMAEG in its initial brief, to date, the Ohio Utilities have not paid penalties for violating Ohio's regulatory laws and rules and their duties and obligations to Ohio consumers in their capacity as public utilities in Ohio (a.k.a. electric distribution utilities (EDUs)).[17] The Ohio Utilities have not paid penalties for defrauding Ohio customers, they have not made customers whole by fully refunding the monies that they collected from Ohio customers through various mechanisms, and they have not paid penalties for degrading the integrity of the Commission's regulatory processes. The Commission has a statutory responsibility to protect customers from the payment of unjust, unreasonable, and unlawful costs,[18]

[14] FirstEnergy Brief at 1.

[15] *Id.* at 2.

[16] *Id.*

[17] OMAEG Ex. 1 at 33–34 (Unredacted Direct Testimony of John A. Seryak (May 23, 2025) (Seryak Testimony)).

[18] R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law . . . and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law"). *See also* R.C. 4928.02(A).

and as a public policy matter, captive customers are entitled to protection against abuse of public utilities' monopoly power. The Commission must make customers whole for paying unjust, unreasonable, and unlawful costs to FirstEnergy. Customers are entitled to restitution.

1. FirstEnergy's Failure to Address the Randazzo Agreements Demonstrates the Insufficiency of Its Remediation Efforts.

Despite having supposedly "accepted full responsibility for its conduct" related to HB 6, bribing Randazzo, and other misconduct described in the deferred prosecution agreement (DPA) that FE Corp. entered into with the United States Attorney for the Southern District of Ohio, the Ohio Utilities' initial brief makes plain that this is not the case.[19] Most notably, FirstEnergy failed to acknowledge and/or properly address the illicit agreements between Randazzo and various FE Corp. entities. As such, FirstEnergy seemingly confirms that it has not made all necessary remediation efforts because there is an entire category of illegal activity and misconduct going unaddressed. This is especially egregious given that this proceeding was explicitly meant to address FirstEnergy's illegal dealings with Randazzo both before and after the passage of HB 6 and the subsequent referendum effort.[20]

[19] FirstEnergy Brief at 1, 3, 5.

[20] OMAEG Ex. 28 at ¶¶ 6, 8 (Entry, Case Nos. 17-974-EL-UNC, et al. (November 22, 2024)) ("During cross examination, the ALJ sustained various objections to questions regarding a consulting agreement entered into by the former Commission chairman. The ALJ notified parties that those questions were more appropriate for the bifurcated portion of the proceeding, which would be addressed by the Commission at a later time"); *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 ¶ 55 (June 21, 2024) (limiting the scope of the initial 2024 corporate separation hearing "such that allegations involving the FirstEnergy's activities related to the passage of Am. Sub. H.B. 6 and the former Commission chairman will be addressed at a later time"); *id.*, Case No. 17-974-EL-UNC, Tr. Vol. I at 48–51, 121–28; *id.*, Case No. 17-974-EL-UNC, Tr. Vol. II at 407.

FirstEnergy does not deny the facts set forth in the DPA.[21] Therefore, FirstEnergy does not deny that it was making payments to Randazzo as early as 2010.[22] FirstEnergy does not deny that on January 8, 2013, SFA entered into a five-year consulting agreement with FESC, which provided that SFA would receive two annual payments of $300,000, followed by three annual payments of $500,000.[23] FirstEnergy does not deny that this agreement was amended in 2015 "in exchange for [Randazzo's] industrial group withdrawing its opposition to a 2014 PUCO Electric Security Plan settlement package involving FirstEnergy Corp.'s Ohio electric distribution subsidiaries."[24] Nor does FirstEnergy deny that between 2013 and 2018, Randazzo received over $8.4 million in bribes.[25] FirstEnergy also does not deny that the remaining payments set forth in the 2015 Amendment, which totaled $4.3 million, were paid in a lump sum to Randazzo as a bribe in exchange for "perform[ing] official action in his capacity as PUCO Chairman to further FirstEnergy Corp.'s [and the Ohio Utilities'] interests relating to passage of nuclear legislation and other specific FirstEnergy Corp. legislative and regulatory priorities, as requested and as opportunities arose."[26]

Despite these undisputed facts, FirstEnergy failed to properly address or discuss these agreements and bribes in its initial brief. Quite the opposite, FirstEnergy completely ignored the 2010 Invoice while also downplaying the significance of the later agreements and bribes, insisting

[21] FirstEnergy Brief at 1.

[22] Companies Ex. 1 at 17 (Deferred Prosecution Agreement (July 20, 2021) (DPA)).

[23] FirstEnergy Brief at 48; NOAC Brief at 3–5; NOPEC Brief at 20–21; RESA/IGS Brief at 8–9. *See also* OCC at 26.

[24] Companies Ex. 1 at 34 (DPA). *See also* FirstEnergy Brief at 48; OCC at 26; NOAC Brief at 6–7; NOPEC Brief at 20–21; RESA/IGS Brief at 9.

[25] NOPEC Brief at 21.

[26] Companies Ex. 1 at 35 (DPA). *See also* FirstEnergy Brief at 46; OCC Brief at 6–7; NOAC Brief at 6; NOPEC Brief at 21; RESA/IGS Brief at 12.

that they were not used to induce settlement in ESP IV, that they do not represent corporate separation violations, and that they do not warrant sanctions and forfeitures.[27] According to FirstEnergy, the 2013 Agreement, 2015 Amendment, and $4.3 million bribe do not represent corporate separation violations because "[t]he Companies today lack information explaining what services were provided pursuant to the initial 2013 consulting agreement, or which FirstEnergy entities may have benefited from the services provided thereunder,"[28] and the $4.3 million bribe was only made for the benefit of the Ohio Utilities.[29] But as explained by OMAEG and other Intervenors, the record evidence presented in this case demonstrates that, not only were the 2010 Agreement, 2013 Agreement, and 2015 Amendment gross conflicts of interest,[30] they were also corporate separation violations benefitting unregulated affiliates, undisclosed side deals, *and* part of FirstEnergy's wider criminal conspiracy.

First, on its face, the 2010 Irrevocable Assignment of Claims represents a conflict of interest since Randazzo signed on behalf of his own shell companies SFA and IEU-Admin as well as his then-client IEU-Ohio. Notably, this was done without IEU-Ohio's knowledge or consent.[31] The related 2010 Invoice negotiated in reliance upon the assignment of claims provided that FE Corp. would make six annual payments of $1 million to SFA for "Energy Efficiency Funding" and to fund activities designed for inclusion in FirstEnergy's "portfolio compliance plans," and another six annual payments of $500,000 to IEU-Admin for "Energy Efficiency Support Services

[27] *See* FirstEnergy Brief at 44–46, 48–49, 52–53.

[28] FirstEnergy Brief at 48.

[29] *Id.* at 46.

[30] OCC Brief at 26; NOAC Brief at 4–5.

[31] OMAEG Ex. 50 at ¶¶ 17–19 (Board of Professional Conduct of the Supreme Court of Ohio Complaint and Certificate (March 18, 2024) (Randazzo Disciplinary Complaint)).

Funding" and to support efforts related to FirstEnergy's "portfolio compliance plans."[32] In other words, Randazzo had every reason to ensure that IEU-Ohio signed the 2010 ESP II settlement so that he—through his shell companies—could pocket an aggregate $9 million. As such, he was not acting in the best interests of his client, but rather of himself.

Similarly, Randazzo's simultaneous legal representation of IEU-Ohio and employment as an FESC/FirstEnergy Solutions (FES) consultant beginning in 2013 represents a clear conflict of interest given that IEU-Ohio's interests were adverse to the Ohio Utilities' and "'often conflicted with FirstEnergy Corp.'s interests.'"[33] While Randazzo's actions related to the 2010 Agreement made plain his willingness to sell out his client for his own gain, once he was officially employed as a consultant pursuant, it became that much easier to use him—and by extension IEU-Ohio—to benefit the Ohio Utilities and unregulated affiliates (like FES). This is especially obvious with regards to the 2015 Amendment, which provided Randazzo with a significant increase in pay in exchange for IEU-Ohio withdrawing its opposition to the ESP IV settlement. As explained by NOAC, bribing Randazzo "was key" to pushing through the ESP IV settlement—and likely when securing approval for the ESP II settlement as well—on account of IEU-Ohio's influence and bargaining power.[34] Had Randazzo been acting independently, perhaps IEU-Ohio would have remained opposed to the settlement, but as it was, he placed the interests of his employer above those of his client.

[32] OMAEG Ex. 1, Attachment JS-3 (2010 Agreement).

[33] NOAC Brief at 4, *quoting* Companies Ex. 1 at 16 (DPA).

[34] *Id.* at 7. *See also* Tr. Vol. X at 2301 (Seryak Cross) (noting that Randazzo "did have significant influence in the case through his group the IEU Ohio [sic]").

Lastly, the $4.3 million bribe paid to Randazzo before his appointment as Commission chair created a clear conflict of interest since, but for the bribe paid, Randazzo would not have "over rul[ed] [sic] Staff and other Commissioners on decoupling, [gotten] rid of SEET and burn[ed] the DMR final report" in furtherance of FirstEnergy's regulatory agenda.[35]

Second, as discussed in OMAEG's initial brief, the 2010 Invoice represents a corporate separation violation. Despite this agreement supposedly being between FE Corp. and Randazzo's shell companies, it was signed by Richard Grigg, who was the Executive Vice President and President of the Ohio Utilities at the time.[36] This indicates that, at minimum, the contract was for the Ohio Utilities' benefit, and indeed, as determined by the expanded Rider DCR audit, the costs of this contract were recovered from FirstEnergy customers through the Companies' energy efficiency rider (Rider DSE2) rather than being paid for by FE Corp.[37] Consequently, this contract and subsequent payments constitute a corporate separation violation because dollars collected from FirstEnergy customers were being used to meet the obligations of a contract entered into by the Ohio Utilities' unregulated parent company, potentially on behalf of its subsidiary. Similarly, the 2013 Agreement and 2015 Amendment also represent clear corporate separation violations. The 2013 Agreement was initially created at the direction of former FE Corp. and FESC CEO Tony Alexander, who specifically wanted to bring Randazzo on as a consultant for FES to help with regulatory matters.[38] FESC attorneys drafted and prepared the agreement itself, which was then

[35] OMAEG Ex. 1, Attachment JS-12 (3/4/20 Text Messages Between Jones and Chack).

[36] OMAEG Ex. 1, Attachment JS-3 (2010 Agreement).

[37] Staff Ex. 1, Expanded Scope at 17 (Compliance Audit of the 2020 Delivery Capital Recovery (DCR) Riders of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company and Expanded Scope (August 3, 2021) (Blue Ridge Audit Report and Expanded Scope)).

[38] NOAC Brief at 5; OCC Ex. 29 (Email, Bates No. FE_CIV_SEC_0155951 (December 20, 2012)).

signed by FESC's executive president.[39] Yet while the 2013 Agreement and 2015 Amendment were ostensibly for the benefit of FESC, the terms of the agreement provided that SFA's "work" could from time to time be defined by the President and/or Vice President (VP) of Sales & Marketing of FES, and that work being done for FES would be invoiced to FESC, the latter of which allocates all of its costs to all FE Corp. entities, including the Ohio Utilities.[40] Therefore, customer dollars were being used to subsidize one of FirstEnergy's competitive affiliates in violation of Ohio Admin. Code 4901:1-37-04(A)(3) and (D)(6).

