

Transmitted by fax and mail

December 10, 2004

The Honorable Thomas Moyer  
Chief Justice of the Ohio Supreme Court  
65 S. Front St.  
Columbus, OH 43215

Dear Chief Justice Moyer,

On behalf of Ohio Citizen Action's 100,000 dues-paying members, I call on you to recuse yourself from the FirstEnergy case filed on October 1 by Ohio Consumers' Counsel Janine Migden-Ostrander. That suit appeals the June 9 order of the Public Utilities Commission of Ohio approving FirstEnergy's rate plan. According to the suit, the plan should be scrapped as a violation of Ohio's 1999 Ohio's electric choice law.

Your recusal is necessary due to the large amount of money you received for your campaign from FirstEnergy during the recent election. FirstEnergy had given you \$20,550 as of October 13, 2004 ([Campaign contributions to candidates for Chief Justice and Justice of the Ohio Supreme Court, from November 2, 2003 - October 13, 2004](#), by Catherine Turcer and Brandi Whetstone, Ohio Citizen Action. We will not know the final tally until post-election filings are in.

As of that date, FirstEnergy was one of the top contributors to all Supreme Court races, pouring in \$61,100.

We believe a recusal is warranted regardless of FirstEnergy's motives in giving you that campaign contribution. It is instructive, however, to review the chronology of FirstEnergy's campaign contributions to see what they had in mind.

Virtually all of FirstEnergy's campaign contributions to Supreme Court candidates came on one day, August 6: 44 contributions in one day.

Why is August 6 significant?

Here's the background. In the spring of 2004, while FirstEnergy was pushing its \$3 billion rate case before the Public Utilities Commission, new leadership arrived at the Office of Consumers' Counsel. The previous Counsel, Rob Tongren had been forced out due to the scandal over the previous FirstEnergy rate decision.

Within days of her swearing-in, new Counsel Janine Migden-Ostrander was reported to be considering taking the FirstEnergy case to the Ohio Supreme Court if the Commission approved it ("Rate debate could hit high court", Jay Miller, *Crain's Cleveland Business*, April 12, 2004.)

On June 9, the Commission approved FirstEnergy's plan. A few days later, Shari Weir, Ohio Citizen Action's Cleveland Director, again warned that plan opponents could take the case to the Supreme Court ("PUCO lets price gouging go forward," Shari Weir, column, *Crain's Cleveland Business*, June 14, 2004).

**Wednesday, August 4:** The Commission met again for final adjustments to its June 9 order. This was the occasion when the Commission could have brought its order into line with the 1999 state law, and avoided a Supreme Court showdown.

Instead, it made the June 9 order worse by permitting FirstEnergy to apply for fuel cost rate increases as early as 2006.

**Thursday, August 5:** In reviewing this Commission decision on August 5, FirstEnergy CEO Anthony Alexander must have realized that a Supreme Court case was now inevitable.

**Friday, August 6:** Within 24 hours, on August 6, FirstEnergy money was pouring into Ohio Supreme Court candidates' treasuries.

Can it be any clearer that FirstEnergy was using its money to influence the outcome of this forthcoming case?

The most recent precedent for such a recusal is the decision that, "Four Ohio Supreme Court justices, all victims or beneficiaries of corporate-bankrolled election ads, will not participate in decisions related to the Ohio Chamber of Commerce's attempt to prevent disclosure of its contributors. Chief Justice Thomas Moyer and Justices Alice Robie Resnick, Terrence O'Donnell, and Evelyn Lundberg Stratton have recused themselves from an appeal filed by the chamber's non-profit Citizens for a Strong Ohio" (*Toledo Blade*, November 9, 2004).

Those recusals were excellent decisions. The FirstEnergy case deserves no less.

Please let me know what you decide to do on this.

With thanks,

Sandy Buchanan  
Executive Director

Similar letters were sent to Justice Terrence O'Donnell and Justice-elect Judith Ann Lanzinger.