

**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 )  
Edison Company for Authority to Provide )  
for a Standard Service Offer Pursuant to )  
R.C. 4928.143 in the Form of an Electric )  
Security Plan )

Case No. 14-1297-EL-SSO

PUCO

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**IGS ENERGY'S MOTION TO COMPEL OR IN THE ALTERNATIVE MOTION TO  
STRIKE  
AND REQUEST FOR EXPEDITED TREATMENT**

Pursuant to Ohio Administrative Code ("OAC") 4901-1-12 and 4901-1-23 Interstate Gas Supply, Inc. ("IGS") respectfully requests that the Public Utilities Commission Ohio to ("Commission") compel Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("FirstEnergy") to produce information requested in IGS' First Set of Discovery responses. See Attachment 1.<sup>1</sup> Specially, IGS requests that the Commission compel FirstEnergy to produce:

- All forecasts of electric prices produced by Judah Rose since 2009 (IGS Int-1-1; IGS RPD 1-2);
- All forecasts of commodity prices produced by Judah Rose since 2009 (IGS Int-1-2; IGS RPD 1-3);


<sup>1</sup> Attachment 1 contains FirstEnergy's response to IGS's first set of discovery, as well discovery responses cross-referenced in these responses.

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- An unredacted copy of the testimony that Judah Rose submitted in Duke Energy Ohio's Electric Security Plan (Case Nos. 11-3549-EL-SSO, *et al.*) as well as all workpapers and forecasts to support that testimony.  
(IGS RDP-1-6)

Further, because the deadline to file testimony in this proceeding is December 22, 2014, pursuant to OAC 4901-1-12(C), IGS requests that its Motion be given expedited treatment and a decision on IGS' motion be rendered by December 18, 2014.

In the alternative, if FirstEnergy does not provide past forecasts made by Judah Rose, IGS moves the Commission to strike the portions of Mr. Rose's testimony that relies upon forecasts for future electric prices and future commodity prices, as well as the other FirstEnergy testimony (Witnesses Lisowski, Strah, and Mikkeslen) that relies on those forecasts. The reasons for these Motions are more fully set forth in the attached Memorandum in Support.

  
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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

Judah Rose is a professional witness—he regularly submits testimony at utility commissions throughout the country on behalf of utility clients that pay for his services.<sup>2</sup> In past testimony (including testimony filed at the Commission), Mr. Rose has included forecasts of wholesale energy and commodity prices.<sup>3</sup> In the testimony filed in this proceeding Mr. Rose includes forecasts on wholesale electric prices, natural gas commodity prices, and coal prices that FirstEnergy now wishes to be consider as evidence on the record in support of its Application.<sup>4</sup>

On November 6, 2014 IGS served its first set of discovery (“First Set”) on FirstEnergy. In IGS Int-1-1, and IGS Int-1-2, IGS ask FirstEnergy to disclose all past electric and commodity price forecasts Mr. Rose has made since 2009. In IGS RPD-1-2 and IGS RPD-1-3 and IGS RPD-1-6, IGS also requested copies of those forecasts.

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<sup>2</sup> Judah Rose Testimony at 2.

<sup>3</sup> Id. at 2-3.

<sup>4</sup> Id. at 33-28.

On November 25, 2014 FirstEnergy respond to IGS' First Set, failing to provide any of the information requested in IGS Int-1-1, IGS Int-1-2, IGS RPD-1-2 and IGS RPD-1-3 and RPD 1-6. In those responses FirstEnergy referred IGS to discovery responses given to other Parties in this proceeding, in which FirstEnergy claimed that the information that relates to past forecasts made by Mr. Rose is confidential and irrelevant. Moreover, FirstEnergy claimed that Judah Rose created the forecasts for third parties and is contractually prohibited from sharing them.

On November 28, IGS's counsel provided FirstEnergy's counsel with a letter ("November 28 Letter") again requesting information that relates to Mr. Rose's forecasts, explaining that Mr. Rose's past forecasts are directly relevant to the credibility of the current forecasts Mr. Rose is now making in this proceeding. See Attachment 2. Specifically, in the November 28 Letter, IGS explained that the accuracy of Mr. Rose's past forecasts is needed to ascertain whether it is reasonable to rely on the current forecasts Mr. Rose has submitted in this proceeding. IGS's counsel has also had an informal phone conversation with FirstEnergy's counsel requesting the information IGS seeks in IGS Int-1-1, IGS Int-1-2, IGS RPD-1-2 and IGS RPD-1-3 and IGS RPD-1-6.

On December 5, 2014, FirstEnergy's counsel provided IGS' counsel with a letter ("December 5 Letter") again indicating that FirstEnergy refuses to provide IGS with any information that relates to Mr. Rose's past forecasts and projections he has made since 2009. Attachment 3. In that letter, FirstEnergy indicated that Mr. Rose's forecasts are not relevant, and that Mr. Rose is prohibited from disclosing them. FirstEnergy, however, also indicated that Mr. Rose may be "obligated to disclose confidential information pursuant to Court Order." Attachment 3.

FirstEnergy did not identify the case numbers in which Mr. Rose may have provided forecasts, or whether any those forecasts may have been released into the public domain. Regarding forecasts that Mr. Rose has provided in cases in Ohio, FirstEnergy attempted to shift its burden to respond to discovery onto IGS, claiming that “[i]f IGS would like access to this testimony, it should raise this issue in that case and obtain an appropriate order from the Attorney Examiner in that proceeding.” Attachment 3. Of course, the discovery process was completed in those cases long ago and thus unhelpful at this time.

Accordingly, IGS’s counsel has attempted to resolve this discovery dispute with FirstEnergy. It does not appear that FirstEnergy will provide responses to IGS’s requests without a Commission intervention. Attachment 4 (containing the Affidavit of Joseph Olikier). Therefore, requests that the Attorney Examiner issue an order compelling FirstEnergy to produce Mr. Rose’s past electric and commodity forecasts. In the alternative, IGS requests that the Commission strike the portions of Mr. Rose’s testimony that rely upon forecasts of energy and commodity prices.

## **II. ARGUMENT**

### **A. Mr. Rose’s Past Price Forecasts are Directly Relevant to Ascertaining the Reasonableness of his Current Price Forecasts**

Rule 4901-1-16(B), Ohio Administrative Code (“OAC”), provides that any party may seek discovery in Commission proceeding that “is relevant to the subject matter of the proceeding.” Commission rules explicitly state the scope of discovery is not limited to evidence admissible at hearing. Rather, Rule 4901-1-16(B), OAC, provides that the information sought in discovery must be “reasonably calculated to lead to the discovery of admissible evidence.” In short, the standard for what is relevant in the context of

discovery at a Commission proceeding is very broad. Mr. Rose's past opinions regarding future electric prices are easily designed to potentially lead to the discovery of admissible evidence.

Moreover, this Commission has previously determined that past testimony is relevant and compelled parties to produce discovery related to prior testimony and opinions. *In the Matter of the Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services*, Case No. 96-1310-TP-COI, Entry at 12 ("In interrogatories 9 and 10, Ameritech seeks information concerning the publications and dates of testimony provided by the PAO's expert witnesses. The PAO's responses to interrogatories 9 and 10 do appear to be incomplete. . . . An order to compel responses to interrogatories 9 and 10 shall, therefore, be granted.")