As for the $4.3 million bribe, contrary to FirstEnergy's assertion that this payment was for the benefit of the Companies and therefore not a corporate separation violation, the DPA—which FirstEnergy has conceded contains accurate information—explicitly states that the payment was made in exchange for Randazzo "perform[ing] official action in his capacity as PUCO Chairman to further FirstEnergy Corp.'s interests relating to passage of nuclear legislation and other specific FirstEnergy Corp. legislative and regulatory priorities, as requested and as opportunities arose."[41] These official actions included drafting HB 6, which benefitted multiple entities, including FE Corp. and FES, as well as the Ohio Companies, and certifying the Ohio Companies' *competitive* affiliate Suvon, LLC, d/b/a FirstEnergy Advisors (FEA) as an unregulated broker/aggregator, without addressing its fitness to provide service.[42] As such, the $4.3 million bribe was for the benefit of multiple FE Corp. entities, including competitive affiliates, and any amount of the bribe paid for by Ohio customers was improperly subsidizing unregulated entities in violation of Ohio

[39] OMAEG Ex. 1, Attachment JS-4 (2013 Consulting Agreement).

[40] *Id.* at 2 (2013 Consulting Agreement); Staff Ex. 3 at 27 (Rider DMR Audit Report – Public Version (January 14, 2022) (Public Daymark DMR Audit Report)).

[41] Companies Ex. 1 at 35 (DPA). *See also* FirstEnergy Brief at 46; OCC Brief at 6–7; NOAC Brief at 6; NOPEC Brief at 21; RESA/IGS Brief at 12.

[42] NOPEC Brief at 9–13.

Admin. Code 4901:1-37-04(A)(3) and (D)(6). Documents presented during the hearing—which were not reviewed by the Commission's auditors—confirmed that the majority of the Randazzo payments were charged to the Ohio Utilities. Specifically, in January 2019, FE Corp. estimated that SFA alone had received payments totaling $19.8 million since 2010, and of that $19.8 million, $17.4 million was charged to the Ohio Utilities.[43] This stands in sharp contrast to FES—an entity *actually* having work performed by SFA—having only paid about $1.5 million during that same period.[44] And between 2003 and 2020, payments totaling $27.2 million were made to Randazzo entities, of which at least $20.4 million was improperly allocated to the Ohio Utilities.[45] According to the Commission's own auditor, one subsidiary paying for services that benefit another subsidiary certainly constitutes a corporate separation violation.[46]

Third, the 2010 Agreement and 2015 Amendment both constitute undisclosed side deals in violation of R.C. 4928.145. As noted by OCC, these side deals should have been investigated, and the Commission's failure to do so "trivialized the severe ramifications of the failure to disclose the side deals, double dealing, and grievous ethical breeches" committed by FirstEnergy.[47] While the Commission did expand the Rider DCR audit to further investigate whether FirstEnergy violated its statutory obligations under R.C. 4928.145 to disclose side deals during the ESP IV

[43] OMAEG Ex. 1, Attachment JS-14 (1/31/19 FirstEnergy Emails); OMAEG Ex. 1, Attachment JS-15 (1/31/19 Biltz and Dowling Texts).

[44] OMAEG Ex. 1, Attachment JS-14 (1/31/19 FirstEnergy Emails); OMAEG Ex. 1, Attachment JS-15 (1/31/19 Biltz and Dowling Texts).

[45] OMAEG Ex. 1, Attachment JS-16 at 2–3 (Overview of Payments Slideshow). This slideshow includes a column listing out the "Annual amount being collected Jan. 1, 2021," which indicates that Ohio customers might still be paying for these costs each year.

[46] Tr. Vol. III at 576–77 (Kelly Cross).

[47] OCC Brief at 41.

case,[48] not only has this audit never actually been performed, it sets far too narrow of a scope and timeframe. The DPA established that payments to Randazzo dated back to at least 2010, and FirstEnergy's internal documents indicate that payments may even date back to 2003. As such, any investigation into FirstEnergy's undisclosed side deals should have an audit period beginning in 2003 at the latest. Moreover, as recommended by OCC, this matter is consequential enough to merit its own proceeding.[49]

Fourth, the Randazzo agreements are part and parcel of FirstEnergy's wider criminal activity, conspiracy, and misconduct. Whereas FirstEnergy repeatedly tries to trivialize the 2015 Amendment—no real mention of the 2010 Agreement is made—as merely an undisclosed side deal that did not alter the outcome of the ESP IV case,[50] this framing both plays down the significance of this side deal, and ignores the broader context in which this side deal was struck. While FirstEnergy claims that the "serious bargaining" prong of the Commission's three-part test for approving settlements was not impacted by the nondisclosure of the 2015 Amendment because there were enough other parties arguing for/against the settlement,[51] flagrantly bribing IEU-Ohio's counsel to manipulate the party's negotiating position can hardly be called "serious bargaining." Regardless of whether IEU-Ohio remaining opposed to the ESP IV settlement would have raised new issues or otherwise altered the Commission's decision (which OMAEG believes that it would have), the fact that Randazzo was *personally* receiving a $12 million payout in exchange for his client's non-opposition[52] should certainly have been an issue considered by the Commission when

[48] OMAEG Ex. 10 at ¶ 8 (Entry, Case No. 20-1629-EL-RDR (December 15, 2021)).

[49] OCC Brief at 42–43. *See also* NOPEC Brief at 22.

[50] FirstEnergy Brief at 25–27.

[51] *Id.* at 26.

[52] *See* OMAEG Ex. 1, Attachment JS-5 at Item 1 (2015 Amendment); NOAC Brief at 6.

deciding whether to approve or reject the ESP IV settlement, and this side deal certainly should have altered the Commission's final decision. One would assume—and hope—that had the Commission known FirstEnergy was bribing an opposing counsel to induce non-opposition to a pending settlement, the Commission would not have rewarded FirstEnergy's illegal and corrupt activities. For similar reasons, had the 2010 Agreement been properly disclosed, it is very possible that ESP II would also not have been approved, at least not in the same form.

As for the broader context surrounding the 2015 Amendment and the settlement of ESP IV, this settlement would eventually result in the approval of Rider DMR, which, as discussed at length by OMAEG witness Seryak and OCC witness Brown, was key in financing the HB 6 conspiracy and related corruption.[53] Additionally, as explained by NOAC, the ESP IV settlement extended FirstEnergy's then-current base rates, which were set back in 2007, by an additional eight-years.[54] This extension is significant because the 2007 base rates provided significant overearnings to FirstEnergy.[55] Those overearnings were so important to FirstEnergy that one of Randazzo's principal tasks once installed as Commission chair was "fixing the Ohio hole" (FirstEnergy's internal name for the expected reduction in rates that would occur when it filed a new rate case), which he eventually accomplished by eliminating FirstEnergy's requirement to file a new base rate case in 2024.[56] As to the other Randazzo agreements discussed herein, they and

[53] *See* OMAEG Ex. 1 at 18–27 (Seryak Testimony); OCC Ex. 1 at 45–78 (Direct Testimony of Ashley Brown (May 23, 2025) (Brown Testimony)).

[54] NOAC Brief at 6.

[55] *Id*. at 6; Companies Ex. 1 at 18 (DPA).

[56] OMAEG Brief at 86–88; OCC Brief at 21–23; NOAC Brief at 6–7; NOPEC Brief at 14, 19. *See also* OMAEG Ex. 1, Attachment JS-8 (11/10/19 Text Messages Between Jones and Evans) (stating that FE Corp. and FirstEnergy's "[s]tock is gonna get hit with Ohio 2024"); OMAEG Ex. 1, Attachment JS-9 (11/15/19 Text Messages Between Dowling and Jones); OMAEG Ex. 1, Attachment JS-10 (11/21/19 Text Messages Between Dowling and Jones); OMAEG Ex. 39 (Emails, Bates No. FE_CIV_SEC_0294495 (November 26, 2018)); OMAEG Ex. 40 (Texts, Bates No. FE_CIV_SEC_0000025 (January 2, 2019)); OMAEG Ex. 41 (Emails, Bates No. FE_CIV_SEC_046678

the 2015 Amendment were all "part of an effort by the [Ohio] Utilities to co-opt Mr. Randazzo."[57] An effort that not only succeeded, but resulted in the facilitation of "the largest bribery, money-laundering scheme ever perpetrated against the people in the state of Ohio," and FirstEnergy pocketing millions of ill-gotten customer dollars.

While FirstEnergy should certainly be sanctioned and have forfeitures imposed for failing to disclose the Randazzo agreements, the Commission should not be swayed by FirstEnergy's insistence that failing to disclose these agreements was no more than a violation of the discovery rules. These agreements should be viewed as and considered for what they are—key pieces of FirstEnergy's criminal conspiracy and additional evidence of FirstEnergy's pattern of corrupt conduct, obstructing justice, and theft from customers.

FirstEnergy admitted that it bribed Randazzo to further its own regulatory and legislative ends.[58] FirstEnergy admitted that it was required to, but did not, disclose 2015 Amendment.[59] And FirstEnergy admitted that bribing Randazzo $4.3 million constitutes criminal conduct.[60] Yet even with these admissions, FirstEnergy still has the temerity to insist that additional forfeitures and sanctions related to the Randazzo agreements and bribes are not warranted. **For all the reasons**

(August 8, 2019)); OCC Ex. 25 (Emails, Bates No. FE_CIV_SEC_0197278 (January 27, 2019)); *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for an extension of the Distribution Modernization Rider*, Case No. 19-361-EL-RDR, Entry at ¶ 17 (November 21, 2019) (wherein the PUCO, under Randazzo, decided that "it is no longer necessary or appropriate for the Companies to be required to file a new distribution rate case at the conclusion of the Companies' current ESP"); *id.*, Case No. 19-361-EL-RDR, Entry at ¶ 1 (December 30, 2020) (wherein the PUCO, after Randazzo stepped down, reversed the earlier decision and ordered FirstEnergy to "file a distribution rate case by May 31, 2024").

[57] OCC Brief at 40.

[58] FirstEnergy Brief at 1, 25, 45–46, 48.

[59] *Id.* at 25.

[60] *Id.* at 46.

set forth above, OMAEG vehemently disagrees with FirstEnergy's position and urges the Commission to: (1) order FirstEnergy to, at minimum, refund to customers the full $20.4 million in Randazzo payments that were improperly allocated to the Ohio Utilities;[61] (2) order FirstEnergy to, at minimum, refund to customers the full $4.7 million in charges collected through Rider DSE2 related to payments to Randazzo under the 2010 Agreement;[62] (3) order FirstEnergy to pay restitution, through customer refunds, of all the over-earnings charged to customers through rates because of the eight-year extension of FirstEnergy's 2007 rate case;[63] (4) impose a forfeiture of $45.9 million for violating Ohio Admin. Code 4901:1-37-04(A)(3) and (D)(6) with respect to using customer funds to retain Randazzo as a consultant for FirstEnergy's competitive affiliate, FES;[64] (5) impose a forfeiture of $20.5 million for violating R.C. 4928.145 with respect to failing to disclose side deals with Randazzo;[65] (6) impose a forfeiture of $1.3 million for violating Ohio Adm.Code 4901:1-37-04(A) and (D) and Ohio Adm.Code 4901:1-37-08 with respect to other known bribes paid to Randazzo;[66] and (7) require FirstEnergy to identify the source of all funds used for the payments to Randazzo.[67]

[61] OMAEG Brief at 110.

[62] *Id*. at 109; OCC Brief at 48.

[63] NOAC Brief at 9.

[64] RESA/IGS Brief at 16. *See also* NOPEC Brief at 24 (recommending restitution of at least $45.7 million).

[65] OCC Brief at 30.

[66] OMAEG Brief at 111.

[67] OCC Brief at 3.

2. FirstEnergy Did Not "Fully Cooperate" During the Commission's Audits.

Contrary to FirstEnergy's bold claim otherwise,[68] the record evidence—and in some cases lack thereof—demonstrates that FirstEnergy did not cooperate with the Commission's audits and in fact hindered the Commission's investigations in these cases. Specifically, FirstEnergy failed to provide appropriate and pertinent documentation related to the matters being audited, did not identify or provide a log of the documents that were not provided, and did not explain why such a list of withheld documents was not provided.

