

# JONES DAY

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January 11, 2013

VIA E-MAIL

shareholderproposals@sec.gov

U.S. Securities and Exchange Commission  
Division of Corporate Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, DC 20549

Re: FirstEnergy Corp. - Omission of Shareholder Proposals Submitted by Ray Chevedden – Securities Exchange Act of 1934 - Rule 14a-8

Dear Ladies and Gentlemen:

On behalf of FirstEnergy Corp., an Ohio corporation (the “*Company*” or “*FirstEnergy*”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), we are writing to respectfully request that the Staff of the Division of Corporate Finance (the “*Staff*”) of the Securities and Exchange Commission (the “*Commission*”) concur with the Company’s view that, for the reasons stated below, the shareholder proposal and the statement in support thereof submitted by Ray Chevedden (the “*Proponent*”), received on December 3, 2012 (the “*Proposal*”), may be properly omitted from the proxy materials (the “*Proxy Materials*”) to be distributed by the Company in connection with its 2013 annual meeting of the shareholders (the “*2013 Meeting*”).

Pursuant to Rule 14a-8(j) under the Exchange Act, we have filed this letter via electronic submission with the Commission no later than eighty (80) days before the Company intends to file its definitive Proxy Materials with the Commission, and concurrently sent copies of this correspondence to the Proponent.

This request is being submitted electronically pursuant to guidance found in Staff Legal Bulletin No. 14D. Accordingly, we are not enclosing the additional six copies ordinarily required by Rule 14a-8(j). In accordance with Rule 14a-8(j), a copy of this submission is being sent, by e-mail, to John Chevedden pursuant to the Proponent’s request.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D require proponents to provide companies a copy of any correspondence that the proponents submit to the Commission or the Staff. Accordingly, I am taking this opportunity to notify the Proponent that if it elects to submit additional correspondence to the Commission or the Staff, copies of that correspondence should

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concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k).

***I. Summary of the Proposal***

The Proposal states, in relevant part:

*“RESOLVED, Shareholders request that our board take the steps necessary so that each voting requirement in our charter and bylaws that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.”*

The Proposal, including the supporting statement made in connection therewith, is attached to this letter as ***Exhibit A***.

***II. Basis for Exclusion of the Proposal***

The Company respectfully requests that the Staff concur in the Company’s view that the First Proposal may be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(9), because the Proposal conflicts with the Company’s own proposal.

***III. Analysis***

***Background***

The Corporate Governance Committee of the Company’s Board of Directors (the “***Board***”) intends to recommend that the Board approve amendments to the Company’s Amended Articles of Incorporation (the “***Articles***”) and Amended Code of Regulations (the “***Regulations***”) (collectively, the “***Company Proposal***”) that would, among other things, reduce supermajority voting requirements to a majority of the voting power, provided that the Board may, in its discretion, set the voting requirement at two-thirds of the voting power. Certain proposed changes to the Articles and Regulations that would be included in the Company Proposal are indicated in the blacklined language as set forth in ***Exhibit B***.

As of the date of this no-action letter request, the Company’s Board has not yet considered the Company Proposal, because the deadline for this submission under Rule 14a-8(j) precedes the date scheduled for the meeting of the Board. If the Board does not approve the inclusion of the Company Proposal in the Proxy Materials, we will withdraw this no-action letter request on behalf of the Company, and the Company will include the Proposal in the Proxy Materials (assuming that the Proponent does not otherwise withdraw the Proposal or the Company and the Proponent agree that the Proposal will not be included in the Proxy Materials).

