

RECEIVED-DOCKETING DIV  
2010 JUN 30 PM 3:56  
PUCO

PUCO

**Case No. 10-176-EL-ATA**

## BY

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
614-466-8574 (Telephone)  
614-466-9475 (Facsimile)  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[allwein@occ.state.oh.us](mailto:allwein@occ.state.oh.us)

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician                      Date Processed JUN 30 2010

JUN 30 2010

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio       )  
Edison Company, The Cleveland Electric       )  
Illuminating Company and The Toledo       ) Case No. 10-176-EL-ATA  
Edison Company for Approval of a New       )  
Rider and Revision of an Existing Rider.     )

---

**MOTION TO COMPEL RESPONSES TO DISCOVERY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

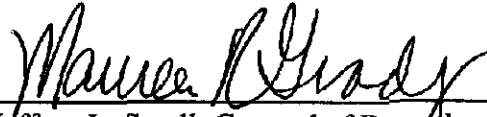
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers of the Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company ("FirstEnergy" or "Companies"), moves<sup>1</sup> the Public Utilities Commission of Ohio ("PUCO" or "Commission"), the legal director, the deputy legal director, or an attorney examiner for an order compelling the Companies to fully and specifically respond to OCC Revised Interrogatories 39, 40, and 42, and the corresponding requests for production of documents, RPD 18, 19, and 21, which are attached hereto as OCC Exhibits 3, 4, 5, 8, 10, and 12. The reasons supporting this motion are set forth in the attached Memorandum in Support.

---

<sup>1</sup> See Ohio Adm. Code 4901-1-12 and 4901-1-23.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Maureen R. Grady", is written over a horizontal line.

Jeffrey L. Small, Counsel of Record  
Maureen R. Grady  
Christopher J. Allwein  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

614-466-8574 (Telephone)

614-466-9475 (Facsimile)

[small@occ.state.oh.us](mailto:small@occ.state.oh.us)

[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)

[allwein@occ.state.oh.us](mailto:allwein@occ.state.oh.us)

## TABLE OF CONTENTS

	<u>Page</u>
I. BACKGROUND .....	1
II. STANDARD OF REVIEW .....	4
III. ARGUMENT.....	6
A. The Companies' Objections To Discovery Of Information That Is Reasonably Calculated To Lead To The Discovery Of Admissible Evidence And Has Not Been Shown To Be Unduly Burdensome, Should Be Overruled And The Companies Should Be Ordered To Respond To Interrogatories 39, 40, And 42, and the Corresponding Requests for Production 18, 19, and 21. ....	6
1. The Companies have failed to provide specific arguments as to how answering these interrogatories and requests for production would be unduly burdensome. Such vague claims should be overruled. ....	9
2. The Companies have failed to establish that the requested information would not reasonably lead to the discovery of admissible evidence. ....	10
IV. CONCLUSION.....	14

## AFFIDAVIT OF MAUREEN R. GRADY

## ATTACHMENTS

ATTACHMENT #1 - FirstEnergy Response to OCC Set 3 – Interrogatories 39, 40, 42

ATTACHMENT #2 - May 28, 2010 E-mail to FirstEnergy

ATTACHMENT #3 - OCC Revised Interrogatory 39

ATTACHMENT #4 - OCC Revised Interrogatory 40

ATTACHMENT #5 - OCC Revised Interrogatory 42

ATTACHMENT #6 - June 4, 2010 E-mail to FirstEnergy

ATTACHMENT #7 - FirstEnergy Revised Response to OCC Revised Interrogatory 39

**ATTACHMENT #8 - FirstEnergy Response to Request for Production 21**

**ATTACHMENT #9 - FirstEnergy Revised Response to OCC Revised Interrogatory 40**

**ATTACHMENT #10 - FirstEnergy Response to Request for Production 18**

**ATTACHMENT #11 - FirstEnergy Revised Response to OCC Revised Interrogatory 42**

**ATTACHMENT #12 - FirstEnergy Response to Request for Production 19**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio       )  
Edison Company, The Cleveland Electric       )  
Illuminating Company and The Toledo       ) Case No. 10-176-EL-ATA  
Edison Company for Approval of a New       )  
Rider and Revision of an Existing Rider.     )

---

**MEMORANDUM IN SUPPORT**

---

**I. BACKGROUND**

On February 12, 2010, the Companies filed an application that proposed to adjust certain residential electric rates which apply to some of the Companies' approximately 1.9 million residential customers, commonly referred to as "all electric" customers. In response to the "substantial public concern expressed" regarding certain all-electric residential customers bills, and in response to the Companies' application, the Commission ordered rate relief, in the form of residential generation credits, for some of the all-electric customers of the Companies.<sup>2</sup> The rate relief was structured to place these all-electric customers in the same position that they would have been in as of December 31, 2008.<sup>3</sup>

The Commission advised that the rate relief was an interim and not long-term solution to the issue.<sup>4</sup> It permitted FirstEnergy to modify its accounting to defer incurred

---

<sup>2</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Finding and Order at ¶9 ( (Mar. 3, 2010).

<sup>3</sup> *Id.* at ¶10.

