

181 FERC ¶ 61,277
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

FirstEnergy Corp.

Docket No. IN23-2-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued December 30, 2022)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and FirstEnergy Corp. (FirstEnergy) (collectively, the Parties). This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2022), into whether FirstEnergy violated the Commission's Duty of Candor rule, 18 C.F.R. § 35.41(b) (2022), and the audit provisions of the Public Utility Holding Company Act of 2005 (PUHCA 2005), Section 301 of the Federal Power Act (FPA), and related provisions of the Commission's regulations at 18 C.F.R. § 366.2 (2022) by omitting material information responsive to data requests issued by Enforcement's Division of Audits and Accounting (DAA) during the course of its audit of FirstEnergy and its affiliates and subsidiaries in Docket No. FA19-1-000.

2. FirstEnergy stipulates to the facts set forth in the Agreement, and admits the violations set forth in Section III of the Agreement. It agrees to pay a civil penalty of \$3,860,000 to the United States Treasury, and further agrees to be subject to compliance monitoring for a two-year period.

I. Facts

3. FirstEnergy is a publicly held electric utility holding company headquartered in Akron, Ohio. The FirstEnergy holding company consists of ten public utilities, each of which has been granted market-based rate authority by the Commission, as well as five transmission only companies. Additionally, the FirstEnergy holding company has numerous other non-utility affiliates.

4. On February 6, 2019, the Commission, via its DAA, commenced an audit of FirstEnergy and its affiliates and subsidiaries, including its ten public utilities.¹ The audit covered the period from January 1, 2015 to September 30, 2021, and analyzed whether FirstEnergy and the companies within its holding company system complied with the Commission's: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R. § 35; (2) service companies' accounting, recordkeeping, and FERC Form No. 60 reporting requirements under 18 C.F.R. §§ 366, 367, and 369 (2022); (3) accounting and reporting requirements for franchised public utilities for their transactions with associated companies under 18 C.F.R. §§ 101 and 141 (2022); and (4) preservation of records requirements for holding companies and service companies under 18 C.F.R. § 368 (2022).²

5. As part of the audit, the DAA requested information related to FirstEnergy's lobbying and governmental affairs expenses and accounting through data requests and as part of its site visits. Throughout 2019 and early 2020, FirstEnergy claimed to respond fully to those data requests with complete and accurate responses.

6. In late July 2020 it became known that FirstEnergy was potentially involved in a criminal matter involving allegations of a racketeering conspiracy related to the passage of Ohio House Bill 6, a bill that, upon its passage into law, provided a billion-dollar subsidy for FirstEnergy's two Ohio nuclear plants. On July 22, 2021, FirstEnergy entered into a Deferred Prosecution Agreement (DPA) in *U.S. v. FirstEnergy Corp.*, No. 1:21-cr-86, filed in the U.S. District Court for the Southern District of Ohio. In the DPA, FirstEnergy admitted that, among other things, it paid more than \$59 million (\$16,904,330.86 attributed to FirstEnergy and \$43,092,505.00 attributed to FirstEnergy Solutions) to Generation Now, a purported 501(c)(4) organization operating for the benefit of the then-Speaker of the Ohio House of Representatives, and over \$22 million to companies owned by an individual who became the Chairman of the Public Utilities Commission of Ohio (Ohio PUC), including a payment of \$4,333,333.00 on or about January 2, 2019.

7. Although information related to these payments or those payments otherwise associated with Ohio House Bill 6 was responsive to the DAA's audit data requests, such information was not provided as part of FirstEnergy's initial data request responses in the Commission's audit. FirstEnergy has subsequently provided the requested information to the DAA.

8. FirstEnergy cooperated with Enforcement during the investigation.

¹ Letter to R. Mattuiz from L. Parkinson, *FirstEnergy Corp.*, Docket No. FA19-1-000 (Feb. 6, 2019).

² *Id.*

II. Violations

9. Section 35.41(b) of the Commission's regulations requires all Sellers to "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission . . . unless Seller exercises due diligence to prevent such occurrences."

10. Section 1264 of PUHCA 2005 requires that "[e]ach holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates." 42 U.S.C. § 16452(a).