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The Proposal and the Company Proposal conflict in several respects. The below chart sets forth the corporate actions with voting requirements that would be affected by either the Proposal or the Company Proposal:

| <i>Action</i>   | <i>Ohio Law Default</i> | <i>Current</i>   | <i>Proposal</i>       | <i>Company Proposal</i>                                      |
|---|-------------------------|--|-----------------------|--|
| Amendment of Articles   | 2/3 voting power        | <i>Article IX: 2/3 voting power, except that Board may reduce to majority voting power</i>         | Majority voting power | Majority voting power, or 2/3 voting power if Board approves |
| Amendment of Articles   | 2/3 voting power        | <i>Article X: 80% of the voting power is required to amend, repeal or adopt certain provisions</i> | Majority voting power | Majority voting power, or 2/3 voting power if Board approves |
| Reduction or elimination of stated capital                              | 2/3 voting power        | <i>Article IX: Board may reduce to majority voting power</i>                                       | Majority voting power | Majority voting power, or 2/3 voting power if Board approves |
| Application of capital surplus to dividend payments                     | 2/3 voting power        | <i>Article IX: Board may reduce to majority voting power</i>                                       | Majority voting power | Majority voting power, or 2/3 voting power if Board approves |
| Authorization of share repurchases                                      | 2/3 voting power        | <i>Article IX: Board may reduce to majority voting power</i>                                       | Majority voting power | Majority voting power, or 2/3 voting power if Board approves |
| Authorization of sales of all or substantially all the Company's assets | 2/3 voting power        | <i>Article IX: Board may reduce to majority voting power</i>                                       | Majority voting power | Majority voting power, or 2/3 voting power if Board approves |
| Adoption of a merger agreement and other merger-                        | 2/3 voting power        | <i>Article IX: Board may reduce to majority voting power</i>                                       | Majority voting power | Majority voting power, or 2/3 voting power if Board approves |

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| <i>Action</i>   | <i>Ohio Law Default</i>                                       | <i>Current</i>   | <i>Proposal</i>   | <i>Company Proposal</i>                                      |
|---|---|--|---|--|
| related actions   |   |  |   |  |
| Authorization of a combination or majority share acquisition                  | 2/3 voting power  | <i>Article IX</i> : Board may reduce to majority voting power  | Majority voting power   | Majority voting power, or 2/3 voting power if Board approves |
| Dissolution of the Company  | 2/3 voting power  | <i>Article IX</i> : Board may reduce to majority voting power  | Majority voting power   | Majority voting power, or 2/3 voting power if Board approves |
| Release of pre-emptive rights   | 2/3 voting power  | <i>Article IX</i> : Board may reduce to majority voting power  | Majority voting power   | Majority voting power, or 2/3 voting power if Board approves |
| Authorization of dividend to be paid in shares of another class               | 2/3 voting power  | <i>Article IX</i> : Board may reduce to majority voting power  | Majority voting power   | Majority voting power, or 2/3 voting power if Board approves |
| Adoption, amendment or repeal of Regulations at a meeting of the shareholders | Majority voting power   | <i>Regulations (Section 36)</i> : 80% of the voting power is required to amend, repeal or adopt certain provisions | Majority voting power   | Majority voting power, or 2/3 voting power if Board approves |
| Adoption, amendment or repeal of Regulations by written consent               | 2/3 voting power  | 2/3 voting power   | Majority voting power   | Majority voting power, or 2/3 voting power if Board approves |
| Setting the number of directors   | Majority voting power present at meeting and entitled to vote | <i>Regulations (Section 11)</i> : 80% of the voting power  | Majority voting power present at meeting and entitled to vote | Majority voting power, or 2/3 voting power if Board approves |
| Removal of directors  | Majority voting power   | <i>Regulations (Section 13)</i> : 80% of the voting power  | Majority voting power   | Majority voting power, or 2/3 voting power if Board approves |

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### *Discussion*

Rule 14a-8(i)(9) permits a company to exclude a shareholder proposal from its proxy materials “if the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.” The Commission has stated that, in order for this exclusion to be available, the proposals need not be “identical in scope or focus.” See Exchange Act Release No. 34-40018, at n. 27 (May 21, 1998). The purpose of this exclusion is to prevent shareholder confusion as well as reduce the likelihood of inconsistent vote results that would provide a conflicting mandate for management.

