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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. )

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

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December 23, 2010

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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 EDUs" or the "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 Interrogatories 80 and 81 (attached hereto as exhibits) in this case that involves the rates that customers pay for service.

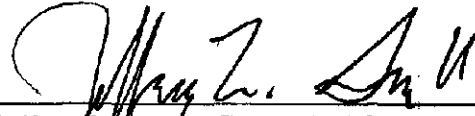
The reasons supporting this Motion to Compel Responses to Discovery ("Motion") are set forth in the attached Memorandum in Support.

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<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 "Jeffrey L. Small", is written over a horizontal line.

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### AFFIDAVIT OF JEFFREY L. SMALL

#### ATTACHMENTS:

ATTACHMENT 1 – Initial Responses to OCC Interrogatories 40 & 42

ATTACHMENT 2 – Revised Responses to OCC Interrogatories 40 & 42

ATTACHMENT 3 – Second Revised Responses to OCC Ints. 40 & 42

ATTACHMENT 4 – Initial Responses to OCC Interrogatories 80 & 81

ATTACHMENT 5 – Revised Responses to OCC Interrogatories 80 & 81

ATTACHMENT 6 – Communications

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**MEMORANDUM IN SUPPORT**

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**I. BACKGROUND**

On February 12, 2010, the Companies filed an application 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> The Commission directed its Staff to investigate and file a report

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<sup>2</sup> *In re FirstEnergy's Application for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Finding and Order at ¶9 (March 3, 2010).

<sup>3</sup> *Id.* at ¶10.

<sup>4</sup> *Id.* at ¶12.

regarding the appropriate long-term rates that should be provided to the all-electric residential customers.<sup>5</sup> The Commission also scheduled and conducted six local public hearings, stating in its entry on that subject that the Commission was “particularly interested in receiving more information . . . about the following: Commitments: If you are in an all-electric home, what contacts or written documents do you have regarding your electric rates now and in the future? Was there a commitment that the rate would remain with the home for future owners?”<sup>6</sup>

On June 30, 2010, the OCC filed a motion to compel answers to certain interrogatories in this case. Among the interrogatories at issue were requests for the Companies to identify employees (including former employees) responsible for promoting all-electric service to both customers and builders.<sup>7</sup> The Entry dated November 8, 2010 states that the OCC’s discovery request was “plainly related to the subject matter of this proceeding and appear[ed] to be reasonably calculated to lead to the discovery of admissible evidence.”<sup>8</sup> In part, the Companies were required to respond to OCC Interrogatories 40 and 42 regarding the identity of employees (including former employees) who were involved in marketing activities related to all-electric service.<sup>9</sup> The initial and the revised responses to Interrogatories 40 and 42 are shown in Attachments 1 and 2.

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<sup>5</sup> Id.

<sup>6</sup> Id., Entry at 3, ¶(7) (October 14, 2010).

<sup>7</sup> *In re FirstEnergy’s Application for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, OCC Motion to Compel at 8-9 (June 30, 2010).

<sup>8</sup> Id., Entry at 4, ¶(8) (November 8, 2010), citing Ohio Adm. Code 4901-1-16(B).

<sup>9</sup> Id., Entry at 2, ¶(4) (“40, and 42”). The

The OCC sought contact information regarding the former employees who were identified by the Companies (i.e. in response to the Entry dated November 8, 2010) as having been engaged in all-electric marketing in order to inquire further into the Companies marketing practices. Those interrogatories and the Companies original and revised responses are shown in Attachments 4 and 5. The FirstEnergy EDUs have not provided much of the information requested, stating in their revised responses that the “information sought is irrelevant and not calculated to lead to the discovery of admissible evidence.”<sup>10</sup>

The OCC requires the information sought from the FirstEnergy EDUs in order to serve subpoenas on the persons previously identified by the Companies. The Motion is submitted due to the Companies unbudging position that it is not required to provide the addresses of former employees who were previously identified as working on the Companies’ marketing effort to residential customers and/or builders.

## **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>11</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

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<sup>10</sup> Exhibit 5.

<sup>11</sup> *In re Investigation Into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 23 (March 17, 1987).

counsel and to expedite the administration of the Commission proceedings.”<sup>12</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 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>13</sup>

This scope of discovery is applicable to written interrogatories. Written interrogatories may elicit facts, data, or other information known or readily available to

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<sup>12</sup> Id., citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76.

<sup>13</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.



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 information sought is relevant; and responses to objections raised by the party from whom the discovery is sought.<sup>14</sup> Copies of the discovery requests and the responses are to be attached.<sup>15</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. The

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<sup>14</sup> Ohio Adm. Code 4901-1-23(C)(1).

