



OFFICE OF THE INSPECTOR GENERAL
REPORT OF INVESTIGATION

FILE ID NUMBER: 2003258

AGENCY: Ohio Consumers' Counsel

BASIS FOR INVESTIGATION: Complaint

ALLEGATIONS: Mismanagement and Misconduct

DATE RECEIVED: October 17, 2003

INVESTIGATED BY: Thomas P. Charles, Inspector General
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EXECUTIVE SUMMARY - FILE ID NO. 2003258

On October 17, 2003, the Office of the Inspector General initiated an investigation into alleged acts of mismanagement and misconduct by former Ohio Consumers' Counsel Robert S. Tongren. Specifically, this office reviewed three allegations. The first allegation involved questions regarding Tongren's involvement in settlement negotiations over electric deregulation in Ohio. The second allegation involved Tongren's ordering the destruction of a document from an energy consulting firm related to that negotiation. Finally, we reviewed allegations related to Tongren's association with utility interests.

Our investigation revealed that some believed Tongren's efforts in negotiations regarding deregulation - while not totally ineffective - were unsuccessful in the effort to minimize the amount of "stranded costs"* recoverable by electric utility companies. This finding speaks to his general effectiveness but does not rise to the level of a wrongful act. However, we believe that events surrounding one of the methods employed unsuccessfully in that effort do represent a wrongful act - specifically, the commission, concealment, and destruction involving a \$579,000.00 report from LaCapra and Associates that understated the value of stranded costs. Finally, we found that Tongren accepted meals and gifts from utility companies and failed to disclose these as required by law. Based upon that alone, we believe a wrongful act occurred in both accepting and then failing to report these gratuities. The issue was further exacerbated by his frequent attendance at political events, which invites the appearance of impropriety.

This report includes recommendations to the agency and referrals to the Joint Legislative Ethics Committee, the Ohio Ethics Commission, and the Ohio General Assembly.

*The term "stranded costs" represents the difference between the market value of power plants in a competitive market and what it cost to build the plant. Prior to restructuring, utilities recovered these costs in their rates over decades, but SB3 changed the recovery to the five-year market development period.

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I. BASIS FOR INVESTIGATION

On October 17, 2003, the Office of the Inspector General received a letter from State Senator Robert F. Hagan requesting that we investigate the Ohio Office of Consumers' Counsel (OCC) regarding the destruction of a consultant's report and the failure to release the findings of the report. Upon receipt of that letter, this office initiated an investigation. A subsequent letter from Senator Hagan and Senator Teresa Fedor was received on October 31, 2003. It cited additional issues related to the management and operation of the agency.

II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION

We subpoenaed records, reviewed policies and procedures, attended meetings and hearings, and conducted interviews, in the course of this investigation. Those interviewed included, but were not limited to, Ohio Public Utilities Commission Chairman Alan Schriber, former Ohio Consumers' Counsel Robert Tongren, Deputy Consumers' Counsel Eric Stephens, former Senator Bruce Johnson, former Representative Priscilla Mead,¹ FirstEnergy CEO Anthony Alexander, Attorney Sam Randazzo of the Industrial Energy Users-Ohio, Shari Weir of Ohio Citizen Action, Eastlake Mayor Dan DiLiberto (who also serves as the president of the Northeast Ohio Public Energy Council), Attorney C. Luther Heckman (who served as the counsel for the Ohio Council of Retail Merchants), and staff and employees of the Ohio Legislative Services Commission, Ohio Public Utilities Commission, and the OCC. We also interviewed several experts under a grant of confidentiality.

Due to the many technical and complex issues associated with this investigation, we retained the services of an economist. Dr. Kenneth Rose provided us expert advice and information related to the subject of deregulation. Dr. Rose was a Senior Institute Economist with the National Regulatory Research Institute at The Ohio State University, and consulted with the

¹Former Senator Bruce Johnson and former State Representative Priscilla Mead were co-chairs of the Ohio Joint Committee on Electric Utility Deregulation. Their efforts contributed to the passage of SB3.

Ohio Legislative Service Commission and state legislators during the development of Ohio's restructuring law, Senate Bill 3.

An initial challenge to investigators in this case involved locating the so-called LaCapra Report. Robert Tongren commissioned the report at a cost of \$579,000.00 from LaCapra and Associates of Boston (hereafter LaCapra). LaCapra is an energy consultant. This "report" – consisting largely of work product in the form of memoranda, draft testimony, analysis, and advice – existed only in "draft" format. Despite many documented requests for this report, it was ultimately destroyed in purported compliance with OCC's records retention schedule. Initially, our requests for copies of this report proved problematic, as no one seemed to possess a copy of the report. However, we subpoenaed the report from LaCapra and requested the OCC provide any materials they could retrieve from their own records. LaCapra forwarded a copy of the report to the OCC. Ultimately, we were able to obtain materials from both LaCapra and the OCC.²

III. DISCUSSION

Electric restructuring, or deregulation, was debated in the Ohio Legislature from 1994 to the passage of Senate Bill 3 (SB3) in June 1999. (Exhibit A) One issue that arose in the debate was the recovery of stranded costs by electric utilities. Stranded costs are those costs primarily related to investments in generation plants or long-term power sales contracts made in a regulated environment that are believed to be unrecoverable in a competitive market. Critics of allowing recovery for stranded costs complained that utilities should not be able to collect the costs of their prior investments, while utility representatives contend that stranded costs were already in their approved rates, and that failure to be reimbursed for their past investments would be an unconstitutional taking of property.