The Staff has stated consistently that where a shareholder proposal and a company proposal present alternative and conflicting decisions for shareholders, the shareholder proposal may be excluded under Rule 14a-8(i)(9). See *Piedmont Natural Gas Company, Inc.* (November 17, 2011) (concurring in excluding a proposal requesting that the company adopt simple majority voting when the company submitted a proposal to amend its governing documents to reduce 80% voting to 66-2/3% voting); *Fluor Corporation* (Jan. 25, 2011) (concurring in excluding a proposal requesting that the company adopt simple majority voting when the company indicated that it planned to submit a proposal to amend its bylaws and articles of incorporation to reduce supermajority provisions to a majority of votes outstanding standard); *Herley Industries Inc.* (Nov. 20, 2007) (concurring in excluding a proposal requesting majority voting for directors when the company planned to submit a proposal to retain plurality voting, but requiring a director nominee to receive more "for" votes than "withheld" votes); *H.J. Heinz Company* (Apr. 23, 2007) (concurring in excluding a proposal requesting that the company adopt simple majority voting when the company indicated that it planned to submit a proposal to amend its bylaws and articles of incorporation to reduce supermajority provisions from 80% to 60%); *AT&T* (Feb. 23, 2007) (concurring in excluding a proposal seeking to amend the company's bylaws to require shareholder ratification of any existing or future severance agreement with a senior executive as conflicting with a company proposal for a bylaw amendment limited to shareholder ratification of future severance agreements); *Gyrodyne Company of America, Inc.* (Oct. 31, 2005) (concurring with the exclusion of a shareholder proposal requesting the calling of special meetings by holders of at least 15% of the shares eligible to vote at that meeting where a company proposal would require a 30% vote for calling such meetings); *AOL Time Warner Inc.* (Mar. 3, 2003) (concurring with the exclusion of a shareholder proposal requesting the prohibition of future stock options to senior executives where a company proposal would permit the granting of stock options to all employees); and *Mattel Inc.* (Mar. 4, 1999) (concurring with the exclusion of a shareholder proposal requesting the discontinuance of among other things, bonuses for top management where the company was presenting a proposal seeking approval of its long-term incentive plan, which provided for the payment of bonuses to members of management).

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Here, the Proposal calls for a majority of votes cast standard. The minimum standard under Ohio law for all actions for which the Company does not already implement a majority of votes cast standard is a majority of the voting power standard (other than setting the number of directors, which is a majority of the voting power present at a meeting and entitled to vote). Therefore, the Proposal generally would be deemed to call for a majority of the voting power standard in such cases. With respect to all such relevant corporate actions, the Company Proposal calls for standards to be lowered to majority of the voting power, provided that the Board may, in its discretion, set the voting requirement at two-thirds of the voting power. Therefore, a favorable shareholder vote for both the Proposal and the Company Proposal would result in an inconsistent and inconclusive mandate from the shareholders. As a result, the Company would be unable to determine the voting standard its shareholders intended to support and what steps would be required from the Company.

Further, the Proposal calls for the voting standard to be set at “a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws,” or, if necessary, “the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.” When read in conjunction with the Company Proposal, which conveys specific voting standards, the Proposal would be unduly confusing to shareholders, and may therefore be excluded from the Proxy Materials under Rule 14a-8(i)(9).

The Proposal directly conflicts with the Company Proposal, and including both in the Proxy Materials could lead to inconsistent and ambiguous voting results. Therefore, the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(9).

### **III. Conclusion**

For the reasons set forth above, the Company respectfully requests that the Staff indicate that it will not recommend enforcement action to the Commission if the Company omits the Proposal from the Proxy Materials for the 2013 Meeting.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If we can be of any further assistance in this matter, please do not hesitate to call the undersigned at (216) 586-7103.

Very truly yours,



Attachments

**EXHIBIT A**

Ray T. Chevedden

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Mr. George M. Smart  
Chairman  
FirstEnergy Corp. (FE)  
76 South Main Street  
Akron, OH 44308  
PH: 330 736-3402  
FX: 330 384-3866  
FX: 330-384-3772

Dear Mr. Smart,

I purchased and hold stock in our company because I believe our company has greater potential. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Sincerely,

Ray T. Chevedden

Ray T. Chevedden

Ray T. Chevedden and Veronica G. Chevedden Family Trust 050490  
Shareholder

11/11/2012  
Date

cc: Ronda Ferguson <rferguson@firstenergycorp.com>  
Corporate Secretary  
PH: 330-384-5620  
FX: 330-384-5909