<sup>15</sup> Ohio Adm. Code 4901-1-23(C)(2).

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' Should be Ordered to Respond to OCC Interrogatories 80 and 81 that Seek Contact Information Regarding the Persons Identified by the Companies in Response to the Entry Compelling Responses to the OCC's Earlier Discovery.**

##### **1. History of the Dispute**

The OCC's discovery that is the subject of this Motion was submitted to the Companies to enable subpoenas to be issued so that statements could be obtained from employees who were involved in the marketing efforts of the Companies. The OCC submitted discovery to the Companies on November 24, 2010, including Interrogatories 80 and 81 that are the subject of the instant pleading.<sup>16</sup> Service was made by electronic message as required by the Entry dated November 23, 2010 that provided for expedited discovery.<sup>17</sup>

On December 6, 2010, the Companies electronically served their responses to this additional discovery, including responses to Interrogatories 80 and 81. These responses are shown in Attachment 4. OCC counsel contacted the Companies' counsel, stating that these interrogatories went unanswered and that the Companies did not include any objection to the discovery questions. On December 9, 2010, the FirstEnergy EDUs served revised responses to interrogatories 80 and 81 by electronic message (shown in

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<sup>16</sup> Attachments 4 and 5 show the content of OCC Interrogatories 80 and 81.

<sup>17</sup> *In re FirstEnergy's Application for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Entry at 2, ¶(6) (November 23, 2010).

Attachment 5). The revised responses to Interrogatories 80 and 81 merely included an objection regarding the relevance of the OCC's interrogatories.

**2. Unanswered Interrogatories (Attachments 4 & 5)**

**a. Interrogatory 80, Revised**

Interrogatory 80 seeks to discover the most recent contact information (i.e. name, address, and phone numbers) of FirstEnergy employees named by the Companies in responses to Interrogatories 40 and 42 (see Attachment 1) that were the subject of the entry that granted the OCC's first motion to compel. The Companies' stated objection to providing this information is that it "is irrelevant and not calculated to lead to the discovery of admissible evidence."<sup>18</sup> Further, the Companies state that the persons identified "who are available in Ohio may be contacted through the Companies."<sup>19</sup> This statement is not an objection, but simply presents the Companies' counsel as a barrier to obtaining information needed by the OCC to subpoena the persons identified in Interrogatories 40 and 42. When asked to clarify this statement, after the absence of an objection was pointed out to the Companies' counsel, the FirstEnergy EDUs responded by adding the objection as quoted above (Attachment 5).

**b. Interrogatory 81, Revised**

Interrogatory 81 seeks to discover the most recent contact information (i.e. name, address, and phone numbers) of three current or retired FirstEnergy employees who were identified in one of the following ways: i) named in a recent public hearing; ii) mentioned

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<sup>18</sup> This objection was added in the revised discovery response received on December 9, 2010. See Attachment 3. The FirstEnergy EDUs initially stated no objection to this question. See Attachment 1, the original response received by OCC on December 6, 2010.

<sup>19</sup> See Attachment 1.

in recent discovery responses; and iii) the author of a recent letter to the editor. The Companies objected to providing this information because it “is irrelevant and not calculated to lead to the discovery of admissible evidence.”<sup>20</sup>

FirstEnergy supplied some information (but not a telephone contact) for one of the persons identified. For the two remaining individuals, FirstEnergy again stated that the persons identified “who are available in Ohio may be contacted through the Companies.”<sup>21</sup> As with Interrogatory 80, the FirstEnergy EDUs added an objection in a revised response after the OCC pointed out the absence of an objection Companies’ counsel (Attachment 5).

### **3. Reasonable Efforts to Resolve the Dispute**

Upon receiving the Companies’ non-responsive submissions to the OCC’s discovery, OCC counsel inquired regarding the meaning of the Companies’ statement that persons that were the subject of the OCC’s interrogatories could “be contacted through the Companies.”<sup>22</sup> The information had previously been orally requested of the Companies’ counsel when the PUCO compelled responses to other OCC discovery requests, including Interrogatories 40 and 42 that sought the names of the Companies’ marketing personnel.<sup>23</sup>

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<sup>20</sup> This objection was added in the revised discovery response received on December 9, 2010. See Attachment 4. The FirstEnergy EDUs initially had no objection to this question. See Attachment 2, the original response received by OCC on December 6, 2010.

<sup>21</sup> See Attachment 2.

<sup>22</sup> Attachment 6 at 3 (December 7, 2010) (“I do not understand how you think I can or should contact the FirstEnergy retirees . . .”).

<sup>23</sup> Id. (“I asked you on the phone . . .”).