²Upon "finding" this report, we were told that it could not be released until all signatories signed waivers of a confidentiality agreement regarding the report and work product. We later learned that another agreement between the Ohio Consumers' Counsel and the Coalition for Choice in Electricity, referred to as a "joint defense agreement," had been entered into in which the parties agreed to not disclose information from their discussions. It does not seem to us that such an agreement is good public policy subsequent to the conclusion of negotiations - if at all.

SB3 allowed for the collection of stranded costs during the market development period (2001 to 2005) and directed the Public Utilities Commission of Ohio to determine the proper dollar amount for each of the utilities. The utility companies were directed by the PUCO to submit transition plans for the market development period. Nuclear plant investments are the largest single category of stranded costs, and FirstEnergy has three nuclear facilities that generated electricity for Northern Ohio. Therefore, it is not surprising that FirstEnergy was interested and involved in negotiation of the stipulation.

The staff of PUCO and members of OCC, industry, commercial, retail, and citizen groups met during late 1999 and early 2000 to negotiate the plan commonly referred to as the “stipulation.” FirstEnergy’s stipulation allowed the utility to collect the transition costs that it requested, and the OCC and other parties were able to obtain concessions and/or benefits for users in this stipulation. LaCapra estimated FirstEnergy’s stranded costs to be much lower than the figure afforded the utility company in their stipulation.

From 2000 to 2003, there were several public records requests for the LaCapra work product, but the OCC did not release any of these records. In February 2003, the OCC adopted a new records retention policy that called for the destruction of case records one year after completion of a rate case, and the LaCapra work product was destroyed in August 2003.

OCC Management and Operation

In considering issues raised by complainants and the media, we investigated three main areas of concern. These involve questions of Tongren’s effectiveness in representing consumer interests in deregulation negotiations; Tongren’s concealment and destruction of the LaCapra Report used in the above negotiation; and Tongren’s association with utility interests.

A. Tongren's Effectiveness in Deregulation Negotiations

The plan suggested by FirstEnergy on behalf of affiliates Ohio Edison, Toledo Edison, and Cleveland Electric Illuminating was submitted to the PUCO on April 17, 2000, after months of negotiation between representatives of the Ohio Consumers' Counsel, the PUCO, retail merchants and their association, energy marketers, industrial companies and their association, the state hospital association, advocates for housing and community organizations, and FirstEnergy.

SB3 entitled electric utilities to recover stranded costs during a market development period, but provided an ending date for the recovery of such costs. It is not within our purview to opine as to the merits of this plan in general. However, we would note that it is not unreasonable to expect that some consideration be afforded utility companies moving from a regulated environment in which there was no competition to an unregulated one in which competition results in the potential loss of corporate investments, as other states have done. We also note that the discussion as to what amount is appropriate to recover as stranded costs is somewhat less relevant due to the fact that anticipated entry into the unregulated environment by new companies has not materialized. Because the overall rate is fixed during the market development period, the calculation only becomes relevant in terms of bringing competition to the market.³

We found that stranded cost estimates varied widely depending on the methodology used and assumptions made. Our investigation found that most

³Investor-owned electric utilities benefit from the collection of high stranded costs because they are able to write off past debt in a short period of time. A savings for FirstEnergy customers *may* have been realized had a lower stranded cost figure been negotiated. However, it would have only been so for customers who selected an alternative provider or "shopping customers." If FirstEnergy had to post a lower generation transition charge (stranded costs), they would have had to post a higher generation charge that *may* have promoted more competition. It is important to note that "non-shopping customers" would not save, regardless of the amount of stranded costs, because the overall electric rate was frozen during the market development period.

believe LaCapra was instructed to use assumptions in estimating FirstEnergy's stranded costs that would contribute to lower estimates that would serve as a tool in the negotiation process.

While electric utility restructuring has had limited success in Ohio and nationally to date, over 200 Ohio communities participate in electric aggregation,⁴ affecting approximately 700,000 residential customers. Ohio leads the nation in electric aggregation participation according to the PUCO. And, it is important to note that FirstEnergy customers are paying rates lower than they were paying a decade ago. Stranded costs, or generation transition charges, account for about 30% of a consumer's electric bill – but the overall cost per kilowatt is lower than it was a decade ago. During the transition period, had FirstEnergy's stranded cost recovery amount been less than what they were afforded, there would have been no savings for a “non-shopping” consumer as the overall electric rates were frozen at October 1999 rates in SB3. For shopping customers, there may have been minimal savings had FirstEnergy posted a higher generation cost in their unbundled rate, resulting in a higher “price to beat.”

Tongren was one of approximately 20 interested parties involved in the settlement negotiations over the issue of deregulation. Initially, he opposed the recovery of stranded costs by the electric utilities. However, that issue quickly turned from whether such costs were appropriate to how much was enough. In hindsight, one can question the wisdom of any signatory, including Tongren, in signing an agreement based upon FirstEnergy's estimates. But, further negotiations or litigation - while they may have reduced FirstEnergy's ultimate amount of recoverable stranded costs - would have almost certainly held up the implementation of restructuring in Ohio for years. It would have also postponed any cost savings by consumers during that period.

