

## Ohio Supreme Court and FirstEnergy rate case

October 21, 2003

FirstEnergy, reeling from a series of major financial problems, including the near-nuclear disaster at the Davis-Besse plant, their role in the largest blackout in U.S. history in August, and their restatement of earnings, files a "rate stabilization" request at the Public Utilities Commission of Ohio, seeking to extend the "transition costs" granted by the legislature when Ohio deregulated electricity in 1999. The costs had been due to expire at the end of 2005. The request amounts to a \$3 billion rate increase for FirstEnergy's residential and business customers in Ohio.

November 5, 2003

Ohio Consumers Counsel Robert Tongren resigns after being engulfed in a scandal about his cozy relationships with utilities. Central to the controversy was his decision to shred a consultant's report, produced during the deregulation debate, showing that FirstEnergy was not entitled to the billions of dollars in transition costs which it ultimately obtained.

April 2004

Within days of her swearing-in, new Consumers Counsel Janine Migden-Ostrander is reportedly 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.)

June 9, 2004

The Public Utilities Commission of Ohio issues an order approving FirstEnergy's rate plan.

June 14, 2004

Ohio Citizen Action warns that the Commission's order may be appealed to the Supreme Court. ("PUCO lets price

gouging go forward," Shari Weir, column, Crain's Cleveland Business, June 14, 2004

August 4, 2004

The Commission adjusts its June 9 order, and permits FirstEnergy to apply for fuel cost rate increases as early as 2006. This decision greatly increased the likelihood of a lawsuit challenging the decision.

August 6, 2004

FirstEnergy CEO Anthony Alexander hosts a fundraiser at his home for the specific purpose of raising contributions for certain Supreme Court candidates. At least two justices, Justice Terrence O'Donnell and Justice Maureen O'Connor, reportedly attend the fundraiser in person. The event raises at least \$40,500, which is immediately pouring into Ohio Supreme Court candidates' treasuries. (Several additional contributions may have come in at that event, but the campaign contribution filings do not make that clear).

October 1, 2004

Migden-Ostrander files suit at the Ohio Supreme Court, appealing the June 9, 2004 order. According to the suit, the plan should be scrapped as a violation of Ohio's 1999 Ohio's electric choice law.

Fall 2004

Ohio Citizen Action distributes information door-to-door throughout the state on campaign contributions to Ohio Supreme Court candidates, and key decisions which are pending. The literature cites the FirstEnergy rate case as a key issue likely to come before the Ohio Supreme Court.

November 2, 2004

Thomas Moyer and Terrence O'Donnell are re-elected to the Ohio Supreme Court, and Judith Lanziger is elected to fill an open seat. Paul Pfeiffer, who had run unopposed, is also re-elected.

November 8, 2004

Chief Justice Thomas Moyer and Justices Alice Robie Resnick, Terrence O'Donnell, and Evelyn Lundberg Stratton recuse themselves from an appeal filed by the Ohio Chamber of Commerce's non-profit Citizens for a Strong Ohio. "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. " (Toledo Blade, November 9, 2004).

December 10, 2004

Ohio Citizen Action writes to Chief Justice Thomas Moyer, Justice Terrence O'Donnell, and Justice-elect Judith Lanziger asking them to recuse themselves from the FirstEnergy case, based on their campaign contributions from the company's PACs and employees.

May 18, 2005

Chief Justice Moyer, and Justices O'Donnell, Lanziger, Stratton, and O'Connor all recuse themselves from three public records lawsuits in the rare-coin scandal involving Thomas Noe. "All had received big contributions from Thomas Noe, the central figure in the scandal, or his wife, Bernadette Noe: Thomas Moyer (\$5,250), Terrence O'Donnell (\$5,250), Judith Lanzinger (\$5,000), Evelyn Stratton (\$4,510), and Maureen O'Connor (\$3,500), *Toledo Blade*, May 19, 2005).

In announcing his decision to recuse himself in this case, Chief Justice Moyer said, "It is not necessary for a judge to recuse himself just because an attorney or party has contributed to his campaign. However, this is a high-profile case with political implications and with potential personal consequences for the campaign contributor in question."

September 12, 2005

Ohio Citizen Action writes to Chief Justice Moyer and Justices Stratton, O'Donnell, Lanziger, and O'Connor, asking them to recuse themselves from the FirstEnergy case, which is slated for oral arguments on September 28.

According to the Ohio Citizen Action analysis, the following are the total contributions to Ohio Supreme Court Justices from FirstEnergy and FirstEnergy subsidiaries, including PACs and employees, from 1995 - 2005:

Justice Evelyn Stratton	\$38,952.15
Justice Terrence O'Donnell	\$30,000.00
Chief Justice Thomas Moyer	\$23,680.00
Justice Judith Lanzinger	\$20,550.00
Justice Maureen O'Connor	\$11,600.00
Total	\$124,782.15

The contributions aggregated above were not spread out evenly throughout the decade. For example, 86% of FirstEnergy's contributions to Chief Justice Moyer took place during the 2004 campaign.

Virtually all of FirstEnergy's campaign contributions to 2004 Supreme Court candidates came on one day, August 6, 2004. There were 44 contributions in one day, as a result of the fundraiser at Anthony Alexander's home.

Questions to be asked about this fundraiser include:

- When did the invitations to this fundraiser go out?
- Who issued the invitations?
- What was Anthony Alexander's pitch to the attendees about why campaign contributions to the Supreme Court candidates were needed?
- How many of the Supreme Court candidates

attended the fundraiser in person? Which ones?

- What was the complete list of attendees? For example, contributors who work for the Boich Companies (which represent coal-mining interests) and Consol Energy wrote checks to the Ohio Supreme Court on that date, but it is impossible to tell from the filings whether they attended the event at Alexander's home.
- Did Chief Justice Moyer receive checks that were collected as part of the fundraiser? His campaign finance reports indicate that he received checks from FirstEnergy with the August 6 date, but do not note whether they were received from a fundraiser.