The position taken by the Companies in discussions with the OCC's counsel was that contact information had been withheld because counsel for the Companies represent the persons (i.e. the retired employees) whose depositions were sought by the OCC.<sup>24</sup> This response did not explain withholding simple contact information that would be used by the OCC to compel persons to attend depositions by way of subpoena.<sup>25</sup> The provisions for service of subpoenas, pursuant to Ohio Adm. Code 4901-1-25, should be well known to the Companies' counsel, and failure to provide the witness contact information is an effort to prevent the OCC from compelling witnesses to attend depositions and possibly preventing the OCC from compelling witnesses to appear at the hearing scheduled for Columbus.

In an effort to resolve the dispute, OCC and FirstEnergy EDU counsel attempted to arrange depositions in December such that the OCC would not be required to issue subpoenas for the attendance of former employees to the depositions sought by the OCC.<sup>26</sup> During discussions between counsel on December 15 and 16, 2010 at depositions conducted in Akron, the Companies' counsel informed the OCC that these former employees did not volunteer to attend the depositions in December and that the contract information would be provided in January if the depositions could not be arranged. This situation presents the OCC with the real prospect that weeks will go by (and precious time will be lost while efforts are made to compel responses) while the OCC in the

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<sup>24</sup> See, e.g., id. at 2 (December 9, 2010) ("... are represented by the Companies. . .").

<sup>25</sup> Id. at 1 (. . . preventing me from having subpoenas issued for their depositions.").

<sup>26</sup> Id. at 6 (December 11, 2010) ("... no subpoena will be necessary . . ."). The earlier telephone conversation concerned depositions in December since the due date for testimony is January 7, 2010.

position of not being able to compel the attendance of witnesses by means of subpoena.<sup>27</sup>

In a final effort to resolve the discovery dispute, OCC counsel assured the Companies' counsel that the contact information would not be used to intrude upon an attorney-client relationship.<sup>28</sup> With that assurance, the Companies' counsel had no reasonable basis to continue their refusal to provide the contact information. The Companies' counsel continued to withhold the contact information,<sup>29</sup> leaving the OCC with no option other than to seek the PUCO's order that compels the FirstEnergy EDUs to provide contact information for former employees.

**B. The Requested Information Is Reasonably Calculated to Lead to the Discovery of Admissible Evidence.**

Discovery should be permitted if there is the possibility that the information sought may be relevant to the subject matter of the action and unless it is clear that the information sought can have no possible bearing upon the action.<sup>30</sup> The OCC's discovery in the form of Interrogatories 80 and 81 easily satisfies this standard, and should lead the PUCO to conclude that OCC's Motion should be granted.

The party opposing the discovery request has the burden to establish that the requested information would not reasonably lead to the discovery of admissible evidence.<sup>31</sup> The Companies' objection, stated in the revised responses, is inexplicable.

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<sup>27</sup> Id. at 8 (December 17, 2010) ("... likelihood that the OCC will be in the same situation in January as it is today ...").

<sup>28</sup> Id. at 8.

<sup>29</sup> Id. at 7.

<sup>30</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.

<sup>31</sup> *State ex rel. Fisher v. Rose Chevrolet, Inc.* (C.A. 1992), 82 Ohio App.3d 520, 523.

The PUCO has already ruled that the OCC's inquiry into the identity of persons responsible for the marketing activities of the Companies is "plainly related to the subject matter of this proceeding and appears to be reasonably calculated to lead to the discovery of admissible evidence."<sup>32</sup> The follow-up Interrogatories 80 and 81 seek to locate the persons named by the Companies so the OCC may pursue the information that the PUCO held is "reasonably calculated to lead to the discovery of admissible evidence."

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 the extent to which the Companies will be allowed to collect their claimed revenue shortfall from Ohio customers, including amounts being deferred in this case for discounts provided to all-electric residential customers.<sup>33</sup> The information sought by the OCC is the same as that sought by the PUCO at the local public hearings regarding "commitment[s] that the [all-electric] rate would remain with the home for future owners[ ]"<sup>34</sup> The PUCO should once again require the Companies to answer the OCC's inquiries.

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<sup>32</sup> *In re FirstEnergy's Application for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Entry at 4, ¶(8) (November 8, 2010).

<sup>33</sup> In its Third Entry on Rehearing, dated April 28, 2010, the PUCO clarified that the FirstEnergy EDUs may modify their 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 the OCC urges the Commission to allocate between customers and the utility.

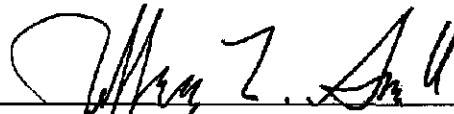
<sup>34</sup> *Id.*, Entry at 3, ¶(7) (October 14, 2010).