In the testimony filed in this proceeding Judah Rose has forecasted wholesale electric prices in the ATSI zone over the next 15 years.<sup>5</sup> FirstEnergy has utilized Mr. Rose's projections of wholesale electric prices to argue that the Commission should approve the power purchase agreement ("PPA") that it is requesting in this proceeding. Specifically, the economics of this multi-billion dollar decision turn largely on Mr. Rose's projections.

Before the Commission agrees to commit FirstEnergy customers to a PPA (based on Judah Rose's forecasts), it is reasonable to test his forecast by comparing it other forecasts Mr. Rose has produced. A comparison will allow the Commission to

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<sup>5</sup> *Id.* at 35-36.

determine the accuracy, consistency, and credibility of Mr. Rose's. Thus, Mr. Rose's forecasts are directly relevant to his credibility in this proceeding.

One of the best ways to ascertain whether Mr. Rose's forecasts should be relied upon today, is evaluate whether Mr. Rose has been correct in the past about power and commodity price projections. If, for instance, Mr. Rose has predicted higher electric prices in the past, and Mr. Rose's projections have turned out to be wrong, it calls into question whether the Commission should rely on projections Mr. Rose's is making in this proceeding. Further, under Rule of Evidence 611(B), "cross-examination is available as to all matters that relate to credibility." These forecasts may potentially relate to Mr. Rose's credibility; thus, they should be produced.

Any question over the relevance of Mr. Rose's past forecasts is eliminated by FirstEnergy's own discovery requests to IGS. Attachment 5. In this proceeding, FirstEnergy has requested that party's produce their own past forecasts of energy prices. Thus, FirstEnergy cannot, on the one hand, request that other parties produce their forecasts, and on the other hand, refuse to produce Mr. Rose's on the claim that they are not relevant.

Further, there must be a means by which Mr. Rose and FirstEnergy be held accountable for the predictions they make in Commission proceedings. If no one is ever able to check the validity of past price projections, because past price projections are deemed irrelevant, there is limited incentive to attempt to make accurate price projections in the first instance.

Given there is an obvious economic incentive for FirstEnergy to project higher power prices, the Commission should have a healthy skepticism of the price projections

that are being presented in this proceeding. This is particularly so since FirstEnergy is requesting that the Commission rely on those projections to justify committing potentially billions of customer dollars.

**B. FirstEnergy has not established that all information requested by IGS is confidential**

FirstEnergy asserts in its discovery responses that the past price projections of Mr. Rose contain confidential information. This claim is without merit—at least to a large majority of those forecasts. By their very nature, past price projections become stale over time and provide not independent economic value after the future unfolds. For instance IGS requests Mr. Rose’s projections from 2009. Five years have passed since 2009 and now there is actual power price data from 2009 through 2014. Thus, Mr. Rose’s projections from this time period could not be used for economic benefit. FirstEnergy, while broadly stating that such forecasts are confidential, has not even attempted to determine whether that is still true (which is unlikely) or identified the individual dockets that such forecasts may have been filed. Therefore, FirstEnergy has not maintained its burden of demonstrating that *all* of the requested information is indeed confidential. And thus it should be compelled to produce forecasts related to time periods that have now passed, and to identify all dockets in which Mr. Rose has submitted forecasts that have been released into the public record.

**C. Even if Mr. Rose’s Past Forecasts Were Confidential, FirstEnergy concedes that the Commission may compel Mr. Rose to produce the forecasts. Additionally, the forecasts may be released [REDACTED].**

In the December 5 Letter FirstEnergy maintains that it cannot provide the information related to Mr. Rose’s past forecasts because Mr. Rose is contractually



prohibited from disclosing his prior forecasts. FirstEnergy, however, concedes that Mr. Rose may be “obligated to disclose confidential information pursuant to Court order.” As discussed below, IGS respectfully requests that the Commission issue an order directing FirstEnergy to produce Mr. Rose’s prior forecasts.

FirstEnergy or its affiliate has hired Mr. Rose to testify in this proceeding. Mr. Rose clearly has access to his own publications and forecasts. FirstEnergy is now attempting to utilize Mr. Rose’s status as a non-employee and contractual agreements with third parties to protect it against legitimate discovery. It would be dangerous precedent to allow a Party to hire an outside expert, and then claim anything that witness has ever done, or said, in the past that could speak to the credibility of the witness is off-limits simply because the witness does not work directly for the Party.

This precedent would be especially dangerous given that FirstEnergy requested that IGS produce all testimony that any of IGS witnesses have ever filed throughout the country, including all “transcripts of depositions” in any administrative proceeding. Attachment 5 (containing FirstEnergy’s First Set of Discovery to IGS, INT. 1.3, RFP 1.8 and an excerpt of FirstEnergy’s Discovery to Independent Market Monitor at INT 1-15 and RPD 1-5 and RPD 1-6). FirstEnergy also requests that IGS produce, “any analysis or opinion rendered” by IGS’s expert witnesses (FirstEnergy’s First Set of Discovery to IGS, RFP 1.9). *Id.*<sup>6</sup>

The Commission can avoid FirstEnergy’s request to establish poor public policy by following another Ohio administrative body that has already rejected FirstEnergy’s

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<sup>6</sup> To the extent that the Commission allows FirstEnergy to avoid disclosure, it is logical—indeed, it is likely—that parties will leverage non-disclosure agreements with their affiliated companies to protect information from disclosure in the discovery process. This would further limit parties’ ability to fully develop the record.

claim that a contract with a third party may limit disclosure. Specifically, the Board of Tax Appeals ordered Cincinnati Gas and Electric Corporation to produce a third-party's trade secret information, stating "[a]lthough appellant suggests that [\*7] it may be under its own contractual obligations with a third party entity not to release such information, there exists insufficient evidence to support such an allegation. *Moreover, we question whether this claim constitutes a valid basis for precluding the BOE's expert from obtaining information which may be necessary in order to formulate an opinion of value.* Accordingly, given the existing record, we find no basis for denying the BOE access to an unredacted version . . . ." *Cincinnati Gas & Electric Co. v. Clermont County Board of Revision*, State of Ohio—Board of Tax Appeals, CASE NOS. 98-K-706, *et al.* (April 4, 2000), 2000 Ohio Tax LEXIS 493.

Additionally, as mentioned above, [REDACTED]

[REDACTED]. Indeed, it is [REDACTED]

[REDACTED]. FirstEnergy is fully aware of this fact

[REDACTED]

Attachment 6 (Response to Sierra Club Set 1-RPD-40 Attachment 1-Confidential) (emphasis added). While IGS disagrees with FirstEnergy's claim Attachment 6 is confidential, it has agreed to file it under seal for the time being.

Because Mr. Rose has offered testimony in this proceeding on behalf of FirstEnergy, [REDACTED]

[REDACTED]

[REDACTED]

Moreover, as FirstEnergy specifically concedes, the Commission may compel Mr. Rose to produce his prior forecasts pursuant to Commission order.

Finally, the agreement [REDACTED]

[REDACTED]. FirstEnergy has failed to demonstrate that it or Mr. Rose has attempted to contact the parties that allegedly prohibit Mr. Rose from disclosing his prior forecasts.