<sup>4</sup> *Id.* at ¶12.

purchased power costs equal to the difference between the rates and charges to all-electric customers and the rates and charges that would otherwise apply—what FirstEnergy has referred to as the “revenue shortfall.”<sup>5</sup> Further it directed its Staff to investigate and file a report regarding the appropriate long-term rates that should be provided to the all-electric residential customers.<sup>6</sup> The Commission also directed the Staff to report on a range of options regarding the recovery of the revenue shortfall as a result of the discounts provided to the all-electric customers.<sup>7</sup>

OCC applied for rehearing on the Commission’s order and requested rehearing, in part, based upon the Commission’s framing of the scope of the Staff’s investigation.<sup>8</sup> There OCC argued that the Commission should have ordered the Staff to investigate any FirstEnergy’ promises and inducements that caused customers to commit to equipment in reliance upon promises and inducements that were not kept, i.e. that the all-electric rates would be permanent. OCC claimed that such an investigation “is absolutely necessary in order for the PUCO Staff to prepare a report that appropriately considers the assignment of financial responsibility to FirstEnergy.”<sup>9</sup>

In its Second Entry on Rehearing the Commission denied OCC’s request for rehearing finding that OCC’s claims appear to be made under laws governing contracts

---

<sup>5</sup> Id. at ¶11.

<sup>6</sup> Id. at ¶12.

<sup>7</sup> Id.

<sup>8</sup> See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Request for Clarification And, in the Alternative, Application for Rehearing by the Office of the Ohio Consumers’ Counsel (Mar. 8, 2010).

<sup>9</sup> Id. at 7.

and equitable remedies and that the PUCO has no power to determine such rights.<sup>10</sup> The Commission found that “adjudication of any alleged agreements, promises, or inducements made by the Companies outside of the express terms of its tariffs, as alleged by OCC, is best suited for a court of general jurisdiction rather than the Commission.”

Both OCC and the Companies applied for rehearing on this particular finding. Specifically OCC argued that the PUCO’s order was unreasonable and unlawful and prohibits the Staff from inquiring into these issues for relevant purposes—purposes that are not founded upon contract law and equitable remedies, as the PUCO erroneously concluded.<sup>11</sup> Those purposes include assessing the culpability of the Companies for purposes of considering options for recovering the revenue shortfall from the rate relief permitted through the PUCO’s March 3, 2010 Finding and Order. OCC also argued that the Commission failed to fulfill its statutory duties under numerous provisions in the Revised Code.<sup>12</sup>

On June 9, 2010, the Commission issued a Fourth Entry on Rehearing, granting the applications for rehearing filed by OCC and others.<sup>13</sup> It found that “sufficient reason has been set forth by the parties seeking rehearing to warrant further consideration of the matters specified in the applications for rehearing.”<sup>14</sup> To date there has been no Entry on

---

<sup>10</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Second Entry on Rehearing at ¶9 (Apr. 15, 2010).

<sup>11</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Application for Rehearing at 4-8 (May 24, 2010).

<sup>12</sup> *Id.* at 8-12.

<sup>13</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Fourth Entry on Rehearing at ¶9 (June 9, 2010).

<sup>14</sup> *Id.*



Rehearing substantively resolving OCC's claims of error as they pertain to the widening of the scope of the Staff's investigation.

## **II. STANDARD OF REVIEW**

According to the Commission, "the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side's industry or efforts."<sup>15</sup> The Commission's rules on discovery "do not create an additional field of combat to delay trials or to appropriate the Commission's time and resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings."<sup>16</sup> These rules are intended to assure full and reasonable discovery, consistent with the statutory discovery rights of parties under R.C. 4903.082.

Specifically, R.C. 4903.082 states that the OCC and "[a]ll parties and intervenors shall be granted ample rights of discovery." Therefore the OCC, a party and intervenor, is entitled to timely and complete responses to its discovery inquiries. Additionally, R.C. 4903.082 directs the Commission to ensure that parties are allowed "full and reasonable discovery" under its rules.

Accordingly, the Commission has adopted Ohio Adm. Code 4901-1-16(B) that provides:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information

---

<sup>15</sup> *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, *Entry* at 23 (Mar. 17, 1987).

<sup>16</sup> *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.*(C.P. 1971), 27 Ohio Misc. 76.

sought appears reasonably calculated to lead to the discovery of admissible evidence.

The PUCO's discovery rule is similar to Ohio Civ. R.26(B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.<sup>17</sup>

This scope of discovery is applicable to written interrogatories. Written interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the discovery is served, under Ohio Adm. Code 4901-1-19. Each interrogatory must be answered "separately and fully, in writing and under oath, unless objected to, in which case the reasons for the objection shall be stated in lieu of an answer. The answer shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them."

In Ohio Adm. Code 4901-1-23, the PUCO provided the procedure for parties to obtain the enforcement of these discovery rights, guaranteed by law and rule. Ohio Adm. Code 4901-1-23(A) and (B) provide for the PUCO to compel a party to answer discovery when the party has failed to do so, including when answers are evasive or incomplete. Ohio Adm. Code Rule 23(C) details the technical requirements for a motion to compel, all of which are met in this OCC pleading.

The motion to compel is to be accompanied by a memorandum in support setting forth the basis of the motion and authorities relied upon; a brief explanation of how the

---

<sup>17</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St. 3d 1479.

information sought is relevant; and responses to objections raised by the party from whom the discovery is sought.<sup>18</sup> Copies of the discovery requests and the responses are to be attached.<sup>19</sup> Finally, Rule 4901-1-23, subsection (C) also requires the party seeking discovery to file an affidavit explaining how it has exhausted all other reasonable means of resolving the differences with the party from whom the discovery is sought.

The OCC has detailed in the attached affidavit, consistent with Rule 4901-1-23(C)(3), the efforts which have been undertaken to resolve differences between it and the Companies. At this point it is clear that there can be no resolution worked out. OCC seeks responses to its discovery requests and is unable to obtain the responses without the Commission compelling such a result.