#### IV. CONCLUSION

The OCC's Motion should be granted, pursuant to R.C. 4903.082, Ohio Adm. Code 4901-1-16, and other relevant authority as applied to the circumstances described above. The discovery in question (Interrogatories 80 and 81) is reasonably calculated to lead to the discovery of admissible evidence. Granting the OCC's Motion 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



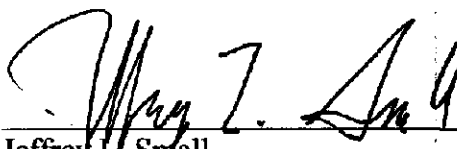
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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Motion to Compel by the Office of the Ohio Consumers' Counsel was provided to the persons listed below via U.S. Mail, postage prepaid, this 23<sup>rd</sup> day of December, 2010.



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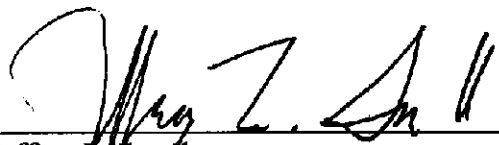
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**AFFIDAVIT OF JEFFREY SMALL**

State of Ohio                                 :  
  :       S.S.  
County of Franklin                         :

I, Jeffrey Small, trial counsel of record for the Ohio Consumers' Counsel ("OCC") in the above-captioned case, being first duly sworn, depose and say:

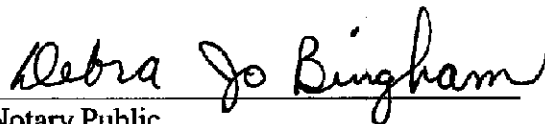
1. That I sought personal contact information for persons in connection with OCC Interrogatories 40 and 42 in an informal discussion with James Burk, counsel for the FirstEnergy EDUs in the above-captioned case. Mr. Burk was reluctant to provide the information, and the request was formalized in the form of OCC Interrogatories 80 and 81. The FirstEnergy EDUs' responses to the OCC's discovery requests did not include contact information for most of the persons who were the subject of the OCC's discovery requests.
2. That I notified Mr. Burk that the FirstEnergy EDUs could not reasonably withhold the requested contact information without any objection to the requests. Soon afterward, revised responses to Interrogatories 80 and 81 were transmitted by FirstEnergy that stated objections based upon the relevance of the requested information. I subsequently notified Mr. Burk that such an objection conflicted with the intent of the Entry in this case that stated that the OCC's discovery regarding the marketing practices of the FirstEnergy EDUs was plainly related to the issues in the case.
3. That efforts to arrange for the depositions of former employees have merely resulted in representations by FirstEnergy EDUs' counsel that former employee contact information will be provided later if such employees do not volunteer to appear for depositions.
4. That I am unable to compel the attendance of witnesses at depositions as the result of the unwillingness of counsel for the FirstEnergy EDUs to provide employee contact information that was sought by Interrogatories 80 and 81. I have exhausted all means other than a motion to compel discovery to resolve differences with the FirstEnergy EDUs regarding the discovery dispute.

  
Jeffrey L. Small

Sworn before me and subscribed in my presence this 23<sup>rd</sup> day of December 2010.



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

  
Notary Public  
State of Ohio

## ATTACHMENT 1

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.

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.

## ATTACHMENT 2



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 interrogatory is overly broad, unduly burdensome, and seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. To begin, the interrogatory uses term "responsible" is vague because it is undefined and subject to a variety of meanings. The interrogatory also seeks information that relates to events that occurred from ten to fifty years ago, spanning decades. The interrogatory can further conceivably be read to include a number of different individuals who worked in a number of different positions. Due to the passage of a significant amount of time, various corporate reorganizations and changes in computer systems, the Companies believe that there are documents and other information that no longer is in the Companies' possession or otherwise available (information that became unavailable well before the advent of this case or any related cases) from which the Companies could form a response to this interrogatory. Thus, the Companies response here may or may not represent a complete a set of information responsive to this interrogatory. This response is, however, the best information that the Companies can provide based on currently available records.