As explained at length in OMAEG's initial brief, during the hearing, all of the auditors revealed glaring deficiencies with their respective audits and final reports, particularly regarding their failures to consider, investigate, and analyze HB 6 issues and other violations of Ohio law, including corporate separation violations.[69] Notably, two auditors confirmed that FirstEnergy (the very entity it was auditing) effectively set the scope of its own audit by withholding documentation that *it* believed was outside the scope, and/or failing to provide relevant and material documentation on account of, supposedly, being unable to locate it.[70] While the auditors were tasked with obtaining and reviewing appropriate documentation related to their respective audits, FirstEnergy willfully and/or negligently "prevented the auditors, the Commission, and the public from getting the full picture."[71]

With respect to Rider DCR, FirstEnergy actively barred the auditor from reviewing additional transactions beyond those that *FirstEnergy* saw fit to disclose, claiming that only the

[68] FirstEnergy Brief at 19.

[69] *See* OMAEG Brief at 18–53.

[70] *Id.* at 5, *citing* Tr. Vol. I at 196–99, 253 (Mullinax Cross); Tr. Vol. II at 406–10, 412–14, 418, 550–52, 687–88 (Kelly Cross).

[71] RESA/IGS Brief at 11.

346 disclosed transactions were within the scope of the audit.[72] Moreover, even the disclosed transactions were not all supported by adequate documentation. Additionally, as explained by RESA/IGS, "FirstEnergy failed to maintain ordinary business records necessary for the Commission to fully and thoroughly review its actions."[73] This resulted in the auditor only having sufficient documentation to support $3.4 million in payments to Randazzo, despite FirstEnergy disclosing certain transactions totaling $14.4 million.[74] And of course, as discussed above, the disclosed $14.4 million in transactions do not constitute all of the bribes paid to Randazzo.

Similarly, the Rider DMR audit suffered from a glaring lack of documentation. Despite the Ohio Utilities having "an obligation to track DMR expenditures, they failed to do so," instead placing all Rider DMR revenues into the Regulated Money Pool where "expenditures could not be traced to any rider."[75] As such, when it came time for the required audit to determine whether Rider DMR funds were being used appropriately, FirstEnergy could not demonstrate that it had "adhered to the Commission's directive" as set forth in the ESP IV case.[76] Given that they could not demonstrate that Rider DMR revenues were spent directly or indirectly on grid modernization, FirstEnergy called on Randazzo to "burn[] the final DMR report."[77] Ordering the then-Chair of the Commission to "burn" a final audit report containing unfavorable findings can hardly be deemed cooperative or legal for that matter.

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[72] OCC Brief at 38.

[73] RESA/IGS Brief at 10.

[74] *Id.* at 10–11.

[75] NOPEC Brief at 16.

[76] OEG Brief at 2.

[77] OMAEG Brief at 41; OCC Brief at 11; NOPEC Brief at 16; OMAEG Ex. 1, Attachment JS-12 (3/4/20 Text Messages Between Jones and Chack).

FirstEnergy also failed to cooperate during the corporate separation audits, as evidenced by its failure to provide "any records from, or associated with, FirstEnergy's [Ethics] Officer."[78] This is despite the fact that the Chief Ethics Officer was described by one of the corporate separation auditors "as having ultimate responsibility for corporate separation compliance."[79] While FirstEnergy attempted to justify this failure to provide any of the Chief Ethics Officer's documents with the paltry excuse of she was no longer with FE Corp,[80] mere separation is hardly a sufficient excuse for evidently not "maintain[ing] records sufficient to demonstrate compliance with this [corporate separation rules] chapter" as required by Ohio Adm.Code 4901:1-37-07. Whether FirstEnergy failed to produce these pertinent records related to the Companies' compliance with Ohio's corporate separation laws and rules as a result of gross incompetence or willful misconduct is irrelevant. Not only did FirstEnergy violate Ohio Adm.Code 4901:1-37-07, its failure to provide these and other documents demonstrates a concerning *lack* of cooperation with the Commission's audits.

In short, contrary to FirstEnergy's claims, it did not cooperate fully with the Commission's audits. As such, FirstEnergy's argument that its cooperation should somehow weigh in favor of not receiving penalties for its past misconduct related to HB 6 and Randazzo should be disregarded. If anything, FirstEnergy's twisting and misrepresentation of the facts supported by voluminous amounts of record evidence further demonstrate that, contrary to its claims of having "accepted

[78] RESA/IGS Brief at 11.

[79] Staff Ex. 3 at 1 (Public Daymark DMR Audit Report).

[80] *Id.* *See also* OMAEG Ex. 18 (DM Set 1-DR-004); OMAEG Ex. 19 (DM Set 1-DR-005 & Attachments).

full responsibility for its conduct,"[81] FirstEnergy is still trying to avoid the consequences of its illegal actions.

3. Additional Remedies Are Necessary to Make Ohioans Whole and Sufficiently Deter Future Misconduct.

While FirstEnergy repeatedly claims to have "tak[en] responsibility for the H.B. 6 conduct, including as related to the former Chairman,"[82] by implementing a new tone at the top, corporate compliance policies, and finance and accounting controls, these subsequent remedial measures do not erase the simple fact that those things *were not* in place during the audit periods at issue in this proceeding. Rather, the fact that all of these protections and controls had to be implemented *in response to* HB 6 simply demonstrates the insufficiency of whatever controls—if any—were in place at the time. As demonstrated during the hearing—and as conceded by FirstEnergy itself given all of its remedial measures—FirstEnergy did not have an appropriate tone at the top to prevent numerous corporate separation violations, misuse of customer funds, improper pass through of unsupported costs to customers, rampant bribery, and other misconduct. FirstEnergy did not have sufficient compliance policies in place to prevent corporate separation violations with regards to overlapping personnel, subsidies, information, and finances. And FirstEnergy did not have appropriate finance and accounting controls to prevent the misuse and/or misallocation of customer dollars. These latter failings are important given how they relate to corporate separation violations, since both of the Commission's corporate separation auditors found numerous "gaps" and deficiencies in FirstEnergy's corporate separation compliance plans and policies.[83] This is

[81] FirstEnergy Brief at 3.

[82] *Id.* at 5.

[83] Staff Ex. 4 at 5–6, 29–33, 93 (Daymark Energy Advisors Compliance Audit of the FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio – Public Version (September 13, 2021) (Public Daymark Corp. Sep. Audit Report)); Staff Ex. 5 at 28, 36, 121 (Sage Management

especially egregious since the various corporate separation violations flagged by the first auditor back in 2018 were still ongoing during the second audit that occurred years later, which further calls into question the veracity of FirstEnergy's claims that it has actually changed. In short, "FirstEnergy—either willfully or in gross negligence—lacked the internal controls necessary to comply with Ohio law, Commission rules and other regulations."[84] Moreover, as discussed by OCC, FirstEnergy has not demonstrated that proper and sufficient safeguards and management controls are in place that would prevent similar misdeeds in the future.[85]

As set forth by the Intervenors, additional remedies are needed to make Ohioans whole and to sufficiently deter FirstEnergy from engaging in such misconduct again. Among other things, the Intervenors made the following recommendations regarding the audits at issue in this case:

- The Commission should order FirstEnergy to refund to customers, at minimum:
    - The full $458 million in illegal Rider DMR overcharges;[86]
    - The full $28.2 million value of decoupling accrued as a result of HB 6's decoupling provision;[87]
    - The full $24.5 million in vendor payments identified and analyzed in the expanded Rider DCR audit;[88]
    - The full $20.4 million in Randazzo payments that were improperly allocated to FirstEnergy;[89]

Consultants LLC Compliance Audit of FirstEnergy Operating Companies with the Corporate Separation Rules of the Public Utilities Commission of Ohio (May 14, 2018) (Sage Audit Report)).

[84] RESA/IGS Brief at 12.

[85] OCC Brief at 52.

[86] OMAEG Brief at 110; OCC Brief at 4; NOPEC Brief at 25.

[87] OMAEG Brief at 110.

[88] *Id.*

[89] *Id.*

- The full $14.7 million in payments to Tony George-owned/controlled entities that were improperly allocated to FirstEnergy;[90]

- The full $4.7 million in charges collected through Rider DSE2 related to payments to Randazzo under the 2010 Agreement;[91] and

- The full $82,850 in additional vendor costs improperly passed on to customers through pole attachment rates.[92]

- The Commission should order FirstEnergy to pay restitution, through customer refunds, of, at a minimum:

  - All amounts paid by the Ohio Utilities to FE Corp. for management services from 2010 through 2020;[93]

  - All amounts paid by the Ohio Utilities for legal and regulatory services to prepare and present matters on behalf of the Ohio Utilities from 2010 to 2020;[94]

  - All the over-earnings charged to customers through rates because of the eight-year extension of the Ohio Utilities' 2007 rate case;[95] and

  - All the over-earnings collected through the vegetation management and storm damage riders.[96]

- The Commission should order FirstEnergy to pay restitution to intervening parties for their legal fees paid in furtherance of FirstEnergy proceedings from 2010 to 2025.[97]

[90] *Id.*

[91] *Id.* at 109; OCC Brief at 48.

[92] OCTA Brief at 1.

[93] NOAC Brief at 8.

[94] *Id.*

[95] *Id.* at 9.

[96] *Id.* at 10.

[97] *See Id.* at 9.

- The Commission should impose the maximum amount of forfeitures authorized by law for each and every violation of the Commission's rules by FirstEnergy, including, but not limited to:

    - $73 million for violating Ohio Adm.Code 4901:1-37-04(A) and Ohio Adm.Code 4901:1-37-04(D) with respect to multiple overlapping executive officers and consistent failures to properly track time;[98]

    - $45.9 million for violating Ohio Admin. Code 4901:1-37-04(A)(3) and (D)(6) with respect to using customer funds to retain Randazzo as a consultant for FirstEnergy's competitive affiliate, FES;[99]

    - $43.7 million for violating Ohio Adm.Code 4901:1-37-04(A) with respect to FE Corp. entities and employees failing to function independently when conducting activities in furtherance of the passage of HB 6 and the subsequent referendum effort;[100]

    - $40.1 million for violating Ohio Adm.Code 4901:1-37-04(A) and (D) specifically with respect to payments made to Householder and Randazzo in furtherance of the HB 6 conspiracy;[101]

    - $22.8 million for violating R.C. 4905.54 with respect to not using Rider DMR funds as directed by the Commission;[102]

    - $20.5 million for violating R.C. 4928.145 with respect to failing to disclose side deals with Randazzo;[103]

    - $15.3 million for violating Ohio Adm.Code 4901:1-37-04(A)(3) and (D)(6) and Ohio Adm.Code 4901:1-37-08 specifically with respect to bribing Randazzo to approve the certification and operation of the Companies competitive affiliate, FEA;[104]

[98] OMAEG Brief at 111.

[99] RESA/IGS Brief at 16. *See also* NOPEC Brief at 24 (recommending restitution of at least $45.7 million).

[100] OMAEG Brief at 111; OCC Brief at 4.

[101] OCC Brief at 57.

[102] NOPEC Brief at 24. *See also* OCC Brief at 30 (recommending a forfeiture of at least $9.6 million); OEG Brief at 2 (recommending a forfeiture of some amount).

[103] OCC Brief at 30.

[104] NOPEC Brief at 24.

- $3.5 million for violating R.C. 4905.54 with respect to the 346 disclosed vendor payments;[105] and

- $1.3 million for violating Ohio Adm.Code 4901:1-37-04(A) and (D) and Ohio Adm.Code 4901:1-37-08 with respect to other known bribes paid to Randazzo.[106]

- The Commission should initiate supplemental, independent audits by different auditors to determine the full extent of the Ohio law and Commission rule violations that took place in relation to the HB 6 conspiracy, bribes, undisclosed side deals, and other unlawful behavior.[107]

- The Commission should further:

  - Find that FirstEnergy, at a minimum, "omit[ted] to do any act or thing required . . . by order of the public utilities commission" and thus, "is liable . . . in treble the amount of damages sustained in consequence;[108]

  - Require FirstEnergy to identify the source of all funds used for the payments to Householder and Randazzo;[109] and

  - Require FirstEnergy to establish an Ohio-only money pool subject to triennial audits.[110]

- Alternatively, the Commission should consider:

  - Revoke the Ohio Utilities' public utility certificates to have a certified territory and operate as EDUs in Ohio;[111] and

  - Transfer the Ohio Utilities' customers to another utility that can step in the shoes of FirstEnergy and operate the utilities in a safe and reliable manner.[112]

[105] OMAEG Brief at 109; OCC brief at 50.