⁴Aggregation is a means in which consumers join to negotiate the purchase of electricity as a group.

In examining the stipulation, one can point to concessions benefiting residential utility consumers. Among these, Tongren cites the following as items he was successful in obtaining:

- a freeze on distribution rates through 2007
- a continuation of reductions provided for in earlier rate cases
- a 5% reduction in the generation rate, generation transition charge, and the regulatory transition charge
- a low cost set-aside generation for marketers to promote competition
- a shopping incentive for residential consumers that is 45% higher than FirstEnergy's generation cost, designed to promote shopping or switching to an alternative marketer
- a provision triggering the loss of the recovery of \$500 million if less than 20% of FirstEnergy's customers "switch"
- a provision for \$5 million per year in low-income efficiency grants

The language in the stipulation itself best explains the attitude of the signatories to the terms of the agreement:

This agreement is the product of the discussions and negotiations of the Signatory Parties, and is not intended to reflect the views or proposals which any individual party may have advanced acting unilaterally. This Stipulation and Recommendation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable. The combination of the offer to marketers, brokers and aggregators of capacity and a substantial shopping credit for customers encourages the timely initiation and smooth and rapid development of an effective, functioning competitive electric generation market in Ohio, which is critical to the overall compromise.

Still, viewed as a whole, it has been suggested that the stipulation was not an equitable settlement in terms of the best interests of residential consumers. Most of the reason for this appears due to the resolution of the stranded costs

issue. There may be basis for belief in that view. However, while that may suggest that Tongren was ineffective in this process, we do not believe that gives rise to a wrongful act or omission on his part.

Accordingly, we do not find reasonable cause to believe a wrongful act or omission occurred in this instance.

B. Tongren's Destruction of the LaCapra Report

In an interview with investigators, Tongren said that the purpose of retaining the LaCapra firm was to establish a figure to be used in negotiations with FirstEnergy representatives. However, we noted that it was never distributed to signators during or after discussions. Nonetheless, the stranded cost estimates derived from LaCapra were discussed with several participants from FirstEnergy, who rejected the figure. Our investigation revealed that this figure was based upon assumptions designed to result in a low figure intended to serve as a starting point for negotiation. This, coupled with the cost of the report and the disparity in stranded cost estimates prepared by FirstEnergy, made the substance of the report of interest to citizen groups and many in the media.

The first public records request for the LaCapra Report was made on April 27, 2000, by the *Cleveland Plain Dealer*. (Exhibit B) The OCC responded that there were no public records available which were responsive to their request. The *Plain Dealer* subsequently requested a copy of this report in August 2000, August 2001, and August 2003. At that time, they were told that it was "attorney work product prepared in anticipation of litigation." As such, it was deemed exempted from public records. Similar public records requests were also received from *Gongwer*, *The Toledo Blade*, Eastlake Mayor Dan DiLiberto of the Northeast Ohio Public Energy Counsel

(NOPEC), WBNS 10TV, *The Dayton Daily News*, and public interest groups, and responded to similarly.

In February 2003, despite awareness of the public interest, the OCC adopted a new records retention policy requiring only one-year retention of case litigation files and records following the conclusion of litigation. Because settlement in this matter occurred in June 2002, the new retention schedule permitted destruction of the report and its underlying documentation in June 2003. As a result, all records associated with the FirstEnergy cases, including the LaCapra work product, were destroyed along with about 60 other files from unrelated cases on August 8, 2003.

It would be impossible to say with certainty that the change in the OCC's retention schedule was solely intended to effectively conceal a potentially embarrassing and clearly unsuccessful gambit on the part of Tongren to reach agreement on the issue of stranded costs. However, the circumstances surrounding the change in retention period, the re-classification of materials as attorney work product, and the high level of public interest, as represented by the numerous public records requests, makes all decisions associated with this issue suspect.

However, it is at least as important to note that neither the change to this classification nor the change to the retention schedule necessitated the destruction of this document. An agency retention schedule is intended as a guideline for purposes of disposing of unneeded records. It does not have to serve as a mandate overriding the entire basis for maintaining public records, which is to provide transparency in the process of government, and thereby, assurance to citizens that elected and appointed representatives are serving their interests. In this case, it is clear that even if the retention schedule had not been changed to facilitate destruction of the LaCapra Report, and even if these materials were properly considered attorney work product, these

decisions did not add to a transparent process. They did not serve to assure citizens of the integrity of the negotiation process. Moreover, in our view, they were either an orchestrated attempt to conceal records or a gross error in judgment on the part of Tongren and others in senior management within OCC.

Once the “draft” document was of no further utility, the LaCapra Report was deemed to be work product created in anticipation of litigation and later deemed as protected material pursuant to attorney-client privilege, effectively keeping it out of the public domain. Tongren and senior management maintained arguments both plausible and legal, which continued to keep this report from public scrutiny. Finally, in the process of reviewing their records retention schedule, Tongren apparently found a means to finally rid the office of the report by including it under the new retention schedule. Despite concerns that destruction may be inadvisable, Tongren directed that the document be reclassified. Tongren later explained to a board member at a meeting of the OCC Governing Board that his reported denials of involvement in this decision were a result of his recovering from surgery.