Subject to and notwithstanding its objections, the Companies states that the following current and/or former employees may have had involvement in and first-hand knowledge of the development or approval of agreements, promises, warranties, covenants, representations or inducements made to customers to incent them to purchase all electric homes or install electric water heaters, or participate in load management activities:

**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**

**Current employees – 76 South Main Street, Akron, Ohio 44308**

**Bill Ridmann, Vice President, Rates and Regulatory Affairs  
Bill Byrd, Vice President, Corporate Risk and CRO  
Trent Smith, Regional President, Toledo Edison  
Mary Ann Lepp, Supervisor Energy Sales, FES  
Beth Shriver, Staff Business Analyst**

**Retired employees - last known address is 76 South Main Street, Akron, Ohio 44308**

**Frank Dery - Communications (deceased)  
Don Rearick - Marketing  
Judy Jurgens - Marketing  
William Holley - Marketing  
Don Smith - Marketing  
Ron Best - Marketing**

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 interrogatory is overly broad, unduly burdensome, and seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. To begin, the interrogatory uses term "responsible" is vague because it is undefined and subject to a variety of meanings. The interrogatory also seeks information that relates to events that occurred from ten to fifty years ago, spanning decades. The interrogatory can further conceivably be read to include a number of different individuals who worked in a number of different positions. Due to the passage of a significant amount of time, various corporate reorganizations and changes in computer systems, the Companies believe that there are documents and other information that no longer is in the Companies' possession or otherwise available (information that became unavailable well before the advent of this case or any related cases) from which the Companies could form a response to this interrogatory. Thus, the Companies response here may or may not represent a complete a set of information responsive to this interrogatory. This response is, however, the best information that the Companies can provide based on currently available records.

Subject to and notwithstanding its objections, the Companies states that the following current and/or former employees may have had involvement in and first-hand knowledge of the development or approval of agreements, promises, warranties, covenants, representations or inducements made to builders to incent them to build all electric homes:

Current employees – 76 South Main Street, Akron, Ohio 44308

Bill Ridmann, Vice President, Rates and Regulatory Affairs  
Bill Byrd, Vice President, Corporate Risk and CRO  
Trent Smith, Regional President, Toledo Edison  
Mary Ann Lepp, Supervisor Energy Sales, FES

**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**

**Beth Shriver, Staff Business Analyst**

**Retired employees - last known address is 76 South Main Street, Akron, Ohio 44308**

**Frank Dery - Communications (deceased)**

**Don Rearick - Marketing**

**Judy Jurgens - Marketing**

**William Holley - Marketing**

**Don Smith - Marketing**

**Ron Best - Marketing**

## ATTACHMENT 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 interrogatory is overly broad, unduly burdensome, and seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. To begin, the interrogatory uses term "responsible" is vague because it is undefined and subject to a variety of meanings. The interrogatory also seeks information that relates to events that occurred from ten to fifty years ago, spanning decades. The interrogatory can further conceivably be read to include a number of different individuals who worked in a number of different positions. Due to the passage of a significant amount of time, various corporate reorganizations and changes in computer systems, the Companies believe that there are documents and other information that no longer is in the Companies' possession or otherwise available (information that became unavailable well before the advent of this case or any related cases) from which the Companies could form a response to this interrogatory. Thus, the Companies response here may or may not represent a complete a set of information responsive to this interrogatory. This response is, however, the best information that the Companies can provide based on currently available records.

Subject to and notwithstanding its objections, the Companies states that the following current and/or former employees may have had involvement in and first-hand knowledge of the development or approval of agreements, promises, warranties, covenants, representations or inducements made to customers to incent them to purchase all electric homes or install electric water heaters, or participate in load management activities:

**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**

**Current employees:**

**76 South Main Street, Akron, Ohio 44308**

**Bill Ridmann, Vice President, Rates and Regulatory Affairs**

**Bill Byrd, Vice President, Corporate Risk and CRO**

**Trent Smith, Regional President, Toledo Edison**

**Mary Ann Lepp, Supervisor Energy Sales, FES**

**Beth Shriver, Staff Business Analyst**

**Mark T Clark, Executive Vice President and CFO**

**134 Lawrence Ave, Wauseon, OH 43567**

**Mark D. Everhart, Staff Business Analyst**

**Retired employees:**

**last known address is 76 South Main Street, Akron, Ohio 44308**

**Frank Dery - Communications (deceased)**

**Don Rearick - Marketing**

**Judy Jurgens - Marketing**

**William Holley - Marketing**

**Don Smith - Marketing**

**Ron Best - Marketing**

## ATTACHMENT 4



**OCC Set 9**

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 9-80**      What is the most recent contact information (e.g. home and cell telephone numbers,  
personal email addresses, home addresses) for each of the living, retired (i.e. former)  
employees who were listed in response to OCC INT-40 and INT-42?

**Response:**      The persons listed in the above listed interrogatory responses and who are available in  
Ohio may be contacted through the Companies.

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 9-81

What is the most recent contact information -- business, if currently employed by FirstEnergy, personal (home and cell telephone numbers, personal email addresses, home addresses) if retired -- and last job title for each of the following:

- a. Al Temple (mentioned in the testimony of James Ehlinger at the Maumee local public hearing)?
- b. Don Evans (mentioned in discovery responses as an OE heat-pump specialist as part of Ohio Edison's "Alternative Plus" program)?
- c. Elio Andreatta (signer, Sr. Residential Rep. for Ohio Edison, of a June 18, 1988 letter to a residential customer that was referenced in a March 3, 2010 Cleveland Plain Dealer and is located at the following site:  
[http://media.cleveland.com/business\\_impact/olher/heatpump.pdf](http://media.cleveland.com/business_impact/olher/heatpump.pdf))?