### **III. ARGUMENT**

**A. The Companies' Objections To Discovery Of Information That Is Reasonably Calculated To Lead To The Discovery Of Admissible Evidence And Has Not Been Shown To Be Unduly Burdensome, Should Be Overruled And The Companies Should Be Ordered To Respond To Interrogatories 39, 40, And 42, and the Corresponding Requests for Production 18, 19, and 21.**

OCC submitted its Third Set of discovery to the Companies on May 4, 2010, which was served by electronic message as well as first class mail, postage prepaid, consistent with Ohio Adm. Code 4901:1-1-05(C)(4). On May 24, 2010, the Companies served their responses to OCC's Third Set of discovery by electronic message. See Attachment 1. On May 28, 2010, OCC and the Companies held a conference call to discuss the Companies' objections to OCC's Third Set of Discovery. See Attachment 2.

---

<sup>18</sup> See Ohio Adm. Code 4901-1-23(C)(1).

<sup>19</sup> Ohio Adm. Code 4901-1-23(C)(2).

As a result of the discussion, OCC redrafted a number of its discovery requests, including OCC Interrogatories 39, 40, and 42, which are the subject of this motion to compel. See Attachments 3, 4, and 5. These redrafted discovery responses were served on the Companies on June 1, 2010, by electronic message.

On June 4, 2010, Counsel for the Companies advised they would continue to object to providing responses to OCC Interrogatories 39, 40, and 42. See Attachment 6. On June 21, 2010 the Companies filed formal responses conveying their objections. See Attachments 7, 9, and 11. OCC moves to compel the Companies to respond to these Interrogatories and the corresponding requests for production, 21, 18, and 19, as discussed below.

**Interrogatory 39, Revised (Attachment 7); Request for Production 21 (Attachment 8)**

This interrogatory seeks to discover the identity of FirstEnergy employees that would be responsible for the development and approval of advertisements and other materials that promoted all-electric rates. The Companies object to providing this information because it would be “unduly burdensome” and is “beyond the scope of the proceeding and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.”<sup>20</sup>

The corresponding Request for Production 21, seeks to obtain copies of the advertising documents referred to in response to OCC Interrogatory 39. The Companies object to providing these documents on the basis that the request is “overly broad, unduly

---

<sup>20</sup> In response to the revisions made to the discovery request, the Companies withdrew their objections of “vague” and “overly broad.” See E-mail of June 4, 2010 (Attachment 6).

burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.”

**Interrogatory 40, Revised (Attachment 9); Request for Production 18 (Attachment 10)**

This interrogatory seeks to discover the identity of FirstEnergy employees and former employees who were responsible for the development of agreements, promises, warranties, and inducements made to *customers* to incentivize them to purchase all-electric homes or install major electric appliances. The Companies object to providing this information because it would be “unduly burdensome” and is “beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.”<sup>21</sup>

The corresponding Request for Production, RFP 18, seeks to obtain copies of the documents in the Companies’ possession that contain advertisements, agreements, promises, and inducements made to incent customers to purchase all-electric homes. The Companies object to providing these documents on the basis that the request is “overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.”

**Interrogatory 42, Revised (Attachment 11); Request for Production 19 (Attachment 12)**

This interrogatory seeks to discover the identity of FirstEnergy employees and former employees who were responsible for the development of agreements, promises,

---

<sup>21</sup> In response to the revisions made to the discovery request, the Companies withdrew their objections on grounds of vagueness and overly broadness. See e-mail of June 4, 2010 (Attachment 6).

warranties, and inducements made to *builders* to incentivize them to purchase all-electric homes or install electric water heaters, etc. The Companies object to providing this information because it would be “unduly burdensome” and is “beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.”<sup>22</sup>

The corresponding request for production, RFP 19 seeks to obtain copies of documents in FirstEnergy’s possession that contain advertisements, agreements, promises, covenants, representations, or inducements to builders. The Companies object to providing these documents on the basis that the request is “overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.”

- 1. The Companies have failed to provide specific arguments as to how answering these interrogatories and requests for production would be unduly burdensome. Such vague claims should be overruled.**

The Companies’ objection that it is overly burdensome to respond to Interrogatories 39, 40, and 42 (and the related Requests for Production 21, 18, and 19), has never been adequately explained to OCC. Such statements appear to be conclusory at best. The Companies must do more than simply intone the familiar litany that the

---

<sup>22</sup> In response to the revisions made to the discovery request, the Companies withdrew their objections on grounds of vagueness and overly broadness. See e-mail of June 4, 2010 (Attachment 6).

interrogatory is overly broad, burdensome, and irrelevant. Federal case law<sup>23</sup> has held that, when a party objects to an interrogatory based on oppressiveness or undue burden, that party must show specifically how, despite the broad and liberal construction afforded discovery rules, each interrogatory is overly broad, burdensome, or oppressive.<sup>24</sup> In objecting, the party must submit affidavits or offer evidence revealing the nature of the burden.<sup>25</sup> General objections without specific support may result in waiver of the objection.<sup>26</sup> Perhaps the objection was designed to test whether OCC would move to compel answers to the inadequate responses.

Here, the Companies have failed to specifically show how the interrogatories and requests for production are unduly burdensome. Because the burden falls upon the party resisting discovery to clarify and explain its objections and to provide support<sup>27</sup> and the Companies have failed to do so, the Commission should overrule this objection.

