



## Corporate Political Activity

### FirstEnergy

April 25, 2017

Ticker	Exchange	Meeting Date	Record Date	Annual Meeting Location
FE	NYSE	5-16-2017	3-20-2017	Akron, Ohio

Agenda	
Item	Proposal
1	MGT: Elect directors
2	MGT: Ratify selection of auditors
3	MGT: Advisory vote on executive compensation
4	MGT: Advisory vote on the frequency of future advisory votes on executive compensation
5	MGT: Increase number of authorized common shares
6	MGT: Eliminate supermajority voting provisions
7	MGT: Majority voting in director elections
8	MGT: Proxy access
9	<b>SH: Report on lobbying</b>
10	SH: Report on climate change strategy
11	SH: Majority voting

**Si2 Briefing** [Corporate Political Activity](#)

**Report Author** [Robin Young](#)

**Links** [Proxy Statement](#); [Corporate Political Activity Policy](#); [Code of Business Conduct](#)

**Resolved Clause** Resolved, the shareholders of FirstEnergy request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
2. Payments by FirstEnergy used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
3. FirstEnergy's membership in and payments to any tax-exempt organization that writes and endorses model legislation.
4. A description of the decision making process and oversight by management and the Board for making payments described in section 2 and 3 above.

For purposes of this proposal, a "grassroots lobbying communication" is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. "Indirect lobbying"

is lobbying engaged in by a trade association or other organization of which FirstEnergy is a member.

Both “direct and indirect lobbying” and “grassroots lobbying communications” include efforts at the local, state and federal levels.

The report shall be presented to the Audit Committee or other relevant oversight committee and posted on FirstEnergy’s website.

**Lead Proponent**

Nathan Cummings Foundation

**Vote History**

This is the third year in a row that this proposal has appeared on the FirstEnergy proxy ballot. The 2016 and 2015 proposals received 27.6 percent and 19.3 percent support, respectively.

**Summary**

FirstEnergy has policies on direct corporate lobbying and trade association activity, but the lobbying policy does not provide any information on the board oversight or management governance of direct lobbying or full disclosure of lobbying expenditures. Additionally, the company does not disclose trade association memberships, dues amounts and political and lobbying expenditures made by those associations using FirstEnergy funds.

**I. FirstEnergy and Political Activity**

FirstEnergy is a diversified energy company based in Akron, Ohio. The company formed in 1997 through a merger between Ohio Edison and subsidiaries and Centerior Energy and subsidiaries. In 2001, FirstEnergy

Financials			
(\$ millions)	2015	2016	% Change
<b>Total Revenue</b>	\$15,026	\$14,562	(3.1%)
<b>Net Income</b>	\$578	(\$6,177)	(1,158.3%)

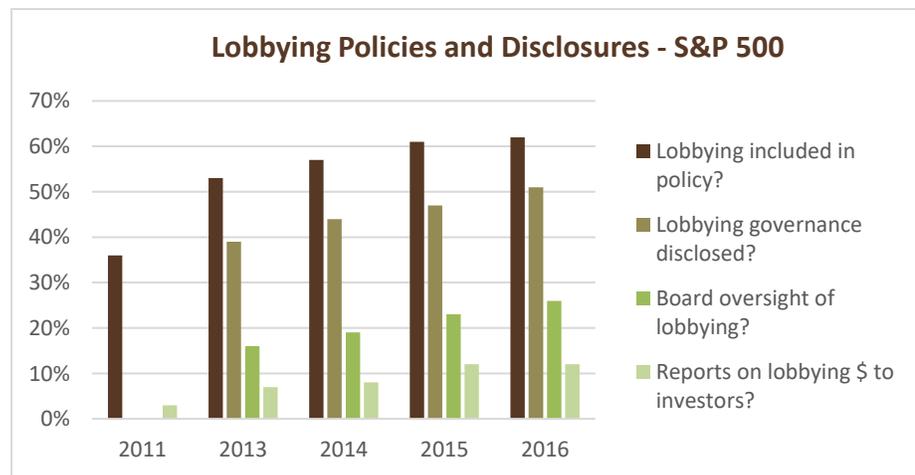
merged with General Public Utilities. Today, the company’s current electric companies are: Ohio Edison; The Cleveland Electric Illuminating Company; Toledo Edison; Met-Ed; Penelec; Penn Power; West Penn Power; Jersey Central Power & Light; Mon Power; and Potomac Edison.