[FE: Rule 14a-8 Proposal, December 3, 2012]

**Proposal 4\* – Simple Majority Vote Right**

RESOLVED, Shareholders request that our board take the steps necessary so that each voting requirement in our charter and bylaws that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

Shareowners are willing to pay a premium for shares of corporations that have excellent corporate governance. Supermajority voting requirements have been found to be one of six entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy’s. The proponents of these proposals included James McRitchie. Currently a 1%-minority can frustrate the will of our 79%-shareholder majority. Supermajority requirements are arguably most often used to block initiatives supported by most shareowners but opposed by management.

We voted 67% to 79% in favor of a simple majority voting standard at a record 5 annual meetings since 2006. Yet our directors ignored us. As a result 1% of shareholders can still thwart a 79%-majority on certain key issues. A good part of the blame for this poor governance may fall on Carol Cartwright, who chaired our corporate governance committee. Ms. Cartwright had 15 years long-tenure on our board. Director independence can erode after 10-years. GMI/The Corporate Library, an independent investment research firm, said long-tenured directors could form relationships that may compromise their independence and therefore hinder their ability to provide effective oversight. Ms. Cartwright could still remain on our board if she were no longer a committee chairman. A more independent perspective would be a priceless asset for the chairman of our corporate governance committee.

After their failed attempt, costing more than \$10,000, to prevent us from even voting on this topic in 2012 through a no action request – our directors did not have the fortitude to face this proposal topic without spending extra money on their negative advertisements under Carol Cartwright. This proposal topic in 2012 would also have probably received a higher majority of votes had our directors been willing to make it as easy for shareholders to vote for this proposal topic as to vote against it. It would take only one-click to vote against this proposal – but many clicks to vote in favor of it based on our biased 2012 Internet voting system. Plus under Ms. Cartwright it was more difficult than necessary to vote against certain underperforming individual directors while supporting other directors.

Please encourage our board to respond positively to this proposal to protect shareholder value:

**Simple Majority Vote Right – Proposal 4\***



Notes:

Ray T. Chevedden,

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

submitted this proposal.

Please note that the title of the proposal is part of the proposal.

\* Number to be assigned by the company.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

***We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.***

See also: Sun Microsystems, Inc. (July 21, 2005).

Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

## EXHIBIT B

### Proposed Amendments to the Articles

#### AMENDED ARTICLES OF INCORPORATION OF FIRSTENERGY CORP.

\* \* \*

### ARTICLE IX

Subject to any Preferred Stock Designation, to the extent applicable law permits these Amended Articles of Incorporation expressly to provide or permit a lesser vote than a two-thirds vote otherwise provided by law for any action or authorization for which a vote of shareholders is required, including, without limitation, adoption of an amendment to these Amended Articles of Incorporation, adoption of a plan of merger, authorization of a sale or other disposition of all or substantially all of the assets of the Corporation not made in the usual and regular course of its business or adoption of a resolution of dissolution of the Corporation, such action or authorization shall be by ~~such two-thirds vote~~ a majority of the voting power of the Corporation and a majority of the voting power of any class entitled to vote as a class on such proposal; provided, however, that the Board of Directors may, in its discretion, increase the voting requirement to two-thirds of the voting power of the Corporation and two-thirds of the voting power of any class entitled to vote as a class on such proposal; unless the Board of Directors of the Corporation shall provide otherwise by resolution, then such action or authorization shall be by the affirmative vote of the holders of shares entitling them to exercise a majority of the voting power of the Corporation on such proposal and a majority of the voting power of any class entitled to vote as a class on such proposal; provided, however, this Article IX (and any resolution adopted pursuant hereto) shall not alter in any case any greater vote otherwise expressly provided by any provision of these Articles of Incorporation or the Code of Regulations. For purposes of these Articles of Incorporation, "voting power of the Corporation" means the aggregate voting power of (1) all the outstanding shares of Common Stock of the Corporation and (2) all the outstanding shares of any class or series of capital stock of the Corporation that has (i) rights to distributions senior to those of the Common Stock including, without limitation, any relative, participating, optional, or other special rights and privileges of, and any qualifications, limitations or restrictions on, such shares and (ii) voting rights entitling such shares to vote generally in the election of directors.