**2. The Companies have failed to establish that the requested information would not reasonably lead to the discovery of admissible evidence.**

The party opposing the discovery request has the burden to establish that the requested information would not reasonably lead to the discovery of admissible

---

<sup>23</sup> Although federal case law is not binding upon the PUCO with regard to interpreting the Ohio Civil Rules of Practice (upon which the PUCO discovery rules are based), it is instructive where, as here, Ohio's rule is similar to the federal rules. Ohio Admin. Code 4901-1-24 allows a protective order to limit discovery to protect against "undue burden and expense." C.R.26(c) similarly allows a protective order to limit discovery to protect against "undue burden and expense." Cf. *In the Matter of the Investigation into Perry Nuclear Power Station*, Case No. 85-521-EL-COI, Entry at 14-15 (Mar. 17, 1987), where the Commission opined that a motion for protective order on discovery must be "specific and detailed as to the reasons why providing the responses to matters...will be unduly burdensome."

<sup>24</sup> *Trabon Engineering Corp. v. Eaton Manufacturing Co.* (N.D. Ohio 1964), 37 F.R.D. 51, 54.

<sup>25</sup> *Roesberg v. Johns-Manville* (M.D.Pa 1980), 85 F.R.D. 292, 297.

<sup>26</sup> *Id.*, citing *In re Folding Carton Anti-Trust Litigation* (N.D. Ill. 1978), 83 F.R.D. 251, 264.

<sup>27</sup> *Gulf Oil Corp. v. Schlesinger* (E.D.Pa. 1979), 465 F.Supp. 913, 916-917.

evidence.<sup>28</sup> In this regard, the Companies have indicated that the PUCO's ruling precluding the PUCO Staff from investigating the business practices of the Companies in marketing "all-electric" rates<sup>29</sup> shields them from responding to OCC's interrogatories on these matters. The Companies are wrong in several respects.

First, as the Companies are aware, the PUCO's ruling on this matter is the subject of several applications for rehearing which were recently granted by the PUCO.<sup>30</sup> Notably, both the Companies and OCC applied for rehearing on the PUCO's finding that it did not have the power to adjudicate the rights of parties related to the Companies' marketing of all-electric rates. Both OCC and the Companies concluded that the PUCO erred in its finding. Thus, the Commission's resolution of this issue is not complete and thus cannot be relied upon by the Companies to shield them from discovery.

Second, the Companies fail to comprehend the broad scope of discovery permitted in Ohio in PUCO proceedings. Under the statute, R.C. 4903.082 parties are to be granted "ample rights of discovery." Under the rules enacted to enable ample discovery rights, a party may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. See Ohio Admin. Code 4901-1-16. The rule also provides for discovery of information reasonably calculated to lead to the discovery of admissible evidence. This discovery rule is nearly identical to Ohio Civ. R. 26(B)(1).

---

<sup>28</sup> *State ex rel. Fisher v. Rose Chevrolet, Inc.* (C.A. 1992), 82 Ohio App.3d 520, 523.

<sup>29</sup> See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Second Entry on Rehearing at ¶9 ( April 15, 2010).

<sup>30</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Fourth Entry on Rehearing (June 9, 2010).



Civ. R. 26(B)(1) grants broad discovery powers to parties. The test for relevancy under Civ. R. 26(B)(1) “is much broader than the test to be utilized at trial. [Evidence] is only irrelevant by the discovery test when the information sought will not reasonably lead to the discovery of admissible evidence.”<sup>31</sup> As noted by the U.S. Supreme Court, “in the interests of fair trial, eliminating surprise, and achieving justice<sup>32</sup> relevancy, construed liberally, creates a broad vista for discovery<sup>33</sup>...and makes trial ‘less of a blind man’s bluff’ and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.”<sup>34</sup>

If there is any possibility that the information sought may be relevant to the subject matter of the action it should be allowed, unless it is clear that the information sought can have no possible bearing upon the action.<sup>35</sup> Applying this standard to OCC’s interrogatories 39, 40, and 42 should lead the PUCO to conclude that OCC’s discovery should be allowed.

The information is calculated to lead to the discovery of admissible evidence related to the culpability of FirstEnergy. The culpability of FirstEnergy is relevant to evaluating the PUCO’s range of options for considering to what extent FirstEnergy will be allowed to collect its claimed revenue shortfall from Ohio customers, including

---

<sup>31</sup> *Tschantz v. Ferguson* (C.A. 1994), 97 Ohio App.3d 693, 715, citing *Icenhower v. Icenhower*, 1975 Ohio App. Lexis 8452 (Aug. 14, 1975) Franklin App. No. 75AP-93, unreported.

<sup>32</sup> *United States v. Purdome* (W.D.Mo. 1962), 30 F.R.D. 338, 340; *Stonybrook Tenants Association, Inc. v. Alpert*, 29 F.R.D. 165, 168 (D. Conn. 1961).

<sup>33</sup> *Oppenheimer Fund, Inc. v. Sanders* (1978), 437 U.S. 340, 351; *Schlagenhauf v. Holder* (1964), 379 U.S. 104, 121; *Hickman v. Taylor* (1947), 329 U.S. 495, 507.

<sup>34</sup> *United State v. Proctor & Gamble Co* (1958), 356 U.S. 677, 682.

<sup>35</sup> *Miller v. Doctor’s General Hospital* (W.D. Okl. 1977), 76 F.R.D. 136, 138-139; *In re Folding Carton Anti-Trust Litigation*, 83 F.R.D. at 254; *United States v. IBM Corp.* (S.D.N.Y.1974), 66 F.R.D. 215, 218; *Cleo Wrap Corp. v. Elsner Engineering Works* (M.D. Pa. 1972), 59 F.R.D. 386, 388.

amounts being deferred in this case for discounts provided to all-electric residential customers.<sup>36</sup> Under cost causation principles that underlie the design of rates,<sup>37</sup> the Commission should assess whether the cause of the revenue deficiency is attributable, in part, or whole, to improper business practices and/or marketing efforts of the Companies. Then the Commission can examine options that would include assigning responsibility for some portion (if not all) of the revenue shortfall to FirstEnergy.