We also found that compliance with the new retention schedule was performed at the same time senior staff members appeared to be acting to have LaCapra destroy their own records of the report and the underlying work product. We subpoenaed OCC records related to communications with LaCapra involving the destruction of the report. The OCC provided three emails in response. The first email, dated June 11, 2002, was from the OCC General Counsel to staff members stating that LaCapra had called wanting to know what to do with documents related to the case. The second email, dated July 25, 2002, was from OCC Counsel to the Deputy Consumers’ Counsel reporting that LaCapra was to follow their own internal procedures and the contract between the OCC and LaCapra. The third email, dated

September 4, 2003 (subsequent to the report's destruction), was from OCC Counsel to LaCapra and Associates and stated the following:

This will confirm our telephone conversation on September 4, 2003 regarding a public records request we received concerning all records of the consulting work conducted by LaCapra Associates in connection with FirstEnergy Corp. deregulation case settlement...It is our understanding that, to the best of your knowledge, your office does not have any responsive records because your office did a comprehensive disposal of your project files concerning the ETP cases in Ohio in the Fall of 2002, prior to the relocation of your office and after confirmation to the OCC that LaCapra Associates had previously provided to the OCC all of its records concerning the FirstEnergy...cases. Please confirm that the above is an accurate summary of our telephone conversation.

In response, La Capra and Associates wrote:

This is an accurate summary of our conversation regarding our disposition of our project files from this project.

Had this narrative been authored by LaCapra, and had this correspondence taken place prior to the OCC destroying the documents, this "proof" would have been much more believable. Moreover, we find it interesting that LaCapra was able to "find" these documents upon the issuance of a subpoena.

It seems to us that - given this communication - the ultimate "recovery" of the LaCapra Report was more than a happy accident. Given the great pains taken to document the "fact" that the original copy of this document had been destroyed, we believe the above facts demonstrate a deliberate attempt to conceal the LaCapra Report from public scrutiny.

This adds to questions this investigation has raised regarding the integrity of senior management in this matter. This office was able to gain the eventual cooperation of the agency with the support of the governing board. However, the mere fact that the LaCapra Report was eventually recovered does not

mitigate the fact that Tongren and senior officials acted to conceal this report for reasons unrelated to compliance with the OCC records retention schedule, both before and during the start of this investigation.

Based upon our investigation, it seems obvious that the LaCapra Report was created as a tool for leverage in the negotiation of the deregulation settlement and was deliberately concealed from the public on the basis that it was a draft and there was an active PUCO case. It was then concealed under the theory that it was prepared in anticipation of litigation or was otherwise an attorney-client privileged communication. Finally, it was concealed in order to “comply” with changes to the OCC records retention schedule. However, it is equally obvious that the purpose of concealing the report was to avoid the scrutiny of commissioning such a costly report, which proved to be of such little value at the bargaining table.

Accordingly, we find reasonable cause to believe a wrongful act or omission occurred in this instance.

C. Tongren’s Association with Utility Interests

In response to claims by some that Tongren was “too close” to utility interests and was frequently “wined and dined” by utility representatives, we issued subpoenas to a number of utility companies. We received information that on 71 occasions from 1999 to 2003 Tongren accepted meals, refreshments, or was a golf guest of Ohio utility representatives. The total reported dollar amount of this spending on Tongren was over \$2,000.00.⁵ (Exhibit C) Most of these incidents involved amounts below the threshold

⁵Tongren’s attorney was unable to provide a calendar or receipts to demonstrate that Tongren did not attend or had reimbursed third parties regarding these events. He did suggest that the real figure may actually be closer to \$1,100.00. We also found that utility companies we subpoenaed failed to keep adequate records regarding these events or Tongren’s attendance.

for reporting such gratuities on ethical disclosures to be filed with the Ohio Ethics Commission. On four days, records subpoenaed from utility interests exceeded \$100 per day. For example, Sprint produced documentation showing they spent \$114.99 on Tongren for meals-business-entertainment on November 6, 1999. Cinergy produced documentation showing they spent \$414.79 on a meal with Tongren and three others at Morton's of Columbus on March 30, 2000. AEP produced documentation showing they spent \$112.16 on Tongren for golf and meals at the Worthington Country Club on August 25, 2000.

AEP also produced documentation showing they spent a total of \$225.19 on Tongren for golf and meals at the Worthington Country Club on August 25, 2000 and June 14, 2001. On each occasion tips, lunch, cart rental, guest fees, and snacks were set forth as individual charges. Therefore, no single cost exceeded \$50. However, the total of these *individual* expenditures clearly exceeded \$100 on each of these days.

Columbia Gas produced documentation showing they spent \$175.31 on Tongren for meals. This includes \$51.00 for a ham delivered to Tongren's home.