[106] OMAEG Brief at 111.

[107] *Id.*; OCC Brief at 3, 53, 55, 57; NOPEC Brief at 22.

[108] OMAEG Brief at 102; OCC Brief at 3.

[109] OCC Brief at 3.

[110] *Id. See also* NOAC Brief at 10.

[111] OMAEG Brief at 111; NOPEC Brief at 22.

[112] OMAEG Brief at 111.

While FirstEnergy may have taken some remedial measures after the HB 6 conspiracy and related corruption were exposed, claiming that such measures somehow resolve any and all issues that may have existed ignores the simple fact that these audits were meant to determine FirstEnergy's compliance with Ohio laws and rules and Commission directives *during the time period* being audited.

After-the-fact remediation is not compliance.

After-the-fact remediation does not erase past violations of Ohio laws and Commission directives.

And after-the-fact remediation is not an appropriate substitute for imposing penalties on FirstEnergy for its flagrant noncompliance during the audit periods.

Allowing FirstEnergy to essentially determine that the remediation measures *it* has chosen to implement are sufficient to not only fully transform its corporate culture, but also ensure that such corruption does not happen again *and* to compensate all of the Ohio customers harmed by its illegal activities is little different from allowing FirstEnergy to set the scope of its own audit. The latter has already been done to the detriment of Ohio customers. The former should not be allowed now.

B. FirstEnergy's Agreement to Only Refund to Customers the Vendor Costs That "Impacted Rates" Is Insufficient to Make Ohioans Whole.

As discussed extensively in OMAEG's and OCC's initial briefs, FirstEnergy essentially set the scope of the expanded Rider DCR audit investigating whether the costs of payments to certain vendors with known ties to the HB 6 corruption scheme—including Randazzo—were passed on to customers through Rider DCR or other mechanisms.[113] Specifically, FirstEnergy

[113] *Id.* at 5, 47–51; OCC Brief at 38–41. *See also* NOPEC Brief at 22 (stating that "NOPEC agrees that [*sic*] with OCC that, because the Companies selected the transactions to be reviewed, a further audit should be conducted in which all transactions during the relevant time period are considered").

chose to disclose to Staff a list of 346 payments to 17 vendors, which totaled approximately $24.5 million in charges that were either incurred directly by the Ohio Utilities or were incurred by FESC and then allocated to the Ohio Utilities.[114] There are no doubt additional transactions from that time period that should have been reviewed as well,[115] yet "[n]o further investigation was conducted to determine if the disclosed list of transactions truly represented the entirety of the [Ohio] Utilities' and FirstEnergy Corp.'s misallocations."[116] In other words, FirstEnergy was permitted to decide which charges would be investigated and which charges would not, and it was allowed to decide which documents to turn over and which to withhold, thereby potentially allowing the continued victimization of consumers.[117] As noted by OCC, allowing FirstEnergy to set the scope of its own audit in such a way represents a regulatory failure that "encourages other utilities to engage in similar behavior by sending a signal that the PUCO will only pursue those violations that are admitted after being investigated by a law enforcement entity."[118] At the same time, Ohio customers are receiving the message that the Commission "does not, and will not, protect them from the fraudulent and criminal actions involving utilities in this state."[119]

For this reason alone, the expanded Rider DCR audit was insufficient to fulfil the Commission's explicit purpose of "determine[ing] whether any funds collected from ratepayers were used to pay the vendors and if so, whether the funds associated with those payments should

[114] Staff Ex. 1, Expanded Scope at 4 (Blue Ridge Audit Report and Expanded Scope); OMAEG Brief at 16; OCC Brief at 19, 39.

[115] *See* OMAEG Brief at 48; OCC Brief at 38–39; NOPEC Brief at 22.

[116] OCC Brief at 38. *See also* Tr. Vol. I at 197 (Mullinax Cross).

[117] OMAEG Brief at 48; OCC Brief at 38.

[118] OCC Brief at 39.

[119] *Id.*

be returned to ratepayers through Rider DCR or through an alternative proceeding."[120] Moreover, while OMAEG supports refunding to customers the amounts that the auditor could confirm impacted rates, the Commission should order further refunds to make Ohioans whole. As conceded by the Commission's own auditor, many of the 346 disclosed payments lacked supporting documentation,[121] meaning that the Rider DCR auditor "cannot be entirely certain where the payments were charged and that the payments did not impact customer rates."[122] Moreover, since the Commission auditor erroneously limited its review to only the 346 transactions that FirstEnergy chose to disclose, there are no doubt other improper and unsupported transactions related to vendors with known ties to the HB 6 conspiracy—including Randazzo—that were simply never reviewed to determine how the costs of those transactions were passed on to customers. Considering other documentation outside of what FirstEnergy chose to provide the auditor, demonstrates that other payments to these vendors occurred during the timeframe reviewed by the Commission's auditor. There is ample reason to believe that there were other improper and/or unsupported payments made, the costs of which were then passed on to customers. Additionally, as noted by OCC, "the fact that so many misallocations escaped the attention of the auditor and were only revealed at the time FirstEnergy Corp. was under criminal and securities related investigations makes it clear that the PUCO audit process has been failing."[123] Given this, OMAEG supports OCC's recommendation that a full management audit like what was conducted in Case Nos. 83-135-GA-COI and 84-006-GA-GCR—which resulted in the removal of the Board of Directors of Columbus Gas of Ohio—is needed.

[120] OMAEG Ex. 6 at ¶ 8 (Entry, Case No. 20-1629-EL-RDR (March 10, 2021) (Entry Expanding Scope)).

[121] Staff Ex. 1, Expanded Scope at 13, Table 7 (Blue Ridge Audit Report and Expanded Scope); Tr. Vol. I at 200 (Mullinax Cross).

[122] Tr. Vol. II at 255 (Mullinax Cross).

[123] OCC Brief at 45.

In its initial brief, FirstEnergy attempted to defend its improper narrowing of the expanded scope by incorrectly claiming that OMAEG's and OCC's arguments in favor of reviewing additional transactions beyond the 346 disclosed amounts to a collateral attack on the Commission's decision expanding the Rider DCR audit.[124] FirstEnergy cites to language from Paragraph 7 of the entry expanding the scope, specifically the sentence stating that the auditor should "review the disclosed transactions to determine whether funds collected from ratepayers were used to pay the vendors."[125] However, FirstEnergy's chosen excerpt excludes important context. The *full* Paragraph 7 reads as follows:

> Based upon the response to the data request, *Staff recommends* that the Commission expand the scope of the audit in this case and direct Blue Ridge to review the disclosed transactions to determine whether funds collected from ratepayers were used to pay the vendors and if so, whether or not the funds associated with those payments should be returned to ratepayers in this proceeding or in an alternative proceeding.[126]

While the cherrypicked language quoted by FirstEnergy does seem to indicate that the Commission may have only intended for the auditor to review a small subset of vendor transactions, the words "Staff recommends" make clear that the Commission was merely reiterating a recommendation, *not* stating its actual decision regarding the expanded scope. Said decision is later, set forth in Paragraph 8 of the entry, which states that "the Commission directs Blue Ridge to expand the scope of its review in this proceeding to determine whether any funds collected from ratepayers were used to pay the vendors and if so, whether the funds associated with those payments should be returned to ratepayers through Rider DCR or through an alternative

[124] FirstEnergy Brief at 23.

[125] *Id.* at 23–24; OMAEG Ex. 6 at ¶ 7 (Entry Expanding Scope).

[126] OMAEG Ex. 6 at ¶ 7 (Entry Expanding Scope) (emphasis added).

proceeding."[127] Notably, *this* sentence makes no mention of limiting the scope of the expanded audit to only include a review of the 346 payments that FirstEnergy chose to disclose. In fact, when considered in the context of both the preceding paragraph and the fact that this entry was issued *after* the disclosure of the 346 payments, it is clear that, had the Commission actually intended to limit the scope of the expanded audit to only those 346 transactions, it could have said as much in its entry.

But it did not.

Therefore, FirstEnergy's argument to the contrary should be rejected.

FirstEnergy further asserts that the Commission "should be confident that Blue Ridge's audit was comprehensive and all problematic transactions have been identified and reviewed," yet it offers no record evidence to support such recommended confidence.[128] Rather, it claims that an *internal* investigation concluded that the 346 payments were all that needed to be reviewed, and that a different third-party auditor *hired by* FE Corp. similarly concluded that only those selected 346 transactions needed to be reviewed.[129] But considering FirstEnergy's long history of obfuscating, failing to disclose relevant information, and failing to properly support its claims with facts, there is little reason to simply accept FirstEnergy's word in this instance. This is especially true given that the FirstEnergy witness who testified at hearing about these internal audits "wasn't involved,"[130] and the third-party auditor hired by FE Corp. was not presented for cross-examination.

[127] *Id.* at ¶ 8 (Entry Expanding Scope).

[128] FirstEnergy Brief at 24.

[129] *Id.* at 23.

[130] Tr. Vol. XII at 2549 (Ashton Cross).

For similar reasons, the Commission should not take FirstEnergy's claims regarding the sufficiency of the secondary audit to investigate the source of the funds used by FirstEnergy to pay for the naming rights of the Cleveland Browns Stadium at face value.[131] As explained by OCC, the audit report filed on this matter "makes it quite clear that Blue Ridge merely requested that the [Ohio] Utilities provide a statement about whether or not the funds were collected from consumers," and then regurgitated that response in its eight-page report.[132] Contrary to FirstEnergy's claim otherwise, the auditor's actions can hardly even be called a cursory audit, never mind an investigation. Consequently, the secondary stadium naming audit failed to actually determine or demonstrate whether the costs of the naming rights for Cleveland Browns Stadium were recovered from customers.

For all the reasons set forth above, the recommendations contained in the Rider DCR audit reports are insufficient to make Ohioans whole in the wake of FirstEnergy using Rider DCR and other mechanisms to improperly pass on to customers the costs of payments to certain vendors with known ties to the HB 6 corruption scheme. FirstEnergy was allowed to set the scope of the expanded Rider DCR audit. It should not be allowed to determine how much restitution is sufficient to compensate Ohio customers for the numerous harms that were inflicted over the years. **As such, in addition to the $6.6 million refund recommended by the auditor and agreed to be FirstEnergy, OMAEG urges that the Commission, at minimum: (1) order FirstEnergy to refund to customers the full $24.5 million in vendor payments identified and analyzed in the expanded Rider DCR audit;[133] (2) order FirstEnergy to refund to customers the full $20.4**

[131] *See* FirstEnergy Brief at 25.

[132] OCC Brief at 39–40.

[133] OMAEG Brief at 110.

million in Randazzo payments that were improperly allocated to FirstEnergy;[134] (3) order FirstEnergy to refund to customers the full $14.7 million in payments to Tony George-owned/controlled entities that were improperly allocated to FirstEnergy;[135] (4) order FirstEnergy to refund to customers the full $82,850 in additional vendor costs improperly passed on to customers through pole attachment rates;[136] (4) impose a forfeiture of $3.5 million for violating R.C. 4905.54 with respect to the 346 disclosed vendor payments;[137] (5) reduce the rate of return allowed for Rider DCR charges;[138] initiate supplemental, independent audits by different independent auditors to determine the full extent of the Ohio law and Commission rule violations that took place in relation to the HB 6 conspiracy, bribes, undisclosed side deals, and other unlawful behavior;[139] and (6) adopt all of the recommendations set forth in the Rider DCR audit reports.