An investigation into any promises made by the Companies outside the terms of the tariff to affect customer behavior toward becoming or continuing to be FirstEnergy all-electric customers, e.g., that the all-electric discounts would be permanent, bears upon the solution that should be adopted, on a going forward basis, for resolving the all-electric rate issues. If the investigation turns up evidence that the Companies did make agreements, promises, or inducements to customers (to remain or become all-electric customers of the Companies) that are outside the terms of the tariff, then the PUCO should conclude that the Companies engaged in unfair and deceptive practices, violating numerous provisions of the Revised Code and Ohio Admin. Code.<sup>38</sup> Such a finding would bear upon the cause of the revenue shortfall and the options regarding any collection of the revenue shortfall, lending support to a theory that the

---

<sup>36</sup> In its Third Entry on Rehearing, dated April 28, 2010, the PUCO clarified that FirstEnergy is authorized to modify its accounting procedures to defer incurred purchased power costs equal to the difference between the rates and charges to the all electric residential customers as the result of the rate relief ordered by the Commission and the rates and charges that would be otherwise charged. The accounting deferrals purport to represent the revenue shortfall that OCC urges the Commission to allocate between customers and the utility.

<sup>37</sup> As the Commission is well aware, other principles underlie rate design as well, including gradualism, avoiding rate shock, and equitable principles of cost allocation.

<sup>38</sup> See for example, R.C. 4905.37, 4928.02(I), 4928.10, and Ohio Admin. Code 4901:1-10-24(D).

Companies should shoulder cost responsibility (in whole or in part) for the revenue shortfall. Moreover, once the representations and inducements are known, such information may have an impact upon the length of time the discounts should continue.

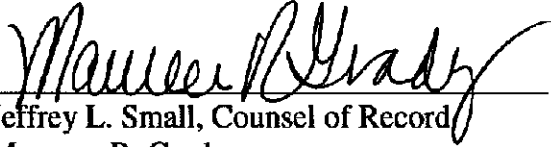
Thus, for purposes of developing a solution to the all-electric rate issues in this proceeding, the information is relevant. The information is reasonably calculated to lead to the discovery of admissible evidence. The Companies should be ordered to answer the discovery.

#### **IV. CONCLUSION**

Pursuant to R.C. 4903.082 and Ohio Adm. Code 4901-1-16 and other authority and reasons stated above, OCC's Motion to Compel should be granted. The Companies have failed to bear their burden of proving that the discovery in question (Interrogatories 39, 40, and 42, Requests for Production 21, 18, and 19) will not lead to the discovery of admissible evidence. Nor have the Companies provided anything but conclusory statements as to the "burden" that will be imposed upon it to answer these interrogatories. As such, it is appropriate and fitting that the PUCO, consistent with its rules and statutes discussed herein, grant OCC's Motion to Compel. Granting OCC's motion to compel will further the interests of consumers by requiring information under which the culpability of the Companies can be determined. Once the culpability of the Companies is known, the PUCO can then proceed to establish a long-term solution to the numerous issues raised concerning the continuation of all-electric rates.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Maureen R. Grady", is written over a horizontal line.

Jeffrey L. Small, Counsel of Record

Maureen R. Grady

Christopher J. Allwein

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

614-466-8574 (Telephone)

614-466-9475 (Facsimile)

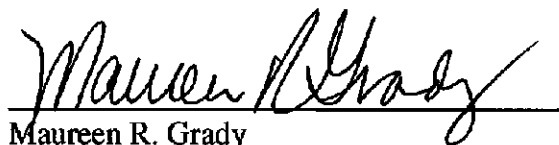
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)

[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)

[allwein@occ.state.oh.us](mailto:allwein@occ.state.oh.us)

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Motion to Compel Responses to Discovery by the Office of the Ohio Consumers' Counsel was provided to the persons listed below electronically this 30<sup>th</sup> day of June, 2010.



Maureen R. Grady  
Assistant Consumers' Counsel

### **PERSONS SERVED**

Duane Luckey  
**Attorney General's Office**  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215  
[Duane.luckey@puc.state.oh.us](mailto:Duane.luckey@puc.state.oh.us)

James W. Burk  
**FirstEnergy Service Company**  
76 South Main Street  
Akron, OH 44308  
[burkj@firstenergycorp.com](mailto:burkj@firstenergycorp.com)

Samuel C. Randazzo  
Lisa G. McAlister  
Joseph M. Clark  
McNees Wallace & Nurick LLC  
21 E. State St., 17<sup>th</sup> Fl  
Columbus, OH 43215

[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[lmcalister@mwncmh.com](mailto:lmcalister@mwncmh.com)  
[jclark@mwncmh.com](mailto:jclark@mwncmh.com)

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 S. Third St  
Columbus, OH 43215  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

**Attorney for Ohio Hospital Association  
and Ohio Manufacturers' Association**

**Attorneys for Industrial Energy Users-  
Ohio**

Richard L. Sites  
Ohio Hospital Association  
155 East Broad Street, 15th Floor  
Columbus, OH 43215-3620  
[ricks@ohanet.org](mailto:ricks@ohanet.org)

**Attorney for Ohio Hospital Association**

Kevin Corcoran  
Corcoran & Associates Co. LPA  
8501 Woodbridge Ct.  
North Ridgeville, OH 44039  
[kevinocorcoran@yahoo.com](mailto:kevinocorcoran@yahoo.com)