11. Section 301 of the FPA provides that "[t]he Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, . . . any information with respect thereto which the Commission may by order require, . . . and to grant to all agents of the Commission free access to its property and its accounts, records, and memorandum when requested so to do."

12. Enforcement concluded that FirstEnergy violated the Commission's Duty of Candor rule, 18 C.F.R. § 35.41(b), because FirstEnergy and its affiliates and subsidiaries omitted material information that was responsive to a series of the DAA's data requests and failed to exercise due diligence to ensure the accuracy and completeness of its responses.

13. Enforcement further concluded that FirstEnergy and its affiliates and subsidiaries failed to comply with Section 1264 of PUHCA 2005 and Section 301 of the FPA (and associated regulations at 18 C.F.R. § 366.2) by not providing the Commission with open access to their accounts and records.

III. Stipulation and Consent Agreement

11. The Parties have resolved the investigation by means of the attached Agreement.

12. FirstEnergy stipulates to the facts recited in Section II of the Agreement, and admits the violations set forth in Section III of the Agreement.

13. FirstEnergy agrees to pay a civil penalty of \$3,860,000 to the United States Treasury.

14. FirstEnergy agrees to submit two annual compliance monitoring reports, in accordance with the terms of the Agreement.

IV. Determination of Appropriate Sanctions and Remedies

15. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,³ including the fact that FirstEnergy cooperated with Enforcement during the investigation.

16. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

17. The Commission also concludes that FirstEnergy's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.⁴

18. The Commission directs FirstEnergy to make the civil penalty payment as required by the Agreement within ten business days of the Effective Date of the Agreement.

19. The Commission directs FirstEnergy to comply with the provisions in the Agreement also requiring it to submit annual compliance reports for two years.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

⁴ *Id.*

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

FirstEnergy Corp.

Docket No. IN23-2-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and FirstEnergy Corp. (FirstEnergy) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, preliminary investigation conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2022), concerning, among other issues, FirstEnergy's omission of material information in response to certain data requests from the Commission's Division of Audits and Accounting (DAA) as part of its recent audit of FirstEnergy and its affiliates and subsidiaries in Docket No. FA19-1-000 (the Audit) (the Investigation).

2. FirstEnergy stipulates to the facts in Section II, and admits that violations of the Commission's Duty of Candor rule, 18 C.F.R. § 35.41(b) (2022), and the audit provisions of the Public Utility Holding Company Act of 2005 (PUHCA 2005), Section 301 of the Federal Power Act (FPA), and related provisions of the Commission's regulations at 18 C.F.R. § 366.2 occurred, as described in Section III. As described below, FirstEnergy agrees to (1) pay a civil penalty of \$3,860,000 to the United States Treasury, and (2) be subject to compliance monitoring as provided more fully below.

II. STIPULATED FACTS

3. FirstEnergy is a publicly held electric utility holding company headquartered in Akron, Ohio. The FirstEnergy holding company consists of ten public utilities, each of which has been granted market-based rate authority by the Commission, as well as five transmission only companies. Additionally, the FirstEnergy holding company has numerous other non-utility affiliates.

4. On February 6, 2019, DAA commenced an audit into FirstEnergy and its affiliates and subsidiaries, including its ten public utilities, in Docket No. FA19-1-000. The Audit covered the period from January 1, 2015 to September 30, 2021 (the Audit Period). The Audit analyzed whether FirstEnergy and the companies within its holding company system complied with the Commission's: (1) cross-subsidization restrictions on affiliate transactions under 18 C.F.R. § 35; (2) service companies' accounting, recordkeeping, and FERC Form No. 60 reporting requirements under 18 C.F.R. §§ 366, 367, and 369; (3) accounting and reporting requirements for franchised public utilities for their transactions with associated companies under 18 C.F.R. §§ 101 and 141; and (4) preservation of records requirements for holding companies and service companies

under 18 C.F.R. § 368.

5. Over the course of several sets of data requests and three site visits, DAA requested various information related to FirstEnergy’s lobbying and governmental affairs expenses and accounting. FirstEnergy responded to those requests in both written and oral form throughout 2019 and early 2020, and submitted an affidavit from a senior FirstEnergy executive, which stated that FirstEnergy’s responses to the data requests were “to the best of [his] knowledge and belief . . . complete and accurate.” In March 2020, the DAA audit team previewed its preliminary audit findings for FirstEnergy.