C. The Record Evidence Demonstrates That FirstEnergy Did Not Comply With the Requirements of Rider DMR.

As acknowledged by FirstEnergy, Rider DMR was approved for the express purpose of directly or indirectly supporting grid modernization efforts.[140] To this end, the Commission directed Staff to periodically review how the Companies, and FE Corp., use the Rider DMR funds to ensure that such funds are used, directly or indirectly, in support of grid modernization," *and* to "ensure that there is no unlawful subsidy of the Companies' affiliates."[141] Despite notably not

[134] *Id.*

[135] *Id.*

[136] OCTA Brief at 1.

[137] OMAEG Brief at 109; OCC brief at 50.

[138] OMAEG Brief at 109; OCC Brief at 51–52.

[139] OMAEG Brief at 111; OCC Brief at 3, 53, 55, 57; NOPEC Brief at 22.

[140] OMAEG Ex. 30 at ¶ 282 (ESP IV Fifth Entry on Rehearing (October 12, 2016) (Fifth EOR)); FirstEnergy Brief at 29–30.

[141] OMAEG Ex. 30 at ¶ 282 (Fifth EOR).

even discussing the issue of using Rider DMR funds to provide unlawful subsidies to FirstEnergy's affiliates, FirstEnergy boldly claims that the evidence demonstrates that the Ohio Utilities complied with the requirements of Rider DMR.

This simply is not true.

As noted by several Intervenors, the second Rider DMR auditor—the first auditor was unable to file a final report because Randazzo "burned" it—concluded that "[w]e were not able to tie any of the Rider DMR funds to any specific use, as once collected the funds entered the [Regulated] Money Pool, where dollars spent are not tracked."[142] In other words, it was impossible for the auditor to determine conclusively whether or not FirstEnergy actually used Rider DMR dollars collected from customers to directly or indirectly support grid modernization. This was in large part due to FirstEnergy placing all Rider DMR revenues into the Regulated Money Pool, wherein funds "lose [their] identity and cannot be traced to a specific source."[143] Even FirstEnergy itself acknowledged that "the Companies cannot trace individual DMR dollars through the Regulated Money Pool from collection to expenditure."[144] According to FirstEnergy, the Commission "was clear when it approved Rider DMR that it would not require special tracking."[145] But as noted by the second Rider DMR auditor, "[g]iven that the intent of Rider DMR was clearly to enable grid modernization, either directly or indirectly, it should have been incumbent on

[142] Staff Ex. 3 at 5 (Public Daymark DMR Audit Report); OMAEG Brief at 37; OCC Brief at 3, 13; OEG Brief at 2–3; NOPEC Brief at 17.

[143] Staff Ex. 3 at 27–29 (Public Daymark DMR Audit Report); OMAEG Brief at 37.

[144] FirstEnergy Brief at 39.

[145] *Id.* at 38.

FirstEnergy to track each and every dollar of any such spending."[146] Moreover, FirstEnergy *does* maintain detailed tracking of how it spends revenues collected by other riders,[147] meaning that doing the same with Rider DMR revenues would not have been "special tracking," but rather tracking in the normal course of doing business. As noted by OCC, "it is simply beyond reason that a regulated electric utility should be excused from performing the basic function of accounting for and tracking consumers' money. The need for accurate accounting and tracking is even more necessary where, as here, the charges in question are literally derived from a bill rider for a specific purpose."[148] How can the record evidence possibly demonstrate that FirstEnergy properly used Rider DMR funds when FirstEnergy's deliberate failure to properly track Rider DMR revenues made it impossible for the auditors to even determine how exactly those funds were used?

Based on the auditors' findings, FirstEnergy most certainly did not use Rider DMR funds to directly fund grid modernization, as evidenced by a lack of increase in budgeted capital expenditures for grid modernization after Rider DMR was established, and the fact that the projects FirstEnergy designated as grid modernization were funded by other riders.[149] Moreover, while FirstEnergy spends pages insisting that it used Rider DMR funds to indirectly support grid modernization, the second auditor "found no evidence that Rider DMR funds were used . . . for the potential indirect purposes outlined in the Fifth Entry on Rehearing."[150] As OMAEG explained in its initial brief, when analyzing the effect of Rider DMR on FirstEnergy's credit ratings, credit

[146] Staff Ex. 3 at 7 (Public Daymark DMR Audit Report); OMAEG Brief at 37; OCC Brief at 8, 11–12; OEG Brief at 2; NOPEC Brief at 16.

[147] OMAEG Brief at 101, *citing* OCC Ex. 1 at 57 (Brown Testimony).

[148] OCC Brief at 12.

[149] Staff Ex. 3 at 7–8 (Public Daymark DMR Audit Report); OMAEG Brief at 38; OCC Brief at 12, 23.

[150] NOPEC Brief at 17.

metrics, and leverage, the second Rider DMR auditor could not ascertain any significant, tangible benefit to customers from the Rider DMR as it related to FirstEnergy's cost of debt.[151] Similarly, this auditor also found no measurable indication that FirstEnergy was using Rider DMR funds to reduce outstanding pension obligations to contribute to the pension.[152] The first Rider DMR auditor explicitly found that "[n]o Rider DMR funds are currently being used to pay down debt or for direct investments in Grid Modernization,"[153] though this finding was later deleted from the filed mid-term report, seemingly at Randazzo's instruction.[154]

As discussed by OMAEG and other Intervenors, the auditors' findings indicate that rather than using the dollars collected from customers through Rider DMR to directly or indirectly support grid modernization, Rider DMR funds instead appear to have been used, directly or indirectly, to finance the HB 6 conspiracy.[155] While FirstEnergy erroneously claims that the second auditor's analysis "confirms that Rider DMR funds were not used for the H.B. 6 conduct,[156] one need only *read* the audit report to know that FirstEnergy is wrong.[157] The second auditor stated that "we cannot rule out with certainty use of Rider DMR funds to support of the passage of H.B. 6,"[158] in large part because the Regulated Money Pool made it impossible to track where and how those Rider DMR dollars were spent. Even more damning, the second auditor stated that

[151] Staff Ex. 3 at 36 (Public Daymark DMR Audit Report).

[152] *Id.* at 58 (Public Daymark DMR Audit Report)

[153] OMAEG Ex. 23 at 4 (Oxford Third Interim Quarterly Report (October 16, 2018) (Oxford Interim Report)).

[154] OMAEG Brief at 43, *citing* Tr. Vol. XII at 2609–12 (Corey Cross).

[155] *See* OMAEG Brief; OCC Brief; NOPEC Brief.

[156] FirstEnergy Brief at 40.

[157] Staff Ex. 3 at 7, 93 (Public Daymark DMR Audit Report).

[158] *Id.* at 7 (Public Daymark DMR Audit Report).

"it also cannot be ruled out that these extra funds – with no clear spending requirements – did not allow FirstEnergy to somehow fund the back-channel support of the passage of H.B. 6."[159] Additionally, during the hearing, FirstEnergy's own witness admitted that "neither [he] nor anyone at [his] direction analyzed whether or not any Rider DMR funds were used in connection with supporting the passage of HB 6."[160]

Rather notably, despite the one purpose of the Rider DMR audit being to "ensure that there is no unlawful subsidy of the Companies' affiliates,"[161] FirstEnergy makes no mention of this requirement when attempting to argue its claim that it complied with the Commission's Rider DMR requirements. While FirstEnergy fails to address this matter, the record evidence and the auditors' findings demonstrate that Rider DMR funds were indeed used to unlawfully subsidize the Companies' affiliates. This was done via the Regulated Money Pool, which OMAEG witness Seryak described as a "corporate practice and use of money laundering."[162] As explained by the Rider DMR auditors and Intervenors, in addition to the Ohio Utilities, multiple other FE Corp. entities—some of which operate *outside of* Ohio—participate in the Regulated Money Pool.[163] In other words, funds collected from FirstEnergy customers and deposited into the Regulated Money Pool may be withdrawn and used by *non-Ohio* regulated companies such as Pennsylvania Electric Company, Pennsylvania Power Company, Trans-Allegheny Interstate Line Company, and Jersey

[159] *Id.* at 93 (Public Daymark DMR Audit Report).

[160] Tr. Vol. V at 929 (Wang Cross).

[161] OMAEG Ex. 30 at ¶ 282 (Fifth EOR).

[162] OMAEG Ex. 1 at 26 (Seryak Testimony).

[163] Staff Ex. 3 at 27–28 (Public Daymark DMR Audit Report); OMAEG Ex. 23 at 1, 3, 6, 8 (Oxford Interim Report); OMAEG Brief at 33; OCC Brief at 8; NOPEC Brief at 16.

Central Power & Light Company.[164] Moreover, as explained by the first Rider DMR auditor, while FE Corp. cannot make direct withdrawals from this pool, as explained by Oxford, Rider DMR funds placed in the Regulated Money Pool can still benefit FE Corp. and its unregulated subsidiaries by offsetting funds that FE Corp. would otherwise be lending to the Regulated Money Pool.[165] In other words, the infusions of Rider DMR cash by FirstEnergy meant that FE Corp. could use funds otherwise earmarked for the Regulated Money Pool to finance different activities, thereby providing another avenue by which Rider DMR funds could be and likely were used in furtherance of the HB 6 conspiracy.

For the reasons discussed above and in the Intervenors' initial briefs, the record evidence plainly does not demonstrate that the Companies spent Rider DMR funds as required by the Commission. Quite the opposite, in fact. **As such, OMAEG urges the Commission to, at minimum: (1) order FirstEnergy to refund to customers the full $458 million in illegal Rider DMR overcharges;[166] (2) find that FirstEnergy, at a minimum, "omit[ted] to do any act or thing required . . . by order of the public utilities commission" and thus, "is liable . . . in treble the amount of damages sustained in consequence;[167] (3) impose a forfeiture of $22.8 million for violating R.C. 4905.54 with respect to not using Rider DMR funds as directed by the Commission;[168] (4) require FirstEnergy to establish an Ohio-only money pool subject to**

[164] OMAEG Ex. 23 at 6 (Oxford Interim Report); OMAEG Brief at 37; OCC Brief at 8.

[165] OMAEG Ex. 23 at 8 (Oxford Interim Report).

[166] OMAEG Brief at 110; OCC Brief at 4; NOPEC Brief at 25.

[167] OMAEG Brief at 102; OCC Brief at 3.

[168] NOPEC Brief at 24. *See also* OCC Brief at 30 (recommending a forfeiture of at least $9.6 million); OEG Brief at 2 (recommending a forfeiture of some amount).

triennial audits;[169] (5) initiate supplemental, independent audits by different auditors to determine the full extent of the Ohio law and Commission rule violations that took place in relation to the HB 6 conspiracy, bribes, undisclosed side deals, and other unlawful behavior;[170] and (6) adopt all of the recommendations set forth in the Rider DMR audit reports.

D. The Record Evidence Supports Finding Numerous Corporate Separation Violations.

Contrary to FirstEnergy's absurd claim otherwise, the record evidence in this case overwhelmingly demonstrates that "the actions of FirstEnergy Corp. and the [Ohio] Utilities constitute a pattern and practice of corporate separation violations"[171] upon which the HB 6 conspiracy and related corruption were built. As noted by RESA/IGS, the Intervenors have more than demonstrated "FirstEnergy's intentional disregard, or willful indifference, to Ohio's statutory and regulatory requirements, especially with respect to its obligations to comply with corporate separation laws."[172] In addition to the examples discussed above—such as using customer dollars to fund bribes to Randazzo for the benefit of multiple FE Corp. entities and provide money to various non-Ohio entities via the Regulated Money Pool—FirstEnergy customers were unlawfully subsidizing FES for years before its bankruptcy,[173] FESC arranged to launder $175 million through a Tony George-owned company to entice NOPEC member communities to break their individual agreements with NOPEC and join an aggregation organized FES,[174] numerous FE Corp. entities

[169] OCC Brief at 3. *See also* NOAC Brief at 10.