**Attorney for Sue Steigerwald; Citizens  
For Keeping the All-Electric Promise  
(CKAP); Joan Heginbotham and Bob  
Schmitt Homes, Inc.**

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company and The Toledo ) Case No. 10-176-EL-ATA  
Edison Company for Approval of a New )  
Rider and Revision of an Existing Rider. )

---

**AFFIDAVIT OF MAUREEN R. GRADY**

---

I, Maureen R. Grady, attorney for the Office of the Ohio Consumers' Counsel ("OCC") in the above captioned case, being first duly sworn, depose and state that the following efforts have been made to resolve the differences with the Companies (The Ohio Edison Company, The Toledo Edison Company, The Cleveland Electric Illuminating Company, "FirstEnergy") as to the motion to compel responses to OCC Interrogatories 39, 40, and 42, and the related Requests for Production of Documents 21, 19, and 18:

1. OCC submitted its Third Set of Discovery to the Companies on May 4, 2010, which was served by electronic message as well as first class mail, postage prepaid. On May 24, 2010, the Companies served their responses to OCC's Third Set of discovery, by electronic message. See Attachment 1.

2. On May 28, at OCC's request, a discovery conference call was held to discuss the Companies' objections to OCC's Third Set of Discovery, including their objections to Interrogatories 39, 40, and 42, and the related Requests for Production of Documents 18, 19, and 21. OCC explained to the Companies' Counsel, Mr. Burk, the reasons for

seeking the information, and explored with Mr. Burk the objections that had been made. As a result of the discovery conference discussion, detailed in Attachment 2, OCC redrafted a number of its discovery requests, including Interrogatories 39, 40, and 42 to attempt to respond to objections the Companies had made. See Attachments 3, 4, and 5. These redrafted discovery responses were served upon the Companies on June 1, 2010, by electronic message.

3. On June 4, 2010, Mr. Burk indicated that the Companies would continue to object to providing responses to OCC Interrogatories 39, 40, and 42, as well as the related requests for production of documents. See Attachment 6. On June 21, 2010, the Companies filed formal responses conveying their renewed objections to these interrogatories. See Attachment 7, 8, and 9.

4. It being clear that all reasonable means of resolving differences with FirstEnergy had been exhausted, OCC indicated to FirstEnergy's Counsel that it would be moving to compel answers to Interrogatories 39, 40, and 42 and the corresponding Requests for Production of Documents 18, 19, and 21. See Attachments 10, 11, and 12.

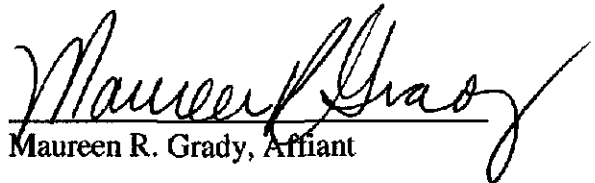


STATE OF OHIO                    )  
  ) SS:  
COUNTY OF FRANKLIN        )

The undersigned, being of lawful age and duly sworn on oath, hereby certifies,  
deposes and state the following:

I have caused to be prepared the attached written affidavit for OCC in the above  
referenced docket. This affidavit is true and correct to the best of my knowledge,  
information and belief.

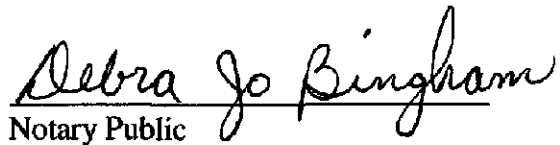
Further affiant sayeth naught.

  
Maureen R. Grady, Affiant

Subscribed and sworn to before me this 30th day of June, 2010.



Debra Jo Bingham, Notary Public  
Union County, State of Ohio  
My Commission Expires June 13, 2015

  
Notary Public

**From:** <singleton@firstenergycorp.com>  
**To:** <sam@mwncmh.com>, <mcallister@mwncmh.com>, <jclark@mwncmh.com>, <small@o...>  
**CC:** <wojciechowski@firstenergycorp.com>  
**Date:** 5/24/2010 1:26 PM  
**Subject:** Discovery Responses Associated with PUCO Case No. 10-176-EL-ATA - OCC Set 3  
**Attachments:** OCC Set 3 - 33-42, 44-46, RPD19-30.pdf

**RE:** Ohio Edison Company, The Cleveland Electric Illuminating Company, and  
The Toledo Edison Company (collectively, the "Companies") Discovery  
Responses associated with P.U.C.O. Case No. 10-176-EL-ATA

Enclosed herein are the Companies' Discovery Responses associated  
with P.U.C.O Case No 10-176-EL-ATA More specifically:

1. Response to OCC's Discovery Set 3 - DR's 33-42, DR's 44-46 and RPD's  
19-30. DR numbers 43, 47 and 48 are considered Confidential and will be  
sent in a separate e-mail.

The Discovery Responses are true and accurate based on information  
currently available to the Companies. Please direct any questions or  
comments of a legal nature to James Burk at 330-384-5861 or  
burkj@firstenergycorp.com. If technical in nature, please contact  
Tammy Singleton at 330-384-5854 or singleton@firstenergycorp.com

(See attached file: OCC Set 3 - 33-42, 44-46, RPD19-30.pdf)

-----  
The information contained in this message is intended only for the  
personal and confidential use of the recipient(s) named above. If  
the reader of this message is not the intended recipient or an  
agent responsible for delivering it to the intended recipient, you  
are hereby notified that you have received this document in error  
and that any review, dissemination, distribution, or copying of  
this message is strictly prohibited. If you have received this  
communication in error, please notify us immediately, and delete  
the original message.