**D. There are no legitimate concerns to prohibit disclosure of this information under seal**

IGS has entered into a confidentiality agreement with FirstEnergy in this proceeding. And IGS will protect the confidentiality of any forecasts that Mr. Rose is

compelled to produce. Additionally, if necessary, IGS will enter into reasonable confidential agreements with any third party that requests one to protect their information. Thus, any concerns that the forecasts might be confidential information of other clients is ameliorated by the fact that IGS will not disclose the information to the public or third parties. For these reasons the Commission should require that FirstEnergy produce the information IGS requests in this Motion to Compel.

The reason why Parties execute confidentiality agreements in Commission proceedings is so that Parties *can* disclose confidential information to each other in the context of a Commission proceeding. Thus, it is not a legitimate rationale to withhold relevant discovery on grounds that the information is confidential, when there is a binding confidentiality agreement executed between the Parties.

### III. ALTERNATIVE MOTION TO STRIKE

Additionally, to the extent that FirstEnergy either refuses to comply with the Commission's order—or claims that it cannot do so—IGS urges the Commission to strike Mr. Rose's testimony, as well as testimony that relies upon Mr. Rose's forecasts. Under Rule 4901:1-23(F), OAC, when a party disobeys an order of the commission compelling discovery, the commission may ***"Prohibit the disobedient party from supporting or opposing designated claims or defenses, or from introducing evidence or conducting cross-examination on designated matters."*** (emphasis added).

As discussed above, in the December 5 Letter FirstEnergy maintains that it cannot provide the information IGS requests because Mr. Rose is contractually

prohibited from disclosing it and it is not in FirstEnergy's possession. But, if FirstEnergy is unwilling or unable to produce the price forecasts IGS requests, IGS respectfully requests that the Commission strike the price forecasts from Mr. Rose's testimony, and the other testimony that FirstEnergy has filed that rely on Mr. Rose's forecasts.

#### **IV. CONCLUSION**


For the reasons set forth in IGS' Memorandum in Support, IGS respectfully requests that the Commission grant its Motion to Compel with respect to the discovery responses submitted in IGS Int-1.1, IGS Int-1.2, IGS RPD-1.2 and IGS RPD-1.3 and IGS RPD-1-6. Further, IGS asks that this Motion be granted expedited treatment, and order that IGS produce the information before the deadline to file testimony in this proceeding. Finally, if FirstEnergy refuses to produce the information requested by IGS, IGS requests that testimony that relates to the forecast Mr. Rose's forecasts be stricken.

Respectfully submitted,

  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *IGS's Motion to Compel and Memorandum in Support or in the Alternative Motion to Strike and Request for Expedited Treatment* was served this the 10th day of December 2014 via electronic mail upon the following:

  
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**IGS Set 1**  
**Witness: Judah L. Rose**

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

**RESPONSES TO REQUEST**

**IGS Set 1 –** Identify all forecasts of electric prices produced by Judah Rose since 2009.  
**INT-1**

**Response:** See response to SC Set 1 – RPD-23 and SC Set 1 - RPD-27.



**IGS Set 1**  
**Witness: Judah L. Rose**

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Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
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**RESPONSES TO REQUEST**

**IGS Set 1 –** Identify all forecasts of commodity prices produced by Judah Rose since 2009.  
**INT-2**

**Response:** See response to SC Set 1 – RPD-31, SC Set 1 – RPD-35, and SC Set 1 – RPD-38.

Witnesses: Judah L. Rose and Jason J. Lisowski  
As to objections: Carrie M. Dunn

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RESPONSES TO REQUEST

IGS Set 1 –  
INT-3

Identify whether the generation unit cost and energy revenue projections provided by FirstEnergy Solutions ("FES") witness Lisowski assumes an impact for the Environmental Protection Agency's ("EPA") proposed carbon emission limits for existing power plants (111(d)) on the following:

- a. Projected Market Revenue
- b. If the answer to (a) is yes, identify the impact (in total dollars) for each year of the projection.
- c. If the answer to (a) is yes, identify the impact (in total dollars) for each generation unit for each year of the projection.
- d. Projected costs.
- e. If the answer to (d) is yes, identify the impact (in total dollars) for each generation unit for year of the projection.
- f. If the answer to (d) is yes, identify the impact (in total dollars) for each generation unit for each year of the projection.

Response:

The request contains a factual inaccuracy. Mr. Lisowski's cost and revenue projections contained in his testimony were provided on behalf of the Companies, not FES.

- a. Objection. This request is vague and ambiguous. Subject to the foregoing, Mr. Lisowski's modeling of the costs and revenue projections were dependent on the price forecasts provided by Mr. Rose. Mr. Rose's projections of power prices accounted for cost and revenue impacts associated with carbon pricing.
- b. Objection. This request is vague and ambiguous. ***Subject to any objections, the requested information is Competitively-Sensitive Confidential*** and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.
- c. See response to part (b).
- d. See response to part (a).
- e. For information on a unit basis for OVEC, the Companies object to the extent the Interrogatory seeks information outside the Companies' possession, custody, or control, including without limitation information within the sole possession of OVEC. ***Subject to any objections, the requested information is Competitively-Sensitive Confidential*** and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.
- f. See response to part (e).

**IGS Set 1**  
**Witness: Jason J. Lisowski**

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Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
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**RESPONSES TO REQUEST**

**IGS Set 1 –**      Witness Lisowski states “I used a dispatch modeling system to project how the Plants will  
**INT-4**      be dispatched economically and the amount of energy revenues that will be generated by  
each of the Plants.” Identify whether the modeling system (results reflected in JIL-1 and  
JIL-3) assumes that the EPA’s proposed carbon emission rules for existing power plants  
will limit the generation output of Sammis or OVEC (Clifty Creek and Kyger Creek). If so,  
identify the impact for each plant for each year. If not, explain why not.

**Response:**    See response to IGS Set 1–INT-3(a). Subject to the answer and objections contained  
therein, the Companies further state that the modeling does not assume that the generation  
output of Sammis or OVEC will be artificially limited by carbon emission rules.

**IGS Set 1**  
**Witness: Jay A. Ruberto and Jason J. Lisowski**  
**As to objections: Carrie M. Dunn**

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The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

**RESPONSES TO REQUEST**

- IGS Set 1 –** Identify whether Attachment JAR-1 assumes an impact for the EPA proposed carbon  
**INT-5** emission limits for existing power plants on the following:
- a. Projected Market Revenue
  - b. If the answer to (a) is yes, identify the impact (in total dollars) for each year of the projection.
  - c. If the answer to (a) is yes, identify the impact (in total dollars) for each generation unit for each year of the projection.
  - d. Projected costs.
  - e. If the answer to (d) is yes, identify the impact (in total dollars) for each generation unit for year of the projection.
  - f. If the answer to (d) is yes, identify the impact (in total dollars) for each generation unit for each year of the projection.

**Response:** See response to IGS Set 1-INT-3.

**IGS Set 1**  
**Witness: Legal**

Case No. 14-1297-EL-SSO  
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**RESPONSES TO REQUEST**

**IGS Set 1 –** Identify whether FirstEnergy has a joint defense agreement with FirstEnergy Solutions  
**INT-6**

**Response:** Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company have a joint defense agreement with FirstEnergy Solutions Corp.