[170] OMAEG Brief at 111; OCC Brief at 3, 53, 55, 57; NOPEC Brief at 22.

[171] OCC Ex. 1 at 78 (Brown Testimony).

[172] RESA/IGS Brief at 12.

[173] *Id.* at 6–12.

[174] NOPEC Brief at 6–9.

failed to function independently over the course of a decade,[175] shared employees habitually failed to properly record or allocate their time,[176] and much more.

According to FirstEnergy, the Commission's two corporate separation auditors failed to find any violations, but as with several of FirstEnergy's claims, this is inaccurate. Both auditors *did* find instances of noncompliance, including failing to maintain a cost allocation manual (CAM) as required by Ohio Adm.Code 4901:1-37-08; failing to maintain sufficient records as required by Ohio Adm.Code 4901:1-37- 07; retail groups serving "two masters," one of which was regulated, the other not; and other substantial gaps in FirstEnergy's corporate separation compliance program/rules.[177] The mere fact that neither auditor properly identified these violations or recommended penalties or changes in corporate governance as a result does not erase the fact that these violations occurred. Moreover, both auditors failed to actually analyze or discuss the HB 6 conspiracy or FirstEnergy's involvement, leaving an entire era of corporate separation violations untouched and unreviewed. Additionally, even if FirstEnergy was correct about there being a lack of evidence (which it is not) that would still be insufficient to demonstrate that FirstEnergy was in compliance with Ohio's corporate separation laws and rules given that (1) FirstEnergy bears the burden of proof, (2) the corporate separation audit reports are insufficient to sustain that burden of

[175] OMAEG Brief at 67; NOAC Brief at 3; NOPEC Brief at 9–10; RESA/IGS Brief at 8.

[176] OMAEG Brief at 67–69.

[177] OMAEG Brief at 64–65, *citing* Staff Ex. 5 at 28, 36, 121 (Sage Audit Report); Staff Ex. 4 at 5–6, 29–33, 93 (Public Daymark Corp. Sep. Audit Report); *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, Tr. Vol. I at 120 (Lund Cross). *See also* OCC Brief; NOAC Brief; NOPEC Brief; RESA/IGS Brief.

proof,[178] and (3) FirstEnergy withheld an unknown number of documents directly related to corporate separation compliance.[179]

As noted by OCC, the corporate separation audits both failed to "cover what should have been the centerpiece for consumer protection – investigating corporate separation in the context of the [Ohio] Utilities' activities with H.B. 6, payments to the former PUCO Chair, and related matters."[180] Despite this, the Intervenors presented voluminous amounts of evidence demonstrating that FirstEnergy's actions with respect to the HB 6 conspiracy and subsequent referendum effort, as well as FirstEnergy's dealings with Randazzo are rife with corporate separation violations. As such, FirstEnergy's claim that the record evidence does not support finding that it violated Ohio's corporate separation laws and rules should be rejected.

1. The Allocation of Zero-Emissions Nuclear Resource Program (ZEN) and HB 6-Related Costs to FirstEnergy Violated Ohio's Corporate Separation Laws and Rules.

FirstEnergy attempts to argue that allocating ZEN and HB 6 costs to the Companies was appropriate and therefore not a corporate separation violation by claiming that the conspiracy did not result in any undue preference or advantage being extended to an affiliate, and that no cross-subsidies occurred. FirstEnergy also attempts to argue that simply because certain provisions of HB 6—such as the decoupling—benefitted the Ohio Utilities (or would have benefitted the Ohio Utilities in the case of the ZEN legislation), using customer dollars to facilitate the conspiracy does not implicate Ohio's corporate separation laws and rules. Not only are these statements false and bordering on nonsensical, they ignore multiple other parts of the corporate separation rules,

[178] *See* OMAEG Brief at 20–34.

[179] *See id.* at 10, 24; RESA/IGS Brief at 11.

[180] OCC Brief at 55.

including requirements to keep sufficient records to demonstrate compliance with Ohio's corporate separation laws and rules, for affiliated companies to function independently, for regulated and unregulated affiliates to not share facilities and services, and for shared employees to appropriately record and charge their time.[181]

As explained in OMAEG's initial brief, the entire HB 6 conspiracy was largely facilitated by the significant overlap of corporate officers and executives who did not function independently, who did not ensure that regulated and nonregulated employees are properly separated, who did not ensure that shared information or knowledge would not provide an unfair competitive advantage to the affiliate over its competitors, and who did not appropriately record and charge their time based on fully allocated costs—all of which violates Ohio Adm.Code 4901:1-37-04(A) and (D). For these numerous and ongoing violations alone, OMAEG recommended a forfeiture of at least $73 million.[182] Since these various overlapping employees failed to properly track or allocate their time, there is no way of knowing whether or not the HB 6-releated costs allocated to the Ohio Utilities were accurate or proper. Additionally, as discussed by OCC, payments made in furtherance of the conspiracy, such as to Householder through Generation Now and Randazzo through his shell companies ultimately benefitted FES, which "stood most to benefit under tainted H.B. 6."[183] Consequently, HB 6-related payments allocated to FirstEnergy resulted in the captive customers of the Ohio Utilities subsidizing a competitive affiliate,[184] which is a clear corporate separation violation.

[181] Ohio Adm.Code 4901:1-37-07; Ohio Adm.Code 4901:1-37-04(A).

[182] OMAEG Brief at 69.

[183] OCC Brief at 57.

[184] *Id.*

For the same reasons, the costs related to various FE Corp. entities' efforts to pass the ZEN legislation would also constitute corporate separation violations. Additionally, while the full extent of the corporate separation violations that occurred whilst FE Corp. and its subsidiaries were pushing to pass the ZEN legislation remain unknown, this is in large part due to lack of available documentation, which is itself a violation of Ohio Adm.Code 4901:1-37-07. While FirstEnergy argues that these issues are outside the scope of this proceeding because "ZEN is not related to the passage of HB 6,"[185] the facts set forth in the DPA, which FirstEnergy does not deny, make clear the connection between these two pieces of legislation. Specifically, the failure of the ZEN legislation—FE Corp.'s first attempt at a "state solution" to save the failing nuclear plants—directly resulted in the creation of HB 6.[186] As set forth in the DPA, the ZEN legislation failed to "gain the support necessary for passage" back in 2017, in part because Householder had not yet been reinstalled as Speaker and therefore could not push their agenda as effectively.[187] That being said, *payments* to Householder's dark money group Generation Now began in March 2017, a mere month before the ZEN legislation was introduced.[188] In other words, Householder was receiving money from FE Corp. years before HB 6 was introduced. Why? Because FE Corp. wanted to secure his support for its scheme to bail out the failing nuclear plants—initially via ZEN, and eventually through HB 6. Simply because ZEN was a failed precursor to HB 6 does not mean that it is "unrelated to the passage of HB 6." Rather, the two are inextricably linked because both are part of the same ongoing scheme. Therefore, FirstEnergy's argument that discussions of ZEN are

[185] FirstEnergy Brief at 47 (internal quotations omitted).

[186] Companies Ex. 1 at 20–21 (DPA).

[187] *Id.*

[188] *Id.* at 21 (DPA); OCC Brief at 57; FirstEnergy Brief at 47.

outside the scope should be dismissed,[189] as should its argument that allocating ZEN-related costs to the Ohio Companies is not a corporate separation violation.

For the reasons set forth above, OMAEG recommends that the Commission impose forfeitures of (1) $73 million for violating Ohio Adm.Code 4901:1-37-04(A) and Ohio Adm.Code 4901:1-37-04(D) with respect to multiple overlapping executive officers and consistent failures to properly track time, and (2) $40.1 million for violating Ohio Adm.Code 4901:1-37-04(A) and (D) specifically with respect to payments made to Householder and Randazzo in furtherance of the HB 6 conspiracy.[190]

2. The Allocation of the Payments to Randazzo Violated Ohio's Corporate Separation Laws and Rules.

As discussed above, payments related to the 2013 Agreement with SFA and the $4.3 million bribe paid to Randazzo constitute corporate separation violations for several reasons. While the 2013 Agreement may have ostensibly been between FESC and SFA, the services provided were ultimately "for the benefit of the utility's affiliate, FES."[191] While "FirstEnergy failed to provide any documentation regarding these consultant expenses to the independent auditors,"[192] evidence provided by the Intervenors demonstrated that the "vast majority" of the payments made to SFA under the 2013 Agreement and other Randazzo agreements were allocated to the Ohio Utilities.[193] As explained by RESA/IGS, competing suppliers did not have access to

[189] Interestingly, FirstEnergy did not object to questioning on cross examination on this issue as being outside the scope of the audit.

[190] OCC Brief at 57.

[191] RESA/IGS Brief at 8.

[192] *Id.* at 9.

[193] OMAEG Ex. 1, Attachment JS-14 (1/31/19 FirstEnergy Emails); OMAEG Ex. 1, Attachment JS-15 (1/31/19 Biltz and Dowling Texts).

the Randazzo's consulting services, nor did they have the ability to strip the costs associated with those services out of their supply rates and pass them through to captive utility customers via other means as FES did.[194] In other words, "FES was gifted, at ratepayer expense, a significant competitive advantage enabling it to engage in more risky and aggressive sales tactics to attract and retain customers while negatively impacting the costs and profits of other competitive suppliers."[195] Using customer funds to retain Randazzo as a consultant for the Ohio Utilities' competitive affiliate FES is on its face a corporate separation violation, since a regulated utility is subsidizing a competitive affiliate and thereby providing "undue preference or advantage."[196]

As for the $4.3 million bribe paid to Randazzo shortly before he became Commission chair, while Randazzo undoubtedly provided the Ohio Utilities with significant benefits such as overruling Staff and other Commissioners on decoupling, getting rid of SEET, and burning the DMR final report, his regulatory actions benefited other FE Corp. entities as well.[197] For example, "fixing the Ohio hole" by eliminating FirstEnergy's requirement to file a new rate case in 2024 resulted in FE Corp.'s stock rising by 1.50% within less than 24 hours after the Commission entry was issued.[198] Additionally, Randazzo used his position as Commission chair to certify one of FirstEnergy's competitive affiliates, FEA, as an unregulated broker/aggregator, *without* addressing FEA's fitness to provide service.[199] As explained by NOPEC, the Commission granted FEA's

[194] RESA/IGS Brief at 10.

[195] *Id.*

[196] NOPEC Brief at 20; RESA/IGS Brief at 8.

[197] OMAEG Ex. 1, Attachment JS-12 (3/4/20 Text Messages Between Jones and Chack).

[198] *Id.* (3/4/20 Text Messages Between Jones and Chack); OMAEG Ex. 1, Attachment JS-8 (11/10/19 Text Messages Between Jones and Evans).

[199] NOPEC Brief at 9–10.

application using the most cursory scrutiny, without permitting discovery or a hearing, and without addressing whether shared branding and senior executives with FirstEnergy and FE Corp. affected FEA's fitness to provide service.[200] This was a "textbook violation of the Corporate Separation Laws – the monopoly utilities' per se illegal cross subsidization of a competitive affiliate," yet FirstEnergy attempts to claims that the $4.3 million bribe was only meant "to benefit the Companies." Additionally, Randazzo had a role in drafting HB 6 and helping craft favorable rate design language,[201] meaning that the $4.3 million bribe financed at least in part by Ohio customers provided direct benefits to other FE Corp. entities such as FES and FE Corp. itself.

For the reasons set forth above, specifically with regards to how payments to Randazzo were used to subsidize FES and FEA in violation of Ohio Admin. Code 4901:1-37-04(A)(3) and 4901:1-37-04(D)(6), OMAEG recommends that the Commission impose forfeitures of (1) $45.9 million for using customer funds to retain Randazzo as a consultant for FES,[202] and (2) $15.3 million for bribing Randazzo to approve the certification and operation of FEA.[203]

[200] *Id.* at 10.