We then reviewed Tongren's Financial Disclosure Statements filed with the Ohio Ethics Commission from 2000, 2001, and 2002 and found that he failed to report any meals or gifts from AEP, Sprint, or Cinergy. This alone is sufficient to demonstrate wrongful acts by Tongren with regard to this matter. However, in reviewing these forms, we also note that Tongren attended 80 political fundraisers from 2000 through 2002. (Exhibit D) His attendance at these events is not prohibited and is certainly not wrongful, per se. Indeed, there could be good justification for his attendance at such events to discuss issues related to public policy in which the OCC may have an interest in the outcome. However, the facts of this case, measured against any

demonstrable influence on public policy, would seem to suggest his attendance was more opportunistic than altruistic. For our purposes here, it is sufficient to say that this compounded the perception that Tongren was too close to utility interests attending such events and would itself constitute an appearance of impropriety.

Accordingly, we find reasonable cause to believe a wrongful act or omission occurred in these instances.

IV. CONCLUSION

By reputation and his own admission, Robert Tongren's approach as Consumers' Counsel was to reach consensus, rather than wage litigation, in dealing with policymakers and utility interests. Indeed, it was apparently his ability to do so which resulted in his initial appointment. Criticism regarding the results of this style is not intended to disparage either the method or the man in this report. Indeed, as we have noted, Tongren can point to several key features of the restructuring settlement that benefited consumers. Nevertheless, many believe residential consumers were not well represented at the bargaining table in the debate over stranded costs.

While an advocate's voice cannot be shrill, it cannot be silent in furthering the interests of a constituency either. It is critical that an advocate be both skilled in the art of negotiation as well as the complexities of litigation. It is equally critical that those dealing with the advocate believe he or she to be capable and competent in both areas. Certainly, Tongren's task in representing consumer utility interests in the deregulation settlement called for both of these skills.

We believe Tongren's voice on the issue of stranded costs was silenced by the ineffectiveness of his strategy regarding the LaCapra Report. The \$579,000.00 report appears to only have been commissioned for use as a bargaining chip in negotiations. His

opponents were apparently not persuaded by the threat of potential litigation. Consequently, the stranded cost figure used in the settlement was completely based upon estimates by FirstEnergy.

As a result, Tongren sought to keep the LaCapra Report from public scrutiny. Through a series of decisions obviously taken to accomplish this end, the document was concealed and destroyed despite clear public interest in it.

Our investigation revealed additional issues related to Tongren's actions as Consumers' Counsel. The acceptance of gifts and gratuities, coupled with his predilection for attending political events, demonstrates a pattern of activity beyond what one could expect as necessary to further consumer interests. In our view, this crossed the line and was self-serving. Moreover, we believe it affected his ability to serve as an effective advocate on behalf of residential utility customers. The fact that some of the gifts and gratuities were not disclosed as required clearly makes it a wrongful act.

Notwithstanding the seriousness of these findings, they pale in comparison to other issues facing policymakers in the future. During the course of the investigation, we heard from several interviewees expressing concern about developments in retail markets in Ohio over the last several years and what could occur in the near future. While a complete evaluation of SB3 and its implementation is beyond the scope of this investigation, we believe that market conditions in the Midwest wholesale market and retail markets within the state of Ohio warrant a careful reevaluation by state policymakers. It has taken much longer to develop the infrastructure needed to support a robust competitive wholesale market than was expected in 1999 when SB3 was passed. This is due in part to external factors ranging from issues involving federal electric industry policy to the inherent difficulties of moving from a regulated environment to one based upon competition.⁶

⁶Such factors include the following: 1) marketers have ceased providing service for a number of reasons; 2) the retail market has not developed due in part to the federal electric industry policy on transmission issues; 3) regulated utilities have shut down their affiliate retail operations; 4) accounting rules have changed, or improved, in the last several years; 5) the credit worthiness of utility companies has impacted the ability of utilities and others to engage in the retail market, power marketing, and merchant supply activities.

This slow development of the regional wholesale market has undoubtedly hindered the development of the retail market within Ohio. If these issues are not addressed, significant harm to Ohio ratepayers could occur - particularly to residential and small commercial and industrial customers. In evaluating their options, policymakers should consider the impact of their energy policy upon market development and the potential for such policies to protect smaller customers, at least until regional wholesale markets are more fully developed.

V. RECOMMENDATIONS

Based upon our findings, we offer the following administrative recommendations. We request the OCC provide us a written response regarding the implementation of these recommendations within 60 days of the issuance of this report of investigation.

1. The OCC should revise its records retention schedule to ensure that documents of potential public interest are maintained a reasonable amount of time in order to provide for there to be greater scrutiny over issues relating to the decisions of that office.
2. The OCC Governing Board should establish ethical guidelines for the position of Consumers' Counsel that define the extent to which the counsel may become involved with utility interests and policy makers. Such a policy must be consistent with Ohio ethics law and sound public policy.

VI. REFERRALS

A copy of this report will be forwarded to the Joint Legislative Ethics Committee and the Ohio Ethics Commission for their review and appropriate action. We are also providing a copy of this report to leadership in the Ohio General Assembly for their consideration in addressing the issues incidental to this report.