Response:

- a. The person listed in the above listed interrogatory, to the extent that he is available in Ohio, may be contacted through the Companies.
- b. The person listed in the above listed interrogatory, to the extent that he is available in Ohio, may be contacted through the Companies.
- c. 8428 Colwyn Ct Apt 4  
Boardman OH 44512  
Residential Representative

## ATTACHMENT 5

**OCC Set 9**

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 9-80**

What is the most recent contact information (e.g. home and cell telephone numbers, personal email addresses, home addresses) for each of the living, retired (i.e. former) employees who were listed in response to OCC INT-40 and INT-42?

**Revised  
Response:**

Objection. The information sought is irrelevant and not calculated to lead to the discovery of admissible evidence. Subject to the objection, the persons listed in the above listed interrogatory responses and who are available in Ohio may be contacted through the Companies.

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 9-81

What is the most recent contact information -- business, if currently employed by FirstEnergy, personal (home and cell telephone numbers, personal email addresses, home addresses) if retired -- and last job title for each of the following:

- a. Al Temple (mentioned in the testimony of James Ehlinger at the Maumee local public hearing)?
- b. Don Evans (mentioned in discovery responses as an OE heat-pump specialist as part of Ohio Edison's "Alternative Plus" program)?
- c. Elio Andreatta (signer, Sr. Residential Rep. for Ohio Edison, of a June 18, 1988 letter to a residential customer that was referenced in a March 3, 2010 Cleveland Plain Dealer and is located at the following site:  
[http://media.cleveland.com/business\\_impact/other/heatpump.pdf](http://media.cleveland.com/business_impact/other/heatpump.pdf)?)

Revised  
Response:

- a. Objection. The information sought is irrelevant and not calculated to lead to the discovery of admissible evidence. Subject to the objection, the person listed in the above listed interrogatory, to the extent that he is available in Ohio, may be contacted through the Companies.
- b. Objection. The information sought is irrelevant and not calculated to lead to the discovery of admissible evidence. Subject to the objection, the person listed in the above listed interrogatory, to the extent that he is available in Ohio, may be contacted through the Companies.
- c. 8428 Colwyn Ct Apt 4  
Boardman OH 44512  
Residential Representative

## ATTACHMENT 6

From: <burkj@firstenergycorp.com>  
To: "JEFF SMALL" <SMALL@occ.state.oh.us>  
CC: <dakutik@jonesday.com>, <jsaks@jonesday.com>  
Date: 12/10/2010 1:08 PM  
Subject: Re: Fwd: NON CONFIDENTIAL Discovery Responses associated with P.U.C.O CaseNo 10-176-EL-ATA

Jeff,

If you want to depose the former employees, to the extent they are available in Ohio, we can make them available for deposition and no subpoena will be necessary. If you have dates in mind for when you would like to take the depositions, please let us know.

\*\*\*\*\*  
James W. Burk  
Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308  
330-384-5861 (voice)  
330-384-3875 (office fax)  
330-777-6574 (direct fax)  
Email: burkj@firstenergycorp.com

"JEFF SMALL"  
<SMALL@occ.state.oh.us>  
To  
<burkj@firstenergycorp.com>  
cc  
12/09/2010 07:11 PM  
"MAUREEN GRADY"  
<GRADY@occ.state.oh.us>  
Subject  
Re: Fwd: NON CONFIDENTIAL Discovery  
Responses associated with P.U.C.O  
CaseNo 10-176-EL-ATA

If you are stating that these former employees consider you their counsel, then I will work through their counsel (i.e. you, or any other counsel that these persons claim as their attorney). However, you are not entitled to withhold their contact information, which is preventing me from having subpoenas issued for their depositions.

How do you suggest that I communicate with these former employees? That is, you insist that the OCC communicate through you. Whether or not your claim is based upon good law, what is your position regarding the means by which the OCC may determine the information possessed by the former employees?

Jeff Small  
Assistant Consumers' Counsel

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>>> <burkj@firstenergycorp.com> 12/9/2010 2:15 PM >>>

If I understand the question in your email below, for clarification, should you wish to contact former employees who reside within the state of Ohio, you may do so through the Companies' legal counsel. Because these former employees may be contacted through and are represented by the Companies, we disagree that OCC can contact former employees without the knowledge of the Companies.

