**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Tariff Change.  | ))))) | Case No. 18-1656-EL-ATA |

**MEMORANDUM CONTRA FIRSTENERGY’S
MOTION FOR LEAVE TO FILE OUT OF TIME**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Public Utilities Commission of Ohio (“PUCO”) should reject FirstEnergy’s Motion for Leave to File Out of Time. FirstEnergy has failed to show good cause for its late filing, as required by Ohio Adm. Code 4901-1-13(A) and Ohio Adm. Code 4901-1-38(B).

On September 10, 2020, the Office of the Ohio Consumers’ Counsel (“OCC”) filed a Motion to Reject FirstEnergy’s July 31, 2020 Revised Tariff Updates to the Tax Savings Adjustment Rider. FirstEnergy’s tariff updates would allow it to keep money that it should be crediting to consumers. FirstEnergy’s memorandum contra was due by 5:30 p.m. on September 25, 2020.[[1]](#footnote-2)

FirstEnergy did not file a memorandum contra by that deadline. Instead, it filed a memorandum contra at 11:29 p.m. on September 25. FirstEnergy did not serve OCC with this memorandum contra upon filing, instead relying on the PUCO’s Docketing Information System to provide electronic notice of the filing. Because the filing was made after 5:30 p.m. on the 25th, the PUCO’s system did not notify parties of the filing until three days later at 8:00 a.m. on September 28. Until that time, OCC was unaware that FirstEnergy had filed a memorandum contra. FirstEnergy’s late-filed memorandum contra did not include any request for leave to file late, nor did it include any explanation for why the filing was not made on time.

Now, 10 days after the late-filed memorandum contra, FirstEnergy seeks leave, asking the PUCO to allow its late filing. The only explanation that FirstEnergy provided is that its attorney had “Internet problems.”[[2]](#footnote-3) FirstEnergy provides no details beyond these two words. And FirstEnergy provides no explanation for why it took 10 days to seek leave for its late filing.

But more is required to establish good cause. For one, FirstEnergy provides no information about the steps it took, with its considerable resources, to overcome the claimed “Internet problems” during the seven and a half hours between when it says it attempted to file the memorandum contra (around 4:00 p.m.) and when it actually filed the memorandum contra (11:29 p.m.).

Indeed, in another recent case, several parties made their filings at 5:47 p.m.—much earlier than FirstEnergy’s 11:29 p.m. filing—citing problems with the PUCO’s online system. The PUCO rejected the filings as late.[[3]](#footnote-4) It should do the same here, where FirstEnergy has failed to establish good cause.

Respectfully submitted,

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Ohio Consumer’s Counsel

*/s/ Christopher Healey*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission this 15th day of October 2020.

 */s/ Christopher Healey*

 Christopher Healey

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

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1. Ohio Adm. Code 4901-1-12(B)(1); Ohio Adm. Code 4901-1-02(D)(4). [↑](#footnote-ref-2)
2. Motion for Leave to File Out of Time of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company at 2 (Oct. 5, 2020). [↑](#footnote-ref-3)
3. *In re Procurement of Standard Service Offer Generation*, Case No. 16-776-EL-UNC, Entry on Rehearing (Sept. 9, 2020). [↑](#footnote-ref-4)