SCHEDULE OF ELECTRIC DEREGULATION EVENTS

Am. Sub. SB 3 Signed by Governor	07-06-1999
FirstEnergy Files Initial Transition Plan with PUCO	10-04-1999
Controlling Board Approves LaCapra Spending	09-27-1999
LaCapra Preliminary Work Product to OCC FirstEnergy Initial Assessment of Transition Costs	01-28-2000
FirstEnergy Stipulation filed with PUCO	04-17-2000
PUCO approved FirstEnergy Stipulation	07-19-2000
Effective Date of Deregulation	01-01-2001
FirstEnergy Cases Completed	06-05-2002
OCC Adopted New Litigation Records Retention Schedule (From two years to one year retention)	02-13-2003
One Year Appeal Window on FirstEnergy Cases Expired	06-05-2003
LaCapra Work Product Destroyed by OCC	08-08-2003
Inspector General Served Subpoena on LaCapra	10-24-2003
LaCapra Work Product Emailed to the OCC	10-24-2003
Inspector General Receives LaCapra Work Product From LaCapra	11-03-2003
Robert Tongren resigns	11-05-2003

Ohio Consumers' Counsel Chronology of Events Regarding LaCapra and Public Records Requests

#	DATE	REQUESTER	DESCRIPTION
	September 27, 1999	-----	Controlling Board approval of \$695,000 LaCapra contract (9/28/99-6/30/01)
	November 3, 1999	-----	LaCapra contract deliverables/work restructured and added state reimbursement limits on out-of-pocket expenses
	December 7, 1999	-----	LaCapra contract modified to include two new LaCapra employees
1	April 27, 2000	Julie Carr Smyth Plain Dealer	Access to and copies of all memos, e-mails, and Plain Dealer reports produced by LaCapra Associates...; all additional OCC records regarding LaCapra's in this case
2	April 27, 2000	Henry Eckart Safe Energy Comm Council, OH Citizen Action, OH Public Interest Research Group	All OCC documents that analyze any financial information included in either FirstEnergy's transition filing or the stipulation, to include all analysis or calculations performed by OCC staff and consultants in the FirstEnergy case; prepared testimony and any other work papers or other documents pertaining to FirstEnergy's claimed transition costs; have signed protective agreement with FirstEnergy and am awaiting the return of a Signed copy from FirstEnergy at this time.
3	April 27, 2000	Scott A. Miller Gongwer	A copy of the report that LaCapra Associates provided your office regarding transition costs
4	April 28, 2000	James Drew Toledo Blade	Records that analyze financial information in First Energy Corp.'s transition filing or the stipulation; analysis or calculations; any prepared testimony and working papers.
5	June 27, 2000	Henry Eckart Safe Energy Communication Counsel and Ohio Public Interest Research Group	Have made request before; OCC response dated 5/5/00 enclosed: explain Refusal with statutory provision; wanted other requests for information & Asked that OCC keep the records undated note from Eric Stephens to RST (Marked ASAP & confidential) "We have another PR request from Eckart. The AG is drafting a response for Henry. It will be faxed to us ASAP for review, comment and or approval. Pls let me know if you have any questions. TX! Eric"; copy of faxed draft letter from AAG to OCC with notes in margins included in stapled package
6	August 21, 2000	Tom Suddes and Sandra Theiss Plain Dealer	Oral request for records related to consulting work by LaCapra.
7	August 22, 2000	Julie Carr Smyth Plain Dealer	Access to and a copy of all records of the consulting work by LaCapra; including any and all "concise written reports; correspondence regarding the handling of documents produced during the contract
8	August 24, 2000	C.A. Masterson	Copy of the findings prepared for OCC on the First Energy transition case fax cover sheet to Lisa Fate (AAG) from Eric Stephens 9/1/00 8:37
9	August 14, 2001	Julie Carr Smyth Plain Dealer	Resubmitting request from a year ago for access to and a copy of all records of the work conducted by LaCapra in connection with FirstEnergy Corp. deregulation

EXHIBIT B

#	DATE	REQUESTER	DESCRIPTION
	February 13, 2003	-----	final approval of records retention schedule ADV-02
10	June 11, 2003	Dan DiLiberto NOPEC	"..engaged in discussions with FirstEnergy or any FirstEnergy representative(s) regarding a possible PUCO stipulation or settlement?"; who is engaged in discussions, what is being discussed and what is status of these discussions?
	August 8, 2003	-----	OCC's LaCapra case files and documentation destroyed
11	August 13, 2003	James Schuck NOPEC	Response to production of records on 7/3/03 and to request copies of NOPEC appointment calendars from OCC that has meetings with FirstEnergy; copies of all records dealing with FirstEnergy's market development period; same for non staff members; Mr. Tongren's financial disclosure forms for 2001 and 2002; records relating to any expense account for Mr. Tongren for the last 12 months; records relating to any travel schedule for Mr. Tongren for the last 12 months
12	August 19, 2003	Julie Carr Smyth Plain Dealer	Resubmitting request of 2000 & 2001 for access to and a copy of all records of the consulting work conducted by LaCapra, concise written reports;
	September 9, 2003	-----	final approval of records retention schedule ANL-01
13	September 9, 2003 September 10, 2003	Julie Carr Smyth Plain Dealer	Oral requests: copies of public records requests from last year and responses, records retentions schedules and public record confirming end of OCC/FirstEnergy and public records requests and responses from 2002
	October 21, 2003	-----	Robert Tongren letter to LaCapra requesting scan of computer network
14	October 29, 2003	Joe Chow 10 TV	Any reports prepared by LaCapra Associates for the Ohio Consumers Counsel's office on the amount of stranded costs for all the electric utilities...