The company serves six million customers within a 65,000 square mile area in Ohio, Pennsylvania, Maryland, West Virginia and New Jersey. FirstEnergy provides electricity generation, transmission, and distribution services. The company’s generation subsidiaries control approximately 17,000 megawatts of capacity from coal, nuclear, natural gas, hydroelectric, oil, wind and solar. The company’s transmission operations include two regional transmission operation centers and approximately 24,000 miles of lines.

FirstEnergy had 15,707 employees as of December 31, 2016.

**Lobbying Policies**

The bar chart and the table below provide comparative data from Si2’s benchmarking research and show how board oversight and company disclosure on lobbying and intermediary group memberships and spending has increased in the last five years in the S&P 500. The table shows



Corporate Lobbying Policies – Governance & Disclosure			
	FirstEnergy	2016 Si2 Study Results	
		Utilities Sector	S&P 500
<b>Governance</b>			
Board oversight of lobbying	No	36%	27%
Management transparency on lobbying?*	No	71%	51%
<b>Policies</b>			
Federal lobbying mentioned?	Yes	89%	62%
State lobbying mentioned?	Yes	64%	32%
<b>Intermediary Groups</b>			
Trade association policy?	Yes	86%	55%
Other non-profit policy?	Yes	50%	30%
Discloses any memberships?	No	75%	44%
Discloses any payments?	No	68%	32%
Prohibits use of company \$ for politics?	No	0%	7%
<b>Spending Disclosure to Investors</b>			
Federal lobbying \$ reported?	No	14%	12%
Any state lobbying \$ reported?	No	4%	3%

\*Identifies corporate officer(s) involved in decision-making.

how the company’s lobbying policy stacks up against companies in the index and in FirstEnergy’s sector, using data from Si2’s 2016 survey of the S&P 500.

**Direct lobbying:** FirstEnergy’s policy on corporate lobbying activity is located in its [Corporate Political Activity Policy](#) and in the [Code of Business Conduct](#).

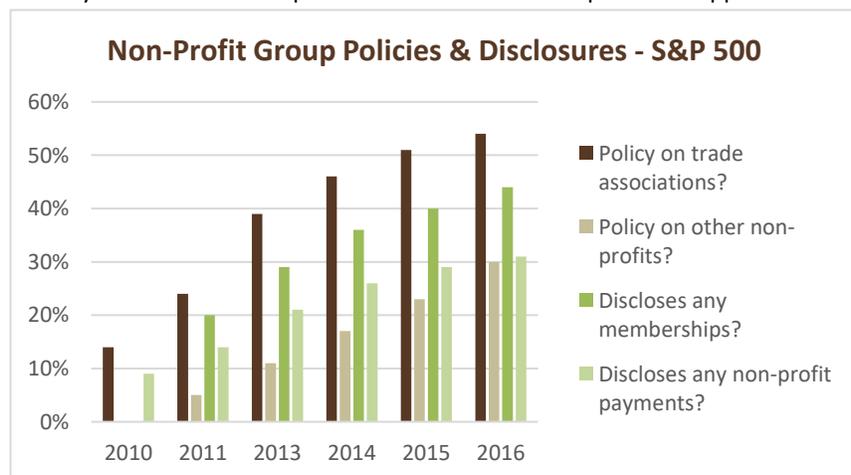
**Board oversight:** FirstEnergy’s policy does not provide for any board oversight of direct corporate lobbying activities.

**Management transparency:** FirstEnergy does not disclose what positions or departments at the company recommend, review and/or approve direct corporate lobbying activity.