**IGS Set 1**  
**Witness: Legal**  
**As to objections: Carrie M. Dunn**

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

**RESPONSES TO REQUEST**

**IGS Set 1 –** Identify whether FirstEnergy remits any portion of the invoices it receives from Calfee Halter  
**INT-7** and Griswold and Jones Day related to the ESP Application to FirstEnergy Solutions. For  
example, IGS Energy filed a Motion to Compel FirstEnergy to adopt a confidentiality  
agreement that allows IGS to have access to FES's confidential information. If the law firm  
of Jones Day drafted a memo contra, would FirstEnergy submit the cost of drafting that  
memo contra to FES?

**Response:** Objection. This request seeks information that is neither relevant nor likely to lead to the  
discovery of admissible evidence. Moreover, this request seeks information that is protected  
by the attorney client and work product privileges.

**IGS Set 1**  
**Witness: Legal**  
**As to objections: Carrie M. Dunn**

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

**RESPONSES TO REQUEST**

**IGS Set 1 –** If the answer to Int. 1.7. is yes, identify all invoices and the total amount of charges that  
**INT-8** FirstEnergy has submitted to FES for payment.

**Response:** Objection. This request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Moreover, this request seeks information that is protected by the attorney client and work product privileges.

**IGS Set 1**  
**Witness: Legal**  
**As to objections: Carrie M. Dunn**

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

**RESPONSES TO REQUEST**

**IGS Set 1 –** If the answer to Int. 1.7. is no, identify why not.  
**INT-9**

**Response:** Objection. This request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Moreover, this request seeks information that is protected by the attorney client and work product privileges.



Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

**IGS Set 1 –** Provide copies of all formal and informal data requests (including staff's formal and informal  
**RPD-1** data requests) served on FirstEnergy and its responses thereto.

**Response:** The Companies have provided IGS with all responses sent to date and will continue to provide to IGS copies of discovery requests submitted by any party to this proceeding sent after the date of their motion to intervene, as well as the Companies' responses thereto, with information designated confidential or competitively sensitive confidential only being released to parties with properly executed non-disclosure agreements.

**IGS Set 1**

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**IGS Set 1 –** Provide copies of all forecasts of electric prices produced by Judah Rose since 2009.  
**RPD-2**

**Response:** See response to SC Set 1 – RPD-27.

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**IGS Set 1 –** Provide copies of all forecasts of commodity prices produced by Judah Rose since 2009.  
**RPD-3**

**Response:** See response to SC Set 1 – RPD-31, SC Set 1 – RPD-35, and SC Set 1 – RPD-38.

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

REQUEST FOR PRODUCTION OF DOCUMENTS

**IGS Set 1 –** Provide a copy of all workpapers, with formulas intact, to support Attachment JAR-1.  
**RPD-4**

**Response:** See OCC Set 2-RPD-19 Attachment 1 and IEU Set 2-RPD-2 Attachment 1-Competitively  
Sensitive Confidential.

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

**IGS Set 1 –  
RPD-5**

Provide a copy of the following publications/presentations:

- a. Rose, J.L., Southeastern Electric Exchange – Integrated Resource Planning Task Force Meeting, Carbon Tax Outlook Discussion, February 21-22, 2008
- b. Rose, J.L., Reality and Impacts of Plant Retirements, Reading Tea Leaves – The Future of America's Installed Power Plants, July 25, 2013.
- c. Rose, J.L., Implications of Current Low Natural Gas Price Environment on Wholesale Power, Edison Electric Institute, May 3, 2012.
- d. Rose, J.L., Anticipating the Next Turn in a Gas-Rich Environment, Key Pricing Drivers, and Outlook, Houlihan and Lokey Merchant Energy Conference, April, 24, 2012.
- e. Rose, J.L., Vinson & Elkins Conference, Houston, TX, November 11, 2010.
- f. Rose, J.L., CO2 Control, "Cap & Trade", & Selected Energy Issues, Multi-Housing Laundry Association, October 26, 2009.
- g. Rose, J.L., Infocast Gas Storage Conference, "Estimating the Growth Potential for Gas-Fired Electric Generation," Houston, TX, March 22, 2006.
- h. Rose, J.L., "Fuel Diversity in the Northeast, Energy Bar Association, Northeast Chapter Meeting, New York, NY, June 9, 2005.
- i. Rose, J.L. and Henning, B. "Partners in Reliability: Gas and Electricity," PowerNews, September 1, 2012.
- j. Assessing the Future of Old Power Plants, Projections on What the Fleet Might Look Like in 10 Years (Presented to Northeast Energy Summit 2014).

**Response:**

Please see IGS Set 1-RPD-5 Attachments 1-8 in response to IGS Set 1-RPD 5 (a)-(d), (f)-(h) and (j). After an exhaustive search, (e) and (i) cannot be found.

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

REQUEST FOR PRODUCTION OF DOCUMENTS

**IGS Set 1 –** Provide an unredacted copy of the testimony that Judah Rose submitted in Duke Energy  
**RPD-6** Ohio's Electric Security Plan (Case Nos. 11-3549-EL-SSO, et al) as well as all workpapers  
and forecasts to support that testimony.

**Response:** Objection. This request seeks confidential information outside the possession, custody, or control of the Companies. The information sought is also the subject of both confidentiality agreements and protective orders, and therefore will not be produced by Mr. Rose. The Companies further object because the request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence.

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

REQUEST FOR PRODUCTION OF DOCUMENTS

**IGS Set 1 –** Provide an unredacted copy of the testimony that Judah Rose submitted in Duke Energy  
**RPD-7** Ohio's Market Rate Offer application (Case No. 10-2586-EL-MRO) as well as all workpapers  
and forecasts to support that testimony.

**Response:** See response to IGS Set 1-RPD-6.

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

REQUEST FOR PRODUCTION OF DOCUMENTS

**IGS Set 1 –** Provide an unredacted copy of the testimony that Judah Rose submitted in Duke Energy  
**RPD-8** Ohio's Electric Security Plan application (Case No. 08-920-EL-SSO) as well as all  
workpapers and forecasts to support that testimony.

**Response:** See response to IGS Set 1-RPD-6.



Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

REQUEST FOR PRODUCTION OF DOCUMENTS

SC Set 1 –  
RPD-27

Refer to page 34, lines 14-16 of the Rose Testimony. With regards to the ICF forecast of wholesale power prices:

- a. Produce any document or other report explaining the ICF forecast or the assumptions that went into such forecast.
- b. Produce, in machine readable electronic format with formulas intact, all modeling files, including input and output files, and any workpapers, used in generating the power price forecast.
- c. Produce any other wholesale power price forecast created by Mr. Rose or ICF since January 1, 2013.