### ~~ARTICLE X~~

~~Notwithstanding anything to the contrary contained in these Articles of Incorporation, the affirmative vote of the holders of at least 80% of the voting power of the Corporation, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, Article V, Article VI, Article VII, Article VIII or this Article X; provided, however, that Article X shall not alter the voting entitlement of shares that, by virtue of any Preferred Stock Designation, are expressly entitled to vote on any amendment to these Articles of Incorporation.~~

\* \* \*

## Proposed Amendments to the Regulations

### AMENDED CODE OF REGULATIONS OF FIRSTENERGY CORP.

\* \* \*

#### DIRECTORS

\* \* \*

~~11~~**12**. Number, Election and Terms of Directors. Except as may be otherwise provided in any Preferred Stock Designation, the number of the directors of the Corporation will not be less than nine nor more than 16 as may be determined from time to time only (i) by a vote of a majority of the Whole Board, or (ii) by the affirmative vote of the holders of at least ~~80%~~**a majority** of the voting power of the Corporation, voting together as a single class; **provided, however, that the Board of Directors may, in its discretion, increase the voting requirement to two-thirds of the voting power of the Corporation.** Except as may be otherwise provided in any Preferred Stock Designation, at each annual meeting of the shareholders of the Corporation, the directors shall be elected by plurality vote of all votes cast at such meeting and shall hold office for a term expiring at the following annual meeting of shareholders and until their successors shall have been elected; provided, that any director elected for a longer term before the annual meeting of shareholders to be held in 2005 shall hold office for the entire term for which he or she was originally elected. Except as may be otherwise provided in any Preferred Stock Designation, directors may be elected by the shareholders only at an annual meeting of shareholders. No decrease in the number of directors constituting the Board of Directors may shorten the term of any incumbent director. Election of directors of the Corporation need not be by written ballot unless requested by the presiding officer or by the holders of a majority of the voting power of the Corporation present in person or represented by proxy at a meeting of the shareholders at which directors are to be elected.

\* \* \*

~~13~~**14**. Removal. Except as may be otherwise provided in any Preferred Stock Designation, any director or the entire Board of Directors may be removed only upon the affirmative vote of the holders of at least ~~80%~~**a majority** of the voting power of the Corporation, voting together as a single class; **provided, however, that the Board of Directors may, in its discretion, increase the voting requirement to two-thirds of the voting power of the Corporation.**

\* \* \*

#### GENERAL

\* \* \*

~~36~~**37**. Amendments. Except as otherwise provided by law or by the Articles of Incorporation or this Code of Regulations, these Regulations or any of them may be amended in any respect or repealed at any time **(i) at any meeting of shareholders by the affirmative vote of the holders of shares entitling them to exercise a majority of the voting power of the Corporation,**

provided that any amendment or supplement proposed to be acted upon at any such meeting has been described or referred to in the notice of such meeting or (ii) without a meeting, by the written consent of the holders of shares entitling them to exercise a majority of the voting power of the Corporation; provided, however, that, in the case of clause (ii), the Board of Directors may, in its discretion increase the voting requirement to two-thirds of the voting power of the Corporation. Notwithstanding the foregoing sentence or anything to the contrary contained in the Articles of Incorporation or this Code of Regulations, Regulations 1, 3(a), 9, ~~11~~, 12, 13, 14, ~~31~~15, 32 and ~~36~~37 may not be amended or repealed by the shareholders, and no provision inconsistent therewith may be adopted by the shareholders, without the affirmative vote of the holders of at least ~~80%~~a majority of the voting power of the Corporation, voting together as a single class; provided, however, that the Board of Directors may, in its discretion, increase the voting requirement to two-thirds of the voting power of the Corporation. Notwithstanding the foregoing provisions of this Regulation ~~36~~37, no amendment to Regulations ~~31, 32 or~~, 33, 34 or ~~34~~35 will be effective to eliminate or diminish the rights of persons specified in those Regulations existing at the time immediately preceding such amendment.