**Grassroots lobbying:** The company does address grassroots lobbying, stating

Any request for a FirstEnergy political contribution and grassroots lobbying communications, including contributions to an entity operating under Section 527 of the Internal Revenue Code or an expenditure for a non-candidate state and local ballot initiative, shall be submitted to the External Affairs Department for review and approval. The External Affairs Department will review the request to confirm that the proposed contribution or expenditure is in the best interests of FirstEnergy and, working with the FirstEnergy Legal Department, confirm that any contribution or expenditure we consider complies with applicable election laws, rules and regulations.

**Indirect lobbying:** The bar chart at right provides comparative data from Si2’s benchmarking research and shows how company disclosure on corporate indirect lobbying has grown in the last several years. Si2’s review of S&P 500 companies’ indirect spending governance practices in 2016 shows



that 54 percent of these companies disclosed at least some form of policy on corporate trade association activity, up from 14 percent in 2010.

**Involvement with trade groups and other non-profit organizations:** FirstEnergy's policy does address the subject of trade association activity and lobbying.

**Policy**—FirstEnergy's policy on trade association activity states:

In certain circumstances, where permitted by law, and with the approval of [its] External Affairs Department, FirstEnergy may use corporate funds for the payment of dues and/or contributions to section 527 organizations (tax exempt organizations that engage in political activities), section 501(c)(4) organizations and trade associations that may use a portion of such dues for political and lobbying activities.

**Membership and payment disclosure:** FirstEnergy does not disclose a list of its memberships in trade associations or any other tax-exempt organizations that may spend money on lobbying. Furthermore, it does not disclose any dues or payments to those organizations or the subset of those dues and payments used for political and lobbying expenditures. *(See below for more on the company's involvement with intermediary groups that spend on lobbying.)*

### Lobbying Expenditures

Available information from the public record on the company's lobbying shows it has spent \$11 million at the federal level in the last five years. These amounts may include contributions disbursed through intermediaries.

**Company disclosure of lobbying activities:** The company does not independently disclose federal lobbying expenditures. While the company acknowledges that it engages in lobbying at the state level, it does not provide any information on state lobbying expenditures or any links to relevant state disclosure websites.

FirstEnergy Federal Lobbying Expenditures 2012-2016	
Year	Federal Lobbying Expenditures
2012	\$2,850,000
2013	\$2,200,000
2014	\$1,995,864
2015	\$2,052,281
2016	\$1,856,000
<b>Total</b>	<b>\$10,954,145</b>
Federal expenditures provided by the Center for Responsive Politics through their website <a href="http://OpenSecrets.org">OpenSecrets.org</a> . Quarterly lobbying reports are available at the <a href="http://SenateOfficeofPublicRecords.com">Senate Office of Public Records</a> .	

### Involvement with Trade Associations & Other Intermediaries

The company does not disclose memberships in trade associations and other tax-exempt organizations that may spend money on political campaigns. Dues paid by the company help underwrite a percentage of each association's political and lobbying expenses. *(See table for publicly available data.)*

Company Involvement with Trade Associations						
Organization	FirstEnergy				Most Recent IRS Data	
	On Board	Member	2016 Contributions		Total Dues	Political Spending*
			Dues	Political*		
American Coal Ash Association		X	ND	ND	\$615,284	\$0
Edison Electric Institute		X	ND	ND	\$68.9 mil.	\$4.7 mil.
Nuclear Energy Institute		X	ND	ND	\$49.1 mil.	\$1.8 mil.

\*Political and lobbying expenses non-deductible under Internal Revenue Code Section 162(e)1.

**Memberships:** Some business groups have taken positions at odds with public policy initiatives supported by leading institutional investor activists and corporate reformers. *(A more detailed description of controversies surrounding certain groups appears in Si2's Briefing Paper on Corporate Political Activity, pp. 30-33).*

## II. Proponent Position

The proponent believes that without disclosure of the company's lobbying policies, procedures and expenses, shareholders cannot adequately assess the use of corporate funds and the risks that such spending may impose. In addition, the resolution asserts that without enhanced disclosure, the company may be inadvertently supporting communications, causes or policy objectives through trade association lobbying that do not coincide with the company's long-term interests and may pose risks to company shareholders.