Case No. 10-176-EL-ATA  
Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo  
Edison Company for Approval of a New Rider and Revision of an Existing Rider

RESPONSES TO REQUEST

**OCC**  
**Set 3-39**

Please identify person(s), by name, position, and current business address, that would be familiar with the advertisements or other documents that promoted all electric rates.

**Response:** Objection: The request is overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Case No. 10-176-EL-ATA  
Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo  
Edison Company for Approval of a New Rider and Revision of an Existing Rider

RESPONSES TO REQUEST

**OCC**  
**Set 3-40**

Please identify, by name, title, current business address, persons that would be familiar with agreements, promises, warranties, covenants, representations or inducements made to your customers to incent them to purchase all electric homes or install electric water heaters, or participate in load management activities.

**Response:** Objection: The request is overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Case No. 10-176-EL-ATA  
Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo  
Edison Company for Approval of a New Rider and Revision of an Existing Rider

RESPONSES TO REQUEST

**OCC  
Set 3-42**

Please identify, by name, title, current business address, persons that would be familiar with agreements, promises, warranties, covenants, representations or inducements made to builders to incent them to build all electric homes.

**Response:** Objection: The request is overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

**From:** MAUREEN GRADY  
**To:** burkj@firstenergycorp.com  
**Date:** 5/28/2010 2:48 PM  
**Subject:** Discovery Conference Call -OCC Third Set 5.28.10-Case No. 10-176

This e-mail shall serve to confirm the material we discussed at our discovery conference call on May 28, 2010.

We began with discussing miscellaneous discovery issues. We talked about the tariff history that you sent, and you indicated that there may be more coming in this respect. We discussed the service list issue and you assured that the list would be corrected. We discussed briefly the company's memo contra OCC's application for rehearing.

Discussion then began on individual responses to OCC's Third Set of Discovery:

I 3-34 in response to my request to fully identify William Ridmann and Kevin Warvell, you indicated that Ridmann's position is V.P. Rates & Regulatory Affairs, FirstEnergy Service Company, and Kevin Warvell is Director of Rate Strategy, FirstEnergy Service Company.

I 3-35 We discussed your objections of "overbroad and unduly burdensome." I will be redrafting this. I explained our basis for seeking the information and we discussed an economic development/reasonable arrangement analogy. You will review the redraft and let me know end of next week (target) if your objections still stand.

I 3-36 We discussed your objections. I will redraft the interrogatory and you will look at. You indicated that you would likely be able to provide some substantive response to this interrogatory with the redraft.

I 3-37 We discussed your objections. You referred to the commission rules but were unable to pinpoint the rule referred to. I explained why I believed the information was relevant. You indicated you would see if there was someone at FE that would be familiar with records retention and would supply that information.

I-3-38 We discussed your objections. I will redraft. You indicated that you would check into this to see what information is available.

I-3-39 We discussed your objections. I will redraft to address. I indicated that last known address for the individuals would be sufficient. You indicated you would relook at the issue and get back to me by end of week to advise if the objections still stand.

I-3-40 We discussed your objections. I will redraft to try to address the alleged broadness of the question. You will review the redraft and let me know by end of week if your objections still stand.

I- 3-41 You responded that Ridmann and Warvell are the persons responsible for determining the revenue impact.

I 3-42 We discussed your objections. I will redraft to try to address them. You will review the redraft and let me know by end of the week if your objections still stand.

I 3-43 I noted that the companies' response to d was only a partial response and that I wanted to know to whom the information was provided at the PUCO and why, to the extent that the company was aware of why. You indicated that you believed the PUCO folks were Tammy Turkenton and Bob Fortney. You said you would check to see that these in fact were the only ones at the commission provided with RPD 3, attachment 1.

3-46 was briefly discussed. Given that the company has come forward with the tariff history this response may be able to be culled from there. I indicated we would check to see if there were specific cases still needed.

3-48 I indicated that you had only partially responded to subsection 3, and had not provided billing units and dollar discounts as requested. You said you would check into this.

3-19 RFP To be affected by modifications to 3-42.

3-21 RFP To be affected by modifications to 3-39.

I will have the redrafts ready by either end of day today or Tuesday. Enjoy your weekend.

Maureen

INT-39. Please identify person(s), by name, position, and current business address, that would be familiar with the advertisements or other documents that promoted all electric rates.

**RESPONSE:** *Objection: The request is overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. (May 24, 2010).*

**REDRAFT 5.28.10:**

INT-39. Please identify FirstEnergy employees, (including former employees), by name, position, and latest known business address, that would be responsible for the development and/or approval of the advertisements or other documents that promoted all electric rates.

INT-40. Please identify, by name, title, current business address, persons that would be familiar with agreements, promises, warranties, covenants, representations or inducements made to your customers to incent them to purchase all electric homes or install electric water heaters, or participate in load management activities.

**RESPONSE:** *Objection: The request is overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. (May 24, 2010).*

**REDRAFT 5.28.10:**

INT-40. Please identify, by name, title, latest known business address, FirstEnergy employees (including former employees) that would be responsible for the development and/or approval of agreements, promises, warranties, covenants, representations or inducements made to your customers to incent them to purchase all electric homes or install electric water heaters, or participate in load management activities.



**INT-42.** Please identify, by name, title, current business address, persons that would be familiar with agreements, promises, warranties, covenants, representations or inducements made to builders to incent them to build all electric homes.

**RESPONSE:** *Objection: The request is overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. (May 24, 2010)*

**REDRAFT 5.28.10:**

**INT-42.** Please identify, by name, title, current business address, FirstEnergy employees and former employees that would be responsible for the development and/or approval of agreements, promises, warranties, covenants, representations or inducements made to builders to incent them to build all electric homes.