EXHIBIT C

UTILITY COMPANY PAYMENTS FOR ROBERT TONGREN ACTIVITIES

	<u>DATE</u>	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1	February 22 1999	AEP	meal-Caracalla	\$35.58
2	March 31 1999	Sprint	meals-business-entertainment	\$14.13
3	April 21 1999	Sprint	meals-business-entertainment	\$11.50
4	April 27 1999	AEP	meals-G Michaels	\$15.40
5	July 13 1999	Sprint	meals-business-entertainment	\$7.99
6	July 13 1999	Sprint	meals-business-entertainment	\$10.82
7	August 27 1999	Sprint	meals-business-entertainment	\$57.52
8	September 7 1999	AEP	refreshments-Eaglesticks G. C.	\$7.33
9	September 14 1999	Sprint	meals-business-entertainment	\$8.82
10	September 28 1999	Sprint	meals-business-entertainment	\$13.50
11	October 8 1999	Sprint	meals-business-entertainment	\$73.86
12	November 6 1999	Sprint	meals-business-entertainment	\$114.99
13	December 1 1999	Sprint	meals-business-entertainment	\$12.30
14	December 6 1999	Cinergy	meal-Cincinnati	\$25.00
15	December 13 1999	Sprint	meals-business-entertainment	\$22.92
16	December 21 1999	AEP	refreshments-Capital Club	\$7.86
17	December 21 1999	Sprint	meals-business-entertainment	\$27.00
1	February 15 2000	Sprint	meals-business-entertainment	\$13.50
2	March 7 2000	Sprint	meals-business-entertainment	\$13.50
3	March 17 2000	Cinergy	meals-Columbus, Rigsby's	\$41.14 2
4	March 30 2000	Cinergy	meals-Columbus, Mortons	\$103.70 3
5	May 23 2000	AEP	reception-Capriannos,	\$12.47
6	August 25 2000	AEP	golf-Worthington Hills C Club	\$112.16 4
7	Fall 2000	Cinergy	golf Mason, Heritage Club	\$50.00
8	September 9 2000	Sprint	meals-business-entertainment	\$8.13
9	September 25 2000	Sprint	meals-business-entertainment	\$10.00
10	October 16 2000	AEP	meal-The Top Steakhouse	\$52.57
11	November 20 2000	Sprint	meals-business-entertainment	\$16.76
12	December 5 2000	Sprint	meals-business-entertainment	\$16.87
13	December 12 2000	AEP	other-Capital Club	\$7.54
14	December 20 2000	C. Gas	honeybaked ham	\$51.95
1	January 26 2001	Sprint	meals-business-entertainment	\$16.07
2	January 30 2001	Sprint	meals-business-entertainment	\$16.50
3	February 6 2001	Sprint	meals-business-entertainment	\$10.00
4	February 21 2001	C. Gas	meal-Morton's	\$16.76
5	April 4 2001	AEP	meal-Nationwide Arena	\$37.52
6	April 4 2001	C. Gas	Tartan Fields	\$16.84
7	April 19 2001	C. Gas	Tartan Fields	\$19.89
8	April 30 2001	AEP	meal-Michell's Steakhouse	\$21.10
9	May 1 2001	Sprint	meals-business-entertainment	\$15.00
10	June 14 2001	AEP	golf-Worthington Hills C Club	\$113.03 5
11	June 20 2001	C. Gas	Lindley's	\$14.22
12	August 13 2001	AEP	meal-Little Rhein Steakhouse	\$45.00
13	August 13 2001	AEP	meal-Mad Dogs	\$15.08
14	November 7 2001	Sprint	meals-business-entertainment	\$24.85
15	November 7 2001	Sprint	meals-business-entertainment	\$5.83
16	November 11 2001	Sprint	meals-business-entertainment	\$19.97

UTILITY COMPANY PAYMENTS FOR ROBERT TONGREN ACTIVITIES

	<u>DATE</u>	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
17	December 18 2001	AEP	meal-Lindy's American Bistro	\$27.36
1	March 12 2002	Sprint	meals-business-entertainment	\$19.50
2	March 29 2002	Cinergy	meal-Columbus	\$25.00
3	April 17 2002	Sprint	meals-business-entertainment	\$34.00
4	June 18 2002	Sprint	meals-business-entertainment	\$37.08
5	June 28 2002	Sprint	meals-business-entertainment	\$63.75
6	July 1 2002	Sprint	meals-business-entertainment	\$12.38
7	July 25 2002	AEP	meal-Heritage Eagle Bend	\$6.25
8	July 25 2002	AEP	meal-NCSL dinner	\$37.33
9	July 28 2002	Sprint	meals-business-entertainment	\$15.17
10	September 5 2002	Sprint	meals-business-entertainment	\$13.64
11	September 5 2002	Cinergy	golf-Mason, Heritage Club	\$61.91 6
12	November 11 202	Sprint	meals-business-entertainment	\$23.44
13	December 11 2002	Sprint	meal-Spagio Restaurant	\$16.30
14	December 12 2002	AEP	meal-Mitchell's Steakhouse	\$24.10
15	December 17 2002	AEP	Rigsby's Cuisine	\$34.58
16	December 26 2002	Sprint	meals-business-entertainment	\$36.39
1	February 18 2003	Sprint	meals-business-entertainment	\$9.86
2	March 3 2003	AEP	meal-Lindy's American Bistro	\$15.82
3	April 29 2003	Sprint	meals-business-entertainment	\$21.07
4	June 17 2003	C. Gas	Hyde Park Grille	\$55.65
5	June 23 2003	Sprint	meals-business-entertainment	\$14.20
6	July 16 2003	AEP	meal-Rigsby's Cuisine	\$22.68
7	November 11 2003	Sprint	meals-business-entertainment	\$9.52
	TOTAL			\$2,021.42