6. On July 21, 2020, prior to the completion of the audit report but after DAA had previewed its preliminary audit findings, the U.S. District Court for the Southern District of Ohio unsealed a criminal complaint charging the then-Speaker of the Ohio House of Representatives and others with a racketeering conspiracy relating to the passage of Ohio House Bill 6. The criminal complaint also charged 501(c)(4) corporation Generation Now. The affidavit supporting the criminal complaint alleged that, between March 2017 and March 2020, the Speaker of the Ohio House of Representatives and his associates received approximately \$60 million in payments from “Company A”—almost all of which was funneled through Generation Now—in exchange for their assistance in passing House Bill 6, which, upon its passage into law, would provide a billion-dollar subsidy for Company A’s two nuclear plants.

7. On July 22, 2021, FirstEnergy entered into a Deferred Prosecution Agreement (DPA) in *U.S. v. FirstEnergy Corp.*, No. 1:21-cr-86, filed in the U.S. District Court for the Southern District of Ohio. In the DPA, FirstEnergy admitted that:

- a. FirstEnergy, through the acts of its officers, employees, and agents, conspired with public officials and other individuals and entities to pay millions of dollars to and for the benefit of public officials in exchange for specific official action for FirstEnergy’s benefit;
- b. Between 2017 and March 2020, FirstEnergy Service Company paid more than \$59 million (\$16,904,330.86 attributed to FirstEnergy and \$43,092,505 attributed to FirstEnergy Solutions) to Generation Now, a 501(c)(4) organization, which FirstEnergy knew was operated for the benefit of and controlled by the then-Speaker of the Ohio House of Representatives;
- c. FirstEnergy paid millions of dollars to the then-Speaker of the Ohio House of Representatives through his 501(c)(4), Generation Now, in return for his pursuit of nuclear legislation for FirstEnergy’s benefit in his capacity as a public official;
- d. FirstEnergy and its affiliates and subsidiaries supported the then-Speaker of the Ohio House of Representatives through payments to Generation Now with the intent and for the purpose that, in return, he would take specific official action relating to the passage of House Bill 6 and the defeat of the ballot referendum initiative to overturn House Bill 6;

- e. Between 2010 and January 2, 2019, FirstEnergy paid over \$22 million to companies owned by an individual who became the Chairman of the Public Utilities Commission of Ohio (Ohio PUC), including a payment of \$4,333,333.00 on or about January 2, 2019; and
- f. That individual, after his appointment as Chairman of the Ohio PUC, performed official actions, including acts related to House Bill 6, furthering FirstEnergy's specific legislative and regulatory interests at the direction of and in coordination with certain FirstEnergy executives.

8. While FirstEnergy provided DAA with certain information related to its lobbying and governmental affairs expenses and accounting during the Audit, it did not provide any information related to its efforts on Ohio House Bill 6 and associated payments or payments related to Generation Now, the Speaker of the Ohio House of Representatives, or the Chairman of the Ohio PUC.

9. FirstEnergy fully cooperated with Enforcement during the Investigation.

III. VIOLATIONS

10. Enforcement determined that FirstEnergy had violated the Commission's Duty of Candor rule, 18 C.F.R. § 35.41(b), and Section 1264 of PUHCA 2005 and Section 301 of the FPA (and associated regulations at 18 C.F.R. § 366.2).

11. Section 35.41(b) of the Commission's regulations requires all Sellers to "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission . . . unless Seller exercises due diligence to prevent such occurrences."

12. Section 1264 of PUHCA 2005 requires that "[e]ach holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates." 42 U.S.C. § 16452(a).

13. Section 301 of the FPA provides that "[t]he Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, . . . any information with respect thereto which the Commission may by order require, . . . and to grant to all agents of the Commission free access to its property and its accounts, records, and memorandum when requested so to do."

14. Information pertaining to FirstEnergy's efforts relating to House Bill 6, including payments to Generation Now and the individual who became the Chairman of the Ohio PUC or his companies, and any corresponding agreements, was responsive to certain DAA data requests and should have been included in FirstEnergy's responses to those data requests. This is evidenced by the fact that, between November 2020 and November 2021, FirstEnergy supplemented its responses to 12 distinct data requests and included

information related to more than \$90 million of lobbying and other payments (\$70.9 million related to 501(c)(4) entities and/or the then-Speaker of the Ohio House of Representatives, \$44.4 million of which was allocated to FirstEnergy Solutions, and \$22.8 million related to the then-Chairman of the Ohio PUC) that were not previously disclosed to DAA.