Also attached, please revised responses to OCC 9-80 and 9-81.

(See attached file: OCC Set 9 - 080 Revised.doc)(See attached file: OCC Set 9 - 081 Revised.doc)

\*\*\*\*\*

James W. Burk  
Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308  
330-384-5861 (voice)  
330-384-3875 (office fax)  
330-777-6574 (direct fax)  
Email: burkj@firstenergycorp.com

"JEFF SMALL"

<SMALL@occ.state.

oh.us>

To

<burkj@firstenergycorp.com>

12/07/2010 03:25

cc

PM

"Chris Allwein"

<Allwein@occ.state.oh.us>,

"MAUREEN

GRADY" <GRADY@occ.state.oh.us>

Subject

Fwd: NON CONFIDENTIAL Discovery

with

Responses associated  
P.U.C.O



**\*\* High Priority \*\***

I asked you on the phone for the contact information for the retirees named in FirstEnergy's discovery responses in 10-176. When you did not respond, I asked in writing (i.e. discovery). FirstEnergy's answer to the written request is that the retirees can be contacted through the Company. I do not understand how you think I can or should contact the FirstEnergy retirees.

FirstEnergy did not object to the discovery question, so I see no basis for the non-responsiveness to the OCC's discovery. Please let me know if you believe this matter can be quickly resolved (i.e. without further run-around).

Jeff

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THANK YOU.

----- Message from singletont@firstenergycorp.com on Mon, 6 Dec 2010 16:17:16 -0500 -----

|----->  
| To: |  
|----->

|sam@mwncmh.com, jclark@mwncmh.com, small@occ.state.oh.us, ricks@ohanet.org, tobrien@bricker.com, John.jones@puc.state.oh.us,

| Sarah.parrot@puc.state.oh.us, Allwein@occ.state.oh.us, GRADY@occ.state.oh.us, mikkelsene@firstenergycorp.com,

warvellk@firstenergycorp.com, |  
|wrridmann@firstenergycorp.com, burkj@firstenergycorp.com,  
dakutik@jonesday.com, John.jones@puc.state.oh.us,  
Sarah.parrot@puc.state.oh.us |

>-----|

|----->  
| cc:|  
|----->

>-----|

|wojciechowskik@firstenergycorp.com

|

>-----|

|----->  
|Subject:|  
|----->

>-----|

|NON CONFIDENTIAL Discovery Responses associated with P.U.C.O Case No  
10-176-EL-ATA

|

>-----|

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. Non-Confidential responses to OCC's Discovery Set 9 - DR's 80-82  
and  
RPD's 51-55

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 9 - 080.pdf)(See attached file: OCC  
Set 9  
- 081.pdf)(See attached file: OCC Set 9 - 082.pdf)(See attached  
file:  
OCC Set 9 - RPD 51.pdf)(See attached file: OCC Set 9 - RPD  
52.pdf)(See  
attached file: OCC Set 9 - RPD 53 Attachment 1.pdf)  
(See attached file: OCC Set 9 - RPD 53.pdf)(See attached file:  
OCC  
Set 9 - RPD 54.pdf)(See attached file: OCC Set 9 - RPD 55.pdf)

-----  
The information contained in this message is intended only for the personal

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Burk/FirstEnergy] [attachment "OCC Set 9 - 081.pdf" deleted by James W.

Burk/FirstEnergy] [attachment "OCC Set 9 - 082.pdf" deleted by James W.

Burk/FirstEnergy] [attachment "OCC Set 9 - RPD 51.pdf" deleted by James W.

Burk/FirstEnergy] [attachment "OCC Set 9 - RPD 52.pdf" deleted by James W.

Burk/FirstEnergy] [attachment "OCC Set 9 - RPD 53 Attachment 1.pdf" deleted

by James W. Burk/FirstEnergy] [attachment "OCC Set 9 - RPD 53.pdf" deleted

by James W. Burk/FirstEnergy] [attachment "OCC Set 9 - RPD 54.pdf" deleted

by James W. Burk/FirstEnergy] [attachment "OCC Set 9 - RPD 55.pdf" deleted

by James W. Burk/FirstEnergy]

**From:** <burkj@firstenergycorp.com>  
**To:** <small@occ.state.oh.us>  
**CC:** <dakutik@jonesday.com>  
**Date:** 12/11/2010 10:49 AM  
**Subject:** 10-176 depositions

As we stated in our discovery responses and emails to you and consistent with our discussion yesterday, we will, to the extent they are available in Ohio, make available the former employees listed in previous discovery responses for deposition and no subpoena will be necessary. We started the process of trying to reach people yesterday after we spoke. We have determined that Ron Best resides in Florida. We are waiting to hear back from others. We are trying to determine what dates people would be available in December and the first two weeks of January, while trying to avoid dates close to the holidays.