**Response:**

- a. Objection. This request is vague, unduly burdensome, and ambiguous. Moreover, this request seeks information not in the possession, custody or control of the Companies and seeks proprietary information belonging to ICF. Subject to and without waiving the foregoing objections, please follow this hyperlink ([http://www.epa.gov/powersectormodeling/docs/v513/Chapter\\_2.pdf](http://www.epa.gov/powersectormodeling/docs/v513/Chapter_2.pdf)) to documentation describing the IPM modeling platform. While this is an Environmental Protection Agency's document, it describes ICF's proprietary model IPM. Nevertheless, inputs in this EPA document are EPA inputs. The Inputs used in this proceeding are ICF's data. A description of GE MAPS is provided in the file labeled "SC Set 1-RPD-27 Attachment 1."
- b. Objection. This request is unduly burdensome, overbroad, seeks information not in the possession, custody or control of the Company, and seeks propriety information belonging to ICF. Subject to and without waiving the foregoing objections, while there are a vast number of assumptions used in the IPM and GE-MAPS models and both are very complex algorithms including sophisticated solution software for very large linear optimization programs, the relevant inputs are described in Mr. Rose's work papers.
- c. Objection. This request is irrelevant, vague, overbroad and unduly burdensome and seeks confidential information which Mr. Rose is contractually prohibited from disclosing. Mr. Rose and ICF have consulted for numerous clients during this period, and have conducted numerous forecasts as part of those engagements. Those forecasts are provided pursuant to confidentiality agreements with those clients, and Mr. Rose is prohibited from disclosing the clients for whom those forecasts were performed, the inputs to those forecasts, and the results of those forecasts. Subject to and without waiving the foregoing objections, the Companies state as follows: please refer to the attached files labeled "SC Set 1-RPD-23 Attachment 1 – Confidential." These are ICF's quarterly forecasts on power prices, natural gas prices, coal prices, emission allowance prices, and renewable energy credits. Please refer to SC-Set 1-RPD-23.

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

REQUEST FOR PRODUCTION OF DOCUMENTS

SC Set 1 –  
RPD-31

Refer to page 46 line 9 through page 47 line 10 of the Rose Testimony. With regards to the ICF natural gas price forecast:

- a. Produce any document or other report explaining the ICF forecast or the assumptions that went into such forecast.
- b. Produce, in machine readable electronic format with formulas intact, any modeling files, including input and output files, and any workpapers, used in generating the natural gas price forecast.
- c. Produce any other natural gas price forecast created by Mr. Rose or ICF since January 1, 2013.

**Response:**

- a. Please refer to the attached file "SC Set 1-RPD-31 Attachment 1."
- b. Objection. This request is unduly burdensome, seeks information not in the possession, custody or control of the Companies, and seeks propriety information belonging to ICF. Subject to and without waiving the foregoing objections, see response to SC Set 1-RPD 31(a.) above.
- c. Objection. This request is irrelevant, overbroad, unduly burdensome, overbroad and seeks confidential information which Mr. Rose is contractually prohibited from disclosing. Mr. Rose and ICF have consulted for numerous clients during this period, and have conducted numerous forecasts as part of those engagements. Those forecasts are provided pursuant to confidentiality agreements with those clients, and Mr. Rose is prohibited from disclosing the clients for whom those forecasts were performed, the inputs to those forecasts, and the results of those forecasts. Subject to and without waiving the foregoing objections, the Companies state as follows: The Companies will produce the publicly available forecasts which Mr. Rose has conducted from January 1, 2013 to present. Please refer to SC-Set 1-RPD-23. These are ICF's quarterly forecasts on power prices, natural gas prices, coal prices, emission allowance prices, and renewable energy credits.

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

REQUEST FOR PRODUCTION OF DOCUMENTS

SC Set 1 –  
RPD-35

Refer to page 55, lines 10-17 of the Rose Testimony. With regards to ICF's forecast of potential CO2 prices:

- a. Produce any document or other report explaining the ICF forecast or the assumptions that went into such forecast.
  - b. Produce, in machine readable electronic format with formulas intact, any modeling files, including input and output files, and any workpapers, used in generating the CO2 price forecast.
  - c. Produce any other CO2 price forecast created by Mr. Rose or ICF since January 1, 2013
- 
- a. Objection. This request is vague, overbroad and unduly burdensome. Subject to and without waiving the foregoing objections, see SC RPD 27 a. and b. Note, the CO<sub>2</sub> forecasts are made using the IPM model.
  - b. Objection. This request is overbroad, unduly burdensome, seeks information not in the possession, custody or control of the Companies, and seeks propriety information belonging to ICF. Subject to and without waiving the foregoing objections, while there are a vast number of assumptions used in the IPM model, the relevant inputs are described in Mr. Rose's work papers.
  - c. Objection. This request is overbroad, unduly burdensome, and seeks confidential information which Mr. Rose is contractually prohibited from disclosing. Mr. Rose and ICF have consulted for numerous clients during this period, and have conducted numerous forecasts as part of those engagements. Those forecasts are provided pursuant to confidentiality agreements with those clients, and Mr. Rose is prohibited from disclosing the clients for whom those forecasts were performed, the inputs to those forecasts, and the results of those forecasts. Subject to and without waiving the foregoing objections, the Companies state as follows: The Companies will produce the publicly available forecasts which Mr. Rose has conducted from January 1, 2013 to present. Please refer to SC-Set 1-RPD-23.

Case No. 14-1297-EL-SSO  
Ohio Edison Company, The Cleveland Electric Illuminating Company and  
The Toledo Edison Company for Authority to Provide for a Standard Service Offer  
Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

REQUEST FOR PRODUCTION OF DOCUMENTS

SC Set 1 –  
RPD-38

Refer to page 60, lines 3-7 of the Rose Testimony. With regards to the coal price forecast referenced therein:

- a. Produce any document or other report explaining the coal price forecast or the assumptions that went into such forecast.
- b. Produce, in machine readable electronic format with formulas intact, any modeling files, including input and output files, and any workpapers, used in generating the coal price forecast.
- c. Produce any other coal price forecast created by Mr. Rose or ICF since January 1, 2013.

**Response:**

- a. Objection. This request is vague, overbroad and unduly burdensome. Subject to and without waiving the foregoing objections, the coal price forecast is documented in Mr. Rose's work papers. The coal price forecast was developed using IPM. See SC Set 1-RPD-27 a. and b.
- b. Objection. This request is unduly burdensome, overbroad seeks information not in the possession, custody or control of the Companies, and seeks propriety information belonging to ICF. Subject to and without waiving the foregoing objections, while there are a vast number of assumptions used in the the relevant inputs are described in Mr. Rose's work papers.
- c. Objection. This request is overbroad, unduly burdensome, and seeks confidential information which Mr. Rose is contractually prohibited from disclosing. Mr. Rose and ICF have consulted for numerous clients during this period, and have conducted numerous forecasts as part of those engagements. Those forecasts are provided pursuant to confidentiality agreements with those clients, and Mr. Rose is prohibited from disclosing the clients for whom those forecasts were performed, the inputs to those forecasts, and the results of those forecasts. Subject to and without waiving the foregoing objections, the Companies state as follows: The Companies will produce the publicly available forecasts which Mr. Rose has conducted from January 1, 2013 to present. Please refer to SC Set 1-RPD-23.

CONFIDENTIAL ATTACHMENT 2 FILED UNDER SEAL



76 South Main Street  
Akron, Ohio 44308

Carrie M. Dunn  
Attorney

330-761-2352  
Fax: 330-384-3875

December 5, 2014

Joseph Olikier  
IGS Energy  
6100 Emerald Parkway  
Dublin, Ohio 43016

Re: Case No. 14-1297-EL-SSO: IGS's Request to Supplement Response to IGS First Set of Discovery

Dear Joe:

Please accept this letter as the response of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "the Companies") to Interstate Gas Supply, Inc.'s ("IGS") letter dated November 28, 2014. Please be aware that the Companies' failure to address any point raised in your letter does not indicate agreement with or acquiescence to that position.

