

From: Schilling, Matt
Sent: Thu 11/05/2020 1:48 PM (GMT-00:00)
To: Randazzo, Samuel
Cc: Elisar, Scott; Fleck, Katherine; Ryan, John
Bcc:
Subject: RE: Clips

Thanks! Yes this point is pretty important and I agree with the tendency of the press.

Matt Schilling

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From: Randazzo, Samuel <Samuel.Randazzo@puco.ohio.gov>
Sent: Thursday, November 5, 2020 8:43 AM
To: Schilling, Matt <matt.schilling@puco.ohio.gov>
Cc: Elisar, Scott <Scott.Elisar@puco.ohio.gov>; Fleck, Katherine <Katherine.Fleck@puco.ohio.gov>; Ryan, John <John.Ryan@puco.ohio.gov>
Subject: RE: Clips

Matt, one more thing. Corporate separation requirements are focused on protection of competitive markets. They are not designed to address politics or lobbying (coordinated or otherwise) except as cost allocation may be involved.

The tendency of the press will cause it to view the investigation/audit as being focused on HB 6 related conduct, lobbying, the speaker's race and political giving but these things not within the primary focus of corporate separation requirements.

When political giving, either directly or through "dark money" structures, is viewed as a First Amendment right, there is not much that corporate separation approaches (structural or functional) can do to affect how utilities interact with the legislative branch or the election process.

As an economic regulator, the PUCO, as it has done, can preclude utilities from passing on the costs of its political activities to customers.

From: Randazzo, Samuel
Sent: Thursday, November 5, 2020 8:26 AM
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Happy to help.

There are competing approaches for achieving the goals behind corporate separation requirements which rely on codes of conduct, functional separation and behavioral discipline. The other approach (generally favored by the FTC but not FERC) is structural separation which is a stricter approach to dividing/separating competitive and non-competitive lines of business.

Structural separation is also sometimes required when mergers are proposed that might result in undue concentration of market power.

Again, in either case, the objective is to avoid structures that may have anticompetitive consequences. And, much of the restructuring of the electric, natural gas and communications sector over the last 40 years has been driven by findings that the legacy, vertically integrated, industry structure is anticompetitive.

Under structural separation, a utility engaged in non-competitive lines of business must divest itself of all interests in competitive lines of business.

As an initial transitional approach, Ohio's SB 3 (circa 1999) tolerated functional separation with corporate separation used to manage the risks of improper cross selling but it also encouraged structural separation. Ironically, only the Ohio-based FE operating companies have achieved structural separation with its former generation assets (including interests in OVEC) now held by a separate company (Energy Harbor).

Once structural separation is achieved, the corporate separation requirements which have an important role to play in a functional separation and holding company context are largely displaced by laws and regulations that preclude combinations in favor of anticompetitive behavior.

Sam

From: Schilling, Matt <matt.schilling@puco.ohio.gov>
Sent: Thursday, November 5, 2020 7:55 AM
To: Randazzo, Samuel <Samuel.Randazzo@puco.ohio.gov>
Subject: RE: Clips

Thank you, this is helpful. Our release was missing a bit about what corporate separation actually is. I'll make sure everyone has an updated talking point!

Matt Schilling

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From: Randazzo, Samuel <Samuel.Randazzo@puco.ohio.gov>
Sent: Wednesday, November 4, 2020 8:55 PM
To: Schilling, Matt <matt.schilling@puco.ohio.gov>
Subject: RE: Clips

Broadly speaking, the corporate separation requirements are designed to ensure that there is proper separation between actions and controls as between competitive and non-competitive lines of business. EDUs are confined to the provision of non-competitive retail electric services (essentially distribution service) and any competitive services (essentially generation supply) must be provided, if at all, through a properly separated affiliate. The separation is designed to enable and protect a competitive market in which control over non-competitive services is not exercised to create an advantage in the provision of competitive services. A similar objective is served by Ohio's requirement that control over transmission service must be transferred to an qualifying regional transmission entity such as PJM.

The separation requirements were placed in Ohio law by SB 3 and went into effect prior to most of the other statutory sections that were part of SB 3.

From: Schilling, Matt <matt.schilling@puco.ohio.gov>
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Subject: Clips

[Ohio regulators launch another audit into FirstEnergy's activities regarding House Bill 6 | Cleveland.com](#)

[Ohio regulators auditing FirstEnergy over compliance issues tied to Householder scandal | Akron Beacon Journal](#)

I spoke to Crain's Cleveland as well who asked what possible penalties could be attached -- I declined to speculate.

Please let me know if you have questions.