NOTES:

- 1) Boich Companies Robert Tongren: (no record of who attended or in what year); value <\$75 for Memorial Tournament & Christmas parties
- 2) listed as dinner for two with a total bill of \$82.27; summarized by Cinergy as <\$25, changed to \$41.14
- 3) listed as dinner for four with a total bill of \$414.79; summarized by Cinergy as ~\$80, changed to \$103.70
- 4) listed as six separate items on 8/25/00 for golf outing at Worthington Hills Country Club (tip-\$10, lunch \$15.87, cart rental-\$29.61, guest fees-\$50, snacks-\$2.51 and snacks Halfway House-\$4.17); total \$112.14
- 5) listed as six separate items on 6/14/01 for golf outing at Worthington Hills Country Club (lunch-\$9.47, cart rental-\$33.84, guest fees-\$50, snacks-\$5.09, snacks Halfway House-\$4.63 and tip-\$10); total \$113.03
- 6) listed as golf for three with a total bill of \$185.72; summarized by Cinergy as ~\$60, changed to \$61.91

EXHIBIT D

POLITICAL EVENTS ATTENDED BY ROBERT TONGREN

CY 2000

- 1 Friends of Kevin Coghlin
- 2 Finan Campaign Committee
- 3 Committee to Elect Dennis Stapleton
- 4 Scott Nein For Good Government
- 5 Doug White for Good Government
- 6 Committee to Elect Lou Blessing
- 7 Committee for Jo Ann Davidson
- 8 Friends of Greg Jolivette
- 9 Citizens for Amstuz
- 10 Larry Mumper for State Senate
- 11 Friends of Ed Jerse
- 12 Ohio House Republican Campaign Committee
- 13 Friends of CJ Prentiss
- 14 Schuler for State Representative
- 15 Citizens for Householder
- 16 The Committtee to re-Elect Bill Hartnett
- 17 Republican Senate Campaign Committee
- 18 Citizens for Olman

CY 2001

- 1 Committee to Elect Dennis Stapleton
- 2 Scott Nein For Good Government
- 3 Doug White for Good Government
- 4 Committee to Elect Lou Blessing
- 5 Citizens for Carey
- 6 Citizens to Elect James M. Hoops
- 7 Vote Damschroder
- 8 Hagan for State Representative
- 9 Committee to Elect Jeff Manning
- 10 Citizens for Olman
- 11 Citizens for Dewine
- 12 Husted for State Representative
- 13 Committee to Elect Gilb State Representative
- 14 Citizens for Householder
- 15 Committee to Elect Bill Hartnett
- 16 Committee to Elect John Boccieri
- 17 Citizens for Hottenger
- 18 Committee to Elect Metelsky
- 19 Friends of Tom Raga
- 20 Andrew Fugazzi
- 21 Citizens for Jim Jordan
- 22 Citizens for Gardner

EXHIBIT D

POLITICAL EVENTS ATTENDED BY ROBERT TONGREN

- 23 Committee to Elect Neihaus
- 24 Gardner for State Senate Committee
- 25 Citizens for Callendar
- 26 Committee to Elect Schmidt
- 27 Friends of Senator Spada
- 28 Committee to Elect Jim Carmichael
- 29 Fedor for 52
- 30 Citizens for White
- 31 Friends of Dean DePiero
- 32 Seitz for State Representative
- 33 Myron Leff
- 34 House Democratic Caucus
- 35 Ohio House Republican Campaign Committee
- 36 Republican Senate Campaign Committee

CY 2002

- 1 Redfern 2000
- 2 Friends of Faber
- 3 Citizens fro Greg L. DiDonato
- 4 Committee to Elect Jim Carmichael
- 5 Citizens to Elect James M. Hoops
- 6 Friends of Dean DePiero
- 7 Citizens for Jim Jordan
- 8 Citizens for Olman
- 9 Committee to Elect Gilb State Representative
- 10 Committee to Elect Schmidt
- 11 Committee to Elect Niehaus
- 12 Republican Senate Campaign Committee
- 13 Citizens for Hagen
- 14 Committee to Elect Bill Hartnett
- 15 Friends of Driehaus
- 16 Friends of Ron Young
- 17 Mumper for State Senate Committee
- 18 Friends of CJ Prentiss
- 19 Friends of Tom Raga
- 20 Citizens for Mead
- 21 Citizens for Amstutz Committee
- 22 Citizens for Gardner
- 23 Committee to Elect Lou Blessing
- 24 Committee to Elect Lynn Watchman
- 25 Ohio House Republican Campaign Committee
- 26 Friends of Greg Jolivette
- 27 Schuler Campaign Committee