15. Enforcement concludes that FirstEnergy and its affiliates and subsidiaries omitted material information that was responsive to a series of DAA data requests and failed to exercise due diligence to ensure the accuracy and completeness of its responses, and therefore violated Section 35.41(b). Enforcement further concludes that FirstEnergy and its affiliates and subsidiaries failed to comply with Section 1264 of PUHCA 2005 and Section 301 of the FPA (and associated regulations at 18 C.F.R. § 366.2) by not providing the Commission with open access to its accounts and records.

IV. REMEDIES AND SANCTIONS

16. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to FirstEnergy's conduct evaluated in the Investigation, FirstEnergy agrees with the facts as stipulated in Section II of this Agreement, and admits the violations described in Section III of this Agreement. FirstEnergy further agrees to undertake obligations set forth in the following paragraphs.

A. Civil Penalty

17. FirstEnergy shall pay a civil penalty of \$3,860,000 to the United States Treasury, by wire transfer, within ten days of the Effective Date of this Agreement, as defined herein.

B. Compliance

18. FirstEnergy shall make annual compliance monitoring reports to Enforcement for two years following the Effective Date of this Agreement with respect to its improvements to its compliance programs. The first annual compliance monitoring report shall be submitted one year after the Effective Date of the Agreement. The second annual compliance monitoring report shall be submitted one year from the date of the first report. These annual compliance monitoring reports are not related to any compliance reports that may be required by DAA as part of, or otherwise arising from, the Audit's compliance and implementation period. Each compliance monitoring report shall: (1) identify any known violations of Commission regulations that occurred during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures FirstEnergy instituted or modified during the reporting period related to compliance with Commission regulations; and (3) describe all Commission-related compliance training that FirstEnergy administered during the reporting period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

19. Each compliance monitoring report shall also include an affidavit executed by an officer of FirstEnergy stating that it is true and accurate to the best of his/her knowledge.

20. Upon request by Enforcement, FirstEnergy shall provide to Enforcement documentation supporting the contents of its reports.

V. TERMS

21. The “Effective Date” of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein related to the Investigation that arose on or before the Effective Date as to FirstEnergy and any affiliated entity or person, and their respective agents, officers, directors, or employees, both past and present.

22. Commission approval of this Agreement without material modification shall release FirstEnergy and forever bar the Commission from holding FirstEnergy, any affiliated entity, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement’s Effective Date, but not including any claims which may arise from lack of compliance with the Final Letter Order dated February 4, 2022 in Docket No. FA19-1-000 or other post-Audit compliance concerns not related to FirstEnergy’s omissions during the Audit.

23. Failure by FirstEnergy to make the civil penalty payment or to comply with the compliance obligations agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. § 792, *et seq.*, and may subject FirstEnergy to additional action under the enforcement provisions of the FPA.

24. If FirstEnergy does not make the required civil penalty payment described above within the time agreed by the parties, interest shall begin to accrue at the rates specified at 18 C.F.R. § 35.19a(a)(2)(iii) from the date the payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose.

25. This Agreement binds FirstEnergy and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on FirstEnergy, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

26. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or FirstEnergy has been made to induce the signatories or any other party to enter into the Agreement.

27. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor FirstEnergy shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and FirstEnergy.

28. In connection with the civil penalty provided for herein, FirstEnergy agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). FirstEnergy waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

29. This Agreement can be modified only if in writing and signed by Enforcement and FirstEnergy, and any modifications will not be effective unless approved by the Commission.

30. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

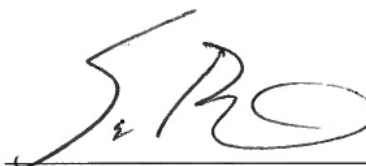
31. The undersigned representative of FirstEnergy affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

32. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:



Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission



FirstEnergy Corp.
BY: Samuel L. Belcher
Senior Vice President, Operations,
FirstEnergy Corp.

Date: December 15, 2022

Date: December 14, 2022