\*\*\*\*\*

James W. Burk  
Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308  
330-384-5861 (voice)  
330-384-3875 (office fax)  
330-777-6574 (direct fax)  
Email: burkj@firstenergycorp.com

**From:** JEFF SMALL  
**To:** burkj@firstenergycorp.com  
**Date:** 12/20/2010 11:07 AM  
**Subject:** Re: Deposition Schedule for December 22 and 23

The problem that you pose is that the OCC has no means to compel the attendance of former employees without the addresses for subpoenas. Maybe this can be resolved by agreement by the appropriate FirstEnergy counsel (i.e. the counsel who represent the former employees) to accept the subpoenas (i.e. "in care of") for the witnesses.

Last week, you and David simply stated that if the employees did not volunteer, the addresses would be provided. I don't think the witnesses will volunteer under these circumstances, and your proposal simply introduces delay.

Can this matter be resolved in the manner described above? Please contact me immediately.

Jeffrey L. Small  
Assistant Consumers' Counsel

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>>> <burkj@firstenergycorp.com> 12/20/2010 10:57 AM >>>  
Jeff,

We do not agree that you are entitled to the information that you seek or that, even if you were entitled to it, you could use it to contact the Companies' former employees identified in our interrogatory responses. With the exception of Mr. Andreatta (whose last known address we provided), the former employees have agreed to have Jones Day represent them and have instructed us to advise you that, if you would like to contact them, you must do so either through Jones Day or FirstEnergy's Legal Department.

As we have advised you, with all of the former employees who we have identified and for whom we have not given you addresses, with the exception of Bill Holley, were not available for a deposition before the holidays. We understand that all, but Bill Holley, had plans to be out of the state. As you know, we had made Bill Holley available, but you have now declined to take his deposition.

We expect that Don Rearick and Judy Jurgens should be available for deposition in January before the hearing. Ron Best and Don Smith are currently outside the state of Ohio; Ron Best permanently and Don Smith through sometime in May.

We do not know what more we could do to make these individuals available to you.

As for the deposition of Dennis Chack, be advised that he has advised us that he does not believe that he had responsibility for developing or approving the type of activities discussed in OCC's Interrogatory Nos. OCC Set 3-39, 3-40, or 3-42. Given this, we intend to amend our answer to these interrogatories to delete his name. Let me know whether, in light of this information, you still want to take his deposition.

\*\*\*\*\*  
James W. Burk

Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308  
330-384-5861 (voice)  
330-384-3875 (office fax)  
330-777-6574 (direct fax)  
Email: [burkj@firstenergycorp.com](mailto:burkj@firstenergycorp.com)

"JEFF SMALL"  
<[SMALL@occ.state.oh.us](mailto:SMALL@occ.state.oh.us)>  
To  
<[cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com)>  
12/17/2010 04:39 PM cc  
<[burki@firstenergycorp.com](mailto:burki@firstenergycorp.com)>,  
<[dakutik@jonesday.com](mailto:dakutik@jonesday.com)>,  
<[kevinocorcoran@yahoo.com](mailto:kevinocorcoran@yahoo.com)>  
Subject  
Re: Deposition Schedule for  
December 22 and 23

**\*\* High Priority \*\***

The OCC has decided not to go forward with the depositions of Clark and Holley on December 23. I will send out a notice for the deposition of Mr. Chack on December 22.

FirstEnergy should provide the contact information for the retired employees who were listed by name in the discovery responses. Although FirstEnergy counsel have said that they depositions could take place without the need for subpoenas, the OCC expected progress on depositions during December. Asking the OCC to wait for a couple of weeks for FirstEnergy to determine whether witnesses will volunteer to respond to the OCC's inquiries sometime in January raises the likelihood that the OCC will be in the same situation in January as it is today (i.e. no information other than names).

The OCC does not seek the contact information to intrude upon an attorney-client relationship where FirstEnergy has established such a relationship. Under the circumstances that I have described, please provide the contact information that was requested in the discovery questions. The OCC may seek to compel the release of the information if the information is not provided in a timely manner.

Jeffrey L. Small  
Assistant Consumers' Counsel

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>>> <[cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com)> 12/16/2010 12:25 PM >>>

Jeff and Kevin:

Please see below for the deposition schedule for December 22 and 23. Could you please let me know who from your office will be attending? Thank you.

December 22:

12:30 p.m. Deposition of Dennis Chack

AK-GO, Plaza Conference Room B

December 23:

8:00 a.m. Deposition of Mark Clark

AK-GO, Plaza Conference Room B

1:00 p.m. Deposition of Bill Holley

AK-GO, Plaza Conference Room B

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