**I. Judah Rose Electric Price Projections**

IGS has requested a variety of information about Witness Rose's electric and commodity price projections. *See* ICF Set 1-INT-1, 2. In response to these requests, the Companies have disclosed both the inputs used by Mr. Rose in his testimony and the quarterly ICF forecasts on power prices, natural gas prices, coal prices, emission allowance prices, and renewable energy prices. However, the Companies advised IGS that previous forecasts that are unrelated to this litigation and were performed pursuant to confidentiality agreements that ICF and Mr. Rose have with third parties. Moreover, Mr. Rose is contractually prohibited from disclosing forecasts done for previous clients. *See* SC Set 1-RPD-27; SC Set 1-RPD-23. Put simply, this information is not the Companies' information to provide in this proceeding.

IGS's letter objects to these responses, arguing that Mr. Rose's past forecasts are relevant. IGS's letter also claims that "there is clear Commission precedent that requires parties in a proceeding to produce past forecasts, or projections, or any other information that is relevant to the credibility of the testimony filed by a Party in a proceeding." The letter does not provide any citation to the "clear Commission precedent" cited in IGS's letter.

The Companies disagree with IGS's conclusion regarding the relevance of the previous forecasts. As you may be aware, Mr. Rose works with clients throughout the country. The projections done for those clients may be for a specific time period, a specific location, and/or include specific assumptions provided by the client. This can lead to divergent results. These

divergent results may reflect ICF's view on the market, but they may reflect the effect of the client's inputs on ICF's model. In light of the unique nature of every forecast, prior forecasts for other clients are not relevant to the validity of Mr. Rose's testimony in this case.

IGS's letter also claims that prior confidentiality agreements between Mr. Rose and his clients are not relevant since some contracts allow confidential information to be produced by court order. This argument fails to acknowledge the difference between an improper discovery request and an order requiring production. Mr. Rose is not obligated to provide confidential information belonging to third parties to satisfy an improper discovery request. Instead, Mr. Rose is only obligated to disclose confidential information pursuant to Court order, and in that proceeding all interested parties can be given notice and the opportunity to be heard as to the appropriate scope of protection for the confidential information.

IGS similarly claims that Mr. Rose is obligated to disclose his prior confidential testimony, requesting, among other things, prior testimony which Mr. Rose has submitted in Ohio. *See* IGS Set 1-RPD-1, 2, 6, 7, 8. Once again, IGS is incorrect. This testimony has been deemed confidential by the Commission. *See, e.g.,* Case No. 11-3549-EL-SSO, November 22, 2011 Entry. Duke Energy Ohio has consistently treated the information as confidential, requiring counsel and parties to sign a confidentiality agreement before being provided with that confidential information. In fact, you were counsel to a party in that proceeding until March 28, 2014, and presumably signed that confidentiality agreement. In any event, since that time Duke Energy Ohio has sought continued protection of Mr. Rose's testimony. *See* Case No. 11-3549-EL-SSO, Motion to Extend Protective Order filed August 12, 2014. It would be inappropriate for IGS to circumvent Commission protective orders by using discovery in unrelated cases to access confidential documents. If IGS would like access to this testimony, it should raise this issue in that case and obtain an appropriate order from the Attorney Examiner in that proceeding.

Accordingly, IGS seeks information which is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The Companies believe that their response to these requests are appropriate and will not be supplementing these responses.

## **II. Attorney Fees**

IGS submitted irrelevant and inappropriate discovery requests to the Companies seeking information related to their attorney-client relationship with the law firms of Jones Day and Calfee Halter and Griswold, who have appeared as counsel for the Companies in this Proceeding. As an initial matter, IGS did not merely request that "FirstEnergy identify whether it is remitting or charging FirstEnergy Solutions ("FES") any of the legal fees FirstEnergy is incurring as a result of participating in this proceeding" as it claims in its letter. Rather, IGS's specific requests are: 1) a response to the unfounded hypothetical "For example, IGS Energy filed a Motion to Compel FirstEnergy to adopt a confidentiality agreement that allows IGS to have access to FES's confidential information. If the law firm of Jones Day drafted a memo contra, would FirstEnergy submit the cost of drafting that memo contra to FES?" (IGS Set 1 INT 7); 2) "identify all invoices and the total amount of charges that FirstEnergy has submitted to FES for payment" (IGS Set 1 INT 8)." As discussed below, not only do these requests seek information protected by the attorney client privilege, they seek information that is unrelated to this litigation.

As an initial matter, whatever legal fees FES is or is not paying is not relevant as it is not a party

to the case.

Second, what the Companies pay their legal counsel is not relevant because, contrary to IGS's mistaken belief, the Companies have not collected legal fees for this Proceeding from their customers as they are not included in distribution rates.

Third, IGS's attempt to shoehorn their improper discovery requests into a corporate separation issue is misplaced. IGS's assertion that "FirstEnergy has an obligation under Rule 4901:1-35-03(F) to demonstrate in its Electric Security Plan ("ESP") Application that it is in compliance with its corporate separation plan" is without merit and not correct. Rule 4901:1-35-03(F) states:

The SSO application shall include a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. If any waivers of the corporate separation plan have been granted and are to be continued, the applicant shall justify the continued need for those waivers.

In other words, the Companies, in their ESP Application demonstrated that their current corporate separation plan is in compliance with the law – and were not required to demonstrate that the Companies are in compliance with their corporation separation plan (which they are in any event). In the Companies' ESP Application, the Companies make no changes whatsoever to their corporate separation plan and state:

Pursuant to O.A.C. 4901:1-35-03(C)(4), the Companies state that their corporate separation plan is publicly available as filed in Case No. 09-462-EL-UNC and approved in Case No. 10-388-EL-SSO. The Companies have obtained no waivers related to their approved corporate separation plan. The Companies currently do not anticipate any revisions or amendments to their approved corporate separation plan. (Application at 19-20.)

Indeed, since approval of the Companies' corporate separation plan in Case No. 10-388-EL-SSO, the Companies have not requested any changes as circumstances have not changed warranting such changes. At that time, when the Commission approved the Companies' corporate separation plan, the Commission found that the plan was in compliance with the law and nothing new has occurred to change that conclusion. Therefore, the Companies have met their obligation under Rule 4901:1-35-03(F) to demonstrate that their current corporate separation plan is in compliance with the law.

Fourth, the Commission expects the Companies to continue to comply with all laws and regulations – and they do. They also comply with their Cost Allocation Manual. As the Commission stated in a case in which IGS was a party "[i]t is the nature of the regulatory legal system whereby utilities are mandated to comply with all applicable laws and regulations; therefore IGS' statement that the Commission assumed Duke would comply with the law is a given." Case Nos. 14-689-EL-UNC; 14-690-EL-ATA, Entry on Rehearing at ¶ 14 dated August 6, 2014. Moreover, any compliance allegations should be reviewed in the appropriate forum – which is not this one. *Id.*



Lastly, the discovery process in an ESP proceeding is not the forum for IGS to seek discovery so that it may attempt to conjure up some misplaced compliance issue – of which it has no evidence.<sup>1</sup> Again, as the Commission stated in the afore-mentioned case, “should issues arise that require either an informal review or a formal proceeding, the requisite information and documentation will be available for our review and consideration in determining how to proceed on the issues.” *Id.*

For all of those reasons, the Companies will not be supplementing their responses to IGS Set 1 INTs 7, 8 or 9.

If you have any questions or concerns about any of the foregoing please feel free to contact me.