The proponent is particularly concerned that the company does not disclose its federal or state-level lobbying expenditures, as well as any information on trade association memberships or relationships with tax-exempt groups that write or endorse model legislation, like the American Legislative Exchange Council.

*(Additional information on the proponent position appears in Si2's [Briefing Paper on Corporate Political Activity](#).)*

## III. Management Position

FirstEnergy opposes the proposal and states its belief that "it has a responsibility to participate in the legislative, regulatory and political process" and that by engaging with lawmakers on key issues it helps to "promote effective government and the interests of key stakeholder groups including [its] shareholders, employees and the communities [it] serve[s]."

FirstEnergy says that it already discloses information regarding its lobbying activities on the company website through its Political Activity Policy and that it complies with all federal and state registration and disclosure requirements, including the filing of all required disclosure reports. The company goes on to provide links to two disclosure websites of the federal government, as well as what information is contained in the reports. FirstEnergy also notes that state disclosures are available through individual state agency websites.

The company says that it is "committed to providing appropriate information and disclosures to its investors concerning its lobbying activities" but that the requested report would be duplicative and would "divert important resources from alternate uses that your Company's Board and management deem to be in the best interests of your Company and its shareholders."

## IV. Analysis

For a general analysis of the issues raised by corporate lobbying, please see Si2's [Briefing Paper on Corporate Political Activity](#). The following is specific to FirstEnergy.

### **Key Points at Issue**

- Do shareholders have enough information about FirstEnergy's lobbying activities?
- Do the company's grassroots lobbying activities expose its shareholders to unnecessary risks?

**Best practices:** FirstEnergy's policies and procedures address direct corporate lobbying as well as lobbying by trade association partners and grassroots activities, but the policy on direct corporate lobbying does not disclose any information on board oversight or management governance. However, FirstEnergy does include oversight of its involvement with 501(c)(4) groups in the policy.

**Disclosure:** The company does not independently disclose its federal or state lobbying expenditures. Required federal disclosure forms provide information on the issues and legislation the company lobbies about as well as which federal legislators or committees are contacted. But since a public repository of

all state level lobbying expenditures does not currently exist and state disclosure regimes vary, this means it is difficult if not impossible to accurately determine how much the company spends in the states on lobbying. Efforts to compile such information take extensive time and labor and do not yield easily comparable information.

With respect to trade association activity, FirstEnergy does not disclose a list of trade association memberships, or provide any information on dues or payments made to the associations or the portion of dues used for political and lobbying purposes.

While trade associations do not routinely report lobbying expenditures as a percentage of a member's dues to individual members, they do provide each company with a breakdown of total political-related expenditures—which includes both political contributions and lobbying. Thus, the company already receives this information and legally must report it to the Internal Revenue Service. Therefore, it could provide shareholders with specific information on how much of its dues are going for political purposes without incurring significant additional expenses.

**Summing up:** In short, while the company has policies on direct corporate lobbying and trade association activity, the lobbying policy does not provide any information on the board oversight or management governance of direct lobbying or full disclosure of lobbying expenditures. Additionally, the company does not disclose trade association memberships, dues amounts and political and lobbying expenditures made by those associations using FirstEnergy funds.

### ***Voting Considerations***

**Voting in favor:** Investors may want to vote in favor of this proposal to underscore to management that current publicly available information provides an inadequate view of company lobbying. They may think that more information is vital for properly assessing risks associated with lobbying, including in the states and at the grassroots, and they may have concerns about reputational damage that can come from ties to controversial groups.

**Voting against:** Investors may decide to vote against the resolution because they think there is enough information available from the company and other sources about its lobbying, and that current disclosure laws are adequate. Some also may vote against because they consider corporate lobbying immaterial (either monetarily or from a public relations perspective). Finally, some also may believe that the company should participate in the political arena through lobbying to pursue its interests, and those of its shareholders.