**From:** MAUREEN GRADY  
**To:** burkj@firstenergycorp.com  
**Date:** 6/4/2010 4:49 PM  
**Subject:** Re: 3rd Set Revised Discovery- Case No. 10-176

Thank you Jim. I appreciate your attending to this matter. Have a good weekend and enjoy the sunshine in Phoenix (I may be getting the weeks mixed up here). Maureen

>>> <burkj@firstenergycorp.com> 6/4/2010 4:38 PM >>>

In response to your email below:

INT-35 We will provide additional information in response to the revised interrogatory  
 INT-36 We will provide additional information in response to the revised interrogatory  
 INT-38 We will provide additional information in response to the revised interrogatory  
 INT-39 We will continue to object to the revised interrogatory, but not on the grounds of vagueness or overly broad  
 INT-40 We will continue to object to the revised interrogatory, but not on the grounds of vagueness or overly broad  
 INT-42 We will continue to object to the revised interrogatory, but not on the grounds of vagueness or overly broad

We may get clarity on INT-39, 40, and 42 when the PUCO issues its Entry on Rehearing next week.

I expect to be able to provide revised responses to at least some of these interrogatories by the end of next week.

I will also get the answers and objections signed and attested to next week.

"MAUREEN GRADY"  
 <GRADY@occ.state.oh.us>  
 To  
 <burkj@firstenergycorp.com>  
 06/01/2010 09:18 AM  
 cc  
 Subject  
 3rd Set Revised Discovery- Case No. 10-176

Jim, per the e-mail sent on Friday, May 28, 2010, I attach the 3rd revised set of discovery. You will also receive this by regular mail. I would appreciate, as we discussed, hearing from you by the end of the week on

OCC Set 3

Case No. 10-176-EL-ATA  
Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo  
Edison Company for Approval of a New Rider and Revision of an Existing Rider

RESPONSES TO REQUEST

**OCC  
Set 3-39**

Please identify person(s), by name, position, and current business address, that  
would be familiar with the advertisements or other documents that promoted all  
electric rates.

**Response:** Objection: The request is overly broad, unduly burdensome, vague, beyond the  
scope of this proceeding, and irrelevant and not reasonably calculated to lead to  
the discovery of admissible evidence.

**Revised  
Question** Please identify FirstEnergy employees, (including former employees), by name, position,  
and latest known business address, that would be responsible for the development and/or  
approval of the advertisements or other documents that promoted all electric rates.

**Revised  
Response** Objection: The request is unduly burdensome, beyond the scope of this  
proceeding, and irrelevant and not reasonably calculated to lead to the discovery  
of admissible evidence.

**OCC Set 3**

Case No. 10-176-EL-ATA  
Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo  
Edison Company for Approval of a New Rider and Revision of an Existing Rider

**RESPONSES TO REQUEST**

**OCC  
Set 3-  
RPD-21**

Please provide copies of all advertising that you used as referred to in response to  
Interrogatory No. 39.

**Response:** Objection: The request is overly broad, unduly burdensome, vague, beyond the  
scope of this proceeding, and irrelevant and not reasonably calculated to lead to  
the discovery of admissible evidence.

OCC Set 3

Case No. 10-176-EL-ATA  
Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo  
Edison Company for Approval of a New Rider and Revision of an Existing Rider

RESPONSES TO REQUEST

**OCC  
Set 3-40**

Please identify, by name, title, current business address, persons that would be familiar with agreements, promises, warranties, covenants, representations or inducements made to your customers to incent them to purchase all electric homes or install electric water heaters, or participate in load management activities.

**Response:** Objection: The request is overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

**Revised  
Question** Please identify, by name, title, latest known business address, FirstEnergy employees (including former employees) that would be responsible for the development and/or approval of agreements, promises, warranties, covenants, representations or inducements made to your customers to incent them to purchase all electric homes or install electric water heaters, or participate in load management activities.

**Revised  
Response** Objection: The request is unduly burdensome, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

**OCC Set 3**

Case No. 10-176-EL-ATA

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider

**RESPONSES TO REQUEST**

**OCC  
Set 3-  
RPD-18**

Please provide a copy of documents you (FirstEnergy and EDUs) possess that contain advertisements, agreements, promises, covenants, representations, or inducements related to incent customers to purchase all electric rate homes, install load management devices, or install electric water heaters.

**Response:** Objection: The request is overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

OCC Set 3

Case No. 10-176-EL-ATA  
Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider

RESPONSES TO REQUEST

**OCC  
Set 3-42**

Please identify, by name, title, current business address, persons that would be familiar with agreements, promises, warranties, covenants, representations or inducements made to builders to incent them to build all electric homes.

**Response:** Objection: The request is overly broad, unduly burdensome, vague, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

**Revised Question** Please identify, by name, title, current business address, FirstEnergy employees and former employees that would be responsible for the development and/or approval of agreements, promises, warranties, covenants, representations or inducements made to builders to incent them to build all electric homes.

**Revised Response** Objection: The request is unduly burdensome, beyond the scope of this proceeding, and irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

**OCC Set 3**

**Case No. 10-176-EL-ATA**  
**Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider**

**RESPONSES TO REQUEST**

**OCC  
Set 3-  
RPD-19**

Please provide a copy of documents you (FirstEnergy and EDUs) possess that  
Contain advertisements, agreements, promises, covenants, representations, or  
inducements related to incent builders to build all electric rate homes.

**Response:** See Response to OCC Set 3 RPD-18.