Very truly yours,

*/s/ Carrie M. Dunn*

Carrie M. Dunn

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<sup>1</sup> For example, IGS makes various allegations of a violation of Ohio law -- for example -- presupposing -- without any evidence -- that “FirstEnergy is providing a competitive advantage to any portion of its business or its competitive affiliates” and that FirstEnergy is using “distribution-related revenues to subsidize a competitive service or affiliate.”


**AFFIDAVIT OF JOSEPH OLIKER**

State of Ohio : S.S.

County of Franklin :

I, Joseph Oliker, counsel for Interstate Gas Supply, Inc. ("IGS" or "IGS Energy") in the above-caption proceedings, being first duly sworn, depose and say:

1. IGS served discovery on Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company ("FirstEnergy") on November 6, 2014.
2. FirstEnergy provided incomplete or inadequate responses on November 26, 2014.
3. On November 28, 2014, I contacted FirstEnergy and requested that it supplement its incomplete responses to IGS's relevant requests by December 5, 2014 or IGS would file a motion to compel. I also called FirstEnergy on December 5, 2014 to determine whether FirstEnergy would supplement its response.
4. FirstEnergy responded on December 5, 2014 that it would not supplement its response to IGS's discovery.
5. Considering FirstEnergy's response, I believe that FirstEnergy does not intend to provide complete discovery responses to IGS without an order from the Public Utilities Commission of Ohio compelling FirstEnergy to modify its Protective Agreement.

  
Joseph Oliker

Sworn before me and subscribed in my presence this 9<sup>th</sup> day of December, 2014



Helen A. Sweeney  
Notary Public, State of Ohio  
My Commission Expires 09-26-2015

  
Notary Public  
State of Ohio

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. 14-1297-EL-SSO
Edison Company for Authority to Provide	)	
for a Standard Service Offer Pursuant to	)	
R.C. § 4928.143 in the Form of an Electric	)	
Security Plan	)	

**FIRST SET OF DISCOVERY REQUESTS OF OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON  
COMPANY TO IGS ENERGY**

Pursuant to Rules 4901-1-16, 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies") requests that IGS Energy respond in writing and under oath to the following interrogatories and requests for production of documents. These discovery requests are governed by the following Definitions and Instructions:

**DEFINITIONS**

1. "You," "Your," or "IGS" refers to IGS Energy and each of its representatives, agents and any others acting on its behalf.
2. The "Proceeding" shall mean PUCO Case No. 14-1297-EL-SSO.
3. "Intervenors" shall mean parties intervening in the Proceeding other than the Companies.
4. "Staff" shall mean the staff of the Public Utilities Commission of Ohio.
5. "Communication" and "Communicate" are used herein in their broadest possible sense and mean any occurrence in which information is relayed between persons by means of an oral or written statement, including, without limitation, any, meeting, conversation,

correspondence, memoranda, discussion, negotiation, telephone conversation, voicemail message, electronic mail message, proposal, or presentation, in whatever form.

6. "Document" is used herein in its broadest possible sense and means any information memorialized in any way, however stored, including, but not limited to, bills, Communications, correspondence, electronic mail, memoranda, notes, writings, meeting minutes, spreadsheets, graphs, charts, and drafts of any of the foregoing, computer files, audio recordings, and photographs, in whatever form.

### **INSTRUCTIONS**

1. You are required to choose one or more of Your employees, officers or agents to answer the following interrogatories and to respond to the following requests for admission and requests for production, who shall furnish all such information which is known or available to You.

2. Where an interrogatory calls for an answer in more than one part, the parts should be presented in the answer in a manner which is clearly understandable.

3. If You claim any form of privilege as a ground for not completely answering any interrogatory, state the nature of the privilege and the general subject of the information withheld.

4. For any Document that You decline to produce because of a claim of privilege or any other reason, provide the date, author, and type of Document, the name of each Person to whom the Document was sent or shown, a summary of the contents of the Document, and a detailed description of the grounds for the claim of privilege or objection to producing the Document. If a claim of privilege is made only to certain portions of a Document, please provide that portion of the Document for which no claim of privilege is made.

5. If any Document responsive to a request for production of documents is no longer in Your possession or control, please state why the Document is no longer in Your possession or

control, explain the circumstances surrounding the disposition of the Document, identify the Person responsible for the disposition of the Document, and state whether the Document or copies thereof still exist.

6. Where an interrogatory requests that a date be given, but You cannot recall the specific date, please respond by giving an approximate date or time frame, indicating that the date or time frame is approximate.

### **INTERROGATORIES**

**INTERROGATORY NO. 1-1:** Identify each person whom You intend to call to testify at the hearings in the Proceeding. To the extent You claim that You have not made a final determination as to which witnesses You intend to call to testify on Your behalf, please supplement this response as soon as such a determination is made.

#### **RESPONSE:**

**INTERROGATORY NO. 1-2:** For each person identified in response to the preceding interrogatory, please state (a) the subject matter upon which the witness is expected to testify; (b) the facts to which each witness is expected to testify; (c) the opinions to be rendered by each witness; (d) for each opinion, the facts that support that opinion; (e) a summary of the witness's qualifications to provide the testimony; and (f) if not otherwise listed in (a), (b), (c) and (d), a summary of each witness's testimony. To the extent You claim that You have not made a final determination as to witnesses You intend to call to testify, please supplement this response as soon as such a determination is made.

#### **RESPONSE:**

**INTERROGATORY NO. 1-3:** For each witness identified in response to Interrogatory No. 1-1 above, please identify all proceedings in all jurisdictions in which the witness has offered evidence, including but not limited to, pre-filed testimony, sworn statements, and live testimony. For each response, please provide the following:

- (a) the jurisdiction in which the testimony or statement was pre-filed, offered, given, or admitted into the record;

- (b) the administrative agency, court, and/or forum in which the testimony or statement was pre-filed, offered, admitted, or given;
- (c) the date(s) the testimony or statement was pre-filed, offered, admitted, or given;
- (d) the identifying number for the case or proceeding in which the testimony or statement was pre-filed, offered, admitted, or given;
- (e) whether the witness was cross-examined; and
- (f) the custodian of the transcripts and pre-filed testimony or statements for each proceeding.

**RESPONSE:**

**INTERROGATORY NO. 1-4:** For each witness identified in response to Interrogatory No. 1-3, above, please identify all documents relating to the anticipated expert testimony, including, without limitation: (a) documents, correspondence or communications exchanged between You and the witness; and (b) any documents received, generated or relied upon by the witness.

**RESPONSE:**

**INTERROGATORY NO. 1-5:** Identify all documents or other evidence that You may seek to introduce as exhibits or for purposes of witness examination in any proceeding related to the Proceeding.

**RESPONSE:**

**INTERROGATORY NO. 1-6:** Identify each meeting, teleconference, or communication (written or oral), between You and any Intervenor, or member of any Intervenor, or any representative or counsel for any Intervenor regarding the Proceeding. For purposes of this Interrogatory:

- (a) for each meeting, teleconference, or oral communication, state the date and each person in attendance at same.
- (b) for each written communication, identify the date, author and addressee (including any person designated as receiving copies), and the form of the

communication (i.e., whether it was a letter, memorandum, email or some other form of written communication).