[201] OMAEG Ex. 42 (Texts, Bates No. FE_CIV_SEC_0237335 (May 13, 2019) (Mikkelsen informing Biltz and Dowling that she spoke earlier with Randazzo about Santino Fanelli getting together with Tamara Turkenton on HB 6 rate design work)); OMAEG Ex. 43 (Texts, Bates No. FE_CIV_SEC_0248001 (June 26, 2019) (Biltz texting Scott Elisar regarding HB 6 revenue requirement and rate design issues)).

[202] RESA/IGS Brief at 16. *See also* NOPEC Brief at 24 (recommending restitution of at least $45.7 million).

[203] NOPEC Brief at 24.

E. The Commission Should Give No Weight to FirstEnergy's Arguments Regarding the Credibility and Recommendations of OMAEG Expert Witness Seryak and OCC Expert Witness Brown.

FirstEnergy's arguments regarding OMAEG witness Seryak and OCC witness Brown's opinions, analyses, and testimony should be rejected as unfounded and inaccurate, and both pieces of testimony should be afforded appropriate weight.

After failing to strike swaths of OMAEG witness Seryak's relevant testimony related to the HB 6 conspiracy and FirstEnergy's actions in furtherance of said conspiracy,[204] FirstEnergy now seeks to undermine OMAEG witness Seryak's testimony, opinions, and analyses with unsubstantiated claims of unreliability and lack of expertise.[205] However, as with many of FirstEnergy's claims throughout its brief, its arguments are replete with misstatements and incorrect information. For example, FirstEnergy claims that Mr. Seryak testified that FE Corp. has not complied with the terms of the DPA,[206] but this is, at best, a misunderstanding of his answers during cross-examination and, at worst, a purposeful twisting of his responses. When asked about FE Corp.'s compliance with the DPA's provisions, the following exchange occurred:

> Q. "For example, FirstEnergy Corp. has undertaken remedial measures and implemented a compliance and ethics program designed to detect and deter violations of U.S. law as required by the DPA," do you see that?
>
> A. Yes, I see that.
>
> Q. Do you have any reason to doubt the accuracy of that sentence?
>
> A. I have not seen -- I think I would want to reserve my judgment on what constitutes a successful implementation of a remedial measure on these things.[207]

[204] *See* Motion to Strike the Specified Intervenor Testimony and Memorandum in Support (June 11, 2025).

[205] FirstEnergy Brief at 49–55.

[206] *Id.* at 50.

[207] Tr. Vol. X at 2270 (Seryak Cross).

Far from claiming without support, as FirstEnergy argues, that FE Corp. has not complied with the requirements of the DPA, Mr. Seryak offered a response that recognizes the limits of the information that has been made available to him. He further clarified in response to a follow-up question that, "FirstEnergy [Corp.] can represent it does something like working to establish, right, that's pretty soft and subjective . . . I might have a different standard of the level of culture change of FirstEnergy and Ohio utilities need to do."[208]

Reasonable minds can disagree, and this is in part the very reason experts such as Mr. Seryak are retained. Based on his analysis of the facts and information available to him, and based on his years of experience in the regulatory field and "specialized knowledge in regulatory policy, tariffs, and riders," he has reached his own conclusions regarding the sufficiency of FirstEnergy's claimed cultural change. It should also be noted that "there's a distinction between FirstEnergy Corp. and [the] Ohio Companies,"[209] so FE Corp. satisfying the requirements set forth in the DPA is not, and should not be treated as, synonymous with *the Ohio Companies* taking all of the remedial steps necessary to ensure that the fraud and abuse perpetuated against customers in relation to HB 6 and Randazzo does not happen again. As further explained by Mr. Seryak:

> A. . . . part of my testimony is bringing forth my opinion.
>
> Now, I don't think there's been adequate remediation with the *Ohio utilities* whose finances were related to FE Corp. because that needs to happen in these cases, and these cases were on hold with the rationale that the DPA, other investigations were going on, so these cases need to be on hold.
>
> And so the facts that are supposed to be provided on some of these issues to understand if FE Corp. and the [Ohio] utilities have remediated customers really are not coming out through this case,

[208] *Id.* at 2271 (Seryak Cross).

[209] *Id.* at 2310 (Seryak Cross).

> so I don't know how we can say how the remediation to customers has really happened.[210]

The DPA was signed and executed in the context of a federal criminal investigation, and it imposed sanctions and penalties for *FE Corp.'s* crimes related to HB 6. However, the DPA and its provisions *do not* replace the kind of remediation to customers that Mr. Seryak, OMAEG, and other Intervenors have been seeking for years at this point. Such remediation—especially restitution to customers who have suffered the brunt of the ill-effects resulting from FirstEnergy's HB 6-related crimes and other misconduct—can only happen through the regulatory process at the Commission. Considering the breadth of crimes committed in relation to HB 6 and Randazzo, remediation in one area, and performed by one member of the FE Corp. corporate family, does not displace or replace the remediation that needs to happen through the Commission for corruption in other cases and other areas. As discussed at length above, post-facto remedial measures cannot and should not be considered a sufficient substitute for compliance with the Commission's rules *during the time that was audited*. Moreover, contrary to FirstEnergy's insistence otherwise, such remedial measures do not constitute an actual penalty for FirstEnergy's laundry list of misconduct, nor do they provide an effective deterrent to prevent similar misconduct in the future.

FirstEnergy also questions Mr. Seryak's qualifications to even offer expert testimony in this case,[211] but as he explained in his direct testimony and during the hearing, he (1) has worked extensively on energy matters for twenty-five years; (2) has worked extensively with electric distribution utilities on customer programming and technology integration; (3) has over a decade of experience in regulatory and policy analyses in the energy industry and has authored or co-

[210] *Id.* at 2311 (Seryak Redirect) (emphasis added).

[211] FirstEnergy Brief at 51.

authored over thirty peer-reviewed academic papers on technical, programmatic, cultural, and regulatory issues concerning energy rates, programs, resources, and policies; (4) has participated in and testified at over a dozen cases before the Commission;[212] (5) has written multiple papers and memoranda on decoupling and lost distribution revenue (LDR);[213] possesses specialized knowledge in regulatory policy, tariffs, and riders based on his decades of experience and regular review to determine their impact on manufacturers;[214] and regularly reviews legislative proposals and passed legislation—including the proposed ZEN legislation and later HB 6 beginning at its inception—to determine their impact or effect on manufacturers.[215]

Ohio Evid.R. 702—which FirstEnergy cites to without further analysis or explanation—states that a witness may testify as an expert if:

> (1) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;
>
> (2) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;
>
> (3) The witness' testimony is based on reliable scientific, technical, or other specialized information and the expert's opinion reflects a reliable application of the principles and methods to the facts of the case . . .[216]

First, Mr. Seryak's testimony includes the details and intricacies of both the HB 6 conspiracy and FirstEnergy's illicit dealings with Randazzo to defraud customers and manipulate the Commission's regulatory processes, which are all matters beyond the knowledge or experience

[212] OMAEG Ex. 1 at 1–4 (Seryak Testimony).

[213] Tr. Vol. X at 2243–44 (Seryak Cross).

[214] *Id.* at 2307–08 (Seryak Redirect).

[215] *Id.* at 2308–09 (Seryak Redirect).

[216] *Id.* at 2311 (Seryak Redirect) (emphasis added).

possessed by lay persons. Second, for the reasons set forth above, and contrary to FirstEnergy's unsubstantiated claim otherwise, Mr. Seryak is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of his testimony. And third, his testimony is based on reliable scientific, technical, or other specialized information (i.e., the staff reports filed in this case, past regulatory proceedings related to the subject matters of his testimony, the voluminous amounts of discovery provided to Intervenors, etc.) and the expert's opinion reflects a reliable application of the principles and methods to the facts of the case. While FirstEnergy may not like or agree with Mr. Seryak's expert opinions and analyses, that does not mean he is unqualified to offer such opinions and analyses. OMAEG further notes that Mr. Seryak's expertise or lack thereof was not raised or addressed during the evidentiary hearing.

FirstEnergy also seeks to undermine Mr. Seryak's analysis of and testimony regarding the corrupted ESP II and ESP IV settlements.[217] According to FirstEnergy, Mr. Seryak's testimony that both settlements were induced by bribery was unsupported by evidence and unreliable.[218] However, as discussed above, the record evidence presented in this case demonstrates the opposite. In 2010, as the ESP II settlement was being negotiated, Randazzo was negotiating the 2010 Invoice to have an aggregate $9 million paid to his shell companies SFA and IEU-Admin, both of which—rather notably—did not even legally exist at the time.[219] At the same time, Randazzo was assigning his then-client IEU-Ohio's rights to any claims against FE Corp. and its subsidiaries and affiliates, including the Ohio Utilities, to SFA and IEU-Admin.[220] This was done without IEU-Ohio's

[217] FirstEnergy Brief at 52–53.

[218] *Id.* at 52.

[219] OMAEG Ex. 50 at ¶ 10 (Randazzo Disciplinary Complaint).

[220] *Id.* at ¶¶ 10–18 (Randazzo Disciplinary Complaint).

consent or knowledge.[221] In exchange for this $9 million bribe—which one of the Commission's auditors determined was ultimately paid for by captive Ohio customers through Rider DSE2[222]—IEU-Ohio signed the ESP II settlement as a signatory party.[223] As discussed above with regards to the ESP IV settlement, regardless of whether IEU-Ohio's signature alone would have changed the Commission's decision to approve the settlement, the existence of the 2010 Agreement and the bribe involve could have and should have (1) been considered by the Commission when assessing the settlement under the three-prong test, and (2) should have resulted in the entire settlement being rejected. FirstEnergy should not have been allowed to buy a signatory party's support, which per se corrupts and undermines the entire settlement negotiation process and the Commission's related regulatory process. FirstEnergy itself recognizes that the Commission had an independent obligation to evaluate the proposed stipulations in ESP II,[224] and that evaluation should have accounted for FirstEnergy's blatant misconduct in the form of bribing Randazzo in exchange for his then-client's support. FirstEnergy's statement that "there is no evidence to suggest it did not adequately discharge its duty" is simply incorrect.[225] The Commission did not and could not adequately discharge its duty because it was not aware of FirstEnergy's illicit actions. While multiple parties may have advocated for and against ESP II settlement, the record was incomplete because no one aside from FirstEnergy, FE Corp., and Randazzo were aware of

[221] *Id.* at ¶¶ 17–19 (Randazzo Disciplinary Complaint).

[222] Staff Ex. 1, Expanded Scope at 17 (Blue Ridge Audit Report and Expanded Scope).

[223] OMAEG Ex. 3 (Supplemental Stipulation, Case No. 10-388-EL-SSO (May 12, 2010)).

[224] FirstEnergy Brief at 52.

[225] *Id.*

the bribe. For the same reasons, and as detailed above, the ESP IV settlement was also tainted by corruption since it was induced by bribery.

As for FirstEnergy's claim that the LDR mechanism is outside the scope of this investigation,[226] that is also untrue given the facts set forth int the DPA, which FirstEnergy does not deny.[227] According to the DPA, the HB 6 decoupling provision was among FE Corp.'s priorities because it allowed the Ohio Utilities to "receive a fixed amount of distribution-related revenue from residential and commercial customers based on the 2018 collection period, which was a year of high electricity sales."[228] FirstEnergy does not deny this, and in fact discusses the importance and benefits of the decoupling provision in its own brief.[229] The DPA further sates that the decoupling provision was enacted "to *continue* to recover lost distribution revenue ("LDR") in a fixed amount based on its 2018 LDR recovery, despite the elimination of energy efficiency programs."[230] In other words, while "not all decoupling is lost distribution revenue,"[231] in this instance, the decoupling provision is a continuation of the existing LDR mechanism, which was continued as part of the corrupt ESP II settlement. The LDR is inextricably linked to the HB 6 decoupling provision, which alone is sufficient to place this mechanism within the scope of this proceeding. Moreover, the LDR mechanism is tied to the ESP II settlement, which was the fruit of FirstEnergy's misconduct with Randazzo, which is also within the scope of this proceeding. Therefore, FirstEnergy's arguments regarding the LDR mechanism should be rejected.

