

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )	
Edison Company, The Cleveland Electric )	Case Nos. 12-2190-EL-POR
Illuminating Company, and The Toledo )	12-2191-EL-POR
Edison Company For Approval of Their )	12-2192-EL-POR
Energy Efficiency and Peak Demand )	
Reduction Program Portfolio Plans for 2013 )	
to 2015 )	

**MEMORANDUM CONTRA RENEWED MOTION AND MEMORANDUM OF ELPC  
AND OEC REQUESTING A DETERMINATION THAT COLLABORATIVE  
MATERIALS ARE NOT CONFIDENTIAL**

The “renewed” motion filed jointly by ELPC and OEC is not permitted by the Commission’s rules and fails to present any basis for the relief it seeks. Thus, the Commission should deny the motion.

First, ELPC and OEC chose to request an expedited ruling on their motion under O.A.C. 4901:1-1-12(C). The rule bars ELPC and OEC from filing a reply brief in support of their motion “unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner.” *Id.* No such request has been made. ELPC and OEC cannot circumvent this rule by styling their reply brief as a “renewed” motion. It is a reply brief, and it is improper under the Commission’s rules.

Second, ELPC and OEC suggest that the Companies’ decision to provide business information to Collaborative participants on September 16, 2014 – one week in advance of the Collaborative meeting held September 23, 2014 – is an additional reason for the Commission to order that ELPC and OEC may breach the confidentiality of Collaborative proceedings. To the contrary, the Companies’ sharing of information with Collaborative participants *for purposes of the Collaborative* is a testament to the Companies’ firm belief that the Collaborative will be of value only if participants may freely discuss their ideas and issues without concern that those

ideas and issues will be publicly broadcast far and wide by one or two participants. Without that trust in an efficient Collaborative process, the Companies would have to be more restrictive with the information to be circulated to or discussed with Collaborative participants. ELPC and OEC have offered no reason in their “renewed” motion why the confidentiality of Collaborative proceedings should be breached.

Third, ELPC and OEC incorrectly suggest that they should have the ability to breach confidentiality because the Companies’ EE/PDR Portfolio Plan may undergo significant changes as a result of S.B. 310. Yet these complainants have pointed to no provision of S.B. 310 that authorizes public disclosure of information intended only for Collaborative use. Indeed, pursuant to S.B. 310, the Companies publicly filed in this docket on September 24, 2014 their Verified Application for Approval of Amended Energy Efficiency and Peak Demand Reduction Programs for 2015 through 2016. ELPC and OEC are free to share with their members all of the information contained in the Verified Application. However, as the Companies have previously explained, the Collaborative is not a back channel for ELPC and OEC to gather information to be used against the Companies, whether in this docket or in the media.<sup>1</sup>

Lastly, as discussed at length in the Companies’ July 22, 2014 Memorandum Contra, there are multiple, good reasons why the Commission cannot and should not grant ELPC’s and OEC’s motion. The motion lacks record support. No statute confers on the Commission the authority to grant to ELPC and OEC the power to broadcast the Companies’ non-public business information shared in confidence pursuant to the Collaborative process. The Companies are not public offices subject to Ohio’s Public Records Act. And ELPC’s and OEC’s professed interest in having robust discussions during the Collaborative process would undoubtedly be unrealized

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<sup>1</sup> See Memorandum Contra, p. 3, filed by the Companies on July 22, 2014 in this docket.

if they could freely disclose the Companies' business information outside of that process. The Commission should not permit third parties to decide how and when the Companies' non-public business information should be made public.

For the reasons set forth above and in the Companies' July 22, 2014 Memorandum Contra, the "renewed" motion filed by ELPC and OEC should be denied.

Respectfully submitted,

s/ James F. Lang

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## CERTIFICATE OF SERVICE

I certify that this Memorandum Contra was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 24th day of September, 2014. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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s/ James F. Lang  
One of Attorneys for Applicants

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**Case No(s). 12-2190-EL-POR, 12-2191-EL-POR, 12-2192-EL-POR**

Summary: Memorandum Contra Renewed Motion and Memorandum of ELPC and OEC Requesting a Determination that Collaborative Materials Are Not Confidential electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company