**RESPONSE:**

**INTERROGATORY NO. 1-7:** Please state whether there are any agreements, relating in any way to this Proceeding, between You and any Intervenor, any member or affiliate of an Intervenor, or a representative or counsel for any Intervenor. The term "Agreements" means written or oral terms agreed upon by the participants or any other commitments made between You and any Intervenor. For purposes of this Interrogatory, for each agreement, state:

- (a) the parties to the agreement;
- (b) the date of the agreement;
- (c) whether the agreement was written or oral; and
- (d) the subject matter of the agreement.

**RESPONSE:**

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

Produce all documents that comprise, constitute or relate to:

- 1-1.** Documents identified or referenced in response to any of the foregoing Interrogatories.
- 1-2.** Documents that contain any information used, reviewed, or referenced in preparing Your responses to any of the foregoing Interrogatories.
- 1-3.** Documents that You may introduce as exhibits or use for purposes of witness examination at any hearing related to the Proceeding.
- 1-4.** The curriculum vitae of any witness identified in response to Interrogatory No. 1-1.
- 1-5.** Any reports, papers, statements, notes, other documents, and any correspondence, communications, or other documents exchanged between You and any witness identified in response to Interrogatory No. 1-1.

- 1-6.** Contracts for services between You and any witness identified in response to Interrogatory No. 1-1.
- 1-7.** Documents reviewed, relied upon, or generated by any witness identified in response to Interrogatory No. 1-1 for purposes of this Proceeding.
- 1-8.** Transcripts of depositions of each witness identified in response to Interrogatory No. 1-1 in any matter identified in response to Interrogatory No. 1-3.
- 1-9.** Any analysis or opinion rendered by said expert identified in response to Interrogatory No. 1-1, on behalf of You, related to the topics listed in Interrogatory No. 1-2.
- 1-10.** Documents, work papers, and electronic files that you have received from any Intervenor in this proceeding.
- 1-11.** Agreements between You and any Intervenor to this proceeding, including any counsel or representative thereof, as identified in response to Interrogatory No. 1-7.
- 1-12.** Documents identified in response to Interrogatory No. 6.



Respectfully Submitted,

/s/ Carrie M. Dunn

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ATTORNEYS FOR OHIO EDISON  
COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY, AND THE  
TOLEDO EDISON COMPANY

## CERTIFICATE OF SERVICE

I certify that this FIRST SET OF DISCOVERY REQUESTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY TO IGS was served on this 20th day of November, 2014 via email on the following parties:

/s/ Carrie M. Dunn  
One of Attorneys for Applicants

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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. 14-1297-EL-SSO
Edison Company for Authority to Provide	)	
for a Standard Service Offer Pursuant to	)	
R.C. § 4928.143 in the Form of an Electric	)	
Security Plan	)	

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**FIRST SET OF DISCOVERY REQUESTS OF OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON  
COMPANY TO THE INDEPENDENT MARKET MONITOR**

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Pursuant to Rules 4901-1-16, 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies") requests that Monitoring Analytics, operating in its capacity as the PJM Independent Market Monitor (the "IMM"), respond in writing and under oath to the following interrogatories and requests for production of documents. These discovery requests are governed by the following Definitions and Instructions:

**DEFINITIONS**

1. "You," "Your," or the "IMM" refers to Monitoring Analytics, operating in its capacity as the PJM Independent Market Monitor and each of its representatives, agents and any others acting on its behalf.
2. The "Proceeding" shall mean PUCO Case No. 14-1297-EL-SSO.
3. "Rider RRS" shall mean the Retail Rate Stability Rider proposed by the Companies in the Proceeding.

**INTERROGATORY NO. 1-13:** List all proceedings in which You participated as an intervenor or otherwise filed any comments, briefs, testimony, or other statements of position. For purposes of this Interrogatory, “list” shall include the case name, case number, and jurisdiction in which matter is or was pending.

**RESPONSE:**

**INTERROGATORY NO. 1-14:** Identify all witnesses who testified on behalf of You in respect of each proceeding identified in the preceding interrogatory. For purposes of this Interrogatory, “identify” shall include the witness’s name, business address, occupation, and relationship to You.

**RESPONSE:**

**INTERROGATORY NO. 1-15:** Have you prepared or have you had anyone prepare any long-term forecasts of wholesale energy or capacity prices? (For purposes of this Interrogatory, “long term” means a period of at least, but not limited to, three years.)

**RESPONSE:**

**INTERROGATORY NO. 16:** Identify with particularity the harm You will incur if Rider RRS is approved by the Commission.

**RESPONSE:**

**INTERROGATORY NO. 17:** Identify the safeguards the law firm of Williams, Allwein and Moser, LLC have undertaken to prevent the dissemination of confidential information between Sierra Club and You.

**RESPONSE:**

## **REQUESTS FOR PRODUCTION OF DOCUMENTS**

Produce all documents that comprise, constitute or relate to:

- 1-1.** Communications between the IMM and PJM relating to the Proceeding, Rider RRS, or the Plants.
- 1-2.** Communications between the IMM and Intervenors relating to the Proceeding, Rider RRS, or the Plants.
- 1-3.** Communications between the IMM and Staff or any member of the Commission relating to the Proceeding, Rider RRS, or the Plants.
- 1-4.** Documents work papers and electronic files produced to any other party in this proceeding.
- 1-5.** Forecasts of the wholesale energy market prepared in 2014 in Your possession, custody, or control, regardless of the person or entity to have prepared said forecast.
- 1-6.** Forecasts of the wholesale capacity market prepared in 2014 in Your possession, custody, or control, regardless of the person or entity to have prepared said forecast.
- 1-7.** Documents identified or referenced in response to any of the foregoing Interrogatories.
- 1-8.** Documents that contain any information used, reviewed, or referenced in preparing Your responses to any of the foregoing Interrogatories.
- 1-9.** Documents that You may introduce as exhibits or use for purposes of witness examination at any hearing related to the Proceeding.
- 1-10.** Any analysis or opinion rendered by said expert identified in response to Interrogatory No. 1-3, on behalf of You, related to the topics listed in Interrogatory No. 1-4.
- 1-11.** The curriculum vitae of any witness identified in response to Interrogatory No. 1-3.
- 1-12.** Any reports, papers, statements, notes, other documents, and any correspondence, communications, or other documents exchanged between You and any witness identified in response to Interrogatory No. 1-3.
- 1-13.** Contracts for services between You and any expert retained or consulted to provide opinions, testimony, evidence, or analysis in relation to the above-captioned proceedings.
- 1-14.** Agreements between You and any Intervenor to this proceeding, including any counsel or representative thereof.
- 1-15.** Transcripts of depositions of each witness identified in Interrogatory No. 1-14. If a transcript is not available, please provide the name, address, and telephone number of the court reporting service used for purposes of each deposition.

**1-16.** Forecasts responsive to Interrogatory No. 1-15.

**1-17.** Documents reviewed, relied upon, or generated by any witness identified in response to Interrogatory No. 1-3 for purposes of this Proceeding.

**1-18.** Produce any forecast, analysis or communications prepared in 2014 relating to the current or projected future state regulation of the electric industry in Ohio.

**1-19.** Documents, notes, presentations, and correspondence (including but not limited to, letters, emails, telephone transcripts, etc.) between You and any Intervenor, on or after August 4, 2014 regarding the Proceeding.

CONFIDENTIAL ATTACHMENT 6 FILED UNDER SEAL