

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Federal Insurance Company,)	
as subrogee of Genesis Healthcare System,)	
)	
Complainant,)	
)	
v.)	Case No. 12-1750-EL-CSS
)	
Ohio Power Company,)	
)	
Respondent.)	

MOTION TO STRIKE OF OHIO POWER COMPANY

Pursuant to Rule 4901-1-12, Ohio Power Company d/b/a AEP Ohio (“AEP Ohio” or the “Company”) moves to strike certain portions of the “Brief on the Proceedings” filed by Complainant Federal Insurance Company (“Complainant” or “Federal”) on December 6, 2013 (“Federal’s Brief”). As discussed further in the accompanying memorandum in support, certain portions of Federal’s Brief rely upon material that is not part of the evidence of record in this proceeding and, therefore, they should be stricken.

Respectfully submitted,

/s/ Yazen Alami

Steven T. Nourse
Counsel of Record
Yazen Alami
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
(614) 716-1608
(614) 716-2014 fax
stnourse@aep.com
yalami@aep.com

Christen M. Blend
Porter Wright Morris & Arthur, LLP
41 South High Street, 30th Floor
Columbus, Ohio 43215
(614) 227-2086
(614) 227-2100 *fax*
cblend@porterwright.com

*Counsel for Respondent
Ohio Power Company*

MEMORANDUM IN SUPPORT

I. INTRODUCTION

AEP Ohio respectfully submits that the Commission should strike the following portions of Federal's Brief:

1. The two sentences that begin on at the bottom of page 15 and continue on to page 16: "The field notes maintained by David Sullivan are found at Complainant Exhibit 6. These field notes document a series of problems with the load tap changes at the Linden Avenue substation;" and
2. The entirety of section IV, entitled "Additional Uncontested Facts."

The Commission should strike these portions of Federal's Brief because they rely upon material that is not part of the evidence of record in this proceeding. In addition, the identified portions of Federal's Brief should also be stricken because they rely upon material that the Attorney Examiner specifically excluded from the record during the hearing.

II. ARGUMENT

Portions of a brief that rely upon material that is not part of the evidence of record in a proceeding should be stricken. *See, e.g., In the Matter of the Complaint of Jeff Slusser v. The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 12-1259-GA-CSS, Opinion and Order at 2-3 (Feb. 20, 2013) ("*Slusser*"). In *Slusser*, the Commission granted the utility's motion to strike portions of the complainant's brief, finding "that those portions of Mr. Slusser's brief that raise issues that are not part of the complaint in this case and the evidence of record should be disregarded and, therefore, Dominion's motion to strike those portions of Mr. Slusser's brief should be granted." *Id.* The identified portions of Federal's Brief should likewise be stricken

and disregarded because they rely upon material that is not part of the evidence of record in this proceeding. Moreover, the identified portions of Federal's Brief should also be stricken because they rely upon material that the Attorney Examiner specifically excluded from the record during the hearing.

In its Brief, Federal relies upon Complainant's Exhibit 6 as part of the two sentences that begin on at the bottom of page 15 and continue on to page 16. However, at the hearing, the Attorney Examiner excluded Complainant's Exhibit 6 from the evidentiary record. Specifically, the Attorney Examiner found that Complainant's Exhibit 6 should be excluded "for lack of foundation and lack of completeness." Transcript of October 24, 2013 hearing (hereinafter "Tr.") at 108. Because Complainant's Exhibit 6 is not part of and, in fact, was specifically excluded from the evidence of record in this proceeding, those portions of Federal's Brief that rely upon Complainant's Exhibit 6 should be stricken and disregarded. Therefore, the two sentences identified above that begin on at the bottom of page 15 and continue on to page 16 of Federal's Brief should be stricken.

Likewise, the entirety of section IV of Federal's Brief should be stricken and disregarded. In this section of its Brief, Federal relies upon Complainant's Exhibits 7-11. However, at the hearing, the Attorney Examiner excluded Complainant's Exhibit 8-11 from the evidentiary record entirely (Tr. at 113), and admitted Complainant's Ex. 7 "only to the extent that responses to requests for admission are not conditioned." Tr. at 111. Each of the Company's responses to the requests for admission contained in Complainant's Exhibit 7, however, are conditioned. Because Complainant's Exhibit 7-11 are not part of the evidence of record in this proceeding, and indeed were also expressly excluded from the record by the Attorney Examiner, those portions of Federal's Brief that rely upon Complainant's Exhibits 7-11 should be stricken and

disregarded. Therefore, the entirety of section IV of Federal's Brief should be stricken and disregarded.

If the identified portions of Federal's Brief are not stricken, AEP Ohio will be prejudiced. Due process demands notice and an opportunity to be heard – “each side of the controversy must be given an opportunity to present its case.” *Motor Serv. Co., Inc. v. Pub. Util. Comm.*, 39 Ohio St.2d 5, 10, 313 N.E.2d 803 (1974). Although AEP Ohio obviously participated in the hearing, it did not rebut or present evidence on the extra-record-exhibits upon which Federal's Brief improperly relies, because it understood those exhibits to have been excluded. Unlike Federal, AEP Ohio accepted the Attorney Examiner's evidentiary rulings and, accordingly, treated the identified exhibits as excluded from the record for purposes of cross-examination at the hearing and for post-hearing briefing. AEP Ohio should not be prejudiced simply because Federal chooses to blatantly disregard the Attorney Examiner's evidentiary rulings. For this reason too, the identified portions of Federal's Brief should be stricken and disregarded.

III. CONCLUSION

For the foregoing reasons, AEP Ohio respectfully requests that the Commission strike and disregard the portions of Federal's Brief identified above.

Respectfully submitted,

/s/ Yazen Alami
Steven T. Nourse
Counsel of Record
Yazen Alami
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
(614) 716-1608

(614) 716-2014 *fax*
stnourse@aep.com
yalami@aep.com

Christen M. Blend
Porter Wright Morris & Arthur, LLP
41 South High Street, 30th Floor
Columbus, Ohio 43215
(614) 227-2086
(614) 227-2100 *fax*
cblend@porterwright.com

Counsel for Respondent
Ohio Power Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by e-mail upon counsel for the Complainant on this 13th day of December, 2013.

Daniel C. Theveny, Esq.
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
DTheveny@cozen.com

/s/ Yazen Alami

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/13/2013 3:23:45 PM

in

Case No(s). 12-1750-EL-CSS

Summary: Motion to Strike and Memorandum in Support electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company