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[226] *Id.* at 54–55.

[227] *Id.* at 1.

[228] Companies Ex. 1 at 18 (DPA).

[229] FirstEnergy Brief at 45–46.

[230] Companies Ex. 1 at 18 (DPA) (emphasis added).

[231] Tr. Vol. X at 2294 (Seryak Cross).

Additionally, FirstEnergy's argument that Mr. Seryak did not consider the "consequences" of his recommended refunds and forfeitures to make customers whole and deter FirstEnergy from engaging in similar misconduct in the future,[232] is also incorrect. Not only does his testimony recognize that the refunds and forfeitures were "steep," he also explained that FirstEnergy "[c]orrupting the regulatory process in such an appalling manner cuts to the core of our functioning democracy in Ohio. It is in a category of its own, and deserves a penalty that far exceeds the direct financial gains and interest of the case, severe enough to be a sufficient deterrent for future corruption of the regulatory process."[233] Moreover, he further elaborated that these penalties need not be repaid immediately or all at once, given their amount.[234] FirstEnergy responds that it cannot afford to shoulder the financial burdens that it spent years foisting upon its captive customers[235] should also be discounted on account of both the severity of the misconduct necessitating these penalties and Mr. Seryak's alternative recommendation.[236] If FirstEnergy is truly unable to afford to pay for the consequences of its gross misconduct, ongoing mistreatment of customers, and serious corruption of the regulatory process, then the Commission should revoke FirstEnergy's certificate to operate as a public utility and have a certified territory and operate as EDUs in Ohio.[237] Mr. Seryak further clarified during the hearing that his alternative recommendation is *not* meant to deprive customers of utility services.[238] Rather, it is intended to provide customers with

[232] FirstEnergy Brief at 54.

[233] OMAEG Ex. 1 at 35 (Seryak Testimony).

[234] *Id.*

[235] FirstEnergy Brief at 54.

[236] OMAEG Ex. 1 at 36 (Seryak Testimony).

[237] *Id.*

[238] Tr. Vol. X at 2314 (Seryak Redirect).

utility services provided by an EDU that has not seen fit to degrade and abuse its customers for a decade.

Lastly, FirstEnergy's arguments opposing OCC witness Brown's testimony should also be disregarded because (1) not including a thorough analysis of every fact and detail that *FirstEnergy* believes is important does not invalidate the remainder of Mr. Brown's analyses, nor his ultimate conclusions and recommendations, and (2) like Mr. Seryak's recommendations, Mr. Brown's proposed refunds and forfeitures are commensurate with the harms inflicted in order to make customers whole and deter future misconduct. **For these reasons and those set forth above, OMAEG urges the Commission to give no weight to FirstEnergy's arguments regarding the credibility and recommendations of OMAEG witness Seryak and OCC witness Brown.**

III. SUMMARY OF RECOMMENDATIONS

For all the reasons set forth above and in the Intervenors' initial briefs, OMAEG makes the following recommendations regarding the audits at issue in this case:

- The Commission should find that:
    - FirstEnergy failed to sustain its burden of proof in this proceeding with respect to all three audits cases;
    - The audits conducted in this proceeding regarding HB 6 issues, bribes, illegal vendor payments, and other misconduct were deficient, incomplete, and not in compliance with the Commission's orders or the RFPs;
    - FirstEnergy was not in compliance with Ohio's corporate separation laws and rules during the audit periods;
    - Rider DMR funds were not used for the specific purposes set forth in ESP IV; and
    - HB 6 costs were improperly passed on to customers through Rider DCR, Rider DMR, Rider DSE2, pole attachment rates, and other mechanisms.
- The Commission should adopt all of the recommendations contained in:
    - The Corporate Separation Audit Reports;

- The Rider DMR Audit Reports;
- The Rider DCR Audit Reports;
- OMAEG witness Seryak's testimony;
- OCC witness Brown's testimony;
- OMAEG's initial brief;
- OCC's initial brief;
- NOAC's initial brief;
- OEG's initial brief;
- NOPEC's initial brief;
- RESA/IGS' initial brief; and
- OCTA's initial brief.

- The Commission should order FirstEnergy to refund to customers, at minimum:
  - The full $458 million in illegal Rider DMR overcharges;[239]
  - The full $28.2 million value of decoupling accrued as a result of HB 6's decoupling provision;[240]
  - The full $24.5 million in vendor payments identified and analyzed in the expanded Rider DCR audit;[241]
  - The full $20.4 million in Randazzo payments that were improperly allocated to FirstEnergy;[242]
  - The full $14.7 million in payments to Tony George-owned/controlled entities that were improperly allocated to FirstEnergy;[243]

[239] OMAEG Brief at 110; OCC Brief at 4; NOPEC Brief at 25.

[240] OMAEG Brief at 110.

[241] *Id.*

[242] *Id.*

[243] *Id.*

- The full $4.7 million in charges collected through Rider DSE2 related to payments to Randazzo under the 2010 Agreement;[244] and

- The full $82,850 in additional vendor costs improperly passed on to customers through pole attachment rates.[245]

- The Commission should order FirstEnergy to pay restitution, through customer refunds, of, at a minimum:

  - All amounts paid by the Ohio Utilities to FE Corp. for management services from 2010 through 2020;[246]

  - All amounts paid by the Ohio Utilities for legal and regulatory services to prepare and present matters on behalf of the Ohio Utilities from 2010 to 2020;[247]

  - All the over-earnings charged to customers through rates because of the eight-year extension of the Ohio Utilities' 2007 rate case;[248] and

  - All the over-earnings collected through the vegetation management and storm damage riders.[249]

- The Commission should order FirstEnergy to pay restitution to intervening parties for their legal fees paid in furtherance of FirstEnergy proceedings from 2010 to 2020.[250]

- The Commission should impose the maximum amount of forfeitures authorized by law for each and every corporate separation violation by FirstEnergy, including, but not limited to:

  - $73 million for violating Ohio Adm.Code 4901:1-37-04(A) and Ohio Adm.Code 4901:1-37-04(D) with respect to multiple overlapping executive officers and consistent failures to properly track time;[251]

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[244] OMAEG Brief at 109; OCC Brief at 48.

[245] OCTA Brief at 1.

[246] NOAC Brief at 8.

[247] *Id.*

[248] *Id.* at 9.

[249] *Id.* at 10.

[250] *Id.* at 9.

[251] OMAEG Brief at 111.

- $45.9 million for violating Ohio Admin. Code 4901:1-37-04(A)(3) and (D)(6) with respect to using customer funds to retain Randazzo as a consultant for FirstEnergy's competitive affiliate, FES;[252]

- $43.7 million for violating Ohio Adm.Code 4901:1-37-04(A) with respect to FE Corp. entities and employees failing to function independently when conducting activities in furtherance of the passage of HB 6 and the subsequent referendum effort;[253]

- $40.1 million for violating Ohio Adm.Code 4901:1-37-04(A) and (D) specifically with respect to payments made to Householder and Randazzo in furtherance of the HB 6 conspiracy;[254]

- $22.8 million for violating R.C. 4905.54 with respect to not using Rider DMR funds as directed by the Commission;[255]

- $20.5 million for violating R.C. 4928.145 with respect to failing to disclose side deals with Randazzo;[256]

- $15.3 million for violating Ohio Adm.Code 4901:1-37-04(A)(3) and (D)(6) and Ohio Adm.Code 4901:1-37-08 specifically with respect to bribing Randazzo to approve the certification and operation of the Companies competitive affiliate, FEA;[257]

- $3.5 million for violating R.C. 4905.54 with respect to the 346 disclosed vendor payments;[258] and

- $1.3 million for violating Ohio Adm.Code 4901:1-37-04(A) and (D) and Ohio Adm.Code 4901:1-37-08 with respect to other known bribes paid to Randazzo.[259]

- The Commission should initiate supplemental, independent audits by different auditors to determine the full extent of the Ohio law and Commission rule violations

[252] RESA/IGS Brief at 16. *See also* NOPEC Brief at 24 (recommending restitution of at least $45.7 million).

[253] OMAEG Brief at 111; OCC Brief at 4.

[254] OCC Brief at 57.

[255] NOPEC Brief at 24. *See also* OCC Brief at 30 (recommending a forfeiture of at least $9.6 million); OEG Brief at 2 (recommending a forfeiture of some amount).

[256] OCC Brief at 30.

[257] NOPEC Brief at 24.

[258] OMAEG Brief at 109; OCC brief at 50.

[259] OMAEG Brief at 111.

that took place in relation to the HB 6 conspiracy, bribes, undisclosed side deals, and other unlawful behavior.[260]

- The Commission should further:
    - Find that FirstEnergy, at a minimum, "omit[ted] to do any act or thing required . . . by order of the public utilities commission" and thus, "is liable . . . in treble the amount of damages sustained in consequence;[261]
    - Require FirstEnergy to identify the source of all funds used for the payments to Householder and Randazzo;[262] and
    - Require FirstEnergy to establish an Ohio-only money pool subject to triennial audits.[263]
- Alternatively, the Commission should consider:
    - Revoke the Ohio Utilities' public utility certificates to have a certified territory and operate as EDUs in Ohio;[264] and
    - Transfer customers to another utility that can step in the shoes of FirstEnergy and operate the utilities in a safe and reliable manner.[265]

IV. CONCLUSION

As demonstrated by the record evidence and in the Intervenors' initial briefs, FirstEnergy: (1) committed numerous corporate separation violations in furtherance of the HB 6 corruption scheme and other misconduct, including its agreements with former Commission Chair Samuel Randazzo; (2) brazenly misused Rider DMR funds to, directly or indirectly, fund various bribes and other activities in furtherance of the HB 6 conspiracy; and (3) improperly passed on the costs of payments to certain vendors with known ties to the HB 6 corruption scheme—including Randazzo—to customers through Rider DCR and other mechanisms. Therefore, for all the reasons

[260] *Id.*; OCC Brief at 3, 53, 55, 57; NOPEC Brief at 22.

[261] OMAEG Brief at 102; OCC Brief at 3.

[262] OCC Brief at 3.

[263] *Id. See also* NOAC Brief at 10.

[264] OMAEG Brief at 111; NOPEC Brief at 22.

[265] OMAEG Brief at 111.

set forth herein and in its initial brief, OMAEG respectfully requests that the Commission: (1) find that FirstEnergy failed to sustain its burden of proof in this proceeding with respect to all three audits; (2) find that the audits conducted regarding HB 6 issues were deficient, incomplete, and not in compliance with the Commission's orders or the RFPs; (3) find that FirstEnergy was not in compliance with Ohio's corporate separation laws and rules during the audit periods; (4) find that Rider DMR funds were not used for the specific purposes set forth in ESP IV and therefore should be refunded to customers in full; (5) find that HB 6 costs were improperly passed on to customers through Rider DCR, Rider DSE2, and other mechanisms and should therefore be refunded to customer in full; (6) adopt all of the recommendations contained in the audit reports filed in this proceeding; (7) adopt all of the recommendations contained in OMAEG witness Seryak's testimony; (8) adopt all of the recommendations contained in OCC witness Brown's testimony; (9) adopt all of the recommendations contained in the Intervenors' briefs; (10) order that FirstEnergy provide refunds to customers as set forth herein; (11) impose the maximum amount of forfeitures authorized by law for each and every corporate separation and Ohio law violation by FirstEnergy; and (12) initiate supplemental corporate separation and other audits to determine the full extent of the Ohio law and Commission rule violations that took place in relation to the HB 6 conspiracy, bribes, undisclosed side deals, and other unlawful behavior.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on August 4, 2025 